

# **TITLE 20: ENVIRONMENTAL PROTECTION**

## **CHAPTER 1: ENVIRONMENTAL PROTECTION GENERAL**

### **PART 1: RULEMAKING PROCEDURES - ENVIRONMENTAL IMPROVEMENT BOARD**

#### **20.1.1.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.1.1.1 NMAC - Rp, 20.1.1.1 NMAC, 4/14/2018]

#### **20.1.1.2 STATUTORY AUTHORITY:**

This part is adopted pursuant to Sections 14-4-1 to -11, 50-9-12, 74-1-5, 74-1-8, 74-1-9, 74-2-6, 74-3-5, 74-4-5 and 74-9-27 NMSA 1978.

[20.1.1.2 NMAC - Rp, 20.1.1.2 NMAC, 4/14/2018]

#### **20.1.1.3 SCOPE:**

This part governs the procedures in all rulemaking hearings before the board, except to the extent that this part may be inconsistent with specific procedures in governing law. In cases where this part is inconsistent with any rulemaking procedures specified in governing law, the procedures in governing law apply, rather than the procedures in this part.

[20.1.1.3 NMAC - Rp, 20.1.1.3 NMAC, 4/14/2018]

#### **20.1.1.4 DURATION:**

Permanent.

[20.1.1.4 NMAC - Rp, 20.1.1.4 NMAC, 4/14/2018]

#### **20.1.1.5 EFFECTIVE DATE:**

April 14, 2018, unless a later date is cited at the end of a section.

[20.1.1.5 NMAC - Rp, 20.1.1.5 NMAC, 4/14/2018]

#### **20.1.1.6 OBJECTIVE:**

The purposes of this part are:

- A.** to standardize the procedures used in rulemaking proceedings before the board;
- B.** to encourage public participation in the hearings conducted by the board for the promulgation of regulations;
- C.** to make possible the effective presentation of the evidence and points of view of parties and members of the general public; and
- D.** to assure that board hearings are conducted in a fair and equitable manner.

[20.1.1.6 NMAC - Rp, 20.1.1.6 NMAC, 4/14/2018]

#### **20.1.1.7 DEFINITIONS:**

As used in this part:

- A.** "board administrator" means the department employee designated by the secretary of environment to provide staff support to the board;
- B.** "board" means the environmental improvement board;
- C.** "department" means the New Mexico environment department;
- D.** "document" means any paper, exhibit, pleading, motion, response, memorandum, decision, order or other written or tangible item that is filed in a proceeding under this part, or brought to or before the board for its consideration, but does not include a cover letter accompanying a document transmitted for filing;
- E.** "exhibit" means any document or tangible item submitted for inclusion in the hearing record;
- F.** "general public" includes any person attending a hearing who has not submitted a notice of intent to present technical testimony;
- G.** "governing law" means the statute, including any applicable case law, which authorizes and governs the decision on the proposed regulatory change;
- H.** "hearing officer" means the person designated by the board to conduct a hearing under this part;
- I.** "hearing record" means:

- (1) the transcript of proceedings; and
- (2) the record proper;

**J.** "participant" means any person who participates in a rulemaking proceeding before the board;

**K.** "party" means the petitioner; any person filing a notice of intent to present technical testimony, and any person filing an entry of appearance;

**L.** "person" means an individual or any entity, including federal, state and local governmental entities, however organized;

**M.** "petitioner" means the person who petitioned the board for the regulatory change that is the subject of the hearing;

**N.** "provide to the public" means for the board to distribute rulemaking information by:

- (1) posting it on the board's website;
- (2) posting it on the New Mexico sunshine portal;
- (3) making it available at the department's district, field, and regional offices;
- (4) sending it by email to persons who have made a written request for notice of announcements addressing the subject of the rulemaking proceeding and who have provided an email address to the board administrator;
- (5) sending it by email to persons who have participated in the rulemaking and who have provided an email address to the board administrator;
- (6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provided a postal address; and
- (7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees.

**O.** "record proper" means all documents related to the hearing and received or generated by the board prior to the beginning, or after the conclusion, of the hearing, including, but not limited to:

- (1) the petition for hearing and any response thereto;

(2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition for hearing was considered, and of any subsequent meeting at which the proposed regulatory change was discussed;

(3) the notice of hearing;

(4) affidavits of publication;

(5) a copy of all publications in the New Mexico register relating to the proposed rule;

(6) notices of intent to present technical testimony;

(7) all written pleadings, including motions and responsive pleadings and orders;

(8) a copy of any technical information that was relied upon in formulating the final rule;

(9) statements for the public record or other relevant materials received by the agency during the public comment period;

(10) the hearing officer's report, if any;

(11) a copy of the full text of the initial proposed rule, the full text of the final adopted rule, and the concise explanatory statement filed with the state records administrator;

(12) post-hearing submissions, if allowed;

(13) the audio recordings (or an appropriate extract of the recordings) of the meeting(s) at which the board deliberated on the adoption of the proposed regulatory change;

(14) the board's decision and the reasons therefore; and

(15) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.

**P.** "regulation" means any rule, regulation or standard promulgated by the board and affecting one or more persons, besides the board and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts;

**Q.** "regulatory change" means the adoption, amendment or repeal of a regulation;

**R.** "service" means personally delivering a copy of the document, exhibit or pleading to the person required by this part to be served; mailing it to that person; or, if that person has agreed, sending it by facsimile or electronic transmission; if a person is represented by an attorney, service of the document shall be made on the attorney; service by mail is complete upon mailing the document; service by facsimile or electronic transmission is complete upon the transmission of the document.

**S.** "technical testimony" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing; and

**T.** "transcript of proceedings" means the verbatim record (audio recording or stenographic) of the proceedings, testimony and argument in the matter, together with all exhibits proffered at the hearing, whether or not admitted into evidence, including the record of any motion hearings or prehearing conferences.

[20.1.1.7 NMAC - Rp, 20.1.1.7 NMAC, 4/14/2018]

#### **20.1.1.8-20.1.1.106 [RESERVED]**

#### **20.1.1.107 POWERS AND DUTIES OF BOARD AND HEARING OFFICER:**

**A.** Board: The board shall exercise all powers and duties prescribed under this part and not otherwise delegated to the hearing officer or the board administrator.

**B.** Hearing officer: The board shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under this part. The hearing officer may be a member of the board. The hearing officer shall conduct a fair and equitable proceeding, assure that the facts are fully elicited and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in proceedings governed by this part, including, but not limited to:

- (1) conducting hearings under this part;
  - (2) taking, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;
  - (3) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;
  - (4) if requested by the board, preparing and filing a report of the hearing, with recommendations for board action;
  - (5) requesting parties to file original documents with the board administrator;
- and

(6) requesting a party to submit a proposed statement of reason in support of the board's decision.

[20.1.1.107 NMAC - Rp, 20.1.1.107 NMAC, 4/14/2018]

**20.1.1.108 LIBERAL CONSTRUCTION:**

This part shall be liberally construed to carry out their purpose.

[20.1.1.108 NMAC - Rp, 20 NMAC 1.1.108, 4/14/2018]

**20.1.1.109 SEVERABILITY:**

If any part or application of this part is held invalid, the remainder of this part, or their application to other persons or situations, shall not be affected.

[20.1.1.109 NMAC - Rp, 20.1.1.109 NMAC, 4/14/2018]

**20.1.1.110 GENERAL PROVISIONS- COMPUTATION OF TIME:**

**A.** Computation of time: In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday, or legal state holiday. Whenever a party must act within a prescribed period after service upon him, and service is by mail, three days is added to the prescribed period. The three-day extension does not apply to any deadline under the act.

**B.** Extension of time: The board or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[20.1.1.110 NMAC – Rp, 20.1.1.110 NMAC, 4/14/2018]

**20.1.1.111 GENERAL PROVISIONS- RECUSAL:**

No board member shall participate in any action in which his or her impartiality of fairness may reasonably be questioned, and the member shall recuse himself or herself in any such action by giving notice to the board and the general public by announcing this recusal on the record. In making a decision to recuse himself or herself, the board member may rely upon the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978, the Financial Disclosures Act, Sections 10-16A-1 through 10-16A-8 NMSA 1978, or any other relevant authority.

[20.1.1.111 NMAC – RP, 20.1.1.111 NMAC, 4/14/2018]

#### **20.1.1.112 GENERAL PROVISIONS- EX PARTE DISCUSSIONS:**

At no time after the initiation and before the conclusion of a proceeding under this part, shall the department, or any other party, interested participant, or their representatives discuss ex parte the merits of the proceeding with any board member or the hearing officer.

[20.1.1.112 NMAC – Rp, 20.1.1.112 NMAC, 4/14/2018]

#### **20.1.1.113-20.1.1.199 [RESERVED]**

#### **20.1.1.200 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:**

**A.** The filing of any document as required by this part shall be accomplished by delivering the document to the board administrator and the board legal counsel.

**B.** Any person filing any document shall:

(1) provide the board administrator with the original and nine copies of the document, provided that the board administrator may waive the requirement to provide nine copies if an electronic copy of the original is provided in a format acceptable for distribution to the board members;

(2) if the document is a notice of intent to present technical testimony filed by any person other than the petitioner, serve a copy thereof on the petitioner;

(3) any document filed pursuant to this part shall be filed with the board administrator at least 20 days before any meeting at which the board will consider the document. If the document is a motion seeking an order from the hearing officer in a rules hearing, the motion must also be served at the same time with the hearing officer and the board legal counsel.

**C.** Whenever this part requires service of a document, service shall be made by delivering a copy to the person to be served by mailing it, or, if that person has agreed, by sending it by facsimile or by electronic transmission to that person. Agreement to be served by facsimile or electronic transmission may be evidenced by placing the person's facsimile number or email address on a document filed pursuant to this part. Service shall also be made upon the board's legal counsel. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document. Service by facsimile or electronic transmission is complete upon transmission of the document.

**D.** The petitioner and any person who has filed a timely notice of intent to present technical testimony under this part may inspect all documents that have been filed in a proceeding in which they are involved as participants. Such inspection shall be

permitted in accordance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978. The board administrator shall notify the petitioner and all persons who have filed a timely notice of intent to present technical testimony by email whenever any document is filed in a proceeding under this part. Any such person who does not provide an email address shall instead be notified by mail.

**E.** All documents filed under this part shall be made available to any person for inspection upon request and shall, to the extent required by law, be made available on the department's website and the New Mexico sunshine portal.

**F.** The board administrator shall provide copies of all documents to each board member at least 15 days before the meeting at which the board will consider the documents. With regard to those documents filed in conjunction with any rules hearing, the hearing officer may make exception to this requirement.

[20.1.1.200 NMAC - Rp, 20.1.1.200 NMAC, 4/14/2018]

#### **20.1.1.201 EXAMINATION OF DOCUMENTS FILED:**

**A.** Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any rulemaking proceeding before the board. Such documents shall be made available by the board administrator, as appropriate, and shall also be made available on the New Mexico sunshine portal. If the board administrator determines that any part of the rulemaking record cannot be practicably displayed or is inappropriate for public display on the New Mexico sunshine portal, the board administrator shall describe that part of the record, shall note on the New Mexico sunshine portal that the part of the record is not displayed, and shall provide instructions for accessing or inspecting that part of the record.

**B.** Cost of duplication: The cost of duplicating documents shall be borne by the person seeking copies of such documents, but the board administrator shall not charge a fee for providing the notice of proposed rulemaking in electronic form.

[20.1.1.201 NMAC - Rp, 20.1.1.201 NMAC, 4/14/2018]

#### **20.1.1.202-20.1.1.299 [RESERVED]**

#### **20.1.1.300 PREHEARING PROCEDURES - PETITION FOR REGULATORY CHANGE:**

**A.** Any person may file a petition with the board to adopt, amend or repeal any regulation within the jurisdiction of the board.

**B.** The petition shall be in writing and shall include a statement of the reasons for the regulatory change. The petition shall cite the relevant statutes that authorize the

board to adopt the proposed rules and shall estimate the time that will be needed to conduct the rules hearing, if at all possible. A copy of the entire rule, including proposed regulatory change, indicating any language proposed to be added or deleted, shall be attached to the petition. The entire rule and its proposed changes shall be submitted to the board in redline fashion, and shall include line numbers. Any document that does not include all the items required to be in a petition shall be returned to the petitioner along with a copy of these rules and a check-off list of required items, and the petitioner will be asked to resubmit the petition in the form required by these rules.

**C.** The board shall determine, at a public meeting occurring at least 15 days and no later than 60 days, after receipt of the petition, whether or not to hold a public hearing on the proposal. Any person may respond to the petition either in writing prior to the public meeting or in person at the public meeting.

**D.** If the board determines to hold a public hearing on the petition, it may issue such orders specifying procedures for conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate to fully inform the board of the matters at issue in the hearing or control the conduct of the hearing. Such orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct testimony in writing prior to the hearing, or limiting testimony or cross-examination

[20.1.1.300 NMAC - Rp, 20.1.1.300 NMAC, 4/14/2018]

#### **20.1.1.301 NOTICE OF HEARINGS:**

**A.** Unless otherwise allowed by governing law and specified by the board, the board shall provide to the public notice of the proposed rulemaking at least 60 days prior to the hearing. Notice of the proposed rulemaking shall include publication in at least one newspaper of general circulation in the state, publication in the New Mexico register, and such other means of providing notice as the board may direct or are required by law.

**B.** The notice of proposed rulemaking shall state:

(1) the subject of the proposed rule, including a summary of the full text of the proposed rule and a short explanation of the purpose of the proposed rule;

(2) a citation to the specific legal authority authorizing the proposed rule and a short explanation of the purpose of the proposed rule;

(3) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained;

(4) the statutes, regulations and procedural rules governing the conduct of the hearing;

(5) the manner in which persons may present their views or evidence to the board, including the time, place, and information on participating in the public hearing;

(6) the location where persons may secure copies of the full text of the proposed regulatory change;

(7) an internet link providing free access to the full text of the proposed rule; and

(8) if applicable, that the board may make a decision on the proposed regulatory change at the conclusion of the hearing.

[20.1.1.301 NMAC - Rp, 20.1.1.301 NMAC, 4/14/2018]

### **20.1.1.302 TECHNICAL TESTIMONY:**

**A.** Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 20 days prior to the hearing, file a notice of intent to present technical testimony with the board administrator. The notice shall:

(1) identify the person for whom the witness(es) will testify;

(2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;

(3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;

(4) include a copy of the direct testimony of each technical witness in narrative form;

(5) include the text of any recommended modifications to the proposed regulatory change; and

(6) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

**B.** The hearing officer may enforce the provisions of this section through such action as the hearing officer deems appropriate, including, but not limited to, exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to such testimony. The hearing officer may also require that written rebuttal testimony be submitted prior to hearing.

[20.1.1.302 NMAC - Rp, 20.1.1.302 NMAC, 4/14/2018]

#### **20.1.1.303 ENTRY OF APPEARANCE:**

Any person may file an entry of appearance as a party. The entry of appearance shall be filed with the board administrator no later than 20 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid waste of resources.

[20.1.1.303 NMAC – Rp, 20.1.1.303 NMAC, 4/14/2018]

#### **20.1.1.304 PARTICIPATION BY GENERAL PUBLIC:**

**A.** Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

**B.** A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing. Written comment must be mailed or delivered to the board administrator; email comments will not be accepted. However, comments may be submitted electronically on the board webpage.

**C.** If the board changes the date of the hearing or the deadline for submitting comments as stated in the notice of proposed rulemaking, the board shall provide to the public notice of the change.

[20.1.1.304 NMAC - Rp, 20.1.1.304 NMAC, 4/14/2018]

#### **20.1.1.305 LOCATION OF HEARING:**

Unless otherwise provided by governing law, the board may hold hearings on proposed regulatory changes of statewide application in Santa Fe or within any area of the state substantially affected by the proposed regulatory change, and shall hold hearings on proposed changes of local application within the area affected by the proposal.

[20.1.1.305 NMAC - Rp, 20.1.1.305 NMAC, 4/14/2018]

#### **20.1.1.306 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:**

**A.** A member of the board may participate in a meeting or hearing of the board by means of a conference telephone or other similar communications equipment, when it is otherwise difficult or impossible for the member to attend the meeting or hearing in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time

and members of the public attending the meeting or hearing are able to hear any member of the board who speaks at the meeting or hearing. A board member's participation by such means shall constitute presence in person at the meeting or hearing. A board member who wishes to participate in a rules hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rules hearing so as to permit the board administrator to arrange for adequate telephone hookup.

**B.** A witness may participate in a rules hearing of the board by means of a telephone conference or other similar communications equipment when an emergency or circumstances make it impossible for the witness to attend the hearing in person. A witness who wishes to participate in a rules hearing in this manner must receive permission from the hearing officer sufficiently in advance of the rules hearing. No witness may participate in a rules hearing by telephone conference unless he makes a request sufficiently in advance of the rules hearing so as to permit the board administrator to arrange for an adequate telephone hookup. Each witness participating by telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the hearing must be able to hear any witness who speaks during the hearing.

[20.1.1.306 NMAC - Rp, 20.1.1.306 NMAC, 4/14/2018]

#### **20.1.1.307 MOTIONS:**

**A.** General: All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion and state the relief sought. Each motion shall be accompanied by an affidavit, certificate or other evidence relied upon and shall be served as provided by 20.1.1.200 NMAC.

**B.** Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

**C.** Opposed motions: Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

**D.** Response to motions: Any party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

**E.** Reply to response: The moving party may, but is not required to, submit a reply to any response within 10 days after service of the response.

**F. Decision:** All motions shall be decided by the hearing officer without a hearing, unless otherwise ordered by the hearing officer *sua sponte* or upon written request of any party. The hearing officer shall refer any motion that would effectively dispose of the matter, and may refer any other motion to the board for a decision. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The hearing officer shall file all original documents with the board administrator.

[20.1.1.307 NMAC - Rp, 20.1.1.307 NMAC, 4/14/2018]

**20.1.1.308-20.1.1.399 [RESERVED]**

**20.1.1.400 HEARING PROCEDURES - CONDUCT OF HEARINGS:**

**A.** The rules of civil procedure and the rules of evidence shall not apply.

**B.** The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening the record with unnecessary repetition. The hearing shall proceed as follows.

(1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any party who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present its case first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the general public. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any person who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 20.1.1.404 NMAC. If the

record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

**C.** If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.

[20.1.1.400 NMAC - Rp, 20.1.1.400 NMAC, 4/14/2018]

#### **20.1.1.401 TESTIMONY AND CROSS-EXAMINATION:**

**A.** All testimony will be taken under oath or affirmation which may be accomplished in mass or individually.

**B.** The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is incompetent or unduly repetitious. The hearing officer shall require all oral testimony be limited to the position of the witness in favor of or against the proposed rule.

**C.** Any person who testifies at the hearing is subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

[20.1.1.401 NMAC - Rp, 20.1.1.401 NMAC, 4/14/2018]

#### **20.1.1.402 EXHIBITS:**

**A.** Any person offering an exhibit at hearing, other than a document filed and served before the hearing, shall provide at least an original and nine copies for the board, and a sufficient number of copies for every other party.

**B.** All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he shall identify each exhibit with an index tab or by other appropriate means.

**C.** Large charts and diagrams, models and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

[20.1.1.402 NMAC - Rp, 20.1.1.402 NMAC, 4/14/2018]

#### **20.1.1.403 TRANSCRIPT OF PROCEEDINGS:**

**A.** Unless specified by the board or hearing officer, a verbatim transcript shall be made of the hearing. The cost of the original transcript of the proceeding and of providing a copy for each board member shall be borne by the petitioner.

**B.** Any person may obtain a copy of the transcript of a proceeding. It shall be obtained directly from the court reporter, and the cost of the transcript shall be paid directly to the source.

[20.1.1. 403 NMAC - Rp, 20.1.1.403 NMAC, 4/14/2018]

#### **20.1.1.404 POST-HEARING SUBMISSIONS:**

The hearing officer may allow the record to remain open for a reasonable period of time following the conclusion of the hearing for written submission of additional evidence, comments and arguments, and proposed statements of reasons. The hearing officer's determination regarding post-hearing submissions shall be announced at the conclusion of the hearing. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of the material to be submitted and the necessity for a prompt decision.

[20.1.1. 404 NMAC - Rp, 20.1.1.404 NMAC, 04/14/2018]

#### **20.1.1.405 HEARING OFFICER'S REPORT:**

If the board directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals and the evidence supporting those proposals, including discussion or recommendations as requested by the board, and shall be filed with the board administrator within the time specified by the board. The board administrator shall promptly notify each party that the hearing officer's report has been filed and shall provide a copy of the report along with a notice of any deadline set for comments on that report.

[20.1.1.405 NMAC - Rp, 20.1.1.405 NMAC, 4/14/2018]

#### **20.1.1.406 DELIBERATION AND DECISION:**

**A.** If a quorum of the board attended the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing, the board may immediately deliberate and make a decision on the proposed regulatory change.

**B.** If the board does not reach a decision at the conclusion of the hearing, the board administrator, following receipt of the transcript, will promptly furnish a copy of the transcript to each board member that did not attend the hearing and, if necessary, to

other board members, board counsel and the hearing officer. Exhibits provided to those persons at the time of the hearing need not be supplied again.

**C.** The board shall reach its decision on the proposed regulatory change within 60 days following the close of the record or the date the hearing officer's report is filed, whichever is later.

**D.** If, during the course of its deliberations, the board determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed regulatory change, the board may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.

**E.** The board shall issue its decision on the proposed regulatory change in a suitable format, which shall include its reasons for the action taken.

**F.** The board's written decision is the official version of the board's action, and the reasons for that action. Other written or oral statements by board members are not recognized as part of the board's official decision or reasons.

**G.** If the board fails to act on a proposed rule within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the board acts to extend the period for an additional two years by filing a statement of good cause for the extension in the rulemaking record. If the board extends the rulemaking period, it shall provide for additional public participation, comments, and hearing prior to adopting the rule.

**H.** The board may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If the board terminates a rulemaking in this manner, it shall provide to the public notice of its action.

[20.1.1.406 NMAC - Rp, 20.1.1.406 NMAC, 4/14/2018]

**20.1.1.407 NOTICE OF BOARD ACTION:**

**A.** The board administrator shall provide to the public notice of the board's action and a concise explanatory statement.

**B.** The adopted rule shall not take effect unless within 15 days of adoption of the rule, the board delivers the final rule to the state records administrator, accompanied by a concise explanatory statement that contains:

(1) the date that the board adopted the rule;

(2) a reference to the specific statutory or other authority authorizing the rule;

and

(3) any findings required by law for adoption of the rule.

**C.** Adoption of the final rule occurs upon signature of the written decision.

**D.** If the state records administrator notifies the board of having made any minor, nonsubstantive corrections in spelling, grammar, and format in the filed rule, the board administrator shall provide to the public notice of the correction within 30 days of receiving the state records administrator's record of correction.

[20.1.1.407 NMAC - Rp, 20.1.1.407 NMAC, 4/14/2018]

**20.1.1.408-20.1.1.499 [RESERVED]**

**20.1.1.500 APPEALS AND STAYS - APPEAL OF REGULATIONS:**

**A.** Appeal of any regulatory change by the board shall be taken in accordance with governing law.

**B.** The appellant shall serve a copy of the notice of appeal on the board and on each party.

**C.** The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the expense of appellant.

**D.** Unless otherwise provided by governing law, the filing of an appeal shall not act as a stay of the regulatory change being appealed.

[20.1.1.500 NMAC - Rp, 20.1.1.500 NMAC, 4/14/2018]

**20.1.1.501 STAY OF BOARD REGULATIONS:**

**A.** Any person who is or may be affected by a rule adopted by the board may file a motion with the board seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting, the granting of a stay. The movant shall file the motion with the board administrator at least 30 days before the meeting at which the board will consider the motion. The movant shall serve the motion for a stay as provided by this part, and shall further serve all parties in the rulemaking proceeding. The board chair will decide at which meeting the stay motion will be heard.

**B.** Unless otherwise provided by governing law, the board may grant a stay pending appeal of any regulatory change promulgated by the board. The board may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

**C.** In determining whether good cause is present for the granting of a stay, the board, upon at least a two-thirds vote of the members voting shall consider:

- (1) the likelihood that the movant will prevail on the merits of the appeal;
- (2) whether the moving party will suffer irreparable harm if a stay is not granted;
- (3) whether substantial harm will result to other interested persons; and
- (4) whether harm will ensue to the public interest.

**D.** If no action is taken within 60 days after filing of the motion, the board shall be deemed to have denied the motion for stay.

[20.1.1.501 NMAC - Rp, 20.1.1.501 NMAC, 4/14/2018]

## **PART 2: ADJUDICATORY PROCEDURES - ENVIRONMENTAL IMPROVEMENT BOARD**

### **20.1.2.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.1.2.1 NMAC - Rp, 20 NMAC 1.2.I.100, 8/27/06]

### **20.1.2.2 SCOPE:**

**A.** This part governs the following adjudicatory proceedings of the environmental improvement board:

(1) proceedings for the granting of variances, or for the appeal from permitting actions, pursuant to the Air Quality Control Act, Sections 74-2-7(H) and 74.2-8 NMSA 1978 ("petition hearings"); and

(2) any other adjudicatory proceedings under the jurisdiction of the board to which the board applies this part.

**B.** Uniform Licensing Act proceedings: Subparts I, III and IV of this part [now 20.1.2.1 through 20.1.2.7 NMAC, and 20.1.2.106 through 20.1.2.113 NMAC; 20.1.2.200 through 20.1.2.208 NMAC; and 20.1.2.400 through 20.1.2.405 NMAC] apply to any board adjudicatory proceedings conducted under the Uniform Licensing Act, Sections 61-1-1 NMSA 1978 et seq., ("ULA"), including proposed denial, suspension or revocation of certificates held or applied for under the Medical Radiation Health and Safety Act, Section 61-14E-11 NMSA 1978 ("ULA hearings"). Any conflict between this part and the ULA shall be resolved in favor of the ULA.

[20.1.2.2 NMAC - Rp, 20 NMAC 1.2.I.101, 8/27/06]

### **20.1.2.3 STATUTORY AUTHORITY:**

This part is adopted under the authority of the Air Quality Control Act, Sections 74-2-5, 74-2-7 and 74-2-8 NMSA 1978; the Medical Radiation Health and Safety Act, Section 61-14E-5 NMSA 1978; and the Environmental Improvement Act, Section 74-1-8 NMSA 1978, as amended.

[20.1.2.3 NMAC - Rp, 20 NMAC 1.2.I.102, 8/27/06]

### **20.1.2.4 DURATION:**

Permanent.

[20.1.2.4 NMAC - Rp, 20 NMAC 1.2.I.103, 8/27/06]

### **20.1.2.5 EFFECTIVE DATE:**

August 27, 2006, unless a later date is cited at the end of a paragraph.

[20.1.2.5 NMAC - Rp, 20 NMAC 1.2.I.104, 8/27/06]

### **20.1.2.6 OBJECTIVE:**

The objective of this part is to establish procedures that govern the adjudicatory proceedings of the environmental improvement board.

[20.1.2.6 NMAC - Rp, 20 NMAC 1.2.I.105, 8/27/06]

### **20.1.2.7 DEFINITIONS:**

GENERAL: As used in this part. Terms defined in act or regulations: Terms defined in the act or regulations and not defined in this part are used consistent with the meanings given in the act or regulations.

A. "Act" means, as the context requires:

(1) the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, and its subsequent amendments and successor provisions;

(2) the Medical Radiation Health and Safety Act, Chapter 61, Article 14E NMSA 1978, and its subsequent amendments and successor provisions; and

(3) any other statute that includes authority for adjudicatory proceedings before the board when the board applies this part to such proceedings.

B. "Applicant" means the person who is the holder of, or the applicant for, the permit to which an appeal petition applies.

C. "Board" means the environmental improvement board or its successor agency under the act.

D. "Department" means the New Mexico environment department or its successor agency under the act.

E. "Board administrator" means the department employee designated by the secretary of environment to provide staff support to the board, and, further, is the person designated by the board to maintain the official record of the proceeding.

F. "Hearing officer" means the person designated under this part or appointed by the board to conduct a proceeding under this part.

G. "Interested participant" means any person, other than a party, who files an entry of appearance in accordance with Subsection A of 20.1.2.207 NMAC.

H. "Party" means the petitioner, the applicant if different from the petitioner, the department, any person who is entitled, and who timely requests, to be heard under the ULA or any person who is permitted to intervene in the particular hearing pursuant to NMRA 1-024.

I. "Petition" means a variance petition filed pursuant to Section 74-2-8(D) NMSA 1978, or an appeal petition filed pursuant to Section 74-2-7(H) NMSA 1978.

J. "Petitioner" means any person who files a timely petition.

K. "Record proper" means all documents filed by or with the board administrator during the proceeding and also includes:

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

(2) for an appeal petition proceeding, the administrative record of the department; and

(3) minutes, or an appropriate extract of minutes, of any board meeting where the board deliberated or acted on any procedural or substantive issue in the proceeding.

L. "Regulations" means any rules promulgated by the board to implement the act.

M. "Service" means personally delivering a copy of the document, exhibit or any pleading to the person required by these rules to be served; mailing it to that person, or, if that person agrees, by sending it by facsimile or electronic transmission. If a person is

represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document; service by facsimile or by electronic transmission is accomplished when the transmission of the document is completed or upon acknowledgement by the recipient.

N. "Technical evidence" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

O. "ULA hearing" means a proceeding conducted by the board under the Uniform Licensing Act, Sections 61-1-1 NMSA 1978 et seq.

[20.1.2.7 NMAC - Rp, 20 NMAC 1.2.I.108, 8/27/06]

#### **20.1.2.8-20.1.2.105 [RESERVED]**

#### **20.1.2.106 APPLICABILITY OF RULES OF CIVIL PROCEDURE AND RULES OF EVIDENCE:**

In the absence of a specific provision in this part governing an action, the board may look to the New Mexico Rules of Civil Procedure, NMRA 1-001 et seq., and the New Mexico Rules of Evidence, NMRA 11-101 et seq., for guidance. Any reference to the rules of civil procedure shall not be construed to extend or otherwise modify the authority and jurisdiction of the board under the act.

[20.1.2.106 NMAC - Rp, 20 NMAC 1.2.I.106, 8/27/06]

#### **20.1.2.107 CONSTRUCTION, SEVERABILITY, SAVINGS CLAUSE:**

This part shall be liberally construed to carry out its purposes. If any part or application of this part is held invalid, the remainder of this part, or its application to other persons or situations, shall not be affected. This part does not apply to petitions filed prior to the effective date of this part, except as stipulated to by the parties to such proceeding.

[20.1.2.107 NMAC - Rp, 20 NMAC 1.2.I.107, 8/27/06]

#### **20.1.2.108 [RESERVED]**

#### **20.1.2.109 POWERS AND DUTIES OF THE BOARD AND HEARING OFFICER:**

A. Board: The board shall exercise all powers and duties as prescribed under the act, the regulations and this part and not otherwise delegated to a staff member, the hearing officer or the board administrator. The board may specify procedures in addition to or that vary from those provided in this part in order to expedite the efficient resolution of the action or to avoid obvious injustice, so long as such procedures do not conflict with the act, the ULA or the regulations or prejudice the rights of any party.

B. Hearing officer: The board may appoint one or more hearing officers to perform the functions described in Paragraph (2) of Subsection B of 20.1.2.109 NMAC. From the date a proceeding is initiated under this part, the chair of the board shall serve as hearing officer, until such time as another hearing officer is appointed. The board or the board chair may appoint another hearing officer. The appointment of a hearing officer does not preclude the board members from attending or participating in the proceeding.

(1) Qualifications: A hearing officer may be an independent contractor, board counsel or a member of the board and shall not be:

(a) an employee of the department, unless employed by the department as a hearing officer;

(b) a person who has a personal bias or prejudice concerning a party, or has personal knowledge of disputed facts concerning the proceeding, or is related to a party within the third degree of relationship, or has a financial interest in the proceeding; or

(c) a person who has performed prosecutorial or investigative functions in connection with the licensing or permitting action at issue in the hearing.

(2) Functions: The hearing officer shall exercise all powers and duties prescribed or delegated under the act or this part. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by this part, including, but not limited to:

(a) conduct hearings under this part;

(b) rule upon motions and procedural requests that do not seek final resolution of the proceeding and issue all necessary orders;

(c) issue subpoenas, as authorized by law, for the attendance and testimony of witnesses and the production of documentary evidence;

(d) administer oaths and affirmations, examine witnesses, and admit or exclude evidence;

(e) require parties to attend conferences for the settlement or simplification of issues, or the expedition of proceedings;

(f) impose sanctions, subject to review by the board, on parties and interested participants who cause undue delay and fail to cooperate with the board;

(g) file original documents with the board administrator.

C. Notice of hearing officer assignment: If a hearing officer, other than a board member, is assigned, the board administrator shall notify the parties of the name and address of the hearing officer. The board administrator shall also, at that time, forward to the hearing officer copies of all documents filed to date.

D. Participation by conference, telephone or other similar device: A member of the board may participate in a meeting or hearing of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting or hearing in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting or hearing are able to hear any member of the board who speaks at the meeting or hearing. A board member's participation by such means shall constitute presence in person at the meeting or hearing. A board member who wishes to participate in a permit hearing in this manner must receive permission from the hearing officer sufficiently in advance of the permit hearing so as to permit the board administrator to arrange for an adequate telephone hookup.

[20.1.2.109 NMAC - Rp, 20 NMAC 1.2.I.109, 8/27/06]

#### **20.1.2.110 EX PARTE DISCUSSIONS:**

At no time after the initiation and before the conclusion of a proceeding under this part, shall the department, any other party, interested participant or their representatives discuss ex parte the merits of the proceeding with any board member or the hearing officer. This prohibition does not preclude a hearing officer from considering and acting upon any motion filed pursuant to this part.

[20.1.2.110 NMAC - Rp, 20 NMAC 1.2.I.110, 8/27/06]

#### **20.1.2.111 GENERAL PROVISIONS - COMPUTATION AND EXTENSION OF TIME:**

A. Computation of time: Time shall be calculated in accordance with the Uniform Statute and Rule Construction Act, NMSA 1978, Section 12-2 A-7. In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which event the time is extended until the end of the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service upon him, and service is by mail, three (3) days is added to the prescribed period. The three-day extension does not apply to any deadline under the act.

B. Extension of time: The board or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[20.1.2.111 NMAC - Rp, 20 NMAC 1.2.I.111, 8/27/06]

## **20.1.2.112 GENERAL PROVISIONS - DOCUMENTS:**

### **FILING, SERVICE, FORM AND EXAMINATION:**

A. As used in this section, "document" means any pleading, motion, response, memorandum, decision, order or other written material filed in a proceeding under this part, but does not include a cover letter accompanying a document transmitted for filing.

B. Filing of documents: Except as otherwise provided, a party filing documents shall file the originals and eight (8) copies with the board administrator and shall serve copies thereof upon the hearing officer, the board legal counsel, and all other parties. If there is no hearing officer the party shall serve the document upon the board chair. All documents shall be filed at least fifteen (15) days before the hearing at which the board will consider the matter. A certificate of service, as shown in Appendix A, (20.1.2.600 NMAC) shall accompany each filed document.

C. Service of documents: Except as otherwise provided, all documents may be served personally, by express or first class mail, or, if the person agrees, by facsimile or by electronic transmission.

D. Form of documents: Unless otherwise provided by this part or by order of the hearing officer, all documents, except exhibits, shall be prepared on 8 1/2 x 11-inch white paper, printed double-sided, if possible, and where appropriate, the first page of every document shall contain a heading and caption as illustrated in Appendix A, (20.1.2.600 NMAC).

E. Documents issued by board or hearing officer: All original documents issued by the board or hearing officer shall be filed with the board administrator. The board administrator shall promptly serve copies of the documents upon all parties and interested participants.

F. Examination of documents filed:

(1) Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any proceeding. Inspection shall be permitted in accordance with the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12, and may be limited by the Environmental Improvement Act, NMSA 1978, Section 74-2-11. Documents subject to inspection shall be made available by the board administrator, as appropriate.

(2) Cost of duplication: Unless waived by the department, the cost of duplicating documents or tapes filed in any proceeding shall be borne by the person seeking the copies.

[20.1.2.112 NMAC - Rp, 20 NMAC 1.2.I.112, 8/27/06]

**20.1.2.113 MOTIONS:**

A. General: All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion and state the relief sought. Each motion shall be accompanied by an affidavit, certificate or other evidence relied upon and shall be served as provided by 20.1.2.112 NMAC.

B. Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

C. Opposed motions: Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

D. Response to motions: Any party upon whom an opposed motion is served shall have fifteen (15) days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

E. Reply to response: The moving party may, but is not required to, submit a reply to any response within ten (10) days after service of the response.

F. Decision: All motions shall be decided by the hearing officer without a hearing, unless otherwise ordered by the hearing officer sua sponte or upon written request of any party. The hearing officer shall refer any motion that would effectively dispose of the matter, and may refer any other motion to the board for a decision. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The hearing officer shall file all original documents with the board administrator.

G. Recusal: No board member shall participate in any action in which his or her impartiality or fairness may reasonably be questioned, and the member shall recuse himself or herself in any such action by giving notice to the board and the general public by announcing this recusal on the record. In making a decision to recuse himself or herself, the board member may rely upon the Governmental Conduct Act, NMSA 1978, Sections 10-16A-1 through 10-16A-8, The Uniform Financial Disclosure Act or any other relevant legal authority.

[20.1.2.113 NMAC - Rp, 20 NMAC 1.2.I.113, 8/27/06]

**20.1.2.114-20.1.2.199 [RESERVED]**

**20.1.2.200 PREHEARING PROCEDURES - INITIATION OF PETITION HEARING:**

A petition hearing shall be initiated by the filing of a variance petition or an appeal petition. The petitioner shall:

A. sign the petition under oath or affirmation and attest to the truth of the information contained therein; and

B. file the original and eight (8) copies of the petition with the board and serve a copy on the department.

[20.1.2.200 NMAC - Rp, 20 NMAC 1.2.II.200, 8/27/06]

**20.1.2.201 VARIANCE PETITION:**

A. Contents: A variance petition shall comply with Subsection B of 20.2.1.114 NMAC.

B. Response of the department: The department shall review each variance petition and, within sixty (60) days after receipt of the petition, file a recommendation with the board to grant, grant with conditions or deny the variance request. The recommendation shall include reasons and a copy shall be served on the petitioner by certified mail and on any other party or interested participant.

C. Hearing requirement: If the department recommends granting the variance request, or any part of the variance request, with or without conditions, the board shall hold a hearing on those requests recommended for approval. If the department recommends denial of all or part of the variance request, the board shall only hold a hearing on the variances recommended for denial if the petitioner files a request for hearing within fifteen (15) days after receipt of the department's recommendation. If a timely request for hearing is not filed, the recommended denial shall become a final action of the board and shall not be subject to review.

D. Timing of hearing: If a hearing on a variance petition is required, the hearing shall be held within ninety (90) days after the later of the filing of a department recommendation to grant a variance or the filing of a request for hearing by the petitioner, as applicable.

[20.1.2.201 NMAC - Rp, 20 NMAC 1.2.II.201, 8/27/06]

**20.1.2.202 APPEAL PETITION:**

A. Timing and contents: An appeal petition shall:

(1) be filed with the board within thirty (30) days from the date notice is given of the permitting action;

(2) identify the petitioner, and certify that the petitioner has standing under the act to file the petition;

(3) identify the permitting action appealed from, specify the portions of the permitting action to which petitioner objects and generally state the objections; and

(4) attach a copy of the permitting action.

B. Hearing delay: A petitioner may delay a hearing to negotiate with the department by waiving in the petition the right to a hearing within sixty (60) days. The waiver will stay all other deadlines under this part for sixty (60) days; the stay may be extended by a stipulated or unopposed motion. Any such stipulated or unopposed motion must be filed with the board, and served as required by this part, at least fifteen (15) days before the expiration of the sixty (60) day period.

C. Response of department: The department shall, within thirty (30) days after receipt of an appeal petition:

(1) file with the board the administrative record of the permitting action which is the subject of the petition; the department shall serve only the index to the record on other parties; the parties may stipulate that only the relevant portions of the record be filed with the board;

(2) deliver to the board administrator a list of all persons who have expressed in writing an interest in the facility or the permitting action that is the subject of the petition or who participated in a public hearing on the permitting action; and

(3) file an answer to the petition responding to each objection in the petition.

[20.1.2.202 NMAC - Rp, 20 NMAC 1.2.II.202, 8/27/06]

#### **20.1.2.203 NOTICE OF DOCKETING:**

A. Docketing notice: The board administrator shall, as soon as practicable after receipt of a petition, issue and serve upon the parties, each board member, and the board legal counsel a notice of docketing, containing the caption and docket number of the case, and the date upon which the petition was received by the board administrator. A copy of this part shall be included with a notice of docketing sent to a petitioner or applicant.

B. Untimeliness: The board administrator shall docket any petition, without regard to whether it appears to be timely; but the board or any party may move to dismiss an untimely petition.

[20.1.2.203 NMAC - Rp, 20 NMAC 1.2.II.203, 8/27/06]

#### **20.1.2.204 SCHEDULING THE HEARING:**

A. Hearing date: The hearing shall be scheduled to begin no later than sixty (60) days after the date an appeal petition was received, or for a variance petition, within the sixty (60) day period set forth in Subsection D of 20.1.2.201 NMAC, unless a stipulated or unopposed motion is filed requesting that the ninety day deadline be waived. The stipulated or unopposed motion must be filed with the board, and served as required by this part, at least fifteen (15) days prior to the expiration of the sixty (60) day deadline.

B. Scheduling order: Unless the sixty (60) day hearing deadline has been waived, the hearing officer shall, no later than forty-five (45) days prior to the hearing deadline, issue a scheduling order setting the date, time and location of the hearing. The order may include other procedural matters. The parties may, jointly or singly, submit to the hearing officer, at least fifteen (15) days prior to the deadline for the issuance of the scheduling order, a request regarding the date and location of the hearing and other procedural matters, such as the assignment of a non-board member hearing officer. The hearing officer may consult with the board on procedural matters at a board meeting.

[20.1.2.204 NMAC - Rp, 20 NMAC 1.2.II.204, 8/27/06]

#### **20.1.2.205 PUBLIC NOTICE OF HEARING:**

A. Publication: The board administrator shall, upon direction from the board or hearing officer, prepare a notice of hearing setting forth the date, time and location of the hearing, a brief description of the petition, and information on the requirements for entry of appearance and statement of intent to present evidence, and:

(1) no later than thirty (30) days prior to the hearing date, send copies, with requests for publication, to at least one newspaper of general circulation in the state, and to at least one additional newspaper published or distributed at least weekly in the county where the facility is located;

(2) mail a copy to each interested participant who has filed an entry of appearance, and to each person who participated in the department's permitting proceeding or who has expressed, in writing to the department or the board, an interest in the facility or permitting action that is the subject of the petition; and

(3) immediately upon receipt of an entry of appearance that is received after the initial mailing, mail a copy to such interested participant and participant in the department's permitting proceeding.

B. Certification: After the notice of hearing has been distributed in accordance with this section, the board administrator shall file an affidavit certifying how and when notice was given with a copy of the notice of hearing and affidavits of publication attached.

[20.1.2.205 NMAC - Rp, 20 NMAC 1.2.II.205, 8/27/06]

**20.1.2.206 STATEMENT OF INTENT TO PRESENT TECHNICAL EVIDENCE:**

A. Requirement to file: Any person who wishes to present technical evidence at the hearing shall, no later than fifteen (15) days prior to the hearing, file a statement of intent.

B. Content: The statement of intent to present technical evidence shall include:

- (1) the name of the person filing the statement;
- (2) indication of whether the person filing the statement supports or opposes the petition at issue;
- (3) the name of each witness;
- (4) an estimate of the length of the direct testimony of each witness;
- (5) a list of exhibits, if any, to be offered into evidence at the hearing; and
- (6) a summary or outline of the anticipated direct testimony of each witness.

[20.1.2.206 NMAC - Rp, 20 NMAC 1.2.II.206, 8/27/06]

**20.1.2.207 PARTICIPATION BY PERSONS OTHER THAN PARTIES:**

A. Interested participants: Entry of appearance: Any person who wishes to be treated as an interested participant and to cross-examine witnesses at the hearing shall file and serve upon all parties an entry of appearance at least fifteen (15) days prior to the hearing. For purposes of this subsection, a statement of intent to present evidence filed under 20.1.2.206 NMAC shall be considered an entry of appearance if the person has not previously filed a separate entry of appearance. The entry of appearance shall identify the person wishing to be treated as an interested participant and any individual who may appear on behalf of that person.

B. Participation by the general public: Any person who has not timely filed either an entry of appearance or a statement of intent to present evidence may present a general non-technical statement as follows.

- (1) Any member of the general public may testify at the hearing. No prior notification is required to present general non-technical statements in support of or in opposition to the petition. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is non-technical in nature and not unduly repetitious of the testimony.

(2) A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to or at the hearing.

[20.1.2.207 NMAC - Rp, 20 NMAC 1.2.II.207, 8/27/06]

**20.1.2.208 DISCOVERY:**

For a ULA hearing, discovery shall be governed by the provisions of the ULA. For other board adjudicatory proceedings, formal discovery is not a right, and therefore, formal discovery is discouraged and shall only be allowed by order of the hearing officer under the following procedures:

A. Grounds for discovery: Discovery shall only be permitted upon a determination by the hearing officer that:

(1) the type of discovery sought will not unreasonably delay the proceeding and is neither unreasonably burdensome nor unreasonably expensive; and

(2) the information to be obtained is relevant and is not otherwise reasonably obtainable, may be lost, or may become unavailable.

B. Order for discovery: Upon motion for discovery by a party and determination by the hearing officer that such motion should be granted, the hearing officer shall issue an order for the taking of such discovery together with the conditions and terms thereof.

[20.1.2.208 NMAC - Rp, 20 NMAC 1.2.II.208, 8/27/06]

**20.1.2.209-20.1.2.299 [RESERVED]**

**20.1.2.300 HEARING PROCEDURES - HEARING:**

A. Location of the hearing: Unless otherwise ordered by the board or hearing officer, the hearing shall be in Santa Fe.

B. Postponement of hearing: No request for postponement of a hearing shall be granted, except upon consent of all parties or for good cause shown.

[20.1.2.300 NMAC - Rp, 20 NMAC 1.2.III.300, 8/27/06]

**20.1.2.301 CONDUCT OF HEARING:**

A. The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.

B. The hearing officer shall establish the order of testimony, except that the party with the burden of persuasion shall present its case first. The hearing officer may allow brief opening or closing statements.

[20.1.2.301 NMAC - Rp, 20 NMAC 1.2.III.301, 8/27/06]

**20.1.2.302 BURDEN OF PERSUASION:**

In a petition hearing, the petitioner has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to justify the relief sought in the petition. Following the establishment of a prima facie case by the petitioner, any person opposed to the relief sought in the petition has the burden of going forward with any adverse evidence and showing why the relief should not be granted.

[20.1.2.302 NMAC - Rp, 20 NMAC 1.2.III.302, 8/27/06]

**20.1.2.303 EVIDENCE:**

A. General: The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is unduly repetitious, or otherwise unreliable or of little probative value. The department shall formally move into evidence the administrative record filed by the department pursuant to Subparagraph (a) of Paragraph (3) of Subsection C of 20.1.2.200 NMAC. In a ULA hearing involving the suspension or revocation of a license, rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state.

B. Examination of witnesses: Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in this part or by the hearing officer. The board members, hearing officer, parties and interested participants shall have the right to cross-examine a witness. The hearing officer may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the witness' direct testimony.

C. Exhibits: All exhibits offered in evidence shall be marked with a designation identifying the person by whom the exhibit is offered, and numbered serially in the sequence in which offered. Large charts and diagrams, models and other bulky exhibits are discouraged. Exhibits should be limited to 8 1/2 x 11 inches, or be capable of being folded to that size, unless otherwise necessary for adequate presentation of evidence. Any person offering an exhibit shall provide at least an original and twenty (20) copies for the board and for persons attending the hearing.

D. Official notice: Official notice may be taken of any matter that may be judicially noticed in the New Mexico courts. In a ULA hearing, parties shall be given adequate opportunity to show that such facts are erroneously noticed.

[20.1.2.303 NMAC - Rp, 20 NMAC 1.2.III.303, 8/27/06]

#### **20.1.2.304 OBJECTIONS AND OFFERS OF PROOF:**

A. Objection: Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the hearing officer on any objection and the reasons given for it shall be part of the record.

B. Offer of proof: Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded and what such evidence would have proven. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded.

[20.1.2.304 NMAC - Rp, 20 NMAC 1.2.III.304, 8/27/06]

#### **20.1.2.305-20.1.2.399 [RESERVED]**

#### **20.1.2.400 POST-HEARING PROCEDURES - FILING THE TRANSCRIPT:**

Unless the board orders the hearing to be tape recorded, the hearing shall be transcribed verbatim. Any person, other than the board, desiring a copy of a transcript must order a copy from the court reporter. Any person, other than the board, desiring a copy of hearing tapes must arrange copying with the board administrator at their expense.

[20.1.2.400 NMAC - Rp, 20 NMAC 1.2.IV.400, 8/27/06]

#### **20.1.2.401 PROPOSED FINDINGS AND CONCLUSIONS:**

The hearing officer may allow the record to remain open for a reasonable period of time after the conclusion of the hearing to allow any party or interested participant to submit proposed findings of fact and conclusions of law and closing argument. The hearing officer's determination shall be announced at the conclusion of the hearing. All such submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. No new evidence shall be presented unless specifically allowed by the hearing officer.

[20.1.2.401 NMAC - Rp, 20 NMAC 1.2.IV.401, 8/27/06]

#### **20.1.2.402 RECOMMENDED DECISION:**

If the board directs, the hearing officer shall issue a recommended decision within a period established by the board. The recommended decision shall contain the hearing officer's findings of fact; conclusions regarding all material issues of law or discretion, as well as reasons therefor; and a proposed final order. Upon receipt of a recommended

decision, the board administrator shall forward a copy to all parties and to the board. At the board's discretion, the board may allow any party or interested participant to file comments regarding the recommended decision.

[20.1.2.402 NMAC - Rp, 20 NMAC 1.2.IV.402, 8/27/06]

#### **20.1.2.403 DELIBERATION AND DECISION:**

A. Deliberation: The board shall reach a final decision on each adjudicatory matter at a public meeting. If allowed by the Open Meetings Act, Sections 10-15-1 NMSA 1978 et seq., the board may deliberate in closed session; however, any final action must occur in an open meeting.

(1) If a quorum of the board attended the hearing and the hearing notice indicated that the board may act at the conclusion of the hearing, the board may immediately deliberate and act on the matter.

(2) If the board does not reach a decision at the hearing, the board administrator shall, following receipt of the transcript, promptly provide copies to board members who did not attend the hearing and, if requested, to other board members, board counsel and the hearing officer. The board administrator shall also notify all parties and interested participants of the availability of the transcript.

(3) In a ULA hearing, the board shall leave the record open to receive any advice and recommendation required by the act. The board shall reach its decision within the time period established by the ULA.

B. Order: After reaching a decision, the board shall direct a member, its counsel or a party to prepare a final order. The board may approve the order at a meeting or direct the board chair to sign the order.

(1) The final order shall contain findings of fact, conclusions of law, an order based on the findings and conclusions, and a statement as to the availability of judicial review. If a recommended decision was prepared, the board may adopt, modify or set aside the recommended decision and provide reasons therefor.

(2) In a ULA hearing, if the board takes any action specified in the ULA against the licensee, the final order shall specify that the licensee shall bear all costs of the proceeding.

(3) The board administrator shall promptly send copies of the final order to each party and interested participant, and to all other persons who have made written requests for notification of the action taken.

[20.1.2.403 NMAC - Rp, 20 NMAC 1.2.IV.403, 8/27/06]

#### **20.1.2.404 JUDICIAL REVIEW:**

Judicial review of the final order shall be as provided by law. The filing of an appeal does not stay the final order, unless otherwise ordered by the board or a court.

[20.1.2.404 NMAC - Rp, 20 NMAC 1.2.IV.404, 8/27/06]

#### **20.1.2.405 PREPARATION OF RECORD PROPER:**

The preparation of the record proper for an appeal or for any other reason shall be the responsibility of the hearing clerk. The appellant shall make satisfactory arrangements, including copying or transcript costs, with the board administrator.

[20.1.2.405 NMAC - Rp, 20 NMAC 1.2.IV.405, 8/27/06]

#### **20.1.2.406-20.1.2.499 [RESERVED]**

#### **20.1.2.500 ALTERNATE RESOLUTION - SUMMARY PROCEDURES:**

A. Use of summary procedures: The board may dispose of a petition after an expedited hearing if a party requests that the merits of the petition be decided solely on legal arguments presented in written briefs and oral arguments.

B. Expedited hearing: If the hearing officer determines that the request has a likelihood of success and could fairly expedite the resolution of the proceeding, the hearing officer may allow the parties and interested participants to brief the issue and present oral arguments at an expedited hearing, and then present the issue to the board for a decision. If an expedited hearing is conducted, the hearing officer shall:

(1) assure that public notice is given in accordance with 20.1.2.205 NMAC and include in the public notice instructions for persons other than parties who wish to participate in the oral argument to submit a statement of intent equivalent to the statement provided in 20.1.2.206 NMAC; and

(2) allow the public to attend the expedited hearing, but may limit presentations at the hearing to oral arguments by parties and interested participants on the specific issue before the board.

C. Decision: After an expedited hearing, the board may decide to either dispose of the matter and issue a final order, or decide not to dispose of the matter and proceed with a full hearing under this part.

[20.1.2.500 NMAC - Rp, 20 NMAC 1.2.V.500, 8/27/06]

#### **20.1.2.501 WITHDRAWAL:**

A. Notice of withdrawal: A petitioner may withdraw a petition, or the department may withdraw the permitting action which is the subject of the proceeding, at any time prior to a decision by the board by filing a notice of withdrawal with the board and serving the notice on all other parties and interested participants. A party or interested participant may file a written objection to the notice within ten (10) days after receipt. If an objection is filed, the board shall rule on the notice.

B. Effect of withdrawal: An effective notice of withdrawal under this section results in the following:

(1) when a petitioner withdraws an appeal petition, the permitting action becomes final;

(2) when a petitioner withdraws a variance petition, the petitioner is barred from petitioning for the same variance without permission from the board; and

(3) when the department withdraws a permitting action, the appeal petition is vacated and the agency must issue a new permitting action within sixty (60) days, unless either the board approves a different time period or the applicant withdraws its application; upon issuance of a new permitting action, the right to file a new appeal petition under the act is available.

[20.1.2.501 NMAC - Rp, 20 NMAC 1.2.V.501, 8/27/06]

#### **20.1.2.502 SETTLEMENT:**

The board encourages the settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the act and regulations. The parties may request that the board stay a proceeding under this part while settlement negotiations are being held. The board may approve a settlement that modifies a permitting action only after evidence supporting such modification is presented at a hearing. The department, however, may withdraw and reissue a modified permitting action under 20.1.2.501 NMAC.

[20.1.2.502 NMAC - Rp, 20 NMAC 1.2.V.502, 8/27/06]

**20.1.2.503-20.1.2.599 [RESERVED]**

#### **20.1.2.600 APPENDIX A:**

**[PREFERRED FORMAT]**

**STATE OF NEW MEXICO**

**ENVIRONMENTAL IMPROVEMENT BOARD**

[A. Petition Hearing]

**IN THE MATTER OF THE PETITION FOR**

**[A VARIANCE FROM \_\_\_\_\_]**

**[HEARING ON AIR QUALITY PERMIT NO. \_\_\_\_]**

**[Name of Petitioner],**

**Petitioner**

[B. ULA Hearing]

**NEW MEXICO ENVIRONMENT DEPARTMENT**

**v.**

**[Name of Licensee or Applicant]**

[20.1.1.600 NMAC - Rp, 20 NMAC 1.2.600, 8/27/06]

**PART 3: ADJUDICATORY PROCEDURES - WATER QUALITY CONTROL COMMISSION**

**20.1.3.1 ISSUING AGENCY:**

Water Quality Control Commission ("Commission").

[20.1.3.1 NMAC - Rp, 20 NMAC 1.3.I.100, 10/15/2010]

**20.1.3.2 SCOPE:**

A. This part governs the following adjudicatory proceedings of the water quality control commission:

(1) permit reviews, which include proceedings for the appeal from permitting actions pursuant to the Water Quality Act, NMSA 1978 Section 74-6-5(O);

(2) abatement plan hearings which include proceedings for the appeal of certain abatement plan actions pursuant to commission regulation 20.6.2.4114 NMAC;

(3) variance hearings, which include proceedings for: (a) the consideration of variance requests pursuant to the Water Quality Act, NMSA 1978 Section 74-6-4(G), and (b) the consideration of alternative abatement standards pursuant to commission regulation, Subsection F of 20.6.2.4103 NMAC;

(4) compliance order hearings, which include proceedings for the appeal from compliance orders pursuant to the Water Quality Act, NMSA 1978 Section 74-6-10, and the Utility Operators Certification Act, NMSA 1978 Section 61-33-10; and

(5) any other adjudicatory proceedings under the jurisdiction of the commission to which the commission applies this part.

B. Uniform Licensing Act proceedings: In any commission adjudicatory proceeding conducted under the Uniform Licensing Act, NMSA 1978 Sections 61-1-1 NMSA 1978 et seq. ("ULA"), including the suspension or revocation of a certification under the Utility Operators Certification Act, NMSA 1978 Section 61-33-7, the procedures in the ULA shall govern the proceeding. However, the commission may, in the absence of a specific provision in the ULA governing an action, look to this part for guidance.

[20.1.3.2 NMAC - Rp, 20 NMAC 1.3.I.101, 10/15/2010]

#### **20.1.3.3 STATUTORY AUTHORITY:**

This part is adopted under the authority of the Water Quality Act, NMSA 1978 Sections 74-6-4, 74-6-5 and 74-6-10, as amended, and the Utility Operators Certification Act, NMSA 1978 Section 61-33-10, as amended.

[20.1.3.3 NMAC - Rp, 20 NMAC 1.3.I.102, 10/15/2010]

#### **20.1.3.4 DURATION:**

Permanent.

[20.1.3.4 NMAC - Rp, 20 NMAC 1.3.I.103, 10/15/2010]

#### **20.1.3.5 EFFECTIVE DATE:**

10/15/2010, unless a later date is cited at the end of a section.

[20.1.3.5 NMAC - Rp, 20 NMAC 1.3.I.104, 10/15/2010]

#### **20.1.3.6 OBJECTIVE:**

The objective of this part is to establish procedures that govern the adjudicatory proceedings of the water quality control commission.

[20.1.3.6 NMAC - Rp, 20 NMAC 1.3.I.105, 10/15/2010]

#### **20.1.3.7 DEFINITIONS:**

A. General: As used in this part:

(1) "abatement plan action" means those actions that may be appealed to the commission pursuant to 20.6.2.4114 NMAC;

(2) "abatement plan hearing" means a proceeding before the commission initiated by the timely filing of an abatement plan petition filed pursuant to 20.6.2.4114 NMAC;

(3) "act" means, as the context requires:

(a) the Water Quality Act, NMSA 1978 Chapter 74, Article 6 and its subsequent amendments and successor provisions;

(b) the Utility Operators Certification Act, NMSA 1978 Chapter 61, Article 33 and its subsequent amendments and successor provisions; and

(c) any other statute enacted or amended by the legislature that includes authority for adjudicatory proceedings before the commission when the commission applies this part to such proceedings;

(4) "applicant" means the person who is the holder of, or the applicant for, the permit or abatement plan that is the subject of the action to which a permit review petition or abatement appeal petition applies;

(5) "commission" means the water quality control commission or its successor agency under the act;

(6) "compliance order" means a written administrative order issued by the department pursuant to NMSA 1978 Sections 61-33-10 or 74-6-10;

(7) "compliance order hearing" means a proceeding before the commission initiated by the timely filing of a request for compliance order hearing;

(8) "department" means the applicable constituent agency, that, pursuant to its authority under the act, either (a) performed the permitting action or abatement plan action which is the subject of a petition; (b) is charged with implementing the regulations at the site where the variance is sought; or (c) issued the compliance order;

(9) "hearing" means the evidentiary hearing conducted before the commission or a hearing officer on an abatement plan petition, a variance petition or a request for compliance order hearing unless the context requires otherwise;

(10) "hearing clerk" means the person designated to maintain the official record of the proceeding and unless otherwise ordered is the commission administrator;

(11) "hearing officer" means the person designated under this part or appointed by the commission to conduct a proceeding under this part ;

(12) "party" means:

(a) for the purposes of a permit review, the petitioner, the applicant if different from the petitioner, the department, and, upon motion to the commission, any person who permitted to intervene in the review pursuant to NMRA 1-024;

(b) for purposes of an abatement plan hearing, the petitioner, the applicant if different from the petitioner, the department, any person who participated in the abatement plan action before the department and who files an entry of appearance, and any constituent agency;

(c) for purposes of a variance hearing, the petitioner, the department, any person who has an interest in the proceeding and files an entry of appearance, and any other constituent agency; and

(d) for purposes of a compliance order hearing, the respondent and the department;

(13) "permit review" means a record review proceeding before the commission initiated by the timely filing of a record review petition filed pursuant to NMSA 1978 Section 74-6-5(O);

(14) "permitting action" means those actions that may be appealed to the commission pursuant to the Water Quality Act, NMSA 1978 Section 74-6-5(O), including the certification of a federal water quality permit;

(15) "petition" means a written petition (a) for review of a permitting action filed under NMSA 1978 Section 74-6-5(O); (b) for hearing on an abatement plan action filed under 20.6.2.4114 NMAC; or (c) for hearing on a variance filed under NMSA 1978 Section 74-6-4(G) or 20.6.2.1210 NMAC;

(16) "petitioner" means any person who files a timely petition and who is entitled to be a party pursuant to Subparagraphs (a), (b), and (c) of Paragraph (12) of this subsection;

(17) "record proper" means all documents filed by or with the hearing clerk during the proceeding and includes:

(a) the verbatim record of the hearing and all exhibits offered into evidence at the hearing, whether or not admitted;

(b) for a permit review, the administrative record of the department; and

(c) minutes, or an appropriate extract of minutes, of any commission meeting where the commission deliberated or acted on any procedural or substantive issue in the proceeding;

(18) "regulations" means any rules or standards promulgated by the commission to implement the act;

(19) "request for compliance order hearing" means a written request for hearing on a compliance order filed by a respondent pursuant to NMSA 1978 Section 61-33-10(E) or 74-6-10(G);

(20) "respondent" means any person to whom a compliance order has been issued;

(21) "technical evidence" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing; and

(22) "variance hearing" means a proceeding before the commission initiated by the timely filing of a variance petition filed pursuant to NMSA 1978 Section 74-6-4(G), Subsection F of 20.6.2.4103 NMAC or 20.6.2.1210 NMAC.

B. Terms defined in act or regulations: Terms defined in the act or regulations and not defined in this part are used consistent with the meanings given in the act or regulations.

[20.1.3.7 NMAC - Rp, 20 NMAC 1.3.I.108, 10/15/2010]

#### **20.1.3.8 APPLICABILITY OF RULES OF CIVIL PROCEDURE:**

In the absence of a specific provision in this part governing an action, the commission may look to the New Mexico Rules of Civil Procedure, SCRA 1986, 1-001 to 1-102 and the New Mexico Rules of Evidence, SCRA 1986, 11-101 to 11-1102 for guidance. Any reference to the Rules of Civil Procedure and the Rules of Evidence shall not be construed to extend or otherwise modify the authority and jurisdiction of the commission under the act.

[20.1.3.8 NMAC - Rp, 20 NMAC 1.3.I.106, 10/15/2010]

#### **20.1.3.9 CONSTRUCTION; SEVERABILITY SAVINGS CLAUSE:**

This part shall be liberally construed to carry out its purpose. If any part or application of this part is held invalid, the remainder of this part , or its application to other persons or situations, shall not be affected.

[20.1.3.9 NMAC - Rp, 20 NMAC 1.3.I.107, 10/15/2010]

#### **20.1.3.10 POWERS AND DUTIES OF THE COMMISSION AND HEARING OFFICER:**

A. Commission: The commission shall exercise all powers and duties as prescribed under the act, the regulations and this part, and not otherwise delegated to a staff member, the hearing officer or the hearing clerk.

(1) The commission may issue procedural orders that, based on the nature of the proceeding, either impose additional procedural duties, such as expanded public notice, or simplify the procedures provided in this part, such as foregoing post-hearing submittals or holding the hearing before the full commission. In no event may the commission eliminate any procedural requirements of the act.

(2) The appointment of a hearing officer does not preclude the commissioners from attending or participating in the proceeding.

B. Hearing officer: With respect to abatement plan hearings, variance hearings, and compliance order hearings, the commission may appoint one or more hearing officers to perform the functions described in Paragraph (2) of this subsection. With respect to permit reviews, the commission may appoint a hearing officer to review the record and the arguments of the parties and to recommend a decision to the commission. From the date the petition or request for compliance order hearing is received by the commission, the chair of the commission shall serve as hearing officer until such time as another hearing officer is appointed.

(1) Qualifications: Hearing officer may be an independent contractor or a commissioner, shall be knowledgeable of the laws of the state and of administrative hearing procedures, and shall not be:

(a) an employee of the department, except for the commissioners themselves or their designees, or unless employed by the department as a hearing officer;

(b) a person who has a personal bias or prejudice concerning a party or a party's lawyer or consultant, or has personal knowledge of disputed facts concerning the proceeding, or is related to a party within the third degree of relationship, or has a financial interest in the proceeding; or

(c) a person who has performed prosecutorial or investigative functions in connection with the compliance order or permitting action at issue in the hearing.

(2) Functions: The hearing officer shall exercise all powers and duties prescribed or delegated by the commission under the act or this part . The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by this part including, but not limited to:

(a) conduct permit reviews or hearings under this part;

(b) rule upon motions and procedural requests that do not seek final resolution of the proceeding and issue all necessary orders;

(c) issue subpoenas, as authorized by the act, for the attendance and testimony of witnesses and the production of documentary evidence as provided for in this part;

(d) administer oaths and affirmations, examine witnesses, and admit or exclude evidence;

(e) require parties to attend conferences for the settlement or simplification of issues, or the expedition of proceedings; and

(f) impose sanctions, subject to review by the commission, on parties who cause undue delay and fail to cooperate in the proceeding.

C. Notice of hearing officer assignment: If a hearing officer other than a commissioner is assigned, the hearing clerk shall notify the parties of the name and address of the hearing officer. The hearing clerk shall also, at that time, forward to the hearing officer copies of all documents filed to date.

[20.1.3.10 NMAC - Rp, 20 NMAC 1.3.I.109, 10/15/2010]

#### **20.1.3.11 EX PARTE DISCUSSIONS:**

At no time after the initiation and before the conclusion of a proceeding under this part shall any person discuss ex parte the merits of the proceeding with any commissioner or the hearing officer. This prohibition does not preclude any constituent agency commissioner from conferring with commission counsel, the commission administrator, or agency employees who are not, and have not been, involved in the matter before the commission.

[20.1.3.11 NMAC - Rp, 20 NMAC 1.3.I.110, 10/15/2010]

#### **20.1.3.12 COMPUTATION AND EXTENSION OF TIME:**

A. Computation of time: In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday or legal state holiday, in which event the time is extended until the end of the next day which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service upon him, and service is by mail, three days is added to the prescribed period. The three day extension does not apply to any deadline under the act.

B. Extension of time: The commission or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[20.1.3.12 NMAC - Rp, 20 NMAC 1.3.I.111, 10/15/2010]

### **20.1.3.13 DOCUMENTS:**

#### **FILING, SERVICE, FORM AND EXAMINATION:**

A. As used in this section, "document" means any pleading, motion, response, memorandum, decision, order or other written material filed in a proceeding under this part, but does not include a cover letter accompanying a document transmitted for filing.

B. Filing of documents:

(1) Except as otherwise provided, the originals of all documents served in the proceeding shall be filed with the hearing clerk.

(2) Except as otherwise provided, a party filing documents shall serve copies thereof upon all other parties. A certificate of service, as shown in appendix A, shall accompany each filed document.

C. Service of documents: Except as otherwise provided, all documents may be served personally, by telefax, by e-mail or by express or first-class mail.

D. Form of documents: Unless otherwise ordered by the hearing officer, all documents, except exhibits, shall be prepared on 8 1/2 x 11-inch white paper, printed single-sided, if possible, and where appropriate, the first page of every document shall contain a heading and caption as illustrated in appendix A.

E. Documents issued by commission or hearing officer: All documents issued by the commission or hearing officer shall be filed with the hearing clerk. The hearing clerk shall promptly serve copies of the documents upon all parties.

F. Examination of documents filed.

(1) Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any proceeding. Such documents shall be made available by the hearing clerk, as appropriate.

(2) Cost of duplication: Unless waived by the department, the cost of duplicating documents or tapes filed in any proceeding shall be borne by the person seeking copies of such documents or tapes.

[20.1.3.13 NMAC - Rp, 20 NMAC 1.3.I.112, 10/15/2010]

**20.1.3.14 NOTICE OF DOCKETING:**

A. Docketing notice: The hearing clerk shall, as soon as practicable after initiation of a proceeding under this part, issue and serve upon the parties and each commissioner a notice of docketing, containing the caption and docket number of the case, and the date upon which the petition or request for compliance order hearing was received by the hearing clerk. A copy of this part shall be included with a notice of docketing sent to a petitioner, applicant or respondent.

B. Untimeliness: The hearing clerk shall docket any petition or request for compliance order hearing, without regard to whether it appears to be timely; but the commission or any party may move to dismiss an untimely petition or request for compliance order hearing.

[20.1.3.14 NMAC - Rp, 20 NMAC 1.3.I.113, 10/15/2010]

**20.1.3.15 MOTIONS:**

A. General: All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, state the relief sought and state whether it is opposed or unopposed. Each motion shall be accompanied by an affidavit, certificate or other evidence relied upon and shall be served as provided by 20.1.3.13 NMAC.

B. Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

C. Opposed motions: Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

D. Response to motions: Any party upon whom an opposed motion is served shall have (15) days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

E. Reply to response: The moving party may, but is not required to, submit a reply to any response within 10 days after service of the response.

F. Decision: All motions shall be decided by the hearing officer without a hearing, unless otherwise ordered by the hearing officer. The hearing officer shall refer any motion that would effectively dispose of the matter and may refer any other motion to the commission for a decision. A procedural motion may be ruled upon prior to the

expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling.

[20.1.3.15 NMAC - Rp, 20 NMAC 1.3.I.114, 10/15/2010]

#### **20.1.3.16 PERMIT REVIEW:**

A. Initiation and conduct of permit review: A permit review shall be initiated by the filing of a permit review petition under Paragraph (1) of Subsection A of 20.1.3.16 NMAC.

(1) Timing and contents: A permit review petition shall:

(a) be filed with the commission within 30 days from the date notice is received of the permitting action;

(b) identify the petitioner, and state that the petitioner has standing under NMSA 1978 Section 74-6-5(O) or 20.6.2.3112 NMAC to file the petition;

(c) identify the permitting action to be reviewed;

(d) specify the portions of the permitting action to which petitioner objects;

(e) include a statement of the issues to be raised and the relief sought;

(f) have a copy of the permitting action attached;

(g) be signed under oath or affirmation and attest to the truth of the information contained therein; and

(h) be filed with the commission and a copy served on the department, the applicant or permittee, if the petitioner is not the applicant or permittee, and on any person who submitted evidence, data, views or arguments in the proceeding before the constituent agency.

(2) Filing of administrative record by the department: The department shall within 15 days after receipt of the petition:

(a) file with the commission the administrative record of the permitting action which is the subject of the petition, including the transcript or audio recording of any public hearing held on the application or draft permit and the action taken; the department shall serve only the index to the record on other parties; the parties may stipulate that only specific portions of the record be filed with the commission; and

(b) deliver to the hearing clerk a list of all persons who have expressed in writing an interest in the facility or the permitting action that is the subject of the petition

or who registered with the hearing clerk as a participant at a public hearing on the permitting action.

(3) Remand to the department. A party may request the commission to remand the matter to the department. A request for remand must be filed simultaneously with the permit review petition. If a party shows to the satisfaction of the commission that there was no reasonable opportunity to submit comment or evidence on an issue being challenged, the commission shall order that additional comment or evidence be taken by the department. Based on the additional evidence, the department may revise the decision and shall promptly file with the commission the additional evidence received and the action taken.

(4) Briefing by the parties.

(a) Within 25 days of the department filing the administrative record or 25 days of the department filing additional evidence received and the action taken after a remand, whichever is applicable, the petitioner and any parties in support of the petitioner shall file opening briefs which shall contain a summary of the proceedings before the department and an argument with respect to each issue presented by the petitioner. The opening brief may include proposed findings of fact and conclusions of law. All statements of fact shall contain citations to the administrative record before the department. The opening brief shall not exceed 30 pages.

(b) Within 25 days of the petitioner filing an opening brief, the department and any parties in support of the department shall file answer briefs. The answer brief shall conform to the requirements of the opening brief, except that a summary of proceedings shall not be included unless deemed necessary by the party filing an answer brief.

(c) Within 10 days of the department filing an answer brief, the petitioner and any parties in support of the petitioner may file reply briefs.

(5) The failure to file a timely permit review petition shall be grounds for dismissal of the appeal.

#### B. Scheduling the permit review:

(1) Review date: The permit review shall be scheduled to begin no later than 90 days after the date a permit review petition is received or 90 days after the date the department files the additional evidence received and action taken after a remand, whichever is applicable, unless a stipulated or unopposed motion is filed requesting that the 90 day deadline be waived. The motion must be filed prior to the expiration of the 90 day deadline.

(2) Scheduling order: Unless the 90 day deadline has been waived, the hearing officer shall, no later than 30 days prior to the deadline, issue an order setting the date, time and location of the review by the commission, which the hearing clerk

shall send to the parties by certified mail. The order shall provide information on whether the commission will hear oral argument from the parties. The order may include other procedural matters. The parties may, jointly or singly, submit to the hearing officer, prior to the issuance of the scheduling order, requests regarding the date and location of the review and other procedural matters, including the assignment of a non-commissioner hearing officer. The hearing officer may consult with the commission on procedural matters at a commission meeting.

C. Public notice of permit review.

(1) Content: The hearing clerk shall, upon direction from the commission or hearing officer, prepare a notice of review setting forth the permit for which the review is sought, the date, time, and location of the permit review, the name and address of the petitioner and where the permit and petition may be viewed.

(2) Distribution: The hearing clerk shall:

(a) no later than 30 days prior to the review date, send copies, with requests for publication, to at least one newspaper of general circulation in the state, and to at least one additional newspaper published or distributed at least weekly in the county where the facility is located; and

(b) mail a copy to each party and to each person who has expressed in writing to the department or the commission an interest in the facility or permitting action that is the subject of the petition.

(3) Certification: After the notice of permit review has been distributed in accordance with this section, the hearing clerk shall file an affidavit certifying how and when notice was given with a copy of the notice of permit review and any affidavits of publication attached.

D. Location of permit review: Unless otherwise ordered by the commission or hearing officer, the review shall be in Santa Fe.

E. Postponement of permit review: No request for postponement of a review or hearing shall be granted except upon consent of all parties or for good cause shown.

F. Conduct of permit review.

(1) Argument before the commission: The commission may, upon request of a party or its own initiative, allow oral argument prior to its deliberations. If oral argument is allowed, the commission shall specify the time and place for such oral argument after giving due consideration to the convenience of the parties and the need for expeditious resolution of the proceeding. No new evidence will be admitted during oral argument.

(2) The hearing clerk shall audio record any oral argument before the commission. Any party may, at its own expense, have the oral argument stenographically recorded by a certified court reporter. Any party may, at its own expense, have the audio recording or stenographic recording transcribed by a certified court reporter.

(3) Decision: The commission shall consider and weigh only the evidence contained in the record before the department and the recommended decision of the hearing officer, if any, and shall not be bound by the factual findings or legal conclusions of the department. The commission shall sustain, modify or reverse the action of the department based on a review of the evidence, the arguments of the parties and recommendations of the hearing officer. The commission shall set forth in the final order the reasons for its actions.

G. Judicial review: Judicial review of the final order shall be as provided by law. The filing of an appeal does not stay the final order, unless otherwise ordered by the commission or a court.

H. Preparation of record proper: The hearing clerk shall prepare the record proper for any appeal, which shall include a transcript of any oral argument before the commission. The appellant shall make satisfactory arrangements for payment of preparation of the record proper with the hearing clerk, including copying costs and transcription costs. If any oral argument was stenographically recorded by a certified court reporter, the appellant shall have a transcription made at its own expense. If any oral argument was not stenographically recorded by a certified court reporter, the appellant shall have the hearing clerk's audio recording of the oral argument transcribed by a certified court reporter certifying the accuracy of the transcription.

[20.1.3.16 NMAC - N, 10/15/2010]

#### **20.1.3.17 ABATEMENT PLAN HEARING:**

A. Initiation of abatement plan hearing: An appeal hearing shall be initiated by the filing of an abatement plan petition under Paragraph (1) of Subsection A of 20.1.3.17 NMAC.

(1) Timing and contents: an abatement plan petition shall:

(a) be filed with the commission within 30 days from the date notice is received of the abatement plan action;

(b) identify the petitioner, and state that the petitioner has standing under 20.6.2.4114 NMAC to file the petition;

(c) identify the abatement plan action being appealed, specify the portions of the abatement plan action to which petitioner objects and generally state the objections;

(d) have a copy of the abatement plan action attached;

(e) be signed under oath or affirmation and attest to the truth of the information contained therein; and

(f) be filed with the commission and a copy served on the department.

(2) Response of the department: If an abatement plan petition is filed under Paragraph (1) of Subsection A of 20.1.3.17 NMAC, the department shall within 30 days after receipt of the petition:

(a) file with the commission the administrative record of the abatement plan action which is the subject of the petition, including the transcript or audio recording of any public hearing held. The department shall serve only the index to the record on other parties. The parties may stipulate that only the relevant portions of the record be filed with the commission;

(b) deliver to the hearing clerk a list of all persons who have expressed in writing an interest in the facility or the abatement plan action that is the subject of the petition or who participated in a public hearing on the abatement plan action; and

(c) file an answer to the petition clearly and directly responding to each of the objections in the petition;

(d) the failure to file a timely abatement plan petition shall be grounds for dismissal of the appeal.

#### B. Scheduling the hearing.

(1) Hearing date: The hearing shall be scheduled to begin no later than 90 days after the date an abatement plan petition is received unless a stipulated or unopposed motion is filed requesting that the 90 day deadline be waived. The motion must be filed prior to the expiration of the ninety day deadline.

(2) Scheduling order: Unless the 90 day hearing deadline has been waived, the hearing officer shall, no later than 45 days prior to the hearing deadline, issue an order setting the date, time and location of the hearing. The order may include other procedural matters. The parties may, jointly or singly, submit to the hearing officer, prior to the issuance of the scheduling order, requests regarding the date and location of the hearing and other procedural matters, such as the assignment of a non-commissioner hearing officer. The hearing officer may consult with the commission on procedural matters at a commission meeting.

#### C. Public notice of hearing.

(1) Content: The hearing clerk shall, upon direction from the commission or hearing officer, prepare a notice of hearing setting forth the date, time, and location of the hearing, a brief description of the petition, and information on the requirements for entry of appearance and the statement of intent to present evidence.

(2) Distribution: The hearing clerk shall:

(a) no later than 30 days prior to the hearing date, send copies, with requests for publication, to at least one newspaper of general circulation in the state, and to at least one additional newspaper published or distributed at least weekly in the county where the facility is located;

(b) mail a copy to each interested participant who has previously filed an entry of appearance, and to each person who has expressed in writing to the department or the commission an interest in the facility or abatement plan action that is the subject of the petition; and

(c) immediately upon receipt of an entry of appearance that is received after the initial mailing, mail a copy to such interested participant.

(3) Certification: After the notice of hearing has been distributed in accordance with this section, the hearing clerk shall file an affidavit certifying how and when notice was given with a copy of the notice of hearing and any affidavits of publication attached.

D. Transcription of hearing: The petitioner shall, at its own expense, have the hearing stenographically recorded and transcribed by a certified court reporter unless, after a showing of substantial financial hardship, the hearing officer orders the department to hire a certified court reporter. The petitioner shall, no later than 30 days prior to the hearing date, file with the hearing clerk a certification that the petitioner has hired a certified court reporter and will deliver 16 copies of the hearing transcript to the hearing clerk or a request that the department hire a certified court reporter.

E. Statement of intent to present technical evidence.

(1) Requirement to file: Any person who wishes to present technical evidence at the hearing shall, no later than 10 days prior to the hearing, file a statement of intent.

(2) Content: The statement of intent to present technical evidence shall include:

(a) the name of the person filing the statement;

(b) indication of whether the person filing the statement supports or opposes the petition at issue;

- (c) the name of each witness;
- (d) an estimate of the length of the direct testimony of each witness;
- (e) a list of exhibits, if any, to be offered into evidence at the hearing; and
- (f) a summary or outline of the anticipated direct testimony of each witness.

F. Participation by the general public: Any person who has not timely filed either an entry of appearance or a statement of intent to present evidence may present a general non-technical statement as follows:

(1) Any member of the general public may testify at the hearing. Any testimony provided will be subject to cross-examination. No prior notification is required to present general non-technical statements in support of or in opposition to the petition. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is non-technical in nature and not unduly repetitious of the testimony.

(2) A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to or at the hearing.

G. Discovery:

(1) Grounds for discovery: Discovery shall only be permitted upon a determination by the hearing officer that:

(a) the type of discovery sought will not unreasonably delay the proceeding, and is neither unreasonably burdensome nor unreasonably expensive; and

(b) the information to be obtained is relevant and is not otherwise reasonably obtainable, may be lost, or may become unavailable.

(2) Order for discovery: Upon motion for discovery by a party and determination by the hearing officer that such motion should be granted, the hearing officer shall issue an order for the taking of such discovery together with the conditions and terms thereof.

H. Hearing: Burden of persuasion: at the hearing, the petitioner has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to justify the relief sought in the petition. Following the establishment of a prima facie case by the petitioner, any person opposed to the relief sought in the petition has the burden of going forward with any adverse evidence and showing why the relief should not be granted.

### **20.1.3.18 VARIANCE HEARING:**

#### **A. Initiation of variance hearing:**

(1) Variance hearing shall be initiated by the filing of a variance petition. A copy of the petition shall be served on the department.

(2) Contents: A variance petition shall comply with Subsection A of 20.6.2.1210 NMAC or Subsection F of 20.6.2.4103 NMAC, as applicable.

(3) Response of the department: The department shall review each variance petition and, within 60 days after receipt of the petition, file a recommendation with the commission to grant, grant with conditions, or deny the variance request. The recommendation shall include reasons and a copy shall be served on the petitioner by certified mail and on any other party.

**B. Hearing requirement:** If the department recommends granting the variance request, or any part of the variance request, with or without conditions, the commission shall hold a hearing on those requests recommended for approval. If the department recommends denial of all or part of the variance request, the commission shall only hold a hearing on the variances recommended for denial if the petitioner files a request for hearing within 15 days after receipt of the department's recommendation. If a timely request for hearing is not filed, the recommended denial shall become a final action of the commission and shall not be subject to review.

#### **C. Scheduling the hearing:**

(1) Timing of hearing: If a hearing on a variance petition is required, the hearing shall be held within 90 days after the later of the filing of a department recommendation to grant a variance or the filing of a request for hearing by the petitioner, as applicable. The 90 day deadline may be waived upon the filing of a stipulated or unopposed motion prior to the expiration of the deadline.

(2) Scheduling order and public notice: If a hearing on a variance petition is required, a scheduling order shall be issued as provided in Subsection B of 20.1.3.16 NMAC, and public notice shall be given as provided in Subsection C of 20.1.3.16 NMAC.

**D. Participation by the general public:** Any person who has not timely filed either an entry of appearance or a statement of intent to present evidence may present a general non-technical statement as follows:

(1) Any member of the general public may testify at the hearing. Any testimony provided will be subject to cross-examination. No prior notification is required to present general non-technical statements in support of or in opposition to the petition.

Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is non-technical in nature and not unduly repetitious of the testimony.

(2) A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to or at the hearing.

E. Transcription of hearing: The petitioner shall, at its own expense, have the hearing stenographically recorded and transcribed by a certified court reporter unless, after a showing of substantial financial hardship, the hearing officer orders the department to hire a certified court reporter. The petitioner shall, no later than 30 days prior to the hearing date, file with the hearing clerk a certification that the petitioner has hired a certified court reporter and will deliver 16 copies of the hearing transcript to the hearing clerk or a request that the department hire a certified court reporter.

F. Additional procedures: Procedures for statements of intent to present technical evidence, for discovery and for the burden of persuasion in variance hearings shall follow the procedures for abatement plan hearings, Subsection E to Subsection H of 20.1.3.17 NMAC.

[20.1.3.18 NMAC - Rp, 20 NMAC 1.3.III 300-303, 10/15/2010]

#### **20.1.3.19 COMPLIANCE ORDER HEARING:**

A. Initiation of compliance order hearing:

(1) Filing of request: A compliance order hearing shall be initiated by the filing of a request for compliance order hearing within 30 days after the compliance order is served. The respondent shall file the original of the request for compliance order hearing with the commission and serve a copy on the department.

(2) Request for compliance order hearing: The request for compliance order hearing shall also serve as an answer to the compliance order and shall:

(a) clearly and directly admit or deny each of the factual assertions contained in the compliance order; but where the respondent has no knowledge of a particular factual assertion and so states, the assertion may be denied on that basis; any allegation of the compliance order not specifically denied shall be deemed admitted;

(b) indicate any affirmative defenses upon which the respondent intends to rely; affirmative defenses not asserted in the request for compliance order hearing, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived;

(c) be signed by a person authorized to do so; and

(d) attach a copy of the compliance order.

B. Scheduling the hearing:

(1) Hearing date: The hearing shall be scheduled to begin no later than 90 days after the date a request for compliance order hearing is received, unless a stipulated or unopposed motion is filed requesting that the 90 day deadline be waived. The motion must be filed prior to the expiration of the 90 day deadline.

(2) Scheduling order and public notice: A scheduling order shall be issued as provided in Subsection B of 20.1.3.17 NMAC, and public notice shall be given as provided in Subsection C of 20.1.3.17 NMAC.

C. Transcription of hearing: The respondent shall, at its own expense, have the hearing stenographically recorded and transcribed by a certified court reporter unless, after a showing of substantial financial hardship, the hearing officer orders the department to hire a certified court reporter. The respondent shall, no later than 30 days prior to the hearing date, file with the hearing clerk a certification that the respondent has hired a certified court reporter and will deliver 16 copies of the hearing transcript to the hearing clerk or request that the department hire a certified court reporter.

D. General rules regarding discovery:

(1) Discovery request: Except as otherwise provided by the commission, a party requesting discovery shall serve the discovery request directly upon the party from whom discovery is sought and shall file a notice with the hearing clerk, indicating the date of service of the discovery request, the type of discovery sought, and the party from whom discovery is sought.

(2) Response to discovery request: A party responding to a discovery request shall serve the response, including any objections, upon the party making the discovery request and shall file a notice with the hearing clerk, indicating the date of service of the response, the type of discovery request being responded to, and the party upon whom the response was served.

(3) Continuing obligation to supplement responses: Any party from whom discovery is sought has a continuing obligation, subject to any objections interposed and not overruled by the hearing officer, to supplement responses with relevant information obtained after serving of the initial response and any previous supplemental responses. Unless otherwise ordered by the commission or hearing officer, supplemental responses shall be served as soon as practicable but not later than five days from when the information became available. If the new information becomes available less than five days prior to the hearing or during the hearing, it shall be brought to the attention of the hearing officer for direction and ruling on the use of the information.

(4) Protective order: The hearing officer may, upon motion and for good cause shown, issue any order which justice requires to protect a party or person from

annoyance, embarrassment, oppression or undue burden or expense, including that discovery be limited or that a trade secret or other confidential information not be disclosed.

(5) Failure to make discovery; sanctions: Upon motion by a party showing that another party from whom discovery was requested has failed to respond within the required time, the hearing officer may order the response and may impose such sanctions as may be appropriate, including:

(a) refusal to allow the testimony of a witness not identified as required by Subsection E of 20.1.3.20 NMAC;

(b) denial of admission of a document not disclosed as required by Subsection F of 20.1.3.20 NMAC;

(c) drawing of adverse inference against the non-responsive party; and

(d) in an extreme case, dismissal or default judgment against the non-responding party.

E. Identity of witnesses: Except as allowed by the hearing officer, each party shall, 15 days before the hearing, provide the name and address of each person expected to be called as a witness and a description of the general subject matter of the anticipated testimony of each witness, and a list of exhibits, if any, to be offered into evidence at the hearing.

F. Production of documents:

(1) Definition: As used in this section, "document" includes writings, drawings, graphs, charts, photographs, videotapes and other data compilations from which information can be obtained, and if necessary, translated by a party through detection devices into reasonably usable form. In addition, each copy of a document that is not identical in all respects to every other copy shall be considered a separate document.

(2) Request: Any party, upon written request to another party, is entitled to inspect and make copies of any relevant documents in the possession or control of the other party. The request shall specify a reasonable time (not less than 20 days after service of the request), place and manner of making the inspection and copies. The party responding to the request shall also provide a list of privileged documents, identified by title, author and date.

G. Subpoenas: As allowed by the act, the hearing clerk shall, upon request by any party and without the necessity for notice to other parties, prepare a subpoena requiring the attendance and testimony of any witness and the production of any evidence in the possession or under the control of the witness at the hearing or at a deposition authorized by the hearing officer under Subsection I of 20.1.3.19 NMAC, and forward

the subpoena to the hearing officer for issuance. A subpoena may be issued with the name and address of the witness blank, to be completed by the requesting party.

H. Request for admissions: Any party may serve upon any other party a written request for the admission of any statement or opinion of fact or the application of law to fact, including the genuineness of any document. If the request includes a request for admission of the genuineness of a document, the document shall be attached to the request unless it has been otherwise furnished. Each statement shall be deemed admitted unless, within 20 days after service of the request, or such other time prescribed by the hearing officer, the party to whom the Request is directed serves upon the requesting party a sworn written response specifically denying such matter.

I. Other discovery:

(1) Additional discovery not favored: Discovery not specifically provided for under this part, including interrogatories and depositions, is discouraged. Requests for additional discovery may be made by motion to the hearing officer setting forth:

- (a) the circumstances and necessity warranting the taking of the discovery;
- (b) the nature of the information expected to be discovered; and
- (c) the proposed time and place where the discovery will be taken.

(2) Findings for additional discovery: Discovery may be permitted upon determination by the hearing officer that:

- (a) such discovery will not unreasonably delay the proceeding;
- (b) the information to be obtained is not otherwise reasonably obtainable, may be lost, or may become unavailable because of physical illness or infirmity; and
- (c) there is a substantial reason to believe that the information sought will be admissible at the hearing or will be likely to lead to the discovery of admissible evidence.

(3) Order for additional discovery: Upon determining that a motion for additional discovery should be granted, the hearing officer shall issue an order for the taking of such discovery together with any conditions and terms of the additional discovery.

J. Hearing burden of persuasion: At compliance order hearing, the department has the burden of going forward with the evidence and of proving by a preponderance of the evidence that the violation occurred, and that the proposed civil penalty, revocation, or suspension, as the case may be, is appropriate. Following the establishment of a prima

facie case, the respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

[20.1.3.19 NMAC - Rp, 20 NMAC 1.3.IV.400-409, 10/15/2010]

**20.1.3.20 GENERAL HEARING PROCEDURES FOR ABATEMENT PLAN, VARIANCE AND COMPLIANCE ORDER HEARINGS:**

A. Hearing:

(1) Location of the hearing: Unless otherwise ordered by the commission or hearing officer, the hearing shall be in Santa Fe.

(2) Postponement of hearing: No request for postponement of a hearing shall be granted except upon consent of all parties or for good cause shown.

B. Conduct of hearing:

(1) The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.

(2) The hearing officer shall establish the order of testimony except that the party with the burden of persuasion shall present its case first. The hearing officer may allow brief opening or closing statements.

C. Evidence:

(1) General: The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded in the courts under SCRA 1986, 11-408 is not admissible.

(2) Examination of witnesses: Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in this part or by the hearing officer. The commission, hearing officer, and parties shall have the right to cross-examine a witness. The hearing officer may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the witness' direct testimony.

(3) Exhibits: All exhibits offered in evidence shall be marked with a designation identifying the person by whom the exhibit is offered, and numbered serially in the sequence in which offered. Large charts and diagrams, models, and other bulky exhibits are discouraged. Exhibits should be limited to 8 1/2 X 11 inches, or be capable of being folded to that size, unless otherwise necessary for adequate presentation of evidence.

(4) Official notice: Official notice may be taken of any matter that may be judicially noticed in the New Mexico courts.

(5) Preponderance of evidence: Each matter of controversy shall be determined upon a preponderance of the evidence.

D. Objections and offers of proof:

(1) Objection: Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the hearing officer on any objection and the reasons given for it shall be part of the record.

(2) Offer of proof: Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded and what such evidence would have proved. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded. Where the commission decides that the ruling of the hearing officer in excluding the evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

[20.1.3.20 NMAC - Rp, 20 NMAC 1.3.V.500-503, 10/15/2010]

**20.1.3.21 POST-HEARING PROCEDURES FOR ABATEMENT PLAN, VARIANCE AND COMPLIANCE ORDER HEARINGS:**

A. Filing the transcript: If post-hearing submittals are allowed, the hearing clerk shall, promptly following receipt of the transcript, transmit a copy to the hearing officer, and notify all parties of its availability. Any person, other than the commission, desiring a copy of a transcript may order a copy from the court reporter.

B. Proposed findings and conclusions: Unless otherwise ordered by the commission, within 30 days after conclusion of the hearing, or within such time as may be fixed by the hearing officer, any party may submit proposed findings of fact and conclusions of law and closing argument. All such submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied on. No new evidence shall be presented unless specifically allowed by the hearing officer.

C. Recommended decision:

(1) Filing and contents: Unless otherwise ordered by the commission, the hearing officer shall issue a recommended decision within 30 days after the deadline for

filing of proposed findings and conclusions under Subsection B of 20.1.3.21 NMAC. The recommended decision shall contain the hearing officer's:

(a) findings of fact;

(b) conclusions regarding all material issues of law or discretion, as well as reasons therefor;

(c) a proposed final order; and

(d) for compliance order hearings, if the hearing officer determines that a violation has occurred, the hearing officer shall review the proposed civil penalty to determine if the department acted within its discretion in setting the penalty amount; if the hearing officer decides to recommend a penalty different in amount or nature from the department's proposed penalty, the hearing officer shall set forth the reasons for the change.

(2) Comment on recommended decision: At the commission's discretion, any party may file, within 15 days after service of the recommended decision, comments regarding the recommended decision, including arguments to adopt, reject or modify the recommended decision.

(3) Argument before the commission: The commission may, upon request of a party or its own initiative, allow oral argument on the recommended decision. If oral argument is allowed, the commission shall specify the time and place for such oral argument after giving due consideration to the convenience of the parties and the need for expeditious resolution of the proceeding.

D. Final order by commission: The commission shall reach a final decision at a public meeting, but may deliberate on the decision in closed session in accordance with the Open Meetings Act. The commission may circulate a draft order during closed session so long as no final decision is reached during closed session. After reaching a decision, the commission shall direct a member, its counsel or a party to prepare a final order. The commission may approve the order at a meeting or direct the commission chair to sign the order.

(1) Decision: The commission may adopt, modify, or set aside the hearing officer's recommended decision, and shall set forth in the final order the reasons for its actions.

(2) Penalty: For a compliance order hearing, the commission may change the amount and nature of the civil penalty, if any, recommended by the hearing officer and shall set forth the reasons for the change.

(3) The hearing clerk shall send copies of the final order to each party, and to all other persons who have made written requests for notification of the action taken.

E. Payment of civil penalty: The respondent shall pay the full amount of the civil penalty, if any, assessed in the final order within 60 days after receipt of the final order, unless otherwise ordered by the commission. Payment shall be made by forwarding to the hearing clerk a cashier's check or certified check in the amount of the penalty assessed, payable to the fund specified in the act.

F. Judicial review: Judicial review of the final order shall be as provided by law. The filing of an appeal does not stay any action or payment of penalty required by the final order, unless otherwise ordered by the commission or a court.

G. Preparation of record proper: The hearing clerk shall prepare the record proper for any appeal, which shall include a transcript of the hearing before the commission. The appellant shall make satisfactory arrangements for payment of preparation of the record proper with the hearing clerk, including copying costs and transcription costs.

[20.1.3.21 NMAC - Rp, 20 NMAC 1.3.VI.600-606, 10/15/2010]

#### **20.1.3.22 ALTERNATE RESOLUTION:**

##### A. Summary procedures:

(1) Use of summary procedures: The commission may dispose of a abatement plan petition, variance petition or request for compliance order hearing after an expedited hearing if a party requests that the matter be decided solely on legal arguments presented in written briefs and oral arguments.

(2) Expedited hearing: If the hearing officer determines that the motion or request has a likelihood of success and could fairly expedite the resolution of the proceeding, the hearing officer may submit a recommended decision to the commission based on briefs and oral arguments presented at an expedited hearing. If an expedited hearing is conducted, public notice shall be given in accordance with Subsection C of 20.1.3.17 NMAC, Subsection C of 20.1.3.18 NMAC or Subsection C of 20.1.3.19 NMAC. For abatement plan or variance hearings, the hearing officer shall also:

(a) include in the public notice instructions for persons other than parties who wish to participate in the oral argument to submit a statement of intent equivalent to the statement provided in Subsection E of 20.1.3.17 NMAC; and

(b) allow the public to attend the expedited hearing but may limit presentations at the hearing to oral arguments by parties on the specific issue before the commission.

(3) Commission: Upon a referral of a recommended expedited decision, the commission may either reach a final decision and issue a final order or remand to the hearing officer to proceed with a full hearing under this part.

B. Settlement: The commission encourages the settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the act and regulations.

(1) Compliance order hearing: The commission may approve a stipulated final order signed by all parties. The stipulated final order shall include all the terms and conditions agreed to by the parties, and shall state that, for the purpose of this proceeding, the respondent admits the jurisdictional allegations of the compliance order and consents to the relief specified, including the assessment of the stated civil penalty, if any.

(2) Permit reviews: The commission may approve a settlement that modifies a permitting action only after evidence supporting such modification is presented at a hearing. The department, however, may withdraw and reissue a modified permitting action under Subsection C of 20.1.3.22 NMAC.

(3) Disapproval of settlement: If the commission disapproves the settlement or stipulated final order, the matter shall proceed as if there had been no settlement or stipulated final order.

C. Withdrawal:

(1) Notice of withdrawal: A petitioner or respondent may withdraw a petition or request for compliance order hearing, or the department may withdraw the compliance order or the permitting action or abatement plan action which is the subject of the proceeding, at any time prior to a decision by the commission by filing a notice of withdrawal with the commission and serving the notice on all other parties. A party may file a written objection to the notice within 10 days after receipt. If an objection is filed, the commission shall rule on the notice.

(2) Effect of withdrawal: An effective notice of withdrawal under this section results in the following:

(a) when a petitioner withdraws an permit review petition, the permitting action becomes final;

(b) when a petitioner withdraws an abatement plan appeal petition, the abatement plan action becomes final;

(c) when a petitioner withdraws a variance petition, the petitioner is barred from petitioning for the same variance without permission from the commission;

(d) when a respondent withdraws a request for compliance order hearing, the compliance order becomes final;

(e) when the department withdraws a compliance order, the request for compliance order hearing is vacated; and

(f) when the department withdraws a permitting action or an abatement plan action, the petition is vacated and the department must issue a new permitting action or an abatement plan action within 60 days unless either the commission approves a different time period, the applicant withdraws its application, or the department determines that a permitting action or abatement plan action is no longer required. Upon issuance of a new permitting action or abatement plan action, the right to file a new petition under the act, Section 74-6-5 (O), or regulations, 20.6.2.4114 NMAC, is available.

[20.1.3.22 NMAC - Rp, 20 NMAC 1.3.VII.700-702, 10/15/2010]

**20.1.3.23 APPENDIX A:**

[Preferred Format]

**STATE OF NEW MEXICO**

**WATER QUALITY CONTROL COMMISSION**

[A. Petition Hearing]

**IN THE MATTER OF THE PETITION FOR**

**[A VARIANCE FROM \_\_\_\_\_]**

**[HEARING ON DISCHARGE PLAN NO. \_\_\_\_]**

**[HEARING ON ABATEMENT ACTION DATED \_\_\_\_\_]**

**[Name of Petitioner],**

**Petitioner**

[B. Order Hearing]

**[name of constituent agency issuing Compliance Order],**

**Complainant**

**v.**

**[Name of Respondent],**

**Respondent**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing [name of document] was [hand-delivered] [faxed] [mailed first class to all parties [and interested participants] on [date].

---

[20.1.3.23 NMAC - Rp, 20 NMAC 1.3.VIII.800, 10/15/2010]

**PART 4: PERMIT PROCEDURES - ENVIRONMENT DEPARTMENT**

**20.1.4.1 ISSUING AGENCY:**

Environment Department.

[12/1/97; 20.1.4.1 NMAC – Rn, 20 NMAC 1.4.I.101, Recompiled 11/27/01]

**20.1.4.2 SCOPE:**

This Part sets forth procedural regulations for public hearings before the Environment Department involving permit issuance, renewal, denial, or modification, license, and variance petitions, except to the extent any provision of this Part is inconsistent with any rule promulgated by the Environmental Improvement Board or the Water Quality Control Commission. These regulations may be adopted by the Environmental Improvement Board or Water Quality Control Commission; however, nothing in this Part shall be construed as limiting or affecting, in any manner, the authority of the Board or Commission to adopt rulemaking for permit procedures as provided by law.

[12/1/97; 20.1.4.2 NMAC – Rn, 20 NMAC 1.4.I.102, Recompiled 11/27/01]

**20.1.4.3 STATUTORY AUTHORITY:**

This Part is adopted under the authority of NMSA 1978, 9-7A-6.D, 74-1-1 through 13, 74-4-4.A.7, 74-9-28.A (1) and (3) and 74-9-29.

[12/1/97; 20.1.4.3 NMAC – Rn, 20 NMAC 1.4.I.103, Recompiled 11/27/01]

**20.1.4.4 DURATION:**

Permanent.

[12/1/97; 20.1.4.4 NMAC – Rn, 20 NMAC 1.4.I.104, Recompiled 11/27/01]

#### **20.1.4.5 EFFECTIVE DATE:**

December 1, 1997, unless a later date is cited at the end of a section or paragraph.

[12/1/97; 20.1.4.5 NMAC – Rn, 20 NMAC 1.4.I.105, Recompiled 11/27/01]

#### **20.1.4.6 OBJECTIVE:**

The objective of this Part is to establish hearing procedures for permit issuance, renewal, denial, or modification, license and variance petitions; to ensure due process for all persons; to ensure the ability to participate of all persons and entities who desire to take part; and to give an orderly structure to the proceedings.

[12/1/97; 20.1.4.6 NMAC – Rn, 20 NMAC 1.4.I.106, Recompiled 11/27/01]

#### **20.1.4.7 DEFINITIONS:**

##### **GENERAL:**

##### **A. As used in this Part:**

##### **(1) "Act" means, as the context requires:**

(a) the Department of Environment Act, NMSA 1978, Chapter 9, Article 7A;

(b) the Air Quality Control Act, NMSA 1978, Chapter 74, Article 2;

(c) the Radiation Protection Act, NMSA 1978, Chapter 74, Article 3;

(d) the Hazardous Waste Act, NMSA 1978, Chapter 74, Article 4;

(e) the Water Quality Act, NMSA 1978, Chapter 74, Article 6;

(f) the Solid Waste Act, NMSA 1978, Chapter 74, Article 9; and

(g) any rule adopted or amended by the Board or Commission that utilizes this Part;

(2) "Administrative Record" means all public records used by the Division in evaluating the application or petition, including the application or petition and all supporting data furnished by the applicant or petitioner, all materials cited in the application or petition, public comments, correspondence, and as applicable, the draft permit and statement of basis or fact sheet, and any other material used by the Division to evaluate the application or petition;

- (3) "Applicant" means any person whose application for a permit, renewal or modification to a permit, or license is the subject of the proceeding under this Part;
- (4) "Application" means an application for a permit, renewal or modification to a permit, or license;
- (5) "Completeness Determination" means a determination made by the Secretary that an application under the Solid Waste Act contains all information required by the Act and Regulations;
- (6) "Department" means the Environment Department or its successor agency;
- (7) "Division" means the appropriate Division within the Environment Department;
- (8) "document" means any pleading, motion, response, reply, memorandum, decision, order, entry of appearance, or other writing filed in a proceeding under this Part;
- (9) "Draft Permit" means a document prepared by the Division indicating the Division's proposed decision to issue, deny, or modify a permit;
- (10) "final order" means the order issued by the Secretary that is dispositive of the matter;
- (11) "Hearing Clerk" means the person designated by the Secretary to maintain the Hearing Record;
- (12) "Hearing Determination" means a determination made by the Secretary that a public hearing is required under the Act or Regulations;
- (13) "Hearing Officer" means the person designated under this Part or appointed by the Secretary to conduct a proceeding under this Part;
- (14) "Hearing Record" means the Record Proper and the written transcript or recorded tape of the public hearing, including all exhibits offered into evidence, whether or not admitted;
- (15) "license" means a license issued pursuant to the Radiation Protection Act, NMSA 1978, Chapter 74, Article 3;
- (16) "party" means the Petitioner, the Applicant, the Division, or a person who files an entry of appearance on or before the deadline set forth in the Notice of Hearing;
- (17) "Petition" means a Petition for Variance;

(18) "Petitioner" means a person who timely files a Petition;

(19) "Record Proper" means the Administrative Record and all documents filed by or with the Hearing Clerk;

(20) "Regulations" means any rule adopted pursuant to the Act;

(21) "Secretary" means the Secretary of Environment, the Secretary's designee, or any person who assumes the role of the Secretary for purposes of this Part in the event of the Secretary's recusal or disqualification;

(22) "technical testimony" means scientific, engineering, economic or other specialized testimony, whether oral or written, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing;

(23) "technical materials" means all data, studies and tangible materials used to form the basis of opinion(s) held by a witness presenting technical testimony; and

(24) "Variance" means a waiver from one or more substantive regulations under the Solid Waste Act.

B. Terms Used In Act or Regulations: Terms defined in the Act or Regulations and not defined in this Part are used consistent with the meanings given in the Act or Regulations.

#### **20.1.4.8-20.1.4.99 [RESERVED]**

#### **20.1.4.100 GENERAL PROVISIONS:**

A. Applicability of Rules of Civil Procedure and Evidence: The New Mexico Rules of Civil Procedure, SCRA 1986, 1-001 to 1-102 and the New Mexico Rules of Evidence, SCRA 1986, 11-101 to 11-1102 shall not apply to proceedings under this Part. At the discretion of the Hearing Officer, the rules may be used for guidance and shall not be construed to limit, extend, or otherwise modify the authority and jurisdiction of the Secretary under any Act.

B. Liberal Construction: This Part shall be liberally construed to carry out its purpose and the purposes of the statute or statutes and regulations pursuant to which the proceeding at issue is conducted. This part shall also be liberally construed to facilitate participation by members of the public, including those who are not represented by counsel.

C. Severability: If any section or application of this Part is held invalid, the remainder of this Part or any other application shall not be affected.

#### D. Savings Clause:

(1) Limitation of Applicability: This Part does not apply to pending proceedings for which a Notice of Hearing has been published as provided in Section 202 of 20 NMAC 1.4 [Paragraph C. of Section 200 of 20.1.4 NMAC] filed October 31, 1995, does not affect any permit issued prior to the effective date of this Part until the permittee applies for a modification or renewal of the permit, and does not affect any license or variance issued prior to the effective date of this Part. Any amendment to this Part shall not apply to a proceeding pending on the effective date of the amendment.

(2) References In Other Rules: Any reference in any other rule to NMED 91-1, or to 20 NMAC 1.4 as filed October 31, 1995 and amended May 17, 1996, or to any provision thereof shall be construed as a reference to this Part, or to the corresponding provision thereof.

#### E. Powers and Duties of the Secretary and Hearing Officer:

(1) Secretary: The Secretary shall exercise all powers and duties as prescribed under the Act, the Regulations and this Part, and not otherwise delegated to a staff member, the Hearing Officer, or the Hearing Clerk. The Secretary may specify procedures in addition to or that vary from those provided in this Part in order to expedite the efficient resolution of the action or to avoid obvious injustice, so long as such procedures do not conflict with the Act or the Regulations or prejudice the rights of any party.

(2) Hearing Officer: The Secretary may appoint one or more Hearing Officers to perform the functions described in this Section. The Hearing Officer shall exercise all powers and duties prescribed or delegated under the Act, the Regulations, or this Part. The Hearing Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The Hearing Officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by this Part which includes, but is not limited to, authority to:

(a) conduct hearings under this Part;

(b) rule upon motions, procedural requests, and offers of proof;

(c) issue all necessary orders, except final orders issued by the Secretary under this Part;

(d) issue subpoenas, as authorized under the Solid Waste Act and Section 205.D [Paragraph 4, Subsection E., of 20.1.4.200 NMAC];

(e) administer oaths and affirmations, examine witnesses and admit or exclude evidence; and

(f) require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings.

(3) Secretary and Hearing Officer; Qualifications; disqualification:

(a) Qualifications: The Secretary or the Hearing Officer shall not perform any function provided for in this Part regarding any matter in which the Secretary or the Hearing Officer:

(i) has a personal bias or prejudice concerning a party, the Application or Petition, involved in the proceeding;

(ii) has a financial interest in the proceeding or facility that is the subject of the proceeding;

(iii) is related to a party to the proceeding; or

(iv) is an officer, director or trustee of a party to the proceeding.

(v) The Secretary shall not be disqualified solely because of having been briefed on the matter prior to initiation of a proceeding under this Part.

(b) Disqualification:

(i) Any party, by motion and for cause listed in Section 112.C.1 [Item (i), Subparagraph (a), Paragraph (3), Subsection E. of 20.1.4.100 NMAC], may request the disqualification of the Hearing Officer at any time prior to the hearing, or of the Secretary at any time prior to filing of the Final Order.

(ii) The Hearing Officer shall file a recommended decision on a motion under this Section within five (5) days. The Secretary shall file an order on a motion under this Section within five (5) days of the filing of the recommended decision. If the Secretary grants the motion, the order shall designate the person who shall assume the duties of the Secretary or Hearing Officer.

F. Computation and Extension of Time:

(1) Computation: In computing any period of time prescribed or allowed by this Part, by any applicable statute, or by order of the Hearing Officer or Secretary, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day which is not a Saturday, Sunday, or legal state holiday. Whenever a party must act within a prescribed period after service upon him and service is by mail, three (3) days is added to the prescribed

period. The three days extension does not apply to any deadline mandated under the Act.<sup>3</sup>

(2) Extensions of Time: The Secretary or Hearing Officer may grant an extension of time to file a document or may continue a hearing upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties and undue delay to the proceeding.

G. Ex Parte Discussions: At no time shall any person discuss the merits of the proceeding ex parte with the Secretary or the Hearing Officer. "Ex parte" means any written or oral communication relating to the merits of the proceedings, between the Secretary or Hearing Officer and any person, including communications between Department staff directly involved in the proceeding and the Secretary or Hearing Officer. Ex parte does not include communications between any party or person and department staff. This prohibition shall begin to apply on the date the Secretary or Division makes a completeness or hearing determination and shall terminate on the date of the final order.

#### H. Filing Service, and Form of Documents:

(1) Filing of Documents: Except as otherwise provided, the original of a document to be filed in the proceeding shall be filed with the Hearing Clerk.

(a) A telefax copy of a document may be filed in lieu of the original by telefaxing the document directly to the Hearing Clerk, provided:

(i) the document is preceded by a cover sheet addressed to the Hearing Clerk and indicating: the sender's name, address, telephone number, and telefax number; the case name and number; and the number of pages transmitted;

(ii) the document is no more than ten (10) pages in length excluding the telefax cover sheet; and

(iii) the sender does not request return of a conformed copy of the document; or

(b) for documents greater than 10 pages in length, telefaxing the document to a person other than the Department who files the document for the sender.

(c) A hand-delivered or mailed document, including a document telefaxed to a consenting agent who files the document for the sender, shall be deemed filed on the day the document is received by the Hearing Clerk, provided the document is received before the close of business on a working day. A document telefaxed directly to the Hearing Clerk shall be deemed filed upon completion of successful transmission of the document, provided successful transmission is completed before the close of business on a working day. The close of business on a working day shall be 5:00 p.m. or such

earlier time when the Department's main offices are officially closed before 5:00 p.m. A working day shall not include a Saturday, Sunday, or state or federal holiday. A document received after close of business or on a non-working day shall be deemed filed on the next business day.

(d) A party filing a document by telefax shall retain the original of the document throughout the pendency of the proceeding. Any party shall have the right to inspect the original of the document.

(2) Service of Documents:

(a) Except as otherwise provided, a person filing a document shall serve a copy thereof upon all parties.

(b) Any service required under this Part shall be deemed adequate if the document is:

(i) hand-delivered or mailed first class or express to the most recent address provided by the person upon whom service is made; or

(ii) telefaxed to the most recent telefax number that: (1) appears on a document filed in the proceeding by the person upon whom service is made; or (2) has been provided to the person making service by the person upon whom service is made, with that person's consent to be served by telefax.

(c) A certificate of service, conforming substantially to Section 116.B, [Paragraph I. Of this Section] shall accompany a filed document.

(d) A person serving a document by telefax, upon request of the person upon whom service is made, shall provide to that person a hand-delivered or mailed copy of the document.

(3) Form of Documents: Unless otherwise ordered by the Hearing Officer, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, and the first page of every document shall conform substantially to Section 116.A [Paragraph I. Of 20.1.4.100 NMAC].

(4) Documents Issued by Secretary or Hearing Officer: All documents issued by the Secretary or Hearing Officer shall be filed with the Hearing Clerk. The Hearing Clerk shall promptly serve copies of the document upon all parties.

(5) Examination of Hearing Record:

(a) Examination Allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy the Hearing Record or any part thereof.

(b) Cost of Duplication: Unless waived by the Department, the cost of duplicating the Hearing Record or any part thereof shall be borne by the person seeking duplication.

I. Sample Forms:

(1) Preferred Format For Documents:

STATE OF NEW MEXICO

BEFORE THE SECRETARY OF ENVIRONMENT

IN THE MATTER OF THE [APPLICATION/PETITION]

OF [NAME OF APPLICANT/PETITIONER]

FOR A [TYPE OF PERMIT/LICENSE/VARIANCE] FOR

[NAME OR DESCRIPTION OF FACILITY]

No.

TITLE OF DOCUMENT

Text of document.

Signature

NAME

ADDRESS

TELEPHONE NUMBER

(2) Preferred Format For Certificates of Service:

I hereby certify that on [month/day/year] a copy of [name of document] was [hand-delivered/mailed express or first class/faxed] to:

[names and addresses of persons upon whom service is made]

Signature

NAME

**20.1.4.101-20.1.4.199 [RESERVED]**

**20.1.4.200 PREHEARING PROCEDURES:**

A. Initiation of Hearing:

(1) Filing of Completeness or Hearing Determination: A proceeding under this Part shall be initiated by the filing of a Completeness or Hearing Determination by the Secretary.

(2) Administrative Record to Hearing Clerk: Upon the filing of a Completeness or Hearing Determination, the Division shall, no later than the hearing, forward the Administrative Record to the Hearing Clerk. Material readily available at the Division's office, or published material which is generally available, need not be physically included in the Administrative Record, provided that the material is identified in an index to the Administrative Record filed with the Hearing Clerk. The Administrative Record is available for public review at all times.

(3) Petition: A Petition shall:

(a) specify each provision of the Solid Waste Managements Regulations from which the variance is sought;

(b) specify the length of time for which the variance is sought; and

(c) contain a recitation of all facts the Petitioner relies upon to support the Petition, including a showing that:

(i) application of the provisions from which variance is sought would result in an arbitrary and unreasonable taking of the Petitioner's property or would impose an undue economic burden upon the Petitioner's lawful business, occupation, or activity;

(ii) granting the variance will not result in any condition injurious to human health, safety, or welfare, or the environment; and

(iii) if the variance is requested for longer than one (1) year, facts showing that there are no practicable means known or available for the adequate prevention of degradation of the environment or the risk to the public health, safety, or welfare.

(4) Combined Action: Nothing in this Part shall preclude the filing of a combined Application and Petition by the same person, provided the caption and title clearly indicate that the document is to be treated as both an Application and a Petition.

(5) Division Response to Petition: The Division shall promptly review the Petition to determine whether it is complete and if not, notify the Petitioner of that fact, and of the reasons the Petition is deemed incomplete.

(6) Completeness Determination: In making a Completeness Determination, the Division shall consider whether the Applicant has addressed all the administrative requirements required by the Act and the Regulations. The Completeness Determination shall not be considered to be a determination that the Application is approvable.

B. Notice of Docketing; Identification of Secretary or Designee and hearing Officer: The Hearing Clerk shall, as soon as practicable after receipt of a Completeness or Hearing Determination, issue a Notice of Docketing. The Notice of Docketing shall contain the caption and docket number of the case, the date upon which the Completeness or Hearing Determination was received by the Hearing Clerk, the name of the Secretary or designee who will issue the Final Order, and the name of the Hearing Officer, if one has been designated. If a Hearing Officer has not been designated, the Hearing Clerk shall notify the parties of the name of the Hearing Officer as soon as one is assigned. The Hearing Clerk shall include a copy of this Part with the Notice of Docketing sent to the Applicant or Petitioner.

C. Scheduling the Hearing:

(1) Hearing Date: Unless otherwise provided by law, the Hearing Clerk shall distribute the Notice of Public Hearing as set forth in Section 203.B [Subparagraph (2) of Paragraph C of this Section] no later than sixty (60) days after the filing of a Completeness or Hearing Determination.

(2) Notice of Hearing:

(a) Content: The Department shall promptly prepare and file with the Hearing Clerk a Notice of Hearing setting forth:

(i) the date, time, and location of the hearing;

(ii) a brief description of the nature and location of the action to be considered in the Draft Permit, Application or Petition, including the name and address of the Applicant or Petitioner;

(iii) the name, address and telephone number of a person from whom further information, including a copy of the Draft Permit, Application or Petition, may be obtained;

(iv) the requirements for an Entry of Appearance, a Statement of Intent to Present Technical Testimony, and a general written or oral statement;

- (v) a statement that this Part shall apply at the hearing; and
- (vi) any other requirement set forth in the Act or applicable regulation.

(b) Service: Except as provided under Section 205,[Paragraph E. of this Section] the Hearing Clerk shall, no later than thirty (30) days prior to the hearing:

(i) send copies of the Notice of Hearing, with requests for publication, to at least one newspaper of general circulation in the state, and to at least one additional newspaper, if any, published or distributed at least weekly in the area where the facility is located;

(ii) mail a copy of the Notice of Hearing to each party and to each person who filed a written request for a hearing or who expressed to the Department in writing an interest in the facility that is the subject of the proceeding;

(iii) mail a copy of the Notice of Hearing to each local, state, or federal agency and Tribal government affected by the facility that is the subject of the proceeding;

(iv) immediately upon receipt of an entry of appearance received after the initial mailing, mail a copy of the Notice of Hearing to such person; and

(v) file in the Hearing Record the Affidavits of Publication from the newspapers in which the Notice of Hearing was published.

(3) Continuance of Hearing: A request to continue a hearing may be granted upon motion by a party, for good cause shown, and after consideration of prejudice to other parties and undue delay to the proceeding.

(4) Location of the Hearing: Unless otherwise provided by law, the hearing shall be in Santa Fe or at a place in the area affected by the facility which is the subject of the proceeding.

#### D. Motions:

(1) General: Any party may file a motion with the Hearing Clerk. All motions, except those made orally on the record during a hearing, shall be in writing, specify the grounds for the motion, state the relief or order sought and state whether it is opposed or unopposed. Each motion may be accompanied by affidavits, certificates, or other evidence relied upon, and shall be served as provided by Section 115.B [Subparagraph (2) of Paragraph H. of 20.1.4.100 NMAC].

(2) Unopposed Motions: An unopposed motion shall state that concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for review by the Hearing Officer.

(3) Opposed Motions: Any opposed motion shall state either that concurrence of other parties was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed.

(4) Response to Motions: Any party upon whom an opposed motion is served shall have fifteen (15) days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

(5) Reply to Response: The moving party may, but is not required to, submit a reply to a non-moving party's response within ten (10) days after service of the response.

(6) Decision: Except as provided in Section 112.C.2 [XX Paragraph of 20.1.4.100 NMAC] or otherwise ordered by the Hearing Officer, all motions shall be decided by the Hearing Officer without a hearing.

#### E. Special Procedures for Hearings Under the Solid Waste Act:

(1) Service of Public Notice: No later than sixty (60) days after the Hearing Clerk receives a Completeness Determination, the Hearing Clerk shall provide public notice of the hearing and service in the form and manner set forth under NMSA 1978, 74-9-22.

(2) Discovery: Discovery shall only be permitted upon a determination by the Hearing Officer that:

(a) the discovery will not unreasonably delay the proceeding and is not unreasonably burdensome or expensive;

(b) the information sought is not privileged and is relevant to the subject matter of the proceeding; and

(c) the information to be obtained is not unreasonably cumulative or duplicative, or not otherwise reasonably obtainable.

(3) Order For Discovery: Upon motion for discovery by a party and determination that such motion should be granted, the Hearing Officer shall issue an order for the taking of such discovery together with any conditions and terms of the discovery.

(4) Subpoenas: The Secretary has and may delegate to the Hearing Officer the power to issue subpoenas for the attendance and testimony of witnesses and the production of relevant documentary evidence.

[12/1/97; 20.1.4.200 NMAC – Rn, 20 NMAC 1.4.1.201 through 205, Recompiled 11/27/01]

**20.1.4.201-20.1.4.299 [RESERVED]**

**20.1.4.300 PARTICIPATION:**

A. Participation:

(1) Entry of Appearance: Any person who wishes to be a party shall file, and serve upon all other parties of record, an Entry of Appearance, on or before the deadline set forth in the Notice of Hearing. A timely Statement of Intent to Present Technical Testimony shall be considered an Entry of Appearance, if the person filing such statement has not previously filed a separate Entry of Appearance.

(2) Effect of Failure to File: Failure to file a timely Entry of Appearance shall preclude a person from being a party in the proceeding, but shall not preclude a person from presenting a general written or oral statement or non-technical testimony in the proceeding.

(3) Orders for Conduct of Proceedings: In proceedings under this Part, the Hearing Officer may conduct pre-hearing conferences and issue pre-hearing orders that are not inconsistent with these rules, for purposes including but not limited to expediting the disposition of the proceeding, discouraging unnecessary, duplicative or wasteful pre-hearing activities, formulating and simplifying issues, obtaining stipulations or admissions of fact or law, obtaining advance rulings regarding the admissibility of evidence, avoiding the presentation of unnecessary or cumulative evidence or motions and adopting special procedures for managing proceedings involving difficult or complex issues and/or large numbers of parties. With respect to proceedings involving large numbers of parties, the Hearing Officer may require that service of documents under Section 115.B [Paragraph XX of 20.1.4.100 NMAC] be made on designated representatives of groups of parties with similar interests and may make such other orders as are consistent with this Subpart.

B. Procedure for Submittal of Statements and Testimony:

(1) Technical Written Statements and Oral Testimony: Any person who intends to provide a technical written statement or oral testimony concerning a Draft Permit, Application or Petition shall file a Statement of Intent to Present Technical Testimony on or before the deadline in the Notice of Hearing, but in no event later than fourteen (14) days prior to the hearing.

(a) Content of Statement of Intent: The Statement of Intent to Present Technical Testimony shall

(i) identify the person filing the statement;

(ii) state whether the person filing the statement supports or opposes the Draft Permit, Application, or Petition, or in the case of the Division, the Division's recommended decision to approve, deny, or approve with conditions the Draft Permit, Application, or Petition;

(iii) identify each witness, including name, address, affiliation(s), and educational and work background;

(iv) estimate the length of the direct testimony of each witness;

(v) identify all exhibits which are part of the Record Proper and, for exhibits not part of the Record Proper, attach a copy;

(vi) list or make available all technical materials relied upon by each witness in making statement of technical of fact or opinion contained in his or her direct testimony; and

(vii) attach a summary of the testimony of each witness, stating any opinion(s) to be offered by such witness, and an explanation of the basis for such opinion(s).

(b) Effect of Failure to File: Failure to file a timely Statement of Intent to Present Technical Testimony meeting the requirements of Section 302.A.1 [Paragraph B. of this Section] shall preclude a person from presenting technical testimony, and if the person has not filed a timely Entry of Appearance, from being a party in the proceeding, but shall not preclude a person from presenting a general written or oral statement or non-technical testimony in the proceeding.

(2) General Written and Oral Statements; Non-Technical Testimony: Any person may provide a general written statement concerning the Draft Permit, Application, or Petition at or before the hearing. Any person may provide a general oral statement or non-technical testimony concerning the Draft Permit, Application, or Petition at the hearing.

[12/1/97; 20.1.4.300 NMAC – Rn, 20 NMAC 1.4.III.301 and 302, Recompiled 11/27/01]

**20.1.4.301-20.1.4.399 [RESERVED]**

**20.1.4.400 HEARING PROCEDURES:**

A. Burden of Persuasion; Order of Testimony; Evidence Required:

(1) Burden of Persuasion: The Applicant or Petitioner has the burden of proof that a permit, license, or variance should be issued and not denied. This burden does not shift. The Division has the burden of proof for a challenged condition of a permit or license which the Department has proposed. Any person who contends that a permit

condition is inadequate, improper, or invalid, or who proposes to include a permit condition shall have the burden of going forward to present an affirmative case on the challenged condition.

(2) Order of Testimony: Unless otherwise agreed to by the parties or ordered by the Hearing Officer, testimony shall be presented in the following order:

(a) testimony by, and examination of, the Applicant or Petitioner;

(b) testimony by, and examination of, technical witnesses in support of the Draft Permit, Application, or Petition;

(c) testimony by, and examination of, technical witnesses in opposition to the Draft Permit, Application, or Petition;

(d) all other testimony or oral statement;

(e) direct testimony by the parties, as appropriate, in the same order as testimony in the proceeding; and

(f) rebuttal testimony by the parties, as appropriate, in the same order as testimony in the proceeding.

(3) Standard for Decision: The Hearing Officer shall determine each matter in controversy by a preponderance of the evidence.

#### B. Evidence:

(1) General: Except as otherwise provided in this subsection, the Hearing Officer shall admit all relevant evidence that is not unduly prejudicial or repetitious, or otherwise unreliable or of little probative value.

(a) Evidence relating to settlement that would be excluded in the courts of New Mexico under SCRA 1986, 11-408 is not admissible.

(b) All privileges recognized in the courts of New Mexico shall be recognized to the same extent in proceedings under this Part.

(c) No person shall be allowed to testify as an expert unless identified as a technical witness in a timely filed Statement of Intent to Present Technical Testimony.

(2) Examination of Witnesses: All persons shall have an opportunity to examine witnesses at the hearing in the order set forth under Section 401.B[Subparagraph (2) of this Section]. Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in this Part or by the Hearing Officer. The Hearing Officer may limit cross-examination to avoid harassment, intimidation,

needless expenditure of time, or undue repetition. Technical information, including but not limited to data, studies, and tangible materials, shall not be offered or introduced during the examination of witnesses unless the technical information is in the Hearing Record, and was filed on or before the deadline for a Statement of Intent to Present Technical Testimony. Nothing in this Section shall be construed to limit the right of a party to offer or introduce technical information for impeachment or rebuttal.

(3) Exhibits: Each exhibit offered in evidence shall be marked with a designation identifying the person by whom the exhibit is offered, and shall be numbered serially in the sequence in which offered. A series of exhibits illustrative of the same subject, such as a series of photographs or diagrams showing different aspects of the same activity, may be numbered with the same number and sequential letters (e.g., 1a, 1b, etc.). The Record Proper and any part thereof shall be evidence, and shall not be offered as exhibits at the hearing, but persons may use copies in the course of testimony. Unless otherwise ordered by the Hearing Officer:

(a) A person offering an exhibit during the course of testimony shall provide a copy of the exhibit to each party.

(b) The original of the following types of exhibits shall be replaced in the Hearing Record with the indicated substitute:

(i) Charts, maps, diagrams, and photographs larger than 8 1/2 by 11 inches which cannot be folded or rolled shall be replaced with paper copies of 8 1/2 by 11 inches or larger which can be folded or rolled;

(ii) Photographic slides shall be replaced with photographic prints of 8 1/2 by 11 inches or smaller or paper copies of 8 1/2 by 11 inches;

(iii) Overhead projector slides shall be replaced with paper copies of 8 1/2 by 11 inches;

(iv) Models, samples, and other non-documentary exhibits shall be replaced with photographic prints of 8 1/2 by 11 inches or smaller, paper copies (of such photographic prints) of 8 1/2 by 11 inches, or oral testimony describing the exhibits.

(c) A person offering an exhibit for which a substitute is placed in the Hearing Record shall retain the original of the exhibit during the pendency of the proceeding, including any appeal(s), and shall, upon request, deliver the original of the exhibit to the Hearing Officer, Secretary, or court(s).

(4) Official Notice: The Hearing Officer may take official notice of any matter that may be judicially noticed in the courts of New Mexico.

C. Objections and Offers of Proof:

(1) Objection: A party may make any objection concerning the conduct of the hearing which may be stated orally or in writing during the hearing. The party raising the objection shall supply a short statement of its grounds. The objection, the short statement of its grounds, and the ruling by the Hearing Officer shall be included in the written transcript or recorded tape of the proceeding.

(2) Offer of Proof: Whenever evidence is excluded, the person offering the evidence may make an offer of proof, which shall be included in the written transcript or recorded tape of the proceeding.

(a) The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded.

(b) The offer of proof for an excluded exhibit shall consist of the insertion of the excluded exhibit in the written transcript or recorded tape of the proceeding.

(c) Failure to make an offer of proof shall waive any error in the exclusion of evidence.

(3) Prejudicial Error: Where the Secretary decides that the ruling of the Hearing Officer in excluding the evidence was erroneous and prejudicial, the Secretary may remand the matter to the Hearing Officer for the taking of the excluded evidence, subject to examination and rebuttal, unless otherwise agreed to by the parties.

[12/1/97; 20.1.4.400 NMAC – Rn, 20 NMAC 1.4.IV.401 through 403, Recompiled 11/27/01]

**20.1.4.401-20.1.4.499 [RESERVED]**

**20.1.4.500 POST HEARING PROCEDURES:**

A. Filing the Transcript: The hearing shall be transcribed or tape-recorded verbatim. If the hearing is transcribed, the Hearing Clerk shall promptly notify all parties of the availability of the transcript. Any person desiring a copy of the transcript shall order a copy from the court reporter at his or her own expense. Any person desiring a copy of the hearing tapes shall arrange copying with the Hearing Clerk at his or her own expense.

B. Proposed Findings and Conclusions and Closing Argument: Unless otherwise ordered by the Hearing Officer, any party may submit proposed findings of fact, conclusions of law, and closing argument within thirty (30) days after filing of the transcript. All submissions shall be in writing and shall contain adequate references to the Hearing Record and authorities relied upon. No new evidence shall be presented.

C. Hearing Officer's Report:

(1) **Deadline and Content:** Unless otherwise provided by law or ordered by the Secretary, the Hearing Officer shall file a report within thirty (30) days after expiration of the period under Section 502 [Subsection B. of 20.1.4.500 NMAC]. The report shall contain the Hearing Officer's findings of fact, conclusions of law, recommended decision, and proposed final order.

(2) **Comment on Hearing Officer's Report:** Unless otherwise ordered by the Secretary, a party may file comments on the Hearing Officer's Report, including argument for or against the Hearing Officer's Report or for or against modification of the Hearing Officer's Report, within fifteen (15) days after service of the Hearing Officer's Report. No new evidence shall be presented.

(3) **Argument Before the Secretary:** The Secretary may allow oral argument on the Hearing Officer's Report. A request for oral argument shall be filed no later than the expiration of the period under Section 503.B [Subparagraph (2) of this Section]. If oral argument is allowed, the Secretary shall notify the parties in writing regarding the time and place for oral argument, after giving due consideration to the convenience of the parties and to the deadline for issuance of the final order specified in Section 504 [Paragraph D. of this Section].

#### D. Final Order By Secretary:

(1) **Deadline:** Unless otherwise provided by law or by order of the Secretary, the Secretary shall file a final order no later than thirty (30) days after the expiration of the applicable deadline in Section 503.

(2) **Order:** The Secretary may adopt, modify, or set aside the Hearing Officer's recommended decision, and shall set forth in the final order the reasons for the action taken.

(3) **Notification of Final Order:** The Hearing Clerk shall send a copy of the final order, by certified mail, to each party and to each person who submits a written request for notification of the final order.

**E. Judicial Review:** Judicial or administrative review of the final order shall be as provided by law. The filing of an appeal does not act as a stay of the final order, the permit, license, or variance, or any provision of the Act or the Regulations, unless otherwise ordered by the Secretary or the court, or provided by law.

**F. Preparation of hearing Record:** The Hearing Clerk shall prepare the Hearing Record for an appeal from the final order. Appellant shall make satisfactory arrangements for the preparation of the Hearing Record, including costs for copies or transcripts, with the Hearing Clerk.

**20.1.4.501-20.1.4.599 [RESERVED]**

**20.1.4.600 ALTERNATE RESOLUTION:**

A. Withdrawal: No later than the beginning of the hearing, the Applicant or Petitioner may file a Motion for Withdrawal. The Secretary shall grant or deny the Motion for Withdrawal. [12-1-97]

B. Summary Procedures:

(1) Use of Summary Procedures: The Secretary may issue a final order after an expedited hearing on a motion by a party if not inconsistent with the law:

(a) to dismiss the Application or Petition for a jurisdictional defect; or

(b) to decide the merits of the Application or Petition on legal arguments presented in writing or oral argument.

(2) Expedited Hearing: If the Hearing Officer determines that the relief requested is likely to be granted, the Hearing Clerk shall prepare and file a Notice of Hearing as set forth in this Part. The hearing shall be conducted and post hearing procedures shall be followed as set forth in this Part. The final order of the Secretary on any expedited hearing under this Section may remand the matter to the Hearing Officer for a full hearing under this Part.

[12/1/97; 20.1.4.600 NMAC – Rn, 20 NMAC 1.4.VI. 601 and 602, Recompiled 11/27/01]

**20.1.4.601-20.1.4.699 [RESERVED]**

**PART 5: ADJUDICATORY PROCEDURES - ENVIRONMENT DEPARTMENT**

**20.1.5.1 ISSUING AGENCY:**

Environment Department.

[11/30/95; 20.1.5.1 NMAC – Rn, 20 NMAC 1.5.I.100, Recompiled 11/27/01]

**20.1.5.2 SCOPE:**

Except as otherwise specifically provided by statute or by any other rule or regulation of the Board or the Department, this Part governs administrative appeals of compliance orders, administrative orders, field citations or compliance determinations issued or administered by the Department. This Part further governs administrative hearings for permit suspensions and revocations. In any Department proceeding conducted under the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 et seq. (ULA), the procedures

in the ULA shall govern the proceeding. In the absence of a specific provision in the ULA governing an action, the Department may look to this Part for guidance.

[11/15/90, 11/30/95; 20.1.5.2 NMAC – Rn, 20 NMAC 1.5.I.101, Recompiled 11/27/01]

**20.1.5.3 STATUTORY AUTHORITY:**

This Part is adopted under the authority of NMSA 1978, 9-7A-6, 74-2-12, 74-4-10, 74-6B-8, 74-6B-13, 74-9-28.A(2), 74-9-29, 74-9-36, 74-11-10 and 74-11-11, as amended.

[11/15/09, 11/30/95; 20.1.5.3 NMAC – Rn, 20 NMAC 1.5.I.102, Recompiled 11/27/01]

**20.1.5.4 DURATION:**

Permanent.

[11/30/95; 20.1.5.4 NMAC – Rn, 20 NMAC 1.5.I.103, Recompiled 11/27/01]

**20.1.5.5 EFFECTIVE DATE:**

November 1, 1995.

[11/30/95; 20.1.5.5 NMAC – Rn, 20 NMAC 1.5.I.104, Recompiled 11/27/01]

**20.1.5.6 OBJECTIVE:**

The objective of this Part is to establish regulations that govern adjudicatory proceedings of the Environment Department. This Part is to ensure due process for all the parties and give an orderly structure to the proceedings.

[11/30/95; 20.1.5.6 NMAC – Rn, 20 NMAC 1.5.I.105, Recompiled 11/27/01]

**20.1.5.7 DEFINITIONS:**

A. GENERAL. As used in this Part:

(1) "Act" means, as the context requires:

(a) the Department of Environment Act, NMSA 1978, Chapter 9, Article 7A, and its subsequent amendments and successor provisions;

(b) the Air Quality Control Act, NMSA 1978, Chapter 74, Article 2, and its subsequent amendments and successor provisions;

(c) the Hazardous Waste Act, NMSA 1978, Chapter 74, Article 4, and its subsequent amendments and successor provisions;

(d) the Solid Waste Act, NMSA 1978, Chapter 74, Article 9, and its subsequent amendments and successor provisions;

(e) the Ground Water Protection Act, NMSA 1978, Chapter 74, Article 6B, and its subsequent amendments and successor provisions;

(f) the Tire Recycling Act, NMSA 1978, Chapter 74, Article 11, and its subsequent amendments and successor provisions; or

(g) any other statute enacted or amended by the Legislature and including authority for issuance of compliance orders or field citations by the Division or the Secretary or any other adjudicatory proceedings as consistent with law;

(2) "Board" means the Environmental Improvement Board;

(3) "Complainant" means the Division that issues Compliance Orders, or the party requesting a hearing on a Compliance Determination;

(4) "Compliance Determination" means a decision by the Division listed in the Corrective Action Fund Payment and Reimbursement, 20 NMAC 5.17; [20.5.17 NMAC]

(5) "Compliance Order" means a written administrative order or any field citation issued by the Division;

(6) "Department" means the New Mexico Environment Department or its successor agency under the Act;

(7) "Division" means the appropriate Division within the Environment Department;

(8) "document" means, except as otherwise used in Subpart III, any pleading, motion, response, memorandum, decision, order, or other written material filed or served in a proceeding under this Part, but does not include a cover letter accompanying a document transmitted for filing;

(9) "final order" means an order issued by the Secretary that is dispositive of the matter;

(10) "Hearing Clerk" means the person designated by the Secretary to maintain the official record of the proceeding;

(11) "Hearing Officer" means the person appointed by the Secretary to conduct a proceeding under this Part;

(12) "Notice of Contemplated Action" means a notice issued by the Secretary under NMSA 1978, Section 61-1-4 of the ULA;

(13) "party" means the Complainant, the Division, Respondent, any person who is entitled and who timely requests to be heard under the ULA, or any person who is permitted to intervene in the hearing pursuant to SCRA 1986, 1-024;

(14) "Petition" means a Petition for revocation or suspension of a permit;

(15) "Petitioner" means the Department when the Petition is for revocation or suspension of a permit;

(16) "Record Proper" means all documents filed by or with the Hearing Clerk during the proceeding and includes the written transcript or tape of the hearing and all exhibits offered into evidence at the hearing, whether or not admitted;

(17) "Regulations" means any rule promulgated and adopted pursuant to the Act;

(18) "Request for Hearing" means a written appeal for review of a decision or Compliance Order issued by Division;

(19) "Respondent" means any person to whom a Compliance Order has been issued; or the Division in the case of a Compliance Determination under the Ground Water Protection Act; and

(20) "Secretary" means the Secretary of Environment, or any person who assumes the role of Secretary for purposes of this Part in the event of the Secretary's disqualification.

B. Terms Used in Act or Regulations: Terms defined in the Act or Regulations and not defined in this Part are used consistent with the meanings given in the Act or Regulations.

[11/15/95, 11/30/95; 20.1.5.7 NMAC – Rn, 20 NMAC 1.5.I.111, Recompiled 11/27/01]

20.1.5.8 to 20.1.5.99 RESERVED]

#### **20.1.5.100 GENERAL PROVISIONS:**

A. Applicability of Rules of Civil Procedure: In the absence of a specific provision in this Part governing an action, the New Mexico Rules of Civil Procedure, SCRA 1986, 1-001 to 1-102 and the New Mexico Rules of Evidence, SCRA 1986, 11-101 to 11-1102 may apply as necessary in the discretion of the Secretary or Hearing Officer. The reference to the Rules of Civil Procedure or the Rules of Evidence shall not be construed to extend or otherwise modify the authority and jurisdiction of the Secretary under any statute.

B. Liberal Construction: This Part shall be liberally construed to carry out its purpose.

C. Severability: If any Part or application of this Part is held invalid, the remainder of the Part, or its application to other persons or situations, shall not be affected.

D. Replacement of Prior Rules: This Part replaces the Rules Governing Appeals From Compliance Orders Under the Hazardous Waste Act and the Solid Waste Act, HED 90-10 (EID), filed October 16, 1990. Any reference in this Title to these Rules shall be construed as a reference to this Part.

E. Savings Clause: Replacement of the Rules Governing Appeals From Compliance Orders Under the Hazardous Waste Act and the Solid Waste Act, HED 90-10 (EID), filed October 16, 1990, does not affect pending litigation, nor any Compliance Orders or Compliance Determinations issued prior to the effective date of this Part.

F. Powers and Duties of the Secretary, Hearing Officer:

(1) Secretary: The Secretary shall exercise all powers and duties as prescribed under the Act and this Part, and not otherwise delegated to a staff member, the Hearing Officer, or the Hearing Clerk.

(2) Hearing Officer: The Secretary may appoint one or more Hearing Officers to perform the functions described in Paragraph 2 of this Subsection [Subparagraph (b) of this Subsection].

(a) Qualifications: If an independent Hearing Officer is required by the Act, then the Hearing Officer may be an independent contractor or a State employee who is employed in the capacity as a Hearing Officer. The Hearing Officer shall not be anyone who has performed prosecutorial or investigative functions in connection with the matter at issue in the proceeding.

(b) Functions: The Hearing Officer shall exercise all powers and duties prescribed or delegated by the Secretary under the Act or this Part. The Hearing Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The Hearing Officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by this Part, which includes, but is not limited to authority to:

(i) conduct hearings under this Part;

(ii) rule upon motions, procedural requests, offers of proof, and issue all necessary orders;

(iii) issue subpoenas, as authorized by the Act, for the attendance and testimony of witnesses and the production of documentary evidence as provided for in Subpart III [20.1.5.300 NMAC];

(iv) administer oaths and affirmations, examine witnesses and admit or exclude evidence;

(v) require parties to attend conferences for the settlement or simplification of the issues, or the expedition of the proceedings; and

(vi) impose sanctions, subject to review by the Secretary, on parties who cause undue delay or fail to cooperate in the proceeding.

(3) Secretary or Hearing Officer; Disqualification or Withdrawal:

(a) Neither the Secretary nor any Hearing Officer may perform functions provided for in this Part regarding any matter in which the Secretary or the Hearing Officer:

(i) has a personal bias or prejudice concerning a party or personal knowledge of facts or information concerning the proceeding;

(ii) has a financial interest in the proceeding;

(iii) is related to a party; or

(iv) is an officer, director or trustee of a party to the proceeding.

(b) The Secretary shall not be disqualified solely because of having been briefed on the matter prior to issuance of the Compliance Order or having authorized further investigation of the matter prior to issuance of the Compliance Order.

(c) Any party, by motion and for cause listed in Section 112.C.1, [Subparagraph (a) of Paragraph (3) of this Subsection] may request the disqualification of the Secretary or the Hearing Officer within ten (10) days after the matter has been docketed or the Hearing Officer designated, or if a new Secretary is appointed, within ten (10) days after the Secretary takes office.

(d) Any motion seeking disqualification of the Hearing Officer or the Secretary shall be ruled upon by the Secretary. Upon disqualification of the Secretary, the Deputy Secretary shall assume the duties of the Secretary. In the event that the Deputy Secretary is also subject to disqualification, a division director other than the Complainant shall assume the duties of the Secretary.

G. Computation and Extension of Time:

(1) Computation of Time: In computing any period of time prescribed or allowed by this Part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, then the time is extended until the next day which is not a Saturday, Sunday, or legal state holiday. Whenever a party must act within a prescribed period after service upon him and service is by mail, three (3) days is added to the prescribed period. The three days extension does not apply to any deadline mandated otherwise under the Act.

(2) Extensions of Time: The Secretary or Hearing Officer may grant an extension of time to file a document or continuance of a hearing upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties and undue delay to the proceedings.

H. Ex Parte Discussions: At no time shall any party to a proceeding under this Part discuss ex parte with the Secretary or the Hearing Officer the merits of the proceeding.

I. Filing, Service, and Form of Documents:

(1) Filing of Documents:

(a) Except as otherwise provided, the original of all documents served in the proceeding shall be filed with the Hearing Clerk.

(b) Except as otherwise provided, a party filing documents shall serve copies thereof upon all other parties. A certificate of service, as shown in Section 118, [Subsection L. of this Section] shall accompany each filed document.

(2) Service of Documents: Except as otherwise provided, all documents may be served personally, by express mail, by telefax or by first class mail.

(3) Form of Documents:

(a) Unless otherwise ordered by the Hearing Officer, all documents, except exhibits, shall be on 8 1/2 x 11-inch white paper, and where appropriate, the first page of every document shall contain a heading and caption as illustrated in Section 118 [Subsection L. of this Section]. Any field citation may be on a pre-printed, multi-copy form.

(b) The original of each document, except exhibits, shall be signed by the party or the party's counsel or other representative, and shall include address and telephone number. The signature constitutes a certificate that the signer has read the document; that to the best of the signer's knowledge, information, and belief, there is good ground to support it; and that, except for motions for extension of time, it is not interposed for delay.

(c) Any notice or service required under this Part shall be deemed adequate if made to the most recent address provided by the person upon whom service is made.

J. Filing and Service of Documents Issued by Secretary or Hearing Officer: All documents issued by the Hearing Officer shall be filed with the Hearing Clerk. The Hearing Clerk shall promptly serve copies of the document upon all parties.

K. Examination of Documents Filed:

(1) Examination Allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any proceeding. Such documents shall be made available by the Hearing Clerk, as appropriate.

(2) Cost of Duplication: Unless waived by the Department, the cost of duplicating documents filed in any proceeding shall be borne by the person seeking copies of such documents.

L. Sample Document:

STATE OF NEW MEXICO

SECRETARY OF ENVIRONMENT

NAME OF COMPLAINANT,  
Complainant,

v.

No.

NAME OF RESPONDENT,  
Respondent.

TITLE OF DOCUMENT

Signature\_\_\_\_\_

NAME  
ADDRESS & TELEPHONE NUMBER

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing [name of document] was [hand-delivered/express mailed/faxed/mailed first class] on the following [party/counsel] of record [date]:

[names and addresses of persons upon whom service is made.]

Signature \_\_\_\_\_

Name of signer

[11/15/90, 11/30/95; 20.1.5.100 NMAC – Rn, 20 NMAC 1.5.I.106 through 110, and 20 NMAC 1.5.I.112 through 118, Recompiled 11/27/01]

**20.1.5.101-20.1.5.199 [RESERVED]**

**20.1.5.200 PREHEARING PROCEDURES:**

A. Initiation of Process:

(1) Filing of Request: The appeal process governed by this Part shall be initiated by the filing of a Request for Hearing and served on the Department and any other party.

(2) Request for Hearing: The Request for Hearing shall include an Answer. The Answer shall:

(a) clearly and directly admit or deny each of the factual assertions contained in the Compliance Order/Determination; but where the Respondent/Complainant has no knowledge of a particular factual assertion and so states, the assertion may be denied on that basis. Any allegation of the Compliance Order/Determination not specifically denied shall be deemed admitted;

(b) indicate any affirmative defenses upon which the Respondent/Complainant intends to rely. Any affirmative defense not asserted in the Request for Hearing, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived;

(c) be signed under oath or affirmation that the information contained therein is to the best of the signer's knowledge believed to be true and correct; and

(d) have a copy of the Compliance Order/Determination attached.

B. Notice of Docketing; Notice of Hearing Officer Assignment:

(1) Notice of Docketing; Notice of Hearing Officer Assignment: The Hearing Clerk shall, as soon as practicable after receipt of a Request for Hearing, issue a Notice of Docketing containing the caption and docket number of the case, the date upon which the Request for Hearing was received by the Hearing Clerk, and the name of the Hearing Officer, if one has been designated. If a Hearing Officer has not been designated, the parties shall be notified of the name and address of the Hearing Officer as soon as one is assigned. A copy of this Part shall be included with a Notice of Docketing sent to the Respondent/Complainant.

(2) Untimeliness: The Hearing Clerk shall docket any Request for Hearing, without regard to whether it appears to be timely; but any party may move to dismiss an untimely Request for Hearing.

#### C. Scheduling the Hearing:

(1) Compliance Determinations: The hearing for Compliance Determinations shall be scheduled to begin no later than ninety (90) days after the date the Request for Hearing was received, unless a stipulated or unopposed motion is filed requesting that the ninety day deadline be waived. The motion to waive must be filed prior to the expiration of the ninety day deadline.

(2) Tire Recycling Act Compliance Order: Within five days of receipt of a Request for Hearing, a public hearing shall be scheduled to begin at least fifteen days and not more than twenty days after the date the notice of hearing is mailed to the Respondent.

(3) Notice of Hearing: The Hearing Clerk shall in consultation with the Hearing Officer, but no later than thirty (30) days prior to the hearing date, issue and serve upon the parties a Notice of Hearing setting forth the date, time, and location of the hearing.

(4) Postponement of Hearing: No request for postponement of a hearing shall be granted except upon consent of all parties or for good cause shown.

(5) Location of the Hearing: Unless otherwise ordered by the Secretary, the hearing shall be in Santa Fe.

#### D. Motions:

(1) General: All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, state the relief sought and state whether it is opposed or unopposed. Each motion may be accompanied by an affidavit, certificate, or other evidence relied upon and shall be served as provided by Section 115 [Subsection I. of 20.1.5.100 NMAC].

(2) Unopposed Motions: An unopposed motion shall state that concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the Hearing Officer's review.

(3) Opposed Motions: Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

(4) Response to Motions: Any party upon whom an opposed motion is served shall have fifteen (15) days after service of the motion to file a response. A non-moving

party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

(5) Reply to Response: The moving party may, but is not required to, submit a reply to any response within ten (10) days after service of the response.

(6) Decision: All motions shall be decided by the Hearing Officer without a hearing, unless otherwise ordered by the Hearing Officer sua sponte or upon written request of any party.

[11/15/90, 11/30/95; 20.1.5.200 NMAC – Rn, 20 NMAC 1.5.II 200 through 203, Recompiled 11/27/01]

**20.1.5.201-20.1.5.299 [RESERVED]**

**20.1.5.300 DISCOVERY:**

A. Scope of Discovery:

(1) Grounds: For a ULA Hearing, discovery shall be governed by the provisions of the ULA. Discovery of information not privileged may be permitted if it meets the following:

(a) the discovery will not unreasonably delay the proceeding;

(b) the information to be obtained is not unreasonably cumulative or duplicative, or not otherwise reasonably obtainable;

(c) the discovery is not unreasonably burdensome; and

(d) there is a substantial reason to believe that the information sought will be admissible at the hearing or will be likely to lead to the discovery of admissible evidence.

(2) Request: Unless otherwise directed by the Hearing Officer, a party requesting discovery shall serve the discovery request directly upon the party from whom discovery is sought and shall file a notice with the Hearing Clerk, indicating the date of service of the discovery request, the type of discovery sought and the party from whom discovery is sought.

(3) Response to Discovery Request: A party responding to a discovery request shall serve the response, including any objections, upon the party making the discovery request and shall file a notice with the Hearing Clerk, indicating the date of service of the response, the type of discovery request being responded to, and the party upon whom the response was served.

(4) Continuing Obligation to Supplement Responses: Any party from whom discovery is sought has a continuing obligation, subject to any objections interposed and not overruled by the Hearing Officer, to supplement responses with relevant information obtained after serving of the initial response and any previous supplemental responses. Unless otherwise ordered by the Hearing Officer, supplemental responses shall be served as soon as practicable, but no later than five (5) days from when the information became available. If the information becomes available less than five days before the hearing or during the hearing, it shall be brought to the attention of the Hearing Officer for direction and ruling on use of the information.

(5) Privilege: A list of privileged documents, identified by titles, author, date, and privilege or protection claimed shall be provided in response to discovery.

(6) Protective Order: The Hearing Officer may, upon motion and for good cause shown, protect the discovery from disclosure. If such motion is granted, the moving party may not present the protected discovery at the hearing.

(7) Motion to Compel, Sanctions: A party may move for an order compelling discovery where the party from whom discovery was requested has failed to adequately or timely respond. The Hearing Officer may order the response and may impose such sanctions as may be appropriate, including but not limited to the following:

(a) refusal to allow the testimony of a witness not identified as required by Section 301 [Subsection B. of this Section];

(b) denial of admission of a document not disclosed as required by Section 302; [Subsection C. of this Section]

(c) drawing of adverse inferences against the non-responsive party; and

(d) in an extreme case, dismissal or default judgment against the non-responding party.

B. Identity of Witness: Except as provided in Subsection B of this Section [Paragraph (2) of Subsection A. of this Section] or allowed by the Hearing Officer, each party shall, within fifteen (15) days after receipt of notice of the scheduling of the hearing or within forty-five (45) days before the hearing, whichever is closer to the hearing date, provide the name and address of each person expected to be called as a witness and a description of the general subject matter of the anticipated testimony of each witness.

#### C. Production of Documents:

(1) Definition: As used in this Subpart, "document" includes writings, memos, correspondence, financial information, drawings, graphs, charts, photographs, video tapes and other data compilations from which information can be obtained, and if necessary, translated by the party through detection devices into reasonably usable

form. In addition, each copy of a document that is not identical in all respects to every other copy shall be considered a separate document.

(2) Request: Provided the grounds in Section 300.A [Paragraph (1) of Subsection A. of this Section] are met, any party, upon written request to another party, may inspect and make copies of any designated documents in the possession or control of the other party. The request shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and copies. Reasonable time means not less than twenty (20) days after service of the request in the case of a Compliance Order and not less than ten (10) days after service of the request in the case of a Compliance Determination.

D. Subpoenas: As allowed by the Act, the Hearing Clerk shall, upon written request by any party, issue a subpoena requiring the attendance and testimony of any witness and the production of any evidence in the possession or under the control of the witness at the hearing or at deposition authorized by the Hearing Officer under Section 304 [Subsection E. of this Section]. A subpoena may be issued with the name and address of the witness blank, to be completed by the requesting party.

E. Request for Admissions: Provided the grounds in Section 300.A [Paragraph (1) of Subsection A. of this Section] are met, any party may serve upon any other party a written request for the admission of any statement or opinion of fact or the application of law to fact, including the genuineness of any document. If the request includes a request for admission of the genuineness of a document, the document shall be attached to the request unless it has been or is otherwise furnished or made available for inspection and copying. Each statement shall be deemed admitted unless, within twenty (20) days after service of the Request, or such longer or shorter period as the Hearing Officer may prescribe, the party to whom the request is directed serves upon the requesting party a sworn written response specifically denying such matter.

F. Depositions and Interrogatories:

(1) Motion: Requests for Depositions and Interrogatories must be made by motion to the Hearing Officer and may be permitted only upon determination by the Hearing Officer that the Grounds listed in Section 300.A [Paragraph (1) of Subsection A. of this Section] are met.

(2) Order: Upon determining that a motion for depositions or interrogatories should be granted, the Hearing Officer shall issue an order for the taking of such discovery together with any conditions and terms of the discovery.

[11/15/90, 11/30/95; 20.1.5.300 NMAC – Rn, 20 NMAC 1.5.III.300 through 305, Recompiled 11/27/01]

**20.1.5.301-20.1.5.399 [RESERVED]**

#### **20.1.5.400 HEARING PROCEDURES:**

##### **A. Evidence:**

(1) General: The Hearing Officer shall admit all relevant evidence, unless the Hearing Officer determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that would be excluded in the courts under SCRA 1986, 11-408 is not admissible.

(2) Examination of Witnesses: Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in this Part or by the Hearing Officer. Parties shall have the right to cross-examine a witness. The Hearing Officer may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the witness' direct testimony.

(3) Exhibits: All exhibits offered in evidence shall be marked with a designation identifying the person by whom the exhibit is offered, and numbered serially in the sequence in which offered. Large charts and diagrams, models, and other bulky exhibits are discouraged. Exhibits should be limited to 8 1/2 by 11 inches or be capable of being folded to that size, unless otherwise necessary for adequate presentation of evidence.

(4) Official Notice: Official notice may be taken of any matter that may be judicially noticed in the New Mexico courts. In a ULA Hearing, parties shall be given adequate opportunity to show that such facts are erroneously noticed.

##### **B. Objections and Offers of Proof:**

(1) Objection: Any objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of its grounds. The ruling by the Hearing Officer on any objection and the reasons given for it shall be part of the record.

(2) Offer of Proof: Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded and what such evidence would have proved. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded. Where the Secretary decides that the ruling of the Hearing Officer in excluding the evidence was both erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence.

##### **C. Burden of Persuasion:**

(1) Compliance Order: The Complainant has the burden of going forward with the evidence and of proving by a preponderance of the evidence the facts relied upon to show the violation occurred and that the proposed civil penalty is appropriate. Following the establishment of a prima facie case, the Respondent shall have the burden of going forward with any adverse evidence or defense to the allegations.

(2) Compliance Determination: The Complainant has the burden of proving cost eligibility and substantial compliance with the Act and Corrective Action Fund Payment and Reimbursement Regulations.

(3) Preponderance of Evidence: Each matter of controversy shall be determined by the Hearing Officer upon a preponderance of the evidence.

[11/15/90, 11/30/95; 20.1.5.400 NMAC – Rn, 20 NMAC 1.5.IV.400 through 402, Recompiled 11/27/01]

**20.1.5.401-20.1.5.499 [RESERVED]**

**20.1.5.500 POST-HEARING PROCEDURES:**

A. Filing the Transcript: Unless otherwise ordered by the Secretary or Hearing Officer, the hearing shall be transcribed verbatim. The Hearing Clerk shall promptly notify all parties and interested participants of the availability of the transcript. Any person desiring a copy of the transcript must order a copy from the reporter.

B. Proposed Findings and Conclusions: Unless otherwise ordered by the Hearing Officer, within thirty (30) days after the filing of the transcript, or within such time as may be fixed by the Hearing Officer, any party may submit proposed findings of fact and conclusions of law and closing argument. All such submissions shall be in writing, served on all parties and contain adequate references to the record and authorities relied on. No new evidence shall be presented unless specifically allowed by the Hearing Officer.

C. Recommended Decision:

(1) Content: Unless otherwise ordered by the Secretary, the Hearing Officer shall issue a recommended decision within thirty (30) days after the period for filing of proposed findings and conclusions under Section 501 [Subsection B. of this Section] has expired. The recommended decision shall contain the following:

(a) the Hearing Officer's findings of fact; conclusions regarding all material issues of law or discretion, as well as reasons therefor;

(b) if applicable, a review of the penalty amount to determine if the agency acted within its discretion in setting the penalty amount. If the Hearing Officer decides to recommend a civil penalty different in amount or nature from the penalty recommended

to be assessed in the Compliance Order, the Hearing Officer shall set forth in the recommended decision the specific reasons for the change; and

(c) a proposed final order.

(2) Comment on Recommended Decision: Any party may file, within fifteen (15) days after service of the recommended decision, comments regarding the recommended decision, including argument for, against or modification of the recommended decision.

(3) Argument Before the Secretary: The Secretary may, upon request of a party or sua sponte, allow oral argument on the recommended decision. If oral argument is allowed, the Secretary shall specify the time and place for such oral argument, after giving due consideration to the convenience of the parties and the need for expeditious resolution of the proceeding.

D. Final Order by Secretary: As soon as practicable, but not later than thirty (30) days, after expiration of the time for filing of comments on the recommended decision or conclusion of oral argument, if allowed, the Secretary shall issue a final written order in the matter.

(1) Decision: The Secretary may adopt, modify, or set aside the Hearing Officer's recommended decision, and shall set forth in the final order the reasons for the action taken. In a ULA Hearing, if the Secretary takes any action specified in the ULA against the licensee, the final order shall specify that the licensee shall bear all costs of the proceeding.

(2) Penalty: The Secretary may change the amount and nature of the civil penalty, if any, assessed from the amount recommended by the Hearing Officer and shall set forth reasons for the change. The final order shall also specify the fund to which any civil penalty assessed shall be paid.

E. Payment of Civil Penalty: The Respondent shall pay the full amount of the civil penalty, if any, assessed in the final order within ninety (90) days after receipt of the final order unless otherwise ordered by the Secretary. Payment shall be made by forwarding to the Hearing Clerk a cashier's check or certified check in the amount of the penalty assessed in the final order, payable to the fund specified in the final order.

F. Judicial Review: Judicial review of the Secretary's final order shall be as provided by law. The filing of an appeal does not stay any action, compliance, corrective action or payment of penalty required by the final order, unless otherwise ordered by the Secretary or the Court.

G. Preparation of Record Proper: The preparation of the Record Proper for an appeal or for any other reason shall be the responsibility of the Hearing Clerk.

Appellant shall make satisfactory arrangements, including copying or transcript costs, with the Hearing Clerk.

[11/15/90, 11/30/95; 20.1.5.500 NMAC – Rn, 20 NMAC 1.5.V.500 through 506, Recompiled 11/27/01]

**20.1.5.501-20.1.5.599 [RESERVED]**

**20.1.5.600 ALTERNATE RESOLUTION:**

A. Summary Procedures:

(1) Use of Summary Procedures: Under the following limited circumstances, the Secretary may dispose of a Request for Hearing after an expedited hearing for:

(a) a motion by a party to dismiss the Request for Hearing for jurisdictional defects (i.e., an untimely Request, lack of final action); or

(b) a request by a party to decide the merits of the Request for Hearing on legal arguments presented in writing and oral argument.

(2) Expedited Hearing: If the Hearing Officer determines that a request for an expedited hearing has a likelihood of success and could fairly expedite the resolution of the proceeding, then notice for a hearing shall be given as set forth in this Part. The Hearing Officer shall then submit a recommended decision to the Secretary. The Secretary shall either follow Section 503 [Subsection D. of 20.1.5.500 NMAC] for final orders or remand to the Hearing Officer to proceed with a full hearing under this Part.

B. Settlement:

(1) Settlement Policy: The Secretary encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and Regulations. Settlement conferences shall not affect any party's obligation to timely respond to any matter governed by this Part, including the Respondent's obligation to file a timely Request for Hearing under Section 200 [20.1.5.200 NMAC].

(2) Stipulated Final Order: The Secretary may approve a Stipulated Final Order signed by all the parties. The Stipulated Final Order shall include all the terms and conditions agreed to by the parties, and shall state that, for the purpose of this proceeding, the parties admit the jurisdictional allegations of the Compliance Order/Determination and consent to the relief specified, including the assessment of the stated civil penalty, if any. If the Secretary disapproves the Stipulated Final Order, the matter shall proceed as if there had been no Stipulated Final Order or settlement.

(3) Withdrawal: The Respondent/Complainant may withdraw the Request for Hearing or the Compliance Order at any time prior to a decision by the Secretary. A

Notice of Withdrawal shall be filed with the Hearing Clerk and served on all other parties. The parties may file written objections to the Notice within ten (10) days after receipt. If any objection is filed, the Secretary shall rule on the Notice.

[11/15/90, 11/30/95; 20.1.5.600 NMAC – Rn, 20 NMAC 1.5.VI.601, Recompiled 11/27/01]

**20.1.5.601-20.1.5.699 [RESERVED]**

## **PART 6: RULEMAKING PROCEDURES - WATER QUALITY CONTROL COMMISSION**

### **20.1.6.1 ISSUING AGENCY:**

New Mexico Water Quality Control Commission.

[20.1.6.1 NMAC - Rp, 20.1.6.1 NMAC, 03/16/2018]

### **20.1.6.2 SCOPE:**

This part governs the procedures to be followed by the commission, and by participants before the commission, in connection with all rulemaking hearings before the commission, except to the extent this part may be inconsistent with specific procedures in governing law. In cases where this part is inconsistent with any rulemaking procedures specified in governing law, the procedures in governing law apply, rather than the procedures in this part.

[20.1.6.2 NMAC - Rp, 20.1.6.2 NMAC, 03/16/2018]

### **20.1.6.3 STATUTORY AUTHORITY:**

Subsection E of Section 74-6-4 NMSA 1978 directs the commission to adopt, promulgate and publish regulations. Section 74-6-6 NMSA 1978 requires a public hearing prior to the adoption, amendment or repeal of a regulation, and specifies requirements for such a hearing. Sections 14-4-1 through 14-4-11 NMSA 1978 require specific public notice process and specifies filing requirements with the State Records Administrator.

[20.1.6.3 NMAC - Rp, 20.1.6.3 NMAC, 03/16/2018]

### **20.1.6.4 DURATION:**

Permanent.

[20.1.6.4 NMAC - Rp, 20.1.6.4 NMAC, 03/16/2018]

**20.1.6.5 EFFECTIVE DATE:**

March 16, 2018, unless a later date is cited at the end of a section.

[20.1.6.5 NMAC - Rp, 20.1.6.5 NMAC, 03/16/2018]

**20.1.6.6 OBJECTIVE:**

The objectives of this rule are:

**A.** to standardize the procedures used in rulemaking proceedings before the commission;

**B.** to encourage public participation in the hearings conducted by the commission for the promulgation of regulations;

**C.** to make possible the effective presentation of the evidence and points of view of parties and members of the general public;

**D.** to allow all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing; and

**E.** to assure that commission hearings are conducted in a fair and equitable manner.

[20.1.6.6 NMAC - Rp, 20.1.6.6 NMAC, 03/16/2018]

**20.1.6.7 DEFINITIONS:**

As used in this part:

**A.** "Act" means the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978.

**B.** "Commission administrator" means the department employee designated by the secretary of environment to provide staff support to the commission.

**C.** "Commission" means the water quality control commission.

**D.** "Constituent agency" means any or all agencies of the state defined as such under the act.

**E.** "Department" means the New Mexico environment department.

**F.** "Document" means any paper, exhibit, pleading, motion, response, memorandum, decision, order or other written or tangible item that is filed in a

proceeding under this part, or brought to or before the commission for its consideration, but does not include a cover letter accompanying a document transmitted for filing.

**G.** "Exhibit" means any document or tangible item submitted for inclusion in the hearing record.

**H.** "General public" means any person attending a hearing who has not submitted a notice of intent to present technical testimony.

**I.** "Governing law" means the statute, including any applicable case law, which authorizes and governs the decision on the proposed regulatory change.

**J.** "Hearing officer" means the person designated by the commission to conduct a hearing under this part.

**K.** "Hearing record" means:

- (1) the transcript of proceedings; and
- (2) the record proper.

**L.** "Participant" means any person who participates in a rulemaking proceeding before the commission.

**M.** "Party" means the petitioner, any person filing a notice of intent to present technical testimony, and any person filing an entry of appearance.

**N.** "Person" means an individual or any entity, including federal, state and local governmental entities, however organized.

**O.** "Petitioner" means the person who petitioned the commission for the regulatory change that is the subject of the hearing.

**P.** "Provide to the public" means for the commission to distribute rulemaking information by:

- (1) posting it on the commission's website;
- (2) posting it on the New Mexico sunshine portal;
- (3) making it available at the applicable constituent agency's district, field, and regional offices, if any;
- (4) sending it by email to persons who have made a written request for notice of announcements addressing the subject of the rulemaking proceeding and who have provided an email address to the commission administrator;

(5) sending it by email to persons who have participated in the rulemaking and who have provided an email address to the commission administrator;

(6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provide a postal address; and

(7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees.

**Q.** "Record proper" means all documents related to the hearing and received or generated by the commission prior to the beginning, or after the conclusion, of the hearing, including, but not limited to:

(1) the petition for hearing and any response thereto;

(2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition for hearing was considered, and of any subsequent meeting at which the proposed regulatory change was discussed;

(3) the notice of hearing;

(4) affidavits of publication;

(5) a copy of all publications in the New Mexico register relating to the proposed rule;

(6) notices of intent to present technical testimony;

(7) a copy of any technical information that was relied upon in formulating the final rule;

(8) all written pleadings, including motions and responsive pleadings, and orders;

(9) statements for the public record or other relevant materials received by the agency during the public comment period;

(10) the hearing officer's report, if any;

(11) a copy of the full text of the initial proposed rule, the full text of the final adopted rule, and the concise explanatory statement filed with the state records administrator;

(12) post-hearing submissions, if allowed;

(13) the audio recordings (or an appropriate extract of the recordings) of the meeting(s) at which the commission deliberated on the adoption of the proposed regulatory change;

(14) the commission's decision and the reasons therefore; and

(15) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.

**R.** "Regulation" means any rule, regulation or standard promulgated by the commission and affecting one or more persons, besides the commission and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts.

**S.** "Regulatory change" means the adoption, amendment or repeal of a regulation.

**T.** "Service" means personally delivering a copy of the document, exhibit or pleading to the person required by this part to be served; mailing it to that person; or, if that person has agreed, sending it by electronic transmission; if a person is represented by an attorney, service of the document shall be made on the attorney; service by mail is complete upon mailing the document; service by electronic transmission is complete upon transmission of the document.

**U.** "Technical testimony" means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

**V.** "Transcript of proceedings" means the verbatim record (audio recording or stenographic) of the proceedings, testimony and argument in the matter, together with all exhibits proffered at the hearing, whether or not admitted into evidence, including the record of any motion hearings or prehearing conferences.

[20.1.6.7 NMAC - Rp, 20.1.6.7 NMAC, 03/16/2018]

#### **20.1.6.8 LIBERAL CONSTRUCTION:**

This part shall be liberally construed to carry out its purpose.

[20.1.6.8 NMAC - Rp, 20.1.6.8 NMAC, 03/16/2018]

#### **20.1.6.9 SEVERABILITY:**

If any provision or application of this part is held invalid, the remainder of this part, or its application to other situations or persons, shall not be affected.

[20.1.6.9 NMAC - Rp, 20.1.6.9 NMAC, 03/16/2018]

## **20.1.6.10-20.1.6.99 [RESERVED]**

### **20.1.6.100 POWERS AND DUTIES OF THE COMMISSION AND HEARING OFFICER:**

**A. Commission:** The commission shall exercise all powers and duties prescribed under the act and this part not otherwise delegated to the hearing officer or the commission administrator.

(1) The commission may issue procedural orders that either impose additional procedural requirements or simplify the procedures provided in this part. In no event, may the commission eliminate any procedural requirements of the act.

(2) The appointment of a hearing officer does not preclude the commissioners from attending or participating in the proceeding.

**B. Hearing officer:** The commission shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under this part. The hearing officer shall conduct a fair and equitable proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in proceedings governed by this part, including, but not limited to:

(1) conducting hearings under this part;

(2) ruling on motions and procedural requests that do not seek final resolution of the proceeding, and issuing all necessary orders;

(3) administering oaths and affirmations, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;

(4) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;

(5) if requested by the commission, preparing and filing a report of the hearing, with recommendations for commission action;

(6) requesting parties to file original documents with the commission administrator; and

(7) requesting a party to submit a proposed statement of reasons in support of the commission's decision.

**C. Qualifications:** The hearing officer may be an independent contractor or a commissioner, shall be knowledgeable of the laws of the state and of administrative hearing procedures, and shall not be:

(1) an employee of the department, except for the commissioners themselves or their designees, or unless employed by the department as a hearing officer;

(2) a person who has a personal bias or prejudice concerning a party or a party's lawyer or consultant, or has personal knowledge of disputed facts concerning the proceeding, or is related to a party within the third degree of relationship, or has a financial interest in the proceeding.

**D. Notice of hearing officer assignment:** If a hearing officer other than a commissioner is assigned, the commission administrator shall notify the parties of the name and address of the hearing officer. The commission administrator shall also, at that time, forward to the hearing officer copies of all documents filed to date.

[20.1.6.100 NMAC - Rp, 20.1.6.100 NMAC, 03/16/2018]

#### **20.1.6.101 GENERAL PROVISIONS- COMPUTATION OF TIME:**

**A. Computation of time:** In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday, or legal state holiday. Whenever a party must act within a prescribed period after service upon them, and service is by mail, three days is added to the prescribed period.

**B. Extension of time:** The commission or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[20.1.6.101 NMAC - Rp, 20.1.6.101 NMAC, 03/16/2018]

#### **20.1.6.102 GENERAL PROVISIONS- RECUSAL:**

No commission member shall participate in any action in which his or her impartiality of fairness may reasonably be questioned, and the member shall recuse himself or herself in any such action by giving notice to the commission and the general public by announcing this recusal on the record. In making a decision to recuse himself or herself, the commission member may rely upon the Governmental Conduct Act, Sections 10-16-1 through 10-16-18 NMSA 1978, the Financial Disclosures Act, Sections 10-16A-1 through 10-16A-8 NMSA 1978, or any other relevant authority.

[20.1.6.102 NMAC - Rp, 20.1.6.102 NMAC, 03/16/2018]

**20.1.6.103 GENERAL PROVISIONS- EX PARTE DISCUSSIONS:**

At no time after the commission's determination to hold a public hearing on a petition and before the issuance of the commission's written decision under this part, shall the department, or any other party, interested participant or their representatives discuss *ex parte* the merits of the proceeding with any commission member or the hearing officer.

[20.1.6.103 NMAC - Rp, 20.1.6.103 NMAC, 03/16/2018]

**20.1.6.104 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:**

**A.** The filing of any document as required by this part shall be accomplished by delivering the document to the commission administrator.

**B.** Any person filing any document shall:

(1) provide the commission administrator with the original along with up to 15 copies of the document, provided that the commission administrator may waive the requirement to provide up to 15 copies if an electronic copy of the original is provided in a format acceptable for distribution to the commission members;

(2) serve a copy of the document on each other party. If a party is represented by an attorney, service of the document shall be made on the attorney; and

(3) include a certificate of service, as shown in Section 500 of this rule.

**C.** Whenever this part requires service of a document, service shall be made by delivering a copy to the person to be served by mailing it, or, if that person has agreed, by sending it by electronic transmission to that person. Agreement to be served by electronic transmission may be evidenced by placing the person's email address on a document filed pursuant to this part. Service by mail is complete upon mailing the document. Service by electronic transmission is complete upon transmission of the document.

**D.** Form of documents: Unless otherwise ordered by the hearing officer, all documents, except exhibits, shall be prepared on 8 ½ x 11-inch white paper, printed single-sided, and where appropriate, the first page of every document shall contain a heading and caption as shown in Section 500 of this rule.

**E.** Documents issued by commission or hearing officer: All documents issued by the commission or hearing officer shall be filed with the commission administrator, who shall promptly serve copies of the documents upon all parties.

[20.1.6.104 NMAC - Rp, 20.1.6.104 NMAC, 03/16/2018]

**20.1.6.105 EXAMINATION OF DOCUMENTS FILED:**

**A.** Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any rulemaking proceeding before the commission. Such documents shall be made available by the commission administrator, as appropriate and shall also be made available on the New Mexico sunshine portal. If the commission administrator determines that any part of the rulemaking record cannot be practicably displayed or is inappropriate for public display on the New Mexico sunshine portal, the commission administrator shall describe that part of the record, shall note on the New Mexico sunshine portal that the part of the record is not displayed, and shall provide instructions for accessing or inspecting that part of the record.

**B.** Cost of duplication: The cost of duplicating documents shall be borne by the person seeking copies of such documents, but the commission administrator shall not charge a fee for providing the notice of proposed rulemaking in electronic form.

[20.1.6.105 NMAC - Rp, 20.1.6.105 NMAC, 03/16/2018]

**20.1.6.106-20.1.1.199 [RESERVED]**

**20.1.6.200 PREHEARING PROCEDURES - PETITION FOR REGULATORY CHANGE:**

**A.** Any person may file a petition with the commission to adopt, amend, or repeal any regulation within the jurisdiction of the commission.

**B.** The petition shall be in writing and shall include a statement of the reasons for the regulatory change. The petition shall cite the relevant statutes that authorize the commission to adopt the proposed rules and shall estimate the time that will be needed to conduct the hearing. A copy of the entire rule, including the proposed regulatory change, indicating any language proposed to be added or deleted, shall be attached to the petition. The entire rule and its proposed changes shall be submitted to the commission in redline fashion, and shall include line numbers. Any document that does not include all the items required to be in a petition shall be returned to the petitioner along with a copy of these rules and a check-off list of required items, and the petitioner will be asked to resubmit their petition in the form required by these rules.

**C.** The commission shall determine, at a public meeting occurring no later than 90 days after receipt of the petition, whether or not to hold a public hearing on the proposal. Any person may respond to the petition either in writing prior to the public meeting or in person at the public meeting.

**D.** If the commission determines to hold a public hearing on the petition, it may issue such orders specifying procedures for conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate to fully inform the commission of the matters at issue in the hearing or control the conduct of the hearing. Such orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct testimony in writing prior to the hearing, or limiting testimony or cross-examination.

[20.1.6.200 NMAC - Rp, 20.1.6.200 NMAC, 03/16/2018]

#### **20.1.6.201 NOTICE OF HEARINGS:**

**A.** Unless otherwise allowed by governing law and specified by the commission, the commission shall provide to the public notice of the proposed rulemaking at least 60 days prior to the hearing.

**B.** Public notice for proposed regulatory changes of general application to the state shall include publication in at least one newspaper of general circulation in the state, publication in the New Mexico register, and such other means of providing notice as the commission may direct or are required by law. Notice for proposed regulatory changes that are confined in effect to a specific geographic area shall also be published in a newspaper of general circulation in the area affected.

**C.** The notice of proposed rulemaking shall state:

(1) the subject of the proposed rule, including a summary of the full text of the proposed rule and a short explanation of the purpose of the proposed rule;

(2) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;

(3) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained;

(4) the statutes, regulations, and procedural rules governing the conduct of the hearing;

(5) the manner in which persons may present their views or evidence to the commission including information on participating in the public hearing;

(6) the location where persons may secure copies of the proposed regulatory change;

(7) an internet link providing free access to the full text of the proposed rule;  
and

(8) if applicable, that the commission may make a decision on the proposed regulatory change at the conclusion of the hearing.

[20.1.6.201 NMAC - Rp, 20.1.6.201 NMAC, 03/16/2018]

#### **20.1.6.202 TECHNICAL TESTIMONY:**

**A.** Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 20 days prior to the hearing, file a notice of intent to present technical testimony. The notice shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness the person intends to present, and state the qualifications of that witness, including a description of their educational and work background;
- (3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;
- (4) include a copy of the direct testimony of each technical witness in narrative form, and state the estimated duration of the direct oral testimony of that witness;
- (5) include the text of any recommended modifications to the proposed regulatory change; and
- (6) list and attach all exhibits anticipated to be offered by that person at the hearing.

**B.** The hearing officer may enforce the provisions of this section through such action as the hearing officer deems appropriate, including, but not limited to, exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to such testimony. The hearing officer may also require that written rebuttal testimony be submitted prior to hearing.

[20.1.6.202 NMAC - Rp, 20.1.6.202 NMAC, 03/16/2018]

#### **20.1.6.203 ENTRY OF APPEARANCE:**

Any person may file an entry of appearance as a party. The entry of appearance shall be filed no later than 20 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid waste of resources.

[20.1.6.203 NMAC - Rp, 20.1.6.203 NMAC, 03/16/2018]

**20.1.6.204 PARTICIPATION BY GENERAL PUBLIC:**

**A.** Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with their testimony, so long as the exhibit is not unduly repetitious of the testimony.

**B.** A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing. Written comment must be mailed or delivered to the commission administrator.

**C.** If the commission changes the date of the hearing or the deadline for submitting comments as stated in the notice of proposed rulemaking, the commission shall provide to the public notice of the change.

[20.1.6.204 NMAC - Rp, 20.1.6.204 NMAC, 03/16/2018]

**20.1.6.205 LOCATION OF HEARING:**

Unless otherwise provided by governing law, the commission shall hold hearings on proposed regulatory changes of statewide application in Santa Fe, and at other places the commission may prescribe. The commission may hold hearings on proposed regulatory changes that are not of statewide application within the area substantially affected by the proposal.

[20.1.6.205 NMAC - Rp, 20.1.6.205 NMAC, 03/16/2018]

**20.1.6.206 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:**

**A.** A member of the commission may participate in a meeting or hearing of the commission by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting or hearing in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting or hearing are able to hear any member of the commission who speaks at the meeting or hearing. A commission member's participation by such means shall constitute presence in person at the meeting or hearing. A commission member who needs to participate in this manner must notify the commission administrator sufficiently in advance so as to permit the commission administrator to arrange for the appropriate communications equipment.

**B.** A witness may participate in a hearing of the commission by means of a conference telephone or other similar communications equipment when an emergency or circumstances make it impossible for the witness to attend the hearing in person. A witness who needs to participate in this manner must receive permission from the hearing officer sufficiently in advance of the hearing so as to permit the commission administrator to arrange for the appropriate communications equipment. Each witness participating in this manner must be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the hearing must be able to hear any witness who speaks during the hearing.

[20.1.6.206 NMAC - Rp, 20.1.6.206 NMAC, 03/16/2018]

#### **20.1.6.207 MOTIONS:**

**A. General:** All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, and state the relief sought. Each motion shall be accompanied by an affidavit, certificate or other evidence relied upon and shall be served as provided by 20.1.6.104 NMAC.

**B. Unopposed motions:** An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

**C. Opposed motions:** Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

**D. Response to motions:** Any party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

**E. Reply to response:** The moving party may, but is not required to, submit a reply to any response within 10 days after service of the response.

**F. Decision:** Non-dispositive motions may be decided by the hearing officer without a hearing. The hearing officer shall refer any motion that would effectively dispose of the matter to the commission for a decision, and may refer any other motion to the commission. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The hearing officer shall file all original documents with the commission administrator.

[20.1.6.207 NMAC - Rp, 20.1.6.207 NMAC, 03/16/2018]

**20.1.6.208-20.1.6.299 [RESERVED]**

### **20.1.6.300 HEARING PROCEDURES - CONDUCT OF HEARINGS:**

**A.** The rules of civil procedure and the rules of evidence shall not apply.

**B.** The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome, or burdening the record with unnecessary repetition. The hearing shall proceed as follows.

(1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any party who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present its case first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the general public. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any person who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 20.1.6.304 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

**C.** If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.

[20.1.6.300 NMAC - Rp, 20.1.6.300 NMAC, 03/16/2018]

### **20.1.6.301 TESTIMONY AND CROSS-EXAMINATION:**

**A.** All testimony will be taken under oath or affirmation which may be accomplished in mass or individually.

**B.** The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is incompetent or unduly repetitious. The hearing officer shall require all oral testimony be limited to the position of the witness in favor of or against the proposed rule.

**C.** Any person who testifies at the hearing is subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

[20.1.6.301 NMAC - Rp, 20.1.6.301 NMAC, 03/16/2018]

#### **20.1.6.302 EXHIBITS:**

**A.** Any person offering an exhibit at hearing other than a document filed and served before the hearing shall provide at least an original and 15 copies for the commission, and a sufficient number of copies for every other party.

**B.** All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he shall identify each exhibit with an index tab or by other appropriate means.

**C.** Large charts and diagrams, models, and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

[20.1.6.302 NMAC - Rp, 20.1.6.302 NMAC, 03/16/2018]

#### **20.1.6.303 TRANSCRIPT OF PROCEEDINGS:**

**A.** Unless specified by the commission or the hearing officer, a verbatim transcript shall be made of the hearing, including any deliberations. The cost of the original transcript of the proceeding and of providing a copy for each commission member shall be borne by the petitioner.

**B.** Any person may obtain a copy of the transcript of a proceeding. It shall be obtained directly from the court reporter, and the cost of the transcript shall be paid directly to the source.

[20.1.6.303 NMAC - Rp, 20.1.6.303 NMAC, 03/16/2018]

#### **20.1.6.304 POST-HEARING SUBMISSIONS:**

The hearing officer may allow the record to remain open for a reasonable period of time following the conclusion of the hearing for written submission of additional evidence, comments and arguments, revised proposed rule language, and proposed statements of reasons. The hearing officer's determination regarding post-hearing submissions shall be announced at the conclusion of the hearing. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of the material to be submitted and the necessity for a prompt decision.

[20.1.6.304 NMAC - Rp, 20.1.6.304 NMAC, 03/16/2018]

#### **20.1.6.305 HEARING OFFICER'S REPORT:**

If the commission directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals, and the evidence supporting or opposing those proposals, including discussion or recommendations as requested by the commission, and shall be filed with the commission administrator within the time specified by the commission. The commission administrator shall promptly notify each party that the hearing officer's report has been filed and shall provide a copy of the report along with a notice of any deadline set for comments on that report.

[20.1.6.305 NMAC - Rp, 20.1.6.305 NMAC, 03/16/2018]

#### **20.1.6.306 DELIBERATION AND DECISION:**

**A.** If a quorum of the commission attended the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing, the commission may immediately deliberate and make a decision on the proposed regulatory change.

**B.** If the commission does not reach a decision at the conclusion of the hearing, the commission administrator, following receipt of the transcript, will promptly furnish a copy of the transcript to each commission member that did not attend the hearing and, if necessary, to other commission members, commission counsel and the hearing officer. Exhibits provided to those persons at the time of the hearing need not be supplied again.

**C.** The commission shall reach its decision on the proposed regulatory change within 60 days following the close of the record or the date the hearing officer's report is filed, whichever is later.

**D.** If, during the course of its deliberations, the commission determines that additional testimony or documentary evidence is necessary for a proper decision on the

proposed regulatory change, the commission may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.

**E.** The commission shall issue its decision on the proposed regulatory change in a suitable format, which shall include its reasons for the action taken.

**F.** The commission's written decision is the official version of the commission's action, and the reasons for that action. Other written or oral statements by commission members are not recognized as part of the commission's official decision or reasons.

**G.** If the commission fails to act on a proposed rule within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the commission acts to extend the period for an additional two years by filing a statement of good cause for the extension in the rulemaking record. If the commission extends the rulemaking period, it shall provide for additional public participation, comments, and hearing prior to adopting the rule.

**H.** The commission may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If the commission terminates a rulemaking in this manner, it shall provide to the public notice of its action.

[20.1.6.306 NMAC - Rp, 20.1.6.306 NMAC, 03/16/2018]

#### **20.1.6.307 NOTICE OF COMMISSION ACTION:**

**A.** The commission administrator shall provide to the public notice of the commission's action and a concise explanatory statement.

**B.** The adopted rule shall not take effect unless within 15 days of adoption of the rule, the commission delivers the final rule to the state records administrator, accompanied by a concise explanatory statement that contains:

- (1) the date that the commission adopted the rule;
- (2) a reference to the specific statutory authority authorizing the rule; and
- (3) any findings required by law for adoption of the rule.

**C.** Adoption of the final rule occurs upon signature of the written decision.

**D.** If the state records administrator notifies the commission of having made any minor, nonsubstantive corrections in spelling, grammar, and format in the filed rule, the commission administrator shall provide to the public notice of the correction within 30 days of receiving the state records administrator's record of correction.

[20.1.6.307 NMAC - Rp, 20.1.6.307 NMAC, 03/16/2018]

**20.1.6.308-20.1.6.399 [RESERVED]**

**20.1.6.400 APPEAL OF REGULATIONS:**

**A.** Appeal of any regulatory change by the commission shall be taken in accordance with governing law.

**B.** The appellant shall serve a copy of the notice of appeal on the commission and on each party.

**C.** The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the expense of appellant.

**D.** Unless otherwise provided by governing law, the filing of an appeal shall not act as a stay of the regulatory change being appealed.

[20.1.6.400 NMAC - Rp, 20.1.6.400 NMAC, 03/16/2018]

**20.1.6.401 STAY OF COMMISSION REGULATIONS:**

**A.** Any person who is or may be affected by a rule adopted by the commission may file a motion with the commission seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting, the granting of a stay. The movant shall file and serve the motion in accordance with the requirements of Section 104 of this part at least 30 days before the meeting at which the commission will consider the motion. The commission chair will decide at which meeting the motion will be heard.

**B.** Unless otherwise provided by governing law, the commission may grant a stay pending appeal of any regulatory change promulgated by the commission. The commission may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

**C.** In determining whether good cause is present for the granting of a stay, the commission, upon at least a two-thirds vote of the members voting shall consider:

- (1) the likelihood that the movant will prevail on the merits of the appeal;
- (2) whether the moving party will suffer irreparable harm if a stay is not granted;
- (3) whether substantial harm will result to other interested persons; and
- (4) whether harm will ensue to the public interest.

D. If no action is taken within 60 days after filing of the motion, the commission shall be deemed to have denied the motion for stay.

[20.1.6.401 NMAC - Rp, 20.1.6.401 NMAC, 03/16/2018]

**20.1.6.402-20.1.6.499 [RESERVED]**

**20.1.6.500 PREFERRED FORMAT:**

**STATE OF NEW MEXICO**

**WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF PROPOSED**

**AMENDMENTS TO \_\_\_\_\_ NMAC**

**[Name of Petitioner],**

**Petitioner.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing [name of document] was served by [hand-delivery] [first class mail] [email] to all parties on [date].

[20.1.6.500 NMAC - Rp, 20.1.6.500 NMAC, 03/16/2018]

**PART 7: PARENTAL RESPONSIBILITY ACT COMPLIANCE**

**20.1.7.1 ISSUING AGENCY[IES]:**

New Mexico Environment Department and Water Quality Control Commission, and any other agency that may adopt this Part by reference.

[11/30/95; 20.1.7.1 NMAC - Rn, 20 NMAC 1.7.I.100, Recompiled 11/27/01]

**20.1.7.2 SCOPE:**

This Part applies to disciplinary proceedings by an issuing agency pursuant to the Parental Responsibility Act against a license, certificate, registration or permit required to engage in a profession or occupation.

[11/30/95; 20.1.7.2 NMAC - Rn, 20 NMAC 1.7.I.101, Recompiled 11/27/01]

**20.1.7.3 STATUTORY AUTHORITY:**

This Part is adopted pursuant to the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13, the Department of Environment Act, Section 9-7A-6, and the following licensing laws:

- A. Utility Operators Certification Act, NMSA 1978, Sections 61-33-1 et seq.;
- B. Hazardous Waste Act, NMSA 1978, Section 74-4-4.4; and
- C. Solid Waste Act, NMSA 1978, Section 74-9-8(N).

[11/30/95; 20.1.7.3 - Rn, 20 NMAC 1.7.I.102, Recompiled 11/27/01]

**20.1.7.4 DURATION:**

Permanent.

[11/30/95; 20.1.70.4 NMAC - Rn, 20 NMAC 1.7.I.103, Recompiled 11/27/01]

**20.1.7.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.1.7.5 - Rn, 20 NMAC 1.7.I.104, Recompiled 11/27/01]

**20.1.7.6 OBJECTIVE:**

This Part is intended to implement the requirements of the Parental Responsibility Act as they apply to the issuance, renewal, suspension or revocation of any license, certificate, registration or permit required to engage in a profession or license by an issuing agency.

[11/30/95; 20.1.7.6 NMAC - Rn, 20 NMAC 1.7.I.105, Recompiled 11/27/01]

**20.1.7.7 DEFINITIONS:**

A. All terms defined in the Parental Responsibility Act shall have the same meanings in this Part unless defined below.

B. As used in this Part:

(1) "Agency" means, as the context requires, either the New Mexico Environment Department, the Water Quality Control Commission or any other agency that adopts this Part by reference. The Water Quality Control Commission delegates to the Environment Department the administration and enforcement of this Part except for the conducting of hearings and the issuance of final orders;

(2) "HSD" means the New Mexico Human Services Department;

(3) "license" means a license, certificate, registration or permit issued by an Agency that a person is required to have to engage in a profession or occupation in New Mexico;

(4) "Statement of Compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support; and

(5) "Statement of Non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[11/30/95; 20.1.7.7 NMAC - Rn, 20 NMAC 1.7.I.106, Recompiled 11/27/01]

#### **20.1.7.8 GENERAL PROVISIONS: DISCIPLINARY PROCEEDINGS:**

A. Disciplinary Action: If an applicant or licensee is not in compliance with a judgment and order for support, the Agency:

- (1) Shall deny an application for a license;
- (2) Shall deny the renewal of a license; and
- (3) Has grounds for suspension or revocation of a license.

B. Certified List: Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the Agency shall match the certified list against the current list of Agency applicants and licensees. Upon the later receipt of an application for licensure or renewal, the Agency shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the Agency shall report to HSD the names of Agency applicants and licensees who are on the certified list and the action the Agency has taken in connection with such applicants and licensees.

C. Initial Action: Upon determination that an applicant or licensee appears on the certified list, the Agency shall:

(1) Commence a formal proceeding under Section 203 [Subsection D of 20.1.7.8 NMAC] to take the appropriate action under Section 200 [Subsection A of 20.1.7.8 NMAC]; or

(2) For current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the Agency with a subsequent Statement of Compliance by the earlier of the application for license renewal or a specified date not to exceed six months. If the licensee fails to provide the

Statement, the Agency shall commence a formal proceeding under Section 203 [Subsection D of 20.1.7.8 NMAC].

D. Notice of Contemplated Action: Prior to taking any action specified in Section 200 [Subsection A of 20.1.7.8 NMAC], the Agency shall serve upon the applicant or licensee a written notice stating that:

(1) The Agency has grounds to take such action, and that the Agency shall take such action unless the licensee or applicant:

(a) Mails a letter (certified mail return receipt requested) within twenty (20) days after service of the notice requesting a hearing; or

(b) Provides the Agency, within thirty (30) days of the date of the notice, with a Statement of Compliance; and

(2) If the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD Child Support Enforcement Division.

E. Evidence and Proof: In any hearing under this Part, relevant evidence is limited to the following:

(1) A Statement of Non-compliance is conclusive evidence that requires the Agency to take the appropriate action under section 200 [Subsection A of 20.1.7.8 NMAC], unless:

(2) The applicant or licensee can provide the Agency with a subsequent Statement of Compliance which shall preclude the Agency from taking any action based solely on the prior Statement of Non-compliance.

F. Order: When an action is taken under this Part solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent Statement of Compliance. The Agency may also include any other conditions necessary to comply with Agency requirements for reapplications or reinstatement of lapsed licenses.

G. Procedures: Proceedings under this Part shall be governed by the Uniform Licensing Act, Section 61-1-1, et seq., and any adjudicatory procedures adopted by the Agency.

[11/30/95; 20.1.7.8 NMAC - Rn, 20 NMAC 1.7.II.200 through 206, Recompiled 11/27/01]

## **PART 8: ENVIRONMENTAL IMPROVEMENT BOARD OPEN MEETINGS**

**20.1.8.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.1.8.1 NMAC - N, 08-27-06]

**20.1.8.2 SCOPE:**

This part governs meetings conducted by the environmental improvement board in addition to the requirements of 20.1.1 NMAC, except to the extent that this part may be inconsistent with state law.

[20.1.8.2 NMAC - N, 08-27-06]

**20.1.8.3 STATUTORY AUTHORITY:**

This part is adopted pursuant to Sections 50-9-12, 74-1-9, 74-2-6, 74-3-5, 74-4-5 and 74-9-27 NMSA 1978.

[20.1.8.3 NMAC - N, 08-27-06]

**20.1.8.4 DURATION:**

Permanent.

[20.1.8.4 NMAC - N, 08-27-06]

**20.1.8.5 EFFECTIVE DATE:**

08-27-06, unless a later date is cited at the end of a section.

[20.1.8.5 NMAC - N, 08-27-06]

**20.1.8.6 OBJECTIVE:**

The objective of this part is to establish procedures for running the meeting.

[20.1.8.6 NMAC - N, 08-27-06]

**20.1.8.7 DEFINITIONS:**

[RESERVED]

[20.1.8.7 NMAC - N, 08-27-06]

**20.1.8.8 OPEN MEETINGS RESOLUTION:**

The board shall annually adopt an open meetings resolution, in accordance with the Open Meetings Act.

[20.1.8.8 NMAC - N, 08-27-06]

**20.1.8.9 BOARD MEMBER PARTICIPATION:**

**A.** Pursuant to the provisions of the Open Meetings Act, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the board member to attend the meeting in person.

**B.** Each board member participating by conference telephone must be identified when speaking, all participants must be able to hear each other at the same time and members of the public attending the meeting must be able to hear any board member who speaks during the meeting.

**C.** Participation by such means shall constitute presence in person at the meeting.

[20.1.8.9 NMAC - N, 08-27-06]

**20.1.8.10 PROCEDURE OF BOARD MEETINGS:**

Robert's Rules of Order shall generally govern the procedure of the board meetings except as otherwise provided for by relevant statute or by the board rules.

[20.1.8.10 NMAC - N, 08-27-06]

**20.1.8.11 ELECTION OF BOARD OFFICERS:**

**A.** At its last regular meeting of every calendar year, the board shall elect from its members the following officers: chair, vice-chair and secretary.

**B.** A member shall not be elected to the same office for more than two (2) consecutive years.

**C.** The board shall fill a vacancy in any of these offices at its next regular meeting after the vacancy occurs.

[20.1.8.11 NMAC - N, 08-27-06]

**20.1.8.12 DUTIES OF BOARD CHAIR:**

**A.** The chair of the board shall preside at all meetings; shall appoint all committees; shall sign all certificates of registration, vouchers and other official documents; and shall otherwise perform all duties pertaining to the office of the chair.

**B.** The vice-chair of the board shall, in the absence or incapacity of the chair, exercise the duties and shall possess all the powers of the chair.

[20.1.8.12 NMAC - N, 08-27-06]

**20.1.8.13 DUTIES OF BOARD SECRETARY:**

The secretary of the board shall be responsible for insuring the timely preparation of meeting minutes and shall consult with the board administrator in responding to requests made pursuant to the Inspection of Public Records Act.

[20.1.8.13 NMAC - N, 08-27-06]

**20.1.8.14 MEETING AGENDA:**

**A.** The board chair and vice-chair shall work with the board administrator in preparing and setting the agenda for all board meetings.

**B.** A board member who wishes to place an item on the meeting agenda must submit a request to the board chair and vice-chair at least fifteen (15) days in advance of the meeting at which the board member wishes the matter to be heard.

**C.** Any other person who wishes to place an item on the meeting agenda must submit a request in writing to the board chair and vice-chair at least twenty (20) days in advance of the meeting at which the person wishes the matter to be heard.

[20.1.8.14 NMAC - N, 08-27-06]

**20.1.8.15 MEETING ATTENDANCE:**

Any board member failing to attend three (3) consecutive meetings after receiving proper notice shall be recommended for removal by the governor.

[20.1.8.15 NMAC - N, 08-27-06]

**PART 9: RULEMAKING PROCEDURES - ENVIRONMENT DEPARTMENT**

**20.1.9.1 ISSUING AGENCY:**

New Mexico Environment Department.

[20.1.9.1 NMAC - Rp 20.1.9.1 NMAC, 12/11/18]

**20.1.9.2 STATUTORY AUTHORITY:**

This part is adopted pursuant to Section 3-29-9, Subsection D of Section 9-7A-6, and Sections 14-4-1 through 14-4-11 NMSA 1978.

[20.1.9.2 NMAC - Rp 20.1.9.2 NMAC, 12/11/2018]

**20.1.9.3 SCOPE:**

This part governs the procedures in all regulatory change hearings before the department pursuant to the Department of Environment Act, Subsection D of Section 9-7A-6 NMSA 1978; the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978; and the State Rules Act Sections 14-4-1 through 14-4-11 NMSA 1978.

[20.1.9.3 NMAC - Rp 20.1.9.3 NMAC, 12/11/2018]

**20.1.9.4 DURATION:**

Permanent.

[20.1.9.4 NMAC - Rp 20.1.9.4 NMAC, 12/11/2018]

**20.1.9.5 EFFECTIVE DATE:**

December 11, 2018, unless a later date is cited at the end of a section.

[20.1.9.5 NMAC - Rp 20.1.9.5 NMAC, 12/11/2018]

**20.1.9.6 OBJECTIVE:**

The purposes of this part are:

**A.** to standardize the procedures used in rulemaking proceedings before the department pursuant to the Department of Environment Act, the Sanitary Projects Act, and the State Rules Act;

**B.** to encourage public participation in the regulatory change hearings conducted by the department pursuant to the Department of Environment Act and Sanitary Projects Act;

**C.** to make possible the effective presentation of the evidence and points of view of parties and members of the general public;

**D.** to allow all interested persons a reasonable opportunity to submit data, views, or arguments orally or in writing; and

E. to assure that rulemaking proceedings pursuant to the Department of Environment Act, the Sanitary Projects Act, and the State Rules Act are conducted by the department in a fair and equitable manner.

[20.1.9.6 NMAC - Rp 20.1.9.6 NMAC, 12/11/2018]

#### **20.1.9.7 DEFINITIONS:**

As used in this part:

A. "**department**" means the New Mexico environment department;

B. "**document**" means any paper, exhibit, pleading, motion, response, memorandum, decision, order, or other written or tangible item that is filed in a proceeding under this part, or is brought to or before the secretary for consideration, but does not include a cover letter accompanying a document transmitted for filing;

C. "**exhibit**" means any document or tangible item submitted for inclusion in the hearing record;

D. "**general public**" includes any person attending a hearing who has not submitted a notice of intent to present technical testimony;

E. "**governing law**" means the statute, including any applicable case law, which authorizes and governs the decision on the proposed regulatory change;

F. "**hearing clerk**" means the department employee designated by the secretary as the hearing clerk for the department;

G. "**hearing officer**" means the person designated by the secretary of the department to conduct a hearing under this part; the hearing officer may be an employee of the department;

H. "**hearing record**" means:

(1) the transcript of proceedings; and

(2) the record proper;

I. "**participant**" means any person who participates in a rulemaking proceeding before the secretary;

J. "**party**" means the petitioner, any person filing a notice of intent to present technical testimony, and any person filing an entry of appearance;

**K. "person"** means an individual or entity, including federal, state, local, and tribal governmental entities, however organized;

**L. "petitioner"** means the person who petitioned the secretary for the regulatory change that is the subject of the rulemaking hearing;

**M. "provide to the public"** means for the secretary to distribute rulemaking information by:

- (1) posting it on the department website;
- (2) posting it on the New Mexico sunshine portal;
- (3) making it available at the department's district, field, and regional offices;
- (4) sending it by email to persons who have made a written request for notice of announcements addressing the subject of the rulemaking proceeding and who have provided an email address to the secretary's hearing office administrator;
- (5) sending it by email to persons who have participated in the rulemaking and who have provided an email address to the secretary's hearing office administrator;
- (6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provided a postal address; and
- (7) providing it to the New Mexico legislative council service for distribution to appropriate interim and standing legislative committees.

**N. "record proper"** means all documents related to the hearing and received or generated by the secretary prior to the beginning, or after the conclusions, of the hearing, including but not limited to:

- (1) the petition for hearing, including the proposed regulatory change and any response thereto;
- (2) the notice of hearing;
- (3) affidavits of publication;
- (4) a copy of all publications in the New Mexico register relating to the proposed rule;
- (5) notices of intent to present technical testimony;

- (6) all written pleadings, including motions and responsive pleadings and orders;
- (7) a copy of any technical information that was relied upon in formulating the final rule;
- (8) statements for the public record or other relevant materials received by the department during the public comment period;
- (9) the hearing officer's report, if any;
- (10) a copy of the full text of the initial proposed rule, the full text of the final adopted rule, and the concise explanatory statement filed with the state records administrator;
- (11) post-hearing submissions, if allowed; and
- (12) the secretary's decision and the reasons therefore; and
- (13) any correction made by the state records administrator pursuant to Section 14-4-3 NMSA 1978.

**O. "regulation"** means any regulation, rule, or standard promulgated by the secretary and affecting one or more persons, besides the secretary and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts;

**P. "regulatory change"** means the adoption, amendment or repeal of a regulation;

**Q. "secretary"** means the secretary of the New Mexico environment department, the secretary's designee, or any person who properly assumes the role of the secretary in the event of the secretary's recusal or disqualification.

**R. "service"** means personally delivering a copy of the document, exhibit, or pleading to the person required by this part to be served; mailing it to that person; or if that person has agreed, sending it by facsimile or electronic transmission; if a person is represented by an attorney, service of the document shall be made on the attorney; service by mail is complete upon mailing the document; service by facsimile or electronic transmission is complete upon transmission of the document.

**S. "technical testimony"** means scientific, engineering, economic, or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing; and

**T. "transcript of proceedings"** means the verbatim record (audio recording or stenographic) of the proceedings, testimony, and argument in the matter, together with

all exhibits proffered at the hearing, whether or not admitted into evidence, including the recording of any motion hearings or prehearing conferences.

[20.1.9.7 NMAC - Rp 20.1.9.7 NMAC, 12/11/18]

#### **20.1.9.8 POWERS AND DUTIES OF THE DEPARTMENT AND HEARING OFFICER:**

**A. Department:** The secretary of the department shall exercise all powers and duties prescribed by Subsection D of Section 9-7A-6 or Section 3-29-9 NMSA 1978, and by this part, and not otherwise delegated to the hearing officer. The secretary shall have the authority to take all measures necessary and appropriate to maintain an orderly, efficient and fair proceeding.

**B. Hearing officer:** The secretary shall designate a hearing officer for each hearing who shall exercise all powers and duties prescribed or delegated under this part. The hearing officer shall conduct a fair and equitable proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and or the efficient, fair, and impartial consideration of issues arising in proceedings governed by this part, including, but not limited to:

- (1) conducting hearings under this part;
- (2) ruling on motions and procedural requests that do not seek final resolution of the proceeding, and issuing all necessary orders;
- (3) administering oaths and affirmations, admitting or excluding evidence, examining witnesses, and allowing post-hearing submissions;
- (4) making such orders as may be necessary to preserve decorum and to protect the orderly hearing process;
- (5) if requested by the secretary, preparing and filing a report of the hearing, with recommendations for the secretary's action;
- (6) requesting parties to file original documents with the secretary's hearing office administrator; and
- (7) requesting a party to submit a proposed statement of reasons in support of the secretary's decision.

**C. Qualifications:** The hearing officer may be an independent contractor, shall be knowledgeable of the laws of the state and of administrative hearing procedures, and shall not be:

(1) an employee of the department, except for the secretary, or unless employed by the department as a hearing officer;

(2) a person who has a personal bias or prejudice concerning a party, a party's lawyer, or consultant; has personal knowledge of disputed facts concerning the proceeding; is related to a party within the third degree of relationship; or has a financial interest in the proceeding.

**D.** Notice of hearing officer assignment: If a hearing officer other than the secretary is assigned, the secretary's hearing office administrator shall notify the parties of the name and address of the hearing officer. The secretary's hearing office administrator shall also, at that time, forward to the hearing officer copies of all documents filed to date.

[20.1.9.8 NMAC - Rp 20.1.9.8 NMAC, 12/11/2018]

#### **20.1.9.9 GENERAL PROVISIONS:**

**A.** Liberal construction: This part shall be liberally construed to carry out its purpose.

**B.** Severability: If any part or application of this part is held invalid, the remainder of this part or its application to other persons or situations shall not be affected.

**C.** Computation of time: In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday, or legal state holiday. Whenever a party must act within a prescribed period after service upon them, and service is by mail, three days is added to the prescribed period.

**D.** Extension of time: The secretary or hearing officer may grant an extension of time for the filing of any document upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties.

[20.1.9.9 NMAC - Rp 20.1.9.9 NMAC, 12/11/2018]

#### **20.1.9.10 DOCUMENT REQUIREMENTS – FILING, SERVICE, AND EXAMINATION:**

**A.** The filing of any document as required by this part shall be accomplished by delivering the document to the secretary's hearing office administrator.

**B.** Any person filing any document shall:

(1) provide the secretary's administrator with the original document;

(2) if the document is a notice of intent to present technical testimony filed by any person other than the petitioner, serve a copy thereof on the petitioner.

**C.** The petitioner and any person who has filed a timely notice of intent to present technical testimony under this part may inspect all documents that have been filed in a proceeding in which they are involved as participants. Such inspection shall be permitted in accordance with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978. The secretary's hearing office administrator shall notify the petitioner and all persons who have filed a timely notice of intent to present technical testimony by email whenever any document is filed in a proceeding under this part. Any such person who does not provide an email address shall instead be notified by mail.

**D.** All documents filed under this part shall be made available to any person for inspection upon request and shall, to the extent required by law, be made available on the department's website and the New Mexico sunshine portal.

**E.** Examination allowed: Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any rulemaking proceeding before the secretary. Such documents shall be made available by the secretary's hearing office administrator, as appropriate, and shall also be made available on the New Mexico sunshine portal. If the secretary's hearing office administrator determines that any part of the rulemaking record cannot be practicably displayed or is inappropriate for public display on the New Mexico sunshine portal, the secretary's hearing office administrator shall describe that part of the record, shall note on the New Mexico sunshine portal that the part of the record is not displayed, and shall provide instructions for accessing or inspecting that part of the record.

**F.** Cost of duplication: The cost of duplicating documents shall be borne by the person seeking copies of such documents, but the secretary's hearing office administrator shall not charge a fee for providing the notice of proposed rulemaking in electronic form.

[20.1.9.10 NMAC – Rp 20.1.9.10 NMAC, 12/11/2018]

#### **20.1.9.11 EX PARTE DISCUSSIONS:**

At no time after the filing of a petition under this part shall any petitioner or member of the public discuss ex parte the merits of the proceeding with the secretary or hearing officer. This prohibition does not preclude department staff who are not and have not been involved in the petition from conferring with the secretary or hearing officer.

[20.1.9.11 NMAC - Rp 20.1.9.11 NMAC, 12/11/2018]

## **20.1.9.12 PREHEARING PROCEDURES:**

### **A. Petition for regulatory changes.**

**(1)** Any person, including the department, may file a petition with the secretary to adopt, amend or repeal any regulation within the jurisdiction of the secretary.

**(2)** If the department is the petitioner and intends to file a petition under the Sanitary Projects Act, the department shall prepare the proposed regulatory change in consultation with representatives of the associations as defined in Section 3-29-2 NMSA 1978.

**(3)** The petition shall be in writing and shall include a statement of reasons for the regulatory change. The proposed regulatory change, indicating any language to be added or deleted, shall be attached to the petition.

**(4)** The secretary shall determine no later than 60 days after receipt of the petition whether or not to hold a public hearing on the petition.

**(5)** If the secretary determines to hold a public hearing on the petition, the secretary may issue such orders specifying procedures for the conduct of the hearing, in addition to those provided by this part, as may be necessary and appropriate.

### **B. Notice of hearings.**

**(1)** The secretary shall provide to the public notice of the proposed rulemaking at least 30 days prior to the hearing. Notice of the proposed rulemaking shall include publication in at least one newspaper of general circulation in the state, publication in the New Mexico register, the department's website, and such other means as the secretary may direct or are required by law.

**(2)** The notice of proposed rulemaking shall state:

**(a)** the subject of the proposed rule, including a summary of the full text of the proposed rule and a short explanation of the purpose of the proposed rule;

**(b)** a citation to the specific legal authority authorizing the proposed rule and a short explanation of the purpose of the proposed rule;

**(c)** a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained;

**(d)** the statutes, regulations, and procedural rules governing the conduct of the hearing;

(e) the manner in which persons may present their views or evidence to the secretary, including the time, place, and information on participating in the public hearing;

(f) the location where persons may secure copies of the full text of the proposed regulatory change;

(g) an internet link providing free access to the full text of the proposed rule;  
and

(h) if applicable, that the secretary may make a decision on the proposed regulatory change at the conclusion of the hearing.

**C. Participation by public.**

(1) Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer non-technical exhibits in connection with his or her testimony, so long as the exhibit is not unduly repetitious of the testimony.

(2) Any member of the general public who wishes to submit a written statement for the record, in lieu of giving oral testimony at the hearing, shall file the written statement prior to the hearing or submit it at the hearing. Written comment must be mailed or delivered to the secretary's administrator.

**D. Location of hearing:** Unless otherwise permitted by governing law, the secretary shall hold hearings on proposed regulatory changes in Santa Fe and at other places the secretary may prescribe.

**E.** If the secretary changes the date of the hearing or the deadline for submitting comments as stated in the notice of proposed rulemaking, the secretary shall provide notice to the public of the change.

[20.1.9.12 NMAC - Rp 20.1.9.12 NMAC, 12/11/2018]

**20.1.9.13 TECHNICAL TESTIMONY:**

**A.** Any person, including the petitioner, who intends to present technical testimony at the hearing shall, no later than 15 days prior to the hearing, file a notice of intent to present technical testimony with the secretary's hearing office administrator. The notice shall:

(1) identify the person for whom the witness(es) will testify;

(2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background;

(3) if the hearing will be conducted at multiple locations, indicate the location or locations at which the witnesses will be present;

(4) include a copy of the direct testimony of each technical witness in narrative form;

(5) include the text of any recommended modifications to the proposed regulatory change; and

(6) list and attach all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

**B.** The hearing officer may enforce the provisions of this section through such action as the hearing officer deems appropriate, including, but not limited to, exclusion of the technical testimony of any witness for whom a notice of intent was not timely filed. If such testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to such testimony. The hearing officer may also require that written rebuttal testimony be submitted prior to the hearing.

[20.1.9.13 NMAC - Rp 20.1.9.13 NMAC, 12/11/2018]

#### **20.1.9.14 ENTRY OF APPEARANCE:**

Any person may file an entry of appearance as a party. The entry of appearance shall be filed with the secretary's hearing office administrator no later than 20 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid waste of resources.

[20.1.9.14 NMAC - Rp 20.1.9.14 NMAC, 12/11/2018]

#### **20.1.9.15 PARTICIPATION BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:**

A witness may participate in a rulemaking hearing before the secretary by means of a telephone conference or other similar communications equipment when an emergency or circumstances make it impossible for the witness to attend the hearing in person. A witness who wishes to participate in a rulemaking hearing in this manner must receive permission from the hearing officer or the secretary sufficiently in advance of the rulemaking hearing. No witness may participate in a rulemaking hearing by telephone conference unless the witness makes a request sufficiently in advance of the rulemaking hearing so as to permit the secretary's hearing office administrator to

arrange for an adequate telephone hookup. Each witness participating by telephone must be identified when speaking, all participants must be able to hear each other at the same time, and members of the public attending the hearing must be able to hear any witness who speaks during the hearing.

[20.1.9.15 NMAC – N, 12/11/2018]

#### **20.1.9.16 MOTIONS:**

**A. General:** All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion and state the relief sought. Each motion shall be accompanied by an affidavit, certificate, or other evidence relied upon and shall be served as provided by 20.1.9.10 NMAC.

**B. Unopposed motions:** An unopposed motion shall state that the concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review.

**C. Opposed motions:** Any opposed motion shall state either that concurrence was sought and denied, or why concurrence was not sought. A memorandum brief in support of such motion may be filed with the motion.

**D. Response to motions:** Any party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. A non-moving party failing to file a timely response shall be deemed to have waived any objection to the granting of the motion.

**E. Reply to response:** The moving party may, but is not required to, submit a reply to any response within 10 days after service of the response.

**F. Decision:** All motions shall be decided by the hearing officer without a hearing, unless otherwise ordered by the hearing officer *sua sponte* or upon written request of any party. The hearing officer shall refer any motion that would effectively dispose of the matter, and may refer any other motion, to the secretary for a decision. A procedural motion may be ruled upon prior to the expiration of the time for response; any response received thereafter shall be treated as a request for reconsideration of the ruling. The hearing officer shall file all original documents with the secretary's hearing office administrator.

[20.1.9.16 NMAC – N, 12/11/2018]

#### **20.1.9.17 HEARING PROCEDURES – CONDUCT OF HEARINGS:**

**A.** The rules of civil procedure and the rules of evidence shall not apply.

**B.** The hearing officer shall conduct the hearing so as to provide a reasonable opportunity for all persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition. The hearing shall proceed as follows:

(1) The hearing shall begin with an opening statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any party who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present its case first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon notices of intent to present technical testimony, sign-in sheets, and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from the members of the general public. Members of the general public who wish to present testimony should indicate their intent on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any person who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance with 20.1.9.21 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

**C.** If the hearing is conducted at multiple locations, the hearing officer may require the petitioner's witnesses to summarize their testimony or be available for cross-examination at each location. Other participants are not required to testify at more than one location, and the hearing officer may prohibit a witness from testifying at more than one location.

[20.1.9.17 NMAC - N, 12/11/2018]

#### **20.1.9.18 TESTIMONY AND CROSS-EXAMINATION:**

**A.** All testimony will be taken under oath or affirmation which may be accomplished en masse or individually.

**B.** The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is incompetent or unduly repetitious. The hearing officer shall require all oral testimony be limited to the position of the witness in favor or against the proposed rule.

**C.** Any person who testifies at the hearing is subject to cross-examination on the subject matter of his or her direct testimony and matters affecting his or her credibility. Any person attending the hearing is entitled to conduct such cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time, or undue repetition.

[20.1.9.18 NMAC - N, 12/11/2018]

#### **20.1.9.19 EXHIBITS:**

**A.** Any person offering an exhibit at hearing, other than a document filed and served before the hearing, shall provide an original for the secretary and a sufficient number of copies for every other party.

**B.** All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, he or she shall identify each exhibit with an index tab or by other appropriate means.

**C.** Large charts and diagrams, models, and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

[20.1.9.19 NMAC - N, 12/11/2018]

#### **20.1.9.20 TRANSCRIPT OF PROCEEDINGS:**

**A.** Unless specified by the secretary or hearing officer, a verbatim transcript shall be made of the hearing. The cost of the original transcript of the proceeding and of providing a copy for each member shall be borne by the petitioner.

**B.** Any person may obtain a copy of the transcript of a proceeding. It shall be obtained directly from the court reporter, and the cost of the transcript shall be paid directly to the source.

[20.1.9.20 NMAC - N, 12/11/2018]

#### **20.1.9.21 POST-HEARING SUBMISSIONS:**

The hearing officer may allow the record to remain open for a reasonable period of time following conclusion of the hearing for written submission of additional evidence,

comments arguments, and proposed statements of reasons. The hearing officer's determination regarding post-hearing submissions shall be announced at the conclusion of the hearing. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of material to be submitted, and the necessity for a prompt decision. If the record is kept open, the hearing officer shall determine and announce the subject(s) on which submittals will be allowed and the deadline for filing the submittals.

[20.1.9.21 NMAC - N, 12/11/2018]

#### **20.1.9.22 HEARING OFFICER'S REPORT:**

If the secretary directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals, and the evidence supporting those proposals, including discussion or recommendations as requested by the secretary, and shall be filed with the secretary's administrator within the time specified by the secretary. The secretary's hearing office administrator shall promptly notify each party that the hearing officer's report has been filed and shall provide a copy of the report along with a notice of any deadline set for comments on that report.

[20.1.9.22 NMAC - N, 12/11/2018]

#### **20.1.9.23 DELIBERATION AND DECISION:**

**A.** If the hearing notice indicated that a decision might be made at the conclusion of the hearing, the secretary may immediately make a decision on the proposed regulatory change.

**B.** The secretary shall reach a decision on the proposed regulatory change within 60 days following close of the record or the date the hearing officer's report is filed, whichever is later.

**C.** If the secretary determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed regulatory change, the secretary may, consistent with the requirements of due process, reopen the hearing for such additional evidence only.

**D.** The secretary shall issue a decision on the proposed regulatory change in a suitable format which shall include the secretary's reasons for the action taken.

**E.** The secretary's written decision is the official version of the secretary's action, and the reasons for that action. Other written or oral statements by the secretary are not recognized as part of the secretary's official decision.

**F.** If the secretary fails to act on a proposed regulatory change within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the secretary acts to extend the period for an additional two years by filing a statement of good cause for the extension in the rulemaking record. If the secretary extends the rulemaking period, the secretary shall provide for additional public participation, comments, and hearing(s) prior to adopting the rule.

**G.** The secretary may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If the secretary terminates a rulemaking in this manner, the secretary shall provide to the public notice of the action.

[20.1.9.23 NMAC - N, 12/11/2018]

#### **20.1.9.24 NOTICE OF SECRETARY ACTION:**

**A.** The secretary's administrator shall provide to the public notice of the secretary's action and a concise explanatory statement.

**B.** The adopted rule shall not take effect unless within 15 days of adoption of the rule, the secretary delivers the final rule to the state records administrator, accompanied by a concise explanatory statement that contains:

- (1) the date that the secretary adopted the rule;
- (2) the effective date of the rule;
- (3) a reference to the specific statutory or other authority authorizing the rule;
- (4) any findings required by law for adoption of the rule;
- (5) reasons for any change between the published proposed rule and the final rule; and
- (6) reasons for not accepting substantive argument made through public comment.

**C.** Adoption of the final rule occurs upon signature of the written decision.

**D.** If the state records administrator notifies the secretary of having made any minor, non-substantive corrections in spelling, grammar, or format in the filed rule, the secretary's hearing office administrator shall provide to the public notice of the correction within 30 days of receiving the state records administrator's record of correction.

[20.1.9.24 NMAC - N, 12/11/2018]

### **20.1.9.25 STAYS AND APPEALS OF SECRETARY REGULATIONS:**

**A.** Any person who is or may be affected by a rule adopted by the secretary may file a motion with the secretary's hearing administrator seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting, the granting of a stay. The movant that serve the motion for a say as provided by this part and shall further serve all parties in the rulemaking proceeding. The secretary will decide when the motion will be heard. Unless otherwise ordered by the secretary or otherwise provided by law, the filing of an appeal shall not act as a stay on the regulatory change being appealed.

**B.** Unless otherwise provided by governing law, the secretary may grant a stay pending appeal of any regulatory change promulgated by the secretary. The secretary may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

**C.** In determining whether good cause is present for the granting of a stay, the secretary shall consider:

- (1)** the likelihood that the movant will prevail on the merits of the appeal;
- (2)** whether the moving party will suffer irreparable harm if a stay is not granted;
- (3)** whether substantial harm will result to other interested persons; and
- (4)** whether harm will ensue to the public interest.

**D.** If no action is taken within 60 days after filing the motion, the secretary shall be deemed to have denied the motion for stay.

**E.** Appeal of any final decision of the secretary shall be taken in accordance with the governing law.

**F.** The appellant shall service a copy of the appeal on the secretary and the petitioner.

**G.** The appellant shall be responsible for preparation of a sufficient number of copies of the hearing record at the appellant's expense.

[20.1.9.25 NMAC - N, 12/11/2018]

## **CHAPTER 2: AIR QUALITY (STATEWIDE)**

### **PART 1: GENERAL PROVISIONS**

**20.2.1.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[09/05/95; 20.2.1.1 NMAC - Rn, 20 NMAC 2.1.100, 10/31/02]

**20.2.1.2 SCOPE:**

The provisions of this part apply to all parts of this chapter.

[09/05/95; 20.2.1.2 NMAC - Rn, 20 NMAC 2.1.101, 10/31/02]

**20.2.1.3 STATUTORY AUTHORITY:**

Statutory authority comes from the *Environmental Improvement Act*, NMSA 1978, Sections 74-1-1 et seq., and the *Air Quality Control Act*, NMSA 1978, Sections 74-2-1 et seq.

[09/05/95; 20.2.1.3 NMAC - Rn, 20 NMAC 2.1.102, 10/31/02]

**20.2.1.4 DURATION:**

Permanent.

[09/05/95; 20.2.1.4 NMAC - Rn, 20 NMAC 2.1.103, 10/31/02]

**20.2.1.5 EFFECTIVE DATE:**

October 27, 1995, unless a later date is cited at the end of a section.

[09/05/95, 10/27/95; 20.2.1.5 NMAC - Rn, 20 NMAC 2.1.104, 10/31/02; A, 06/01/10]

[The latest effective date of any section in this part is 02/27/15]

**20.2.1.6 OBJECTIVE:**

The purpose of this Part (20.2.1 NMAC) is to establish general provisions which apply to all parts of this chapter (20.2.1 through 20.2.99 NMAC).

[09/05/95; 20.2.1.6 NMAC - Rn, 20 NMAC 2.1.105, 10/31/02]

**20.2.1.7 DEFINITIONS:**

[RESERVED]

**20.2.1.8-20.2.1.105 [RESERVED]**

**20.2.1.106 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

A. This part amends and supersedes Air Quality Control Regulations (AQCRs):

- (1) 110, *Confidential Information Protection*, last filed May 29, 1990;
- (2) 701, *Procedures for Requesting a Variance Hearing*, last filed Oct. 7, 1975;
- (3) 1001, *Sampling Equipment*, last filed Jan. 27, 1970;
- (4) 1101, *Severability*, last filed Jan. 27, 1970;
- (5) 1201, *Effective Date*, last filed Jan. 27, 1970;
- (6) 1301, *Conflicts*, last filed Jan. 27, 1970.

B. All references to AQCRs 110, 701, 1001, 1101, 1201 and 1301 in any other rule shall be understood as a reference to this part.

[09/05/95, 10-27-95; 20.2.1.106 NMAC - Rn, 20 NMAC 2.1.106, 10/31/02]

**20.2.1.107 SEVERABILITY:**

If any provision or application of any part under Chapter 2 of Title 20 is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[09/05/95; 20.2.1.107 NMAC - Rn, 20 NMAC 2.1.107, 10/31/02]

**20.2.1.108 SAVING CLAUSE:**

Supersession of any Air Quality Control Regulation (AQCR) shall not affect any administrative or judicial enforcement action pending on the effective date of any part under Chapter 2 of Title 20, nor the validity of any permit issued pursuant to any AQCR.

[09/05/95; 20.2.1.108 NMAC - Rn, 20 NMAC 2.1.108, 10/31/02; A, 02/27/15]

**20.2.1.109 CONSTRUCTION:**

Any part under Chapter 2 of Title 20 shall be liberally construed to effectuate the purpose of the *Environmental Improvement Act*, NMSA 1978, 74-1-1 et seq. and the *Air Quality Control Act*, NMSA 1978, 74-2-1 et seq.

[09/05/95; 20.2.1.109 NMAC - Rn, 20 NMAC 2.1.109, 10/31/02]

**20.2.1.110 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with any part under Chapter 2 of Title 20 does not relieve a person from the obligation to comply with other applicable state and federal regulations.

[09/05/95; 20.2.1.110 NMAC - Rn, 20 NMAC 2.1.110, 10/31/02]

#### **20.2.1.111 AVAILABILITY OF MATERIALS INCORPORATED BY REFERENCE:**

Materials incorporated by reference into any part under Chapter 2 of Title 20 may be viewed at the state records center or at the New Mexico environment department, air quality bureau.

[09/05/95; 20.2.1.111 NMAC - Rn, 20 NMAC 2.1.111, 10/31/02; A, 02/27/15]

[As of 02/27/15, the State Records Center is located at 1205 Camino Carlos Rey, Santa Fe, NM 87505; and the New Mexico Environment Department, Air Quality Bureau, is located at 525 Camino de los Marquez, Suite 1, Santa Fe, NM, 87505]

#### **20.2.1.112 EFFECT OF STAY OR INVALIDATION OF INCORPORATED FEDERAL REGULATIONS:**

If a federal court stays, invalidates or otherwise renders unenforceable by the environmental protection agency (EPA), in whole or in part, any federal regulation incorporated by reference in any part under Chapter 2 of Title 20, such incorporated federal regulation shall be enforceable by the department only to the extent it is enforceable by EPA.

[09/05/95; 20.2.1.112 NMAC - Rn, 20 NMAC 2.1.112, 10/31/02]

#### **20.2.1.113 SAMPLING EQUIPMENT:**

When directed by the environment department, or its designated representative, the necessary openings for sampling equipment shall be provided on stacks or other openings through which emissions are released to the atmosphere.

[09/05/95; 20.2.1.113 NMAC - Rn, 20 NMAC 2.1.113, 10/31/02]

#### **20.2.1.114 PETITION PROCEDURES FOR REQUESTING A VARIANCE HEARING:**

**A. Definition:** As used in this section (part), "**petitioner**" means a person seeking a variance from a regulation of the environmental improvement board or limitation prescribed under the *Air Quality Control Act* pursuant to NMSA 1978, Section 74-2-8.

##### **B. Petition procedures:**

**(1)** Any person seeking a variance from a regulation of the environmental improvement board, or a permit condition imposed by the department, or from the

limitations prescribed under the *Air Quality Control Act* pursuant to Section 74-2-8 NMSA 1978, shall do so by filing a written petition with the secretary. Petition forms may be obtained from the environment department.

(2) Petitions shall:

- (a) state the petitioner's name and address;
- (b) state the date of the petition;
- (c) describe the facility or activity for which the variance is sought;
- (d) state the address or description of the property upon which the facility is located;
- (e) identify the regulation of the board or limitation prescribed under the *Air Quality Control Act* from which the variance is sought;
- (f) state in detail the extent to which the petitioner wishes to vary from the regulation or limitations;
- (g) state why the petitioner believes the variance is justified; and
- (h) state the period of time for which the variance is desired.

(3) The petitioner may submit with the petition any relevant documents or material which the petitioner believes would support the petition.

C. The environment department's response and any further action and proceedings shall be in accordance with general adjudicatory procedures of the environmental improvement board.

[10/27/95; 20.2.1.114 NMAC - Rn, 20 NMAC 2.1.114, 10/31/02]

#### **20.2.1.115 CONFIDENTIAL INFORMATION PROTECTION:**

**A. Definitions:** As used in this section:

- (1) "**Claimant**" refers to a person or business who makes a claim of confidentiality.
- (2) "**Confidential business information**" refers broadly to information that, if made public, would harm a business' competitive position. This includes trade secrets and may include data relating to the profits and costs of the owner or operator which have not previously been released to the public.

(3) **"Nature and amount of emissions"** means information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant emission and includes a general description of the location and nature of the source.

(4) **"Source"** or **"stationary source"** means any building, structure, equipment, facility, installation (including temporary installations), operation or portable stationary source which emits or may emit any air contaminant. Any research facility may group its sources for the purpose of this section, at the discretion of the secretary.

(5) **"Trade secret"** refers to a secret plan or process, tool or mechanism unique to the owner or operator of a business.

**B. Confidentiality determinations:** The environment department shall keep confidential trade secrets or confidential business information under applicable legal principles to the extent that:

(1) business information furnished to or obtained by the environment department concerning air contaminant sources shall be considered for confidential treatment if specifically marked as confidential at the time such information is submitted;

(2) the department is not required to disclose this information pursuant to a statutory provision; and

(3) the following conditions are satisfied:

(a) the claimant has asserted a claim of confidentiality which has not been waived, withdrawn or denied;

(b) the claimant has satisfactorily shown that it has taken reasonable measures to protect the confidentiality of the information, and that it intends to continue to take such measures;

(c) the information is not, and has not been, reasonably obtainable without the business' consent; and

(d) the claimant has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business' competitive position.

**C.** This Section (20.2.1.115 NMAC) shall not be construed to prohibit disclosure of records and information:

(1) to other officers, employees or authorized representatives of the department, the local agency, the environmental improvement board, or the local board concerned with carrying out the *Air Quality Control Act*,

(2) to officers, employees or authorized representatives of the United States environmental protection agency concerned with carrying out the federal act;

(3) when relevant, in any proceeding under the *Air Quality Control Act* or the federal act;

(4) of data concerning the nature and amount of emissions from any source;  
or

(5) limit the use of such records or information in any civil or criminal action, subject to such protection as the court may give.

**D. Procedures for handling requests for confidentiality:**

(1) The department's office of general counsel (OGC) in each case shall determine whether and to what extent the information qualifies for confidential treatment under this section.

(2) If the department determines it will need additional information in order to decide whether information submitted by the claimant qualifies for confidential treatment, the department shall send the claimant a written notice requesting additional information.

(a) The claimant shall submit the requested additional information within thirty (30) days of receiving the department's request. The department shall keep the claimant's information confidential and not disclose it to the public during that thirty (30) day time period.

(b) If the claimant does not submit the requested additional information within the thirty (30) day time period, then the department shall assume that the claimant has abandoned or withdrawn the claim of confidentiality, and may release the information to the public upon request (following the expiration of the thirty (30) day period).

(3) Within thirty (30) days of receiving material marked as confidential or within thirty (30) days of receiving any additional information the department requested, the department shall determine whether and to what extent the information qualifies for confidential treatment under this section.

(4) Once a decision is reached, the department shall send the claimant a written notice of the decision by certified mail.

(5) If the department notifies a claimant that his or her claim of confidentiality will not be honored, the department shall not make the information available for public inspection or copying for thirty (30) days in order to give the claimant an opportunity to request administrative review of the decision. The department shall not make the

information available for public inspection or copying while an administrative review, or legal action to prevent disclosure, is pending.

(6) Business information that has been determined to be confidential shall not be made a part of any public record unless the claimant expressly agrees to its publication.

**E. Administrative review:** Every claimant has the right to request additional review of any denial of a request for confidential treatment of business information or documents. The secretary shall be responsible for conducting reviews of denials made by department personnel. The secretary shall use his or her best efforts to review denials within thirty (30) days of receiving the request for review.

[10/27/95; 20.2.1.115 NMAC - Rn, 20 NMAC 2.1.115, 10/31/02]

#### **20.2.1.116 SIGNIFICANT FIGURES:**

**A.** All emissions standards are deemed to have at least two significant figures, but not more than three significant figures.

**B.** At least five significant figures shall be retained in all intermediate calculations.

**C.** In calculating emissions to determine compliance with an emission standard, the following rounding off procedures shall be used:

(1) if the first digit to be discarded is less than the number five, the last digit retained shall not be changed;

(2) if the first digit discarded is greater than the number five, or if it is the number five followed by at least one digit other than the number zero, the last figure retained shall be increased by one unit; and

(3) if the first digit discarded is exactly the number five, followed only by zeros, the last digit retained shall be rounded upward if it is an odd number, but no adjustment shall be made if it is an even number.

**D.** The final result of the calculation shall be expressed in the units of the standard.

[20.2.1.116 NMAC - N, 06/01/10; A, 02/27/15]

#### **20.2.1.117 ELECTRONIC REPORTING AND PERMIT APPLICATIONS:**

**A. Applicability.** Pursuant to the *Cross-Media Electronic Reporting Rule* (CROMERR) as defined by Title 40 of the Code of Federal Regulations (CFR) Part 3, and the *Uniform Electronic Transactions Act*, NMSA 1978, Sections 14-16-1 to -21 (2001 as amended through 2013), any submittal to the department required by any part

under Chapter 2, *Air Quality (Statewide)*, of Title 20, *Environmental Protection*, of the New Mexico administrative code, for which the department has notified persons subject to the applicable requirement that it is accepting specified electronic documents in lieu of paper, shall be submitted electronically, provided that the method of submittal complies with applicable federal and state standards for electronic submissions. The department may grant a waiver of this requirement on a case-by-case basis if requested by the regulated source.

**B. Deadline extension due to computer system failure.**

(1) If electronic submittal capability is in place, but the department's electronic document receiving system is temporarily unavailable, then the department may grant a deadline extension to the regulated source.

(2) If electronic submittal capability is in place, but the regulated source's computer system or its internet service provider is temporarily unavailable, then the source may request a deadline extension. The department may grant a deadline extension to the regulated source.

[20.2.1.117 NMAC - N, 02/27/15]

**PART 2: DEFINITIONS**

**20.2.2.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[10/27/95; 20.2.2.1 NMAC - Rn, 20 NMAC 2.100, 10/31/02]

**20.2.2.2 SCOPE:**

The provisions of this part shall apply to all New Mexico regulations regarding air quality, and codified as 20.2.3 NMAC through 20.2.99 NMAC.

[10/27/95; 20.2.2.2 NMAC - Rn, 20 NMAC 2.101, 10/31/02]

**20.2.2.3 STATUTORY AUTHORITY:**

The environmental improvement board "shall promulgate regulations and standards in ... air quality management" (NMSA 1978, section 74-1-8.A) and "the Environmental Improvement Board... shall adopt... regulations to attain and maintain national ambient air quality standards and prevent or abate air pollution..." (NMSA 1978, section 74-2-5.B).

[10/27/95; 20.2.2.3 NMAC - Rn, 20 NMAC 2.102, 10/31/02]

#### **20.2.2.4 DURATION:**

Permanent.

[10/27/95; 20.2.2.4 NMAC - Rn, 20 NMAC 2.103, 10/31/02]

#### **20.2.2.5 EFFECTIVE DATE:**

October 27, 1995.

[10/27/95; 20.2.2.5 NMAC - Rn, 20 NMAC 2.104, 10/31/02]

[The latest effective date of any section in this Part is 08/31/09.]

#### **20.2.2.6 OBJECTIVE:**

To provide specific definitions for terms used and not defined in air quality regulations 20.2.3 NMAC through 20.2.99 NMAC.

[10/27/95; 20.2.2.6 NMAC - Rn, 20 NMAC 2.105, 10/31/02]

#### **20.2.2.7 DEFINITIONS:**

The following definitions apply to all Parts of Title 20, Chapter 2 NMAC.

**A. "Administrator"** means the administrator of the United States environmental protection agency (US EPA) or his or her designee.

**B. "Aerodynamic diameter"** means the diameter of a sphere of unit density which behaves aerodynamically the same as the particle of the test substance. It is used to predict where particles of different size and density may be deposited in the respiratory tract.

**C. "Air contaminant"** means any airborne substance, including but not limited to, any particulate matter, fly ash, dust, fumes, gas, mist, smoke, vapor, micro-organisms, radioactive material, any combination thereof or any decay or reaction product thereof.

**D. "Air pollution"** means the emission, except as such emission occurs in nature, into the outdoor atmosphere of one or more air contaminants in such quantities and duration as may with reasonable probability injure human health, animal or plant life, or as may unreasonable interfere with the public welfare, visibility or the reasonable use of property.

**E. "Asbestos"** includes chrysolite, crocidolite, amosite, anthophyllite, tremolite, and actinolite.

**F. "Board"** means the New Mexico environmental improvement board or its successor agency or authority.

**G. "Carbon dioxide"** means the chemical compound containing one atom of carbon and two atoms of oxygen.

**H. "Carbon monoxide"** means the chemical compound containing one atom of carbon and one atom of oxygen.

**I. "Department"** means the New Mexico environment department or its successor agency or authority, as represented by the department secretary or his or her designee.

**J. "Federal act"** means the Federal Clean Air Act, as amended, 42 U.S.C. sections 7401 et seq.

**K. "Flue"** means, any duct for air, gases, or the like, such as a stack or chimney.

**L. "Fugitive dust" or "fugitive particulate matter"** means particulate emissions which escape to the atmosphere due to leakage; materials handling, transfer or storage; travel over unpaved roads or parking areas; or other industrial activities, and which are not ducted through exhaust systems.

**M. "Greenhouse gas"** means any of the following: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons or sulfur hexafluoride.

**N. "Heavy metal"** means any metal having an atomic number greater than 21.

**O. "Hydrofluorocarbons"** means gaseous chemical compounds containing only hydrogen, carbon, and fluorine atoms.

**P. "Hydrogen sulfide"** means the chemical compound containing two atoms of hydrogen and one atom of sulfur.

**Q. "Kraft pulp"** means the fibrous cellulose material produced in a kraft mill.

**R. "Lead"** means elemental lead; alloys in which one of the elements is lead; or compounds containing lead, which are measured as elemental lead.

**S. "Methane"** means the chemical compound containing one atom of carbon and four atoms of hydrogen.

**T. "mg/m<sup>3</sup>"** means milligrams per cubic meter.

**U. "Nitrogen dioxide"** means the chemical compound containing one atom of nitrogen and two atoms of oxygen, for the purposes of ambient determinations. The term "nitrogen dioxide," for the purposes of stack emissions monitoring, shall include

nitrogen dioxide (the chemical compound containing one atom of nitrogen and two atoms of oxygen), nitric oxide (the chemical compound containing one atom of nitrogen and one atom of oxygen), and other oxides of nitrogen which may test as nitrogen dioxide.

**V. "Nitrous oxide"** means the chemical compound containing two atoms of nitrogen and one atom of oxygen.

**W. "Non-methane hydrocarbons"** means any combination of hydrocarbons (chemical compounds consisting of hydrogen and carbon) excluding only the molecule methane.

**X. "Ozone"** means the chemical compound having the molecular composition of three oxygen atoms.

**Y. "Particulate matter"** means any airborne, finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

**Z. "Particulate matter emissions"** means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by: applicable reference methods; an equivalent or alternative method specified by the administrator; or a test method specified in the New Mexico state implementation plan.

**AA. "Perfluorocarbons"** means gaseous chemical compounds containing only carbon and fluorine atoms.

**AB. "Person"** means any individual; partnership; corporation; association; municipality; the state or political subdivision of the state; and any agency, department, or instrumentality of the United States and any of their officers, agents, or employees.

**AC. "Photochemical oxidants"** means those oxidizing chemical compounds which are the products of photo initiated reactions involving organic compounds and nitrogen oxides, consisting primarily of ozone and peroxyacetyl nitrate (PAN).

**AD. "PM10"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

**AE. "PM10 emissions"** means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air, as measured by: an applicable reference method; an equivalent or alternative method specified by the EPA administrator; or a test method specified in the New Mexico state implementation plan.

**AF. "PM2.5"** means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

**AG. "PM2.5 emissions"** means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, emitted to the ambient air, as measured by: an applicable reference method; an equivalent or alternative method specified by the EPA administrator; or a test method specified in the New Mexico state implementation plan.

**AH. "ppm"** means parts per million by volume.

**AI. "Ringelmann scale"** means the grading of opacity, appearance, density or shade of a smoke emission, in determining the light-obscuring power of smoke.

**AJ. "Schedule of compliance"** means a schedule or timetable, acceptable to the board, which clearly sets out in detail, the steps to be taken in achieving the objectives of a regulation or standard.

**AK. "Secretary"** means the secretary of the New Mexico environment department or his or her designee.

**AL. "Smoke"** means small gas-borne particles resulting from incomplete combustion, consisting predominantly, by not exclusively, of carbon, soot and combustible material.

**AM. "Sulfur dioxide"** means the chemical compound containing one atom of sulfur and two atoms of oxygen, for the purposes of ambient determinations. The term sulfur dioxide, for the purposes of stack emissions monitoring, shall include sulfur dioxide (chemical compound containing one atom of sulfur and two atoms of oxygen), and other oxides of sulfur which may test as sulfur dioxide.

**AN. "Sulfur hexafluoride"** means the chemical compound containing one atom of sulfur and six atoms of fluorine.

**AO. "Total reduced sulfur"** means any combination of sulfur compounds, except sulfur dioxide and free sulfur, which test as total reduced sulfur, including, but not limited to, hydrogen sulfide, methyl mercaptan, and ethyl mercaptan.

**AP. "Total suspended particulates (TSP)"** means particulate matter as measured by the method described in 40 CFR Part 50, Appendix B.

**AQ. "ug/m3"** means micrograms per cubic meter.

**AR. "US EPA"** means the United States environmental protection agency.

**AS. "Volatile organic compound (VOC)"** means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity.

[10/27/95; 20.2.2.7 NMAC - Rn, 20 NMAC 2.2.200 10/31/02; A, 01/01/08; A, 08/31/09]

#### **20.2.2.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This part supersedes AQCR 100, originally filed on January 23, 1970, and subsequently amended and refiled on May 26, 1971, September 1, 1971, September 14, 1973, June 14, 1974, July 15, 1974, February 7, 1983, May 26, 1983, August 1, 1988, and May 29, 1990.

[10/27/95; 20.2.2.8 NMAC - Rn, 20 NMAC 2.2.106, 10/31/02]

#### **20.2.2.9 DOCUMENTS:**

Documents cited in this part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87503 [2048 Galisteo St., Santa Fe, NM 87505].

[10/27/95; 20.2.2.9 NMAC - Rn, 20 NMAC 2.2.107, 10/31/02]

### **PART 3: AMBIENT AIR QUALITY STANDARDS**

#### **20.2.3.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.3.1 NMAC - Rn, 20 NMAC 2.3.100 10/31/02]

#### **20.2.3.2 SCOPE:**

All geographic areas within the jurisdiction of the environmental improvement board.

[11/30/95; 20.2.3.2 NMAC - Rn, 20 NMAC 2.3.101 10/31/02]

#### **20.2.3.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, Paragraph (4) of Subsection A of Section 74-1-8 NMSA 1978 and Air Quality Control Act, Section 74-2-1 et seq. NMSA 1978, including specifically, Subsections A and B of Section 74-2-5 NMSA 1978.

[11/30/95; 20.2.3.2 NMAC - Rn, 20 NMAC 2.3.102 10/31/02]

#### **20.2.3.4 DURATION:**

Permanent.

[11/30/95; 20.2.3.4 NMAC - Rn, 20 NMAC 2.3.103 10/31/02]

#### **20.2.3.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.3.5 NMAC - Rn, 20 NMAC 2.3.104 10/31/02]

[The latest effective date of any section in this Part is 11/30/18.]

#### **20.2.3.6 OBJECTIVE:**

The objective of this part is to establish ambient air quality standards for the areas of New Mexico under the jurisdiction of the environmental improvement board.

[11/30/95; 20.2.3.6 NMAC - Rn, 20 NMAC 2.3.105 10/31/02]

#### **20.2.3.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part: "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

[11/30/95; 20.2.3.7 NMAC - Rn, 20 NMAC 2.3.107 10/31/02]

#### **20.2.3.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This part amends and supersedes air quality control regulations ("AQCR") 200 - preamble and 201 - ambient air quality standards last filed January 27, 1970 and June 15, 1981, respectively.

**A.** All references to AQCR 200 or 201 in any other rule shall be construed as a reference to this part.

**B.** The amendment and supersession of AQCR 200 and 201 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 200 or 201.

[11/30/95; 20.2.3.8 NMAC - Rn, 20 NMAC 2.3.106 10/31/02]

#### **20.2.3.9 LIMITATION OF APPLICABILITY TO 20.2.70 NMAC:**

The requirements of this part are not applicable requirements under 20.2.70 NMAC, as defined by that part. This section does not limit the applicability of this part to sources required to obtain a permit under 20.2.72 NMAC, nor does it limit which terms and conditions of permits issued pursuant to 20.2.72 NMAC are applicable requirements for permits issued pursuant to 20.2.70 NMAC.

[20.2.3.9 NMAC - N, 9/6/06]

**20.2.3.10-20.2.3.107 [RESERVED]**

**20.2.3.108 PREAMBLE:**

Ambient air quality standards are not intended to provide a sharp dividing line between air of satisfactory quality and air of unsatisfactory quality. They are, however, numbers which represent objectives that will preserve our air resources. It is understood that at certain times, due to unusual meteorological conditions, these standards may be exceeded for short periods of time without the addition of specific pollutants into the atmosphere. The adoption of these statewide ambient air quality standards does not prohibit the promulgation of standards for specific areas, functions, and conditions within the state such as air sheds, municipalities, and certain counties, as authorized under the act. As scientific data accumulates on the effects of a contaminant, these standards may be revised or additional standards added.

[11/30/95; 20.2.3.108 NMAC - Rn, 20 NMAC 2.3.108 10/31/02]

**20.2.3.109 [RESERVED]**

[11/30/95; 20.2.3.109 NMAC - Rn, 20 NMAC 2.3.109 10/31/02; Repealed, 11/30/18]

**20.2.3.110 SULFUR COMPOUNDS:**

The maximum allowable concentrations of the following sulfur-containing air contaminants in the ambient air are as follows:

**A. Sulfur dioxide:**

**(1)** For the state except on the area within 3.5 miles of the Chino mines company smelter furnace stack at Hurley:

**(a)** 24-hour average: 0.10 ppm;

**(b)** Annual arithmetic average: 0.02 ppm;

**(2)** For the area within three and one-half miles of the Chino mines company smelter furnace stack at Hurley:

**(a)** 24-hour average, not be exceeded more than once per year: 0.14 ppm;

**(b)** three-hour average, not to be exceeded more than once per year: 0.50 ppm;

**(c)** Annual arithmetic average: 0.03 ppm.

**B. Hydrogen sulfide:**

(1) For the state, except the Pecos-Permian basin intrastate air quality control region (one-hour average, not to be exceeded more than once per year): 0.010 ppm;

(2) For the Pecos-Permian basin intrastate air quality control region (one-half hour average): 0.100 ppm;

(3) For within corporate limits of municipalities within the Pecos-Permian basin intrastate air quality control region (one-half hour average): 0.030 ppm;

(4) For within five miles of the corporate limits of municipalities having a population of greater than 20,000 and within the Pecos-Permian basin intrastate air quality control region (one-half hour average): 0.030 ppm.

**C. Total reduced sulfur:**

(1) For the state, except the Pecos-Permian basin intrastate air quality control region except for hydrogen sulfide (one-half hour average): 0.003 ppm;

(2) For the Pecos-Permian basin intrastate air quality control region, except for hydrogen sulfide (one-half hour average): 0.010 ppm;

(3) For within corporate limits of municipalities within the Pecos-Permian basin intrastate air quality control region, except for hydrogen sulfide (one-half hour average): 0.003 ppm;

(4) For within five miles of the corporate limits of municipalities having a population of greater than 20,000 and within the Pecos-Permian basin intrastate air quality control region, except for hydrogen sulfide (one-half hour average): 0.003 ppm.

[11/30/95; 20.2.3.110 NMAC - Rn, 20 NMAC 2.3.110 10/31/02]

**20.2.3.111 OTHER AIR CONTAMINANTS:**

The maximum allowable concentrations of the following air contaminants in the ambient air are as follows:

**A. Carbon monoxide:**

(1) eight-hour average: 8.7 ppm;

(2) one-hour average: 13.1 ppm;

**B. Nitrogen dioxide:**

- (1) 24-hour average: 0.10 ppm;
- (2) Annual arithmetic average: 0.05 ppm.

[11/30/95; 20.2.3.111 NMAC - Rn, 20 NMAC 2.3.111 10/31/02]

## **PART 4: [RESERVED]**

## **PART 5: SOURCE SURVEILLANCE**

### **20.2.5.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.5.1 NMAC - Rn, 20 NMAC 2.5.100 10/31/02]

### **20.2.5.2 SCOPE:**

All persons who own or operate a source.

[11/30/95; 20.2.5.2 NMAC - Rn, 20 NMAC 2.5.101 10/31/02]

### **20.2.5.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A) (4) and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5 (C) (5).

[11/30/95; 20.2.5.3 NMAC - Rn, 20 NMAC 2.5.102 10/31/02]

### **20.2.5.4 DURATION:**

Permanent.

[11/30/95; 20.2.5.4 NMAC - Rn, 20 NMAC 2.5.103 10/31/02]

### **20.2.5.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.5.5 NMAC - Rn, 20 NMAC 2.5.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

### **20.2.5.6 OBJECTIVE:**

The objective of this Part is to establish general requirements for maintaining and reporting records on emissions.

[11/30/95; 20.2.5.6 NMAC - Rn, 20 NMAC 2.5.105 10/31/02]

#### **20.2.5.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part: "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

[11/30/95, 20.2.5.7 NMAC - Rn, 20 NMAC 2.5.107 10/31/02]

#### **20.2.5.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation 704 - Source Surveillance, filed July 31, 1972, as amended (AQCR 704).

**A.** All references to AQCR 704 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 704 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment.

[11/30/95; 20.2.5.8 NMAC - Rn, 20 NMAC 2.5.106 10/31/02]

#### **20.2.5.9-20.2.5.107 [RESERVED]**

#### **20.2.5.108 RECORD KEEPING:**

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

[11/30/95; 20.2.5.108 NMAC - Rn, 20 NMAC 2.5.108 10/31/02]

#### **20.2.5.109 DATA SUBMISSION:**

The information recorded shall be summarized and reported to the Department, on forms furnished by the Department, and shall be submitted within forty-five days after the end of the reporting period. Reporting periods are November 1 through April 30 and May 1 through October 31 or such other periods as the Department may deem

necessary. Information reported to the Department shall be signed by the person responsible for its accuracy.

[11/30/95; 20.2.5.109 NMAC - Rn, 20 NMAC 2.5.109 10/31/02]

**20.2.5.110 PUBLIC ACCESS:**

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

[11/30/95; 20.2.5.110 NMAC - Rn, 20 NMAC 2.5.110 10/31/02]

**PART 6: [RESERVED]**

**PART 7: EXCESS EMISSIONS**

**20.2.7.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.7.1 NMAC - Rp, 20.2.7.1 NMAC, 08/01/08]

**20.2.7.2 SCOPE:**

All geographic areas within the jurisdiction of the environmental improvement board.

[20.2.7.2 NMAC - Rp, 20.2.7.2 NMAC, 08/01/08]

**20.2.7.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[20.2.7.3 NMAC - Rp, 20.2.7.3 NMAC, 08/01/08]

**20.2.7.4 DURATION:**

Permanent.

[20.2.7.4 NMAC - Rp, 20.2.7.4 NMAC, 08/01/08]

**20.2.7.5 EFFECTIVE DATE:**

08/01/08, unless a later date is cited at the end of a section.

[20.2.7.5 NMAC - Rp, 20.2.7.5 NMAC, 08/01/08]

[The latest effective date of any section in this part is 8/1/2008.]

#### **20.2.7.6 OBJECTIVE:**

**A.** Establish requirements for a source whose operation results in an excess emission.

**B.** Establish criteria for a source whose operation results in an excess emission to claim an affirmative defense in an administrative or judicial enforcement action from a civil penalty.

[20.2.7.6 NMAC - Rp, 20.2.7.6 NMAC, 08/01/08]

#### **20.2.7.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part, the following definitions apply.

**A. "Air pollution control equipment"** means any apparatus, including acid plants, afterburners, baghouses, cyclones, electrostatic precipitators, flares, incinerators, and particulate or gaseous scrubbers, utilized to control the emission of a regulated air contaminant, including a fugitive emission.

**B. "Air quality regulation or permit condition"** means any regulation adopted by the board, including a federal new source performance standard adopted by reference, or any condition of an air quality permit issued by the department. National emission standards for hazardous air pollutants and maximum achievable control technology standards are not included in this definition.

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

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

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

**F. "Part"** means an air quality regulation under Title 20, Chapter 2 of the New Mexico Administrative Code.

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

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

**I. "Startup"** means the setting into operation of any air pollution control equipment or process equipment.

[20.2.7.7 NMAC - Rp, 20.2.7.7 NMAC, 08/01/08]

**20.2.7.8 AMENDMENT OR SUPERSESSION OF PRIOR REGULATIONS:**

This part supersedes New Mexico Administrative Code ("NMAC") 20.2.7 -- Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance last filed October 30, 1995.

[20.2.7.8 NMAC - Rp, 20.2.7.8 NMAC, 08/01/08]

**20.2.7.9 DOCUMENTS:**

No documents are cited in this part.

[20.2.7.9 NMAC - N, 08/01/08]

**20.2.7.10 SEVERABILITY:**

If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected thereby.

[20.2.7.10 NMAC - N, 08/01/08]

**20.2.7.11 CONSTRUCTION:**

This part shall be liberally construed to carry out its purpose.

[20.2.7.11 NMAC - N, 08/01/08]

**20.2.7.12 SAVINGS CLAUSE:**

Repeal or supersession of a prior version of this part shall not affect any administrative or judicial action initiated under that prior version.

[20.2.7.12 NMAC - N, 08/01/08]

**20.2.7.13 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local statute or regulation.

[20.2.7.13 NMAC - N, 08/01/08]

**20.2.7.14 REQUIREMENTS REGARDING ROUTINE OR PREDICTABLE EMISSIONS DURING STARTUP, SHUTDOWN, AND MAINTENANCE:**

**A.** The owner or operator of a source subject to a permit or to the notification requirement under section 15 of this part, shall establish and implement a plan to minimize emissions during routine or predictable startup, shutdown, and scheduled maintenance through work practice standards and good air pollution control practices. This requirement shall not apply to any affected facility defined in and subject to an emissions standard and an equivalent plan under 40 CFR Part 60 (NSPS), 40 CFR Part 63 (MACT), or an equivalent plan under 20.2.72 NMAC - Construction Permits, 20.2.70 NMAC - Operating Permits, 20.2.74 NMAC - Permits - Prevention of Significant Deterioration (PSD), or 20.2.79 NMAC - Permits - Nonattainment Areas.

**B.** The owner or operator shall maintain the plan at the location authorized by the permit, at the facility, or at the nearest occupied facility, and provide the plan to the department upon written request.

**C.** This requirement shall become effective 180 days after the effective date of this part.

[20.2.7.14 NMAC - Rp, 20.2.7.14 NMAC, 08/01/08]

**20.2.7.15 TEMPORARY PROVISIONS FOR ROUTINE OR PREDICTABLE EMISSIONS DURING STARTUP, SHUTDOWN, AND SCHEDULED MAINTENANCE:**

**A.** If the inclusion of emissions during routine or predictable startup, shutdown, or scheduled maintenance in addition to the potential emission rate or potential to emit of a source could exceed an applicable emissions limitation, or would cause the source to exceed an applicability threshold in 20.2.72 NMAC - Construction Permits, 20.2.70 NMAC - Operating Permits, 20.2.74 NMAC - Permits - Prevention of Significant Deterioration (PSD), or 20.2.79 NMAC - Permits - Nonattainment Areas, the owner or operator shall notify the department in writing no later than 180 days after the effective date of this part. The notice shall include a preliminary estimate of emissions by pollutant to the extent practicable and identify the nature of permitting action likely to be required.

**B.** The owner or operator shall submit the necessary permit application no later than 120 days after receiving a request from the department.

**C.** If a timely notice is submitted under Subsection A of 20.2.7.15 NMAC for any excess emission during routine or predictable startup, shutdown, or scheduled maintenance, the owner or operator shall comply only with Paragraph (2) of Subsection A of 20.2.7.110 NMAC - Final Report, until the permit is issued or denied.

**D.** At the request of the department, the owner or operator of a source that does not submit a notification under Subsection A of 20.2.7.15 NMAC shall submit the basis for its determination and supporting analysis.

[20.2.7.15 NMAC - N, 08/01/08]

### **20.2.7.16-20.2.7.107 [RESERVED]**

### **20.2.7.108 APPLICABILITY:**

**A.** Any source:

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

**(2)** subject to the requirements of 20.2.73 NMAC - Notices of Intent and Emissions Inventory Requirements, 20.2.72 NMAC - Construction Permits, 20.2.70 NMAC - Operating Permits, 20.2.74 - Permits - Prevention of Significant Deterioration (PSD), or 20.2.79 - Permits - Nonattainment Areas.

**B.** Deviations under 20.2.70 NMAC - Operating Permits that do not result in excess emissions are not subject to the provisions of 20.2.7 NMAC.

**C.** This part does not create a separate cause of action for failure to obtain a permit under 20.2.72 NMAC - Construction Permits, 20.2.70 NMAC - Operating Permits, 20.2.74 - Permits - Prevention of Significant Deterioration (PSD), or 20.2.79 - Permits - Nonattainment Areas.

[20.2.7.108 NMAC - N, 08/01/08]

### **20.2.7.109 OPERATION RESULTING IN AN EXCESS EMISSIONS:**

The emission of an air contaminant in excess of the quantity, rate, opacity, or concentration specified in an air quality regulation or permit condition that results in an excess emission is a violation of the air quality regulation or permit condition and may be subject to an enforcement action. The owner or operator of a source having an excess emission shall, to the extent practicable, operate the source, including

associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

[20.2.7.109 NMAC - Rp, 20.2.7.109 NMAC, 08/01/08]

**20.2.7.110 NOTIFICATION:**

**A.** The owner or operator of a source having an excess emission shall report the following information to the department on forms provided by the department. The department may authorize the submittal of such reports in electronic format.

**(1)** Initial report: the owner or operator shall file an initial report, no later than the end of the next regular business day after the time of discovery of an excess emission that includes all available information for each item in Subsection B of 20.2.7.110 NMAC.

**(2)** Final report: the owner or operator shall file a final report that contains specific and detailed information for each item in Subsection B of 20.2.7.110 NMAC, no later than ten (10) days after the end of the excess emission.

**B.** The report shall include the following information.

- (1)** The name of the source.
- (2)** The name of the owner and operator of the source.
- (3)** The name and title of the person preparing the report.
- (4)** Identifying information such as permit and database numbers.
- (5)** The specific date(s) and time(s) the excess emission occurred.
- (6)** Identification of the equipment involved and the emission point(s) (including bypass) from which the excess emission occurred.
- (7)** The air quality regulation or permit condition that was exceeded.
- (8)** Identification of the air contaminant(s) and the magnitude of the excess emission expressed in the units of the air quality regulation or permit condition.
- (9)** The method for determining the magnitude and duration of the excess emission.
- (10)** The cause and nature of the excess emission.

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

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

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

(14) Whether the owner or operator attributes the excess emission to malfunction, startup or shutdown.

(15) Whether the owner or operator will claim an affirmative defense under Sections 111, 112, or 113 of 20.2.7 NMAC. If claiming an affirmative defense, an analysis with and the supporting evidence for each criterion shall be submitted no later than thirty (30) days after submittal of the final report required by this subsection (Subsection B of 20.2.7.110 NMAC). Upon the department's receipt of a written request by the owner or operator no later than thirty (30) days after submittal of the final report, the department may grant an extension to complete the analysis not to exceed thirty (30) additional days.

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

**C.** The department may request that the owner or operator of a source provide additional information. This information shall be reported within a time period specified by the department.

**D.** If the period of an excess emission extends beyond the deadline specified in Paragraph (2) of Subsection A of 20.2.7.110 NMAC, the owner or operator shall notify the department in writing within seventy-two (72) hours of the date and time when the excess emission ceased. This notification shall include all items required in Subsection B of 20.2.7.110 NMAC.

[20.2.7.110 NMAC - Rp, 20.2.7.110 NMAC, 08/01/08]

#### **20.2.7.111 AFFIRMATIVE DEFENSE FOR AN EXCESS EMISSION DURING MALFUNCTION:**

**A.** The owner or operator of a source subject to this part may claim an affirmative defense for an excess emission during malfunction for a civil penalty in an administrative or judicial enforcement action, except for an action to enforce a federal

new source performance standard. There shall be no affirmative defense for an excess emission during malfunction for the owner or operator's liability or the department's claim for injunctive relief for the excess emission. The owner or operator claiming an affirmative defense for an excess emission during malfunction shall bear the burden of proof to demonstrate the following criteria.

(1) The excess emission was caused by a malfunction.

(2) The excess emission:

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

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

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

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

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

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

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

(8) The excess emission was not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(9) The owner or operator complied with the notification requirements in Section 110 of 20.2.7 NMAC.

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

**B.** The department may request that the owner or operator of a source provide additional information beyond what is required in this section (20.2.7.111 NMAC). This

additional information shall be reported within the time period specified by the department.

[20.2.7.111 NMAC - N, 08/01/08]

**20.2.7.112 AFFIRMATIVE DEFENSE FOR AN EXCESS EMISSION DURING STARTUP OR SHUTDOWN:**

**A.** The owner or operator of a source subject to this part may claim an affirmative defense for an excess emission during startup or shutdown for a civil penalty in an administrative or judicial enforcement action, except for an action to enforce a federal new source performance standard. There shall be no affirmative defense for an excess emission during startup or shutdown for the owner or operator's liability or the department's claim for injunctive relief for the excess emission. The owner or operator claiming an affirmative defense for an excess emission during startup or shutdown shall bear the burden of proof to demonstrate the following criteria.

- (1) The excess emission occurred during a startup or shutdown.
- (2) The duration of the excess emission that occurred during startup and shutdown was short and could not have been prevented through careful planning and design.
- (3) The excess emission was not part of a recurring pattern indicative of inadequate design, operation, or maintenance.
- (4) If the excess emission was caused by a bypass (an intentional diversion of control equipment), then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.
- (5) At all times, the source was operated in a manner consistent with good practices for minimizing emissions.
- (6) The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable.
- (7) All possible steps were taken to minimize the impact of the excess emission on ambient air quality.
- (8) All emissions monitoring systems were kept in operation if at all possible.
- (9) The owner or operator complied with the notification requirements in Section 110 of 20.2.7 NMAC.

**(10)** The owner or operator's actions during the period of the excess emission were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

**B.** The department may request that the owner or operator of a source provide additional information beyond what is required in this section (20.2.7.112 NMAC). This additional information shall be reported within the time period specified by the department.

**C.** An excess emission due to malfunction during a period of startup or shutdown which is authorized by permit shall be treated as a malfunction under 20.2.7.111 NMAC.

[20.2.7.112 NMAC - Rp, 20.2.7.112 NMAC, 08/01/08]

### **20.2.7.113 AFFIRMATIVE DEFENSE FOR AN EMERGENCY:**

**A.** An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.

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

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

**(2)** the source was at the time being properly operated;

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

**(4)** the owner or operator fulfilled the notification requirements under Subsection A of 20.2.7.110 NMAC, including a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

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

**D.** The department may request that the owner or operator of a source provide additional information beyond what is required in this section (20.2.7.113 NMAC). This additional information shall be reported within the time period specified by the department.

[20.2.7.113 NMAC - N, 08/01/08]

#### **20.2.7.114 ROOT CAUSE AND CORRECTIVE ACTION ANALYSIS:**

**A.** The owner or operator of a source having an excess emission, upon written request of the department, shall prepare an analysis that uses appropriate analytical tools and contains the following information.

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

(2) an analysis of the corrective actions implemented or available to reduce the likelihood of a recurrence of the excess emission resulting from the causes identified under Paragraph (1) of Subsection A of 20.2.7.114 NMAC, including, as applicable:

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

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

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

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

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

**B.** The department shall make the request no later than ninety (90) days after receipt of the final report under Subsection A of 20.2.7.110 NMAC.

**C.** The department may request the analysis specified in Subsection A of 20.2.7.114 NMAC after considering relevant factors. Examples of such relevant factors may include but are not limited to the significance of the excess emission, the nature or pattern of excess emissions, or the history of the source, as well as other factors determined to be relevant by the department.

**D.** The completed analysis shall be submitted to the department no later than sixty (60) days after the request for submittal pursuant to Subsection A of 20.2.7.114 NMAC. The department may grant an extension to submit the analysis for good cause shown.

E. The owner or operator of a source complying with this section may assert a claim for confidential information protection pursuant to 20.2.1.115 NMAC.

[20.2.7.114 NMAC - N, 08/01/08]

**20.2.7.115 REVIEW OF THE DEPARTMENT'S DETERMINATIONS UNDER SECTIONS 111, 112, AND 113:**

The department may issue a determination regarding an owner or operator's assertion of the affirmative defense under Section 111, 112, or 113 of 20.2.7 NMAC on the basis of any relevant information, including but not limited to information submitted pursuant to this part or obtained through an inspection. Any such determination is not a final action and is not reviewable, shall not be a prerequisite to the commencement of an administrative or judicial enforcement action, does not constitute a waiver of liability pursuant to Section 116 of 20.2.7 NMAC, and shall not preclude an enforcement action by the federal government or a citizen pursuant to the federal Clean Air Act. A source may not assert an affirmative defense under Section 111, 112, or 113 of 20.2.7 NMAC in an administrative or judicial enforcement action unless it asserted such defense pursuant to Subsection B of 20.2.7.110 NMAC.

[20.2.7.115 NMAC - Rp, N, 08/01/08]

**20.2.7.116 FUTURE ENFORCEMENT ACTION:**

The department may commence an administrative or judicial enforcement action against the owner or operator of a source for an excess emission for which it has made a determination pursuant to Section 115 of 20.2.7 NMAC if the department determines that the excess emission is related to a pattern of excess emission events, poor maintenance, careless or marginal operation, or other appropriate reason.

[20.2.7.116 NMAC - Rp, 20.2.7.116 NMAC, 08/01/08]

**PART 8: EMISSIONS LEAVING NEW MEXICO**

**20.2.8.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.8.1 NMAC - Rn, 20 NMAC 2.8.100 10/31/02]

**20.2.8.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.8.2 NMAC - Rn, 20 NMAC 2.8.101 10/31/02]

**20.2.8.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.8.3 NMAC - Rn, 20 NMAC 2.8.102 10/31/02]

**20.2.8.4 DURATION:**

Permanent.

[11/30/95; 20.2.8.4 NMAC - Rn, 20 NMAC 2.8.103 10/31/02]

**20.2.8.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.8.5 NMAC - Rn, 20 NMAC 2.8.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.8.6 OBJECTIVE:**

The objective of this Part is to establish requirements for emissions leaving New Mexico.

[11/30/95; 20.2.8.6 NMAC - Rn, 20 NMAC 2.8.105 10/31/02]

**20.2.8.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part: "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

[11/30/95; 20.2.8.7 NMAC - Rn, 20 NMAC 2.8.107 10/31/02]

**20.2.8.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 901 - To Control Emissions Leaving New Mexico, last filed January 27, 1970.

**A.** All references to AQCR 901 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 901 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 901.

[11/30/95; 20.2.8.8 NMAC - Rn, 20 NMAC 2.8.106 10/31/02]

**20.2.8.9-20.2.8.107 [RESERVED]**

**20.2.8.108 REQUIREMENTS:**

When emissions generated from sources in New Mexico cross the state boundary line, such emissions shall not exceed the standards and regulations of the receiving state, provided, regulations are in effect and reciprocal action is taken by the receiving state.

[11/30/95; 20.2.8.108 NMAC - Rn, 20 NMAC 2.8.108 10/31/02]

**PART 9: [RESERVED]**

**PART 10: WOODWASTE BURNERS**

**20.2.10.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.10.1 NMAC - Rn. 20 NMAC 2.10.100 10/31/02]

**20.2.10.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.10.2 NMAC - Rn. 20 NMAC 2.10.101 10/31/02]

**20.2.10.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.10.3 NMAC - Rn. 20 NMAC 2.10.102 10/31/02]

**20.2.10.4 DURATION:**

Permanent.

[11/30/95; 20.2.10.4 NMAC - Rn. 20 NMAC 2.10.103 10/31/02]

#### **20.2.10.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.10.5 NMAC - Rn. 20 NMAC 2.10.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

#### **20.2.10.6 OBJECTIVE:**

The objective of this Part is to establish controls on the use of woodwaste burners. This Part is not intended to preempt any more stringent controls on burning provided in the Board's Solid Waste Management Regulations (20.9.1 NMAC) or in any local ordinance or regulation.

[11/30/95; 20.2.10.6 NMAC - Rn. 20 NMAC 2.10.105 10/31/02]

#### **20.2.10.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Daily burndown"** means the period of operation during which the supply of woodwaste to the burner has stopped and the operation of the sawmill has ceased and does not include work shift changes.

**B. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**C. "Woodwaste burner"** means any device used for woodwaste including but not limited to a wigwam-type burner.

[11/30/95; 20.2.10.7 NMAC - Rn. 20 NMAC 2.10.107 10/31/02]

#### **20.2.10.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 402 - Woodwaste Burners last filed February 8, 1983.

**A.** All references to AQCR 402 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 402 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 402.

[11/30/95; 20.2.10.8 NMAC - Rn. 20 NMAC 2.10.106 10/31/02]

### **20.2.10.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.10.9 NMAC - Rn. 20 NMAC 2.10.108 10/31/02]

### **20.2.10.10-20.2.10.108 [RESERVED]**

### **20.2.10.109 EMISSION AND TEMPERATURE LIMITATIONS:**

Except as provided in subsections A and B of 20.2.10.109 NMAC and subsection C of 20.2.10.111 NMAC, the owner or operator of a woodwaste burner shall not permit, cause, suffer or allow emissions from the woodwaste burner to equal or exceed an opacity of 20 percent; and no person owning or operating a woodwaste burner which operates during nighttime hours shall permit the temperature of the woodwaste burner exhaust gases to be lower than 750 [degrees] F. during nighttime hours unless the owner or operator can demonstrate, to the satisfaction of the Department, that a lower temperature can achieve an opacity of 20 percent or less.

**A.** 20.2.10.109 NMAC shall not apply during the first sixty minutes of the daily operation of a woodwaste burner.

**B.** The owner or operator of a woodwaste burner shall not permit, cause, suffer or allow emissions from the woodwaste burner to equal or exceed an opacity of 40 percent during the daily burndown period.

[11/30/95; 20.2.10.109 NMAC - Rn. 20 NMAC 2.10.109 10/31/02]

### **20.2.10.110 TEMPERATURE RECORDINGS:**

A woodwaste burner, except a certified "contingency-use woodwaste burner", must be equipped with an instrument, approved by the Department, in a location, approved by the Department, which shall continuously measure and record the temperature of the exiting gases from the woodwaste burner. The owner or operator shall retain such records, showing the date of recordings, for a period of six months from the date of each day's recordings and shall make such records available to the Department at the Department's request.

[11/30/95; 20.2.10.110 NMAC - Rn. 20 NMAC 2.10.110 10/31/02]

### **20.2.10.111 CONTINGENCY-USE WOODWASTE BURNERS:**

**A.** Certification: The Department may certify a woodwaste burner as "contingency-use woodwaste burner" if the owner or operator can demonstrate, to the satisfaction of the Department, that under normal operating conditions of the mill, the woodwaste

burner will not be used to burn woodwaste. The Department may review and rescind, if necessary, such a certification at any time.

**B. Startup notification:** No person shall operate a certified "contingency-use woodwaste burner" unless the owner or operator has notified the Department within 24 hours after the initial startup as to the following:

- (1) the time of initial startup;
- (2) the reason why the owner or operator is unable to dispose of the woodwaste in the normal manner;
- (3) the period of time that the owner or operator will need to use the "contingency-use woodwaste burner"; and
- (4) the steps that are being taken to enable the owner or operator to return to disposition of the woodwaste in the normal manner.
- (5) Upon receipt of aforesaid information, the Department shall promptly approve or disapprove such contingency use and the duration thereof.

**C. Opacity limitation:** No person owning or operating a certified "contingency-use woodwaste burner" shall permit, cause, suffer or allow emissions to equal or exceed an opacity of 40 percent.

[11/30/95; 20.2.10.111 NMAC - Rn. 20 NMAC 2.10.111 10/31/02]

#### **20.2.10.112 OPACITY DETERMINATION:**

The Department shall determine the opacity of emissions from a woodwaste burner by averaging instantaneous opacity readings made at regular intervals over a time period of no less than ten minutes. Such readings shall be made only by a certified opacity reader.

[11/30/95; 20.2.10.112 NMAC - Rn. 20 NMAC 2.10.112 10/31/02]

### **PART 11: ASPHALT PROCESS EQUIPMENT**

#### **20.2.11.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.11.1 NMAC - Rn, 20 NMAC 2.11.100 10/31/02]

#### **20.2.11.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.11.2 NMAC - Rn, 20 NMAC 2.11.101 10/31/02]

**20.2.11.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.11.3 NMAC - Rn, 20 NMAC 2.11.102 10/31/02]

**20.2.11.4 DURATION:**

Permanent.

[11/30/95; 20.2.11.4 NMAC - Rn, 20 NMAC 2.11.103 10/31/02]

**20.2.11.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.11.5 NMAC - Rn, 20 NMAC 2.11.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.11.6 OBJECTIVE:**

The objective of this Part is to establish particulate matter emission standards for asphalt process equipment.

[11/30/95; 20.2.11.6 NMAC - Rn, 20 NMAC 2.11.105 10/31/02]

**20.2.11.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**B. "Rural area"** means any area five or more miles from a community of more than fifty people and one or more miles from any residence.

[11/30/95; 20.2.11.7 NMAC - Rn, 20 NMAC 2.11.107 10/31/02]

**20.2.11.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 501 -- Asphalt Processing Equipment last filed July 1, 1971.

**A.** All references to AQCR 501 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 501 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 501.

[11/30/95; 20.2.11.8 NMAC - Rn, 20 NMAC 2.11.106 10/31/02]

**20.2.11.9-20.2.11.107 [RESERVED]**

**20.2.11.108 ALLOWABLE EMISSION RATES:**

**A.** The owner or operator of asphalt process equipment shall not permit, cause, suffer or allow particulate matter emissions to the atmosphere in excess of the maximum amounts specified in the following table:

Aggregate Process Rate	Maximum Stack Emission Rate
Pounds per Hour	Pounds per Hour
10,000	10
20,000	15
30,000	22
40,000	28
50,000	31
100,000	33
200,000	37
300,000	40
400,000	43
500,000	47
600,000 and above	50

**B.** When the process rate is between any two consecutive process rates in the table, the maximum stack emission rate is determined by interpolation. Where a plant or operation has more than one stack, the maximum stack emission rate applies to the total of the emissions from all stacks.

[11/30/95; 20.2.11.108 NMAC - Rn, 20 NMAC 2.11.108 10/31/02]

**20.2.11.109 FUGITIVE DUST CONTROL:**

The owner or operator of asphalt process equipment shall not operate the equipment without a fugitive dust control system. The fugitive dust control system shall be operated and maintained so that all particulate emissions are limited to the stack outlet.

[11/30/95; 20.2.11.109 NMAC - Rn, 20 NMAC 2.11.109 10/31/02]

#### **20.2.11.110 TEMPORARY EXEMPTIONS:**

**A.** Upon request, the Department, by written permit, may suspend the operational requirements of this Part for portable asphalt process equipment to be operated temporarily in rural areas. A permit shall not be issued for any period exceeding ninety operating days, but may be renewed when reasonably necessary for completion of a project. A written request that has not been acted upon within ten days after its receipt shall be deemed granted.

**B.** In making its decision on a petition, the Department shall give weight it deems appropriate to all facts and circumstances, including but not limited to:

(1) character and degree of injury to, or interference with, health, welfare, visibility and property;

(2) the public interest, including the social and economic value of the sources and subjects of the air contaminants involved; and

(3) technical practicability and economic reasonableness of complying with this Part.

**C.** The Department may require the requestor to submit his request in writing and any or all of the following information:

(1) requestor's name, address and telephone number;

(2) nature of the project and the location where the unit is to be operating;

(3) the proposed length of time of operation;

(4) the aggregate process rate (pounds per hour) of the equipment to be utilized; and

(5) reasons why the requestor believes the suspension of the operational requirements is necessary.

[11/30/95; 20.2.11.110 NMAC - Rn, 20 NMAC 2.11.110 10/31/02]

#### **PART 12: CEMENT KILNS [REPEALED]**

[This part was repealed on August 18, 2014]

## **PART 13: GYPSUM PROCESSING PLANTS**

### **20.2.13.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.13.1 NMAC - Rn, 20 NMAC 2.13.100 10/31/02]

### **20.2.13.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.13.2 NMAC - Rn, 20 NMAC 2.13.101 10/31/02]

### **20.2.13.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8 (A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.13.3 NMAC - Rn, 20 NMAC 2.13.102 10/31/02]

### **20.2.13.4 DURATION:**

Permanent.

[11/30/95; 20.2.13.4 NMAC - Rn, 20 NMAC 2.13.103 10/31/02]

### **20.2.13.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.13.5 NMAC - Rn, 20 NMAC 2.13.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

### **20.2.13.6 OBJECTIVE:**

The objective of this Part is to establish particulate matter emission standards for gypsum processing plants.

[11/30/95; 20.2.13.6 NMAC - Rn, 20 NMAC 2.13.105 10/31/02]

### **20.2.13.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part: "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

[11/30/95; 20.2.13.7 NMAC - Rn, 20 NMAC 2.13.107 10/31/02]

#### **20.2.13.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation (AQCR) 503 -- Gypsum Processing Plants last filed January 27, 1970.

**A.** All references to AQCR 503 in any other rule shall be constructed as a reference to this Part.

**B.** The amendment and supersession of AQCR 503 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 503.

[11/30/95; 20.2.13.8 NMAC - Rn, 20 NMAC 2.13.106 10/31/02]

#### **20.2.13.9-20.2.13.107 [RESERVED]**

#### **20.2.13.108 EMISSION LIMITATIONS:**

The owner or operator of equipment for gypsum processing shall not permit, cause, suffer or allow particulate matter emissions in excess of the 690 mg/m<sup>3</sup> of exhaust gas.

[11/30/95; 20.2.13.108 NMAC - Rn, 20 NMAC 2.13.108 10/31/02]

### **PART 14: PARTICULATE EMISSIONS FROM COAL BURNING EQUIPMENT**

#### **20.2.14.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.14.1 NMAC - Rn, 20 NMAC 2.14.100 10/31/02]

#### **20.2.14.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.14.2 NMAC - Rn, 20 NMAC 2.14.101 10/31/02]

#### **20.2.14.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.14.3 NMAC - Rn, 20 NMAC 2.14.102 10/31/02]

**20.2.14.4 DURATION:**

Permanent.

[11/30/95; 20.2.14.4 NMAC - Rn, 20 NMAC 2.14.103 10/31/02]

**20.2.14.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.14.5 NMAC - Rn, 20 NMAC 2.14.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.14.6 OBJECTIVE:**

The objective of this Part is to establish particulate matter emission standards for coal burning equipment.

[11/30/95; 20.2.14.6 NMAC - Rn, 20 NMAC 2.14.105 10/31/02]

**20.2.14.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

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

**B. "Construction"** means fabrication, erection, or installation of an affected facility.

**C. "Existing coal burning equipment"** means coal burning equipment that was fully constructed and operational or under construction prior to September 1, 1971.

**D. "New coal burning equipment"** means coal burning equipment the construction of which is commenced after September 1, 1971.

**E. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted, as adopted or amended by the Board.

[11/30/95; 20.2.14.7 NMAC - Rn, 20 NMAC 2.14.107 10/31/02]

**20.2.14.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 504 -- Particulate Emissions from Coal Burning Equipment last filed June 13, 1978.

**A.** All references to AQCR 504 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 504 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 504.

[11/30/95; 20.2.14.8 NMAC - Rn, 20 NMAC 2.14.106 10/31/02]

**20.2.14.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM, 87503 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.14.9 NMAC - Rn, 20 NMAC 2.14.108 10/31/02]

**20.2.14.10-20.2.14.199 [RESERVED]**

**20.2.14.200 EMISSION LIMITATIONS - EQUIPMENT LESS THAN OR EQUAL TO 250 MBTU/HOUR HEAT CAPACITY:**

**A.** The owner or operator of coal burning equipment having a rated heat capacity less than or equal to 250 million British Thermal Units per hour (higher heating value) shall not permit, cause, suffer or allow particulate matter emissions to the atmosphere to exceed the limits set forth in the following table:

I Heat Input in Million British Thermal Units Per Hour (higher heating value)	E Maximum Allowable Emissions for Particulate Matter in Pounds per Million British Thermal Units Input Per Hour
10	0.56
20	0.48
30	0.43
40	0.40

50	0.38
70	0.35
100	0.33
200	0.28
250	0.26

**B.** For values of heat input not specified in the table, maximum allowable emissions shall be calculated by the following formula:

- (1) E = Allowable Particulate Emissions (lbs./million BTU);
- (2) I = Total Heat Input (in units of million BTU's /hr., higher heating value);
- (3) When I equals 1 to 250, E equals 0.996135 times I raised to the power - 0.23471.

[11/30/95; 20.2.14.200 NMAC - Rn, 20 NMAC 2.14.200 10/31/02]

**20.2.14.201 EMISSION**

**Limitations - New Equipment Greater Than 250M BTU/Hour Heat Capacity:** The owner or operator of new coal burning equipment having a rated heat capacity greater than 250 million British Thermal Units per hour (higher heating value) shall not permit, cause, suffer, or allow:

**A.** Particulate matter emissions to the atmosphere in excess of 0.05 pounds per million British Thermal Units of heat input (higher heating value); or

**B.** Fine particulate matter emissions of less than two microns equivalent aerodynamic diameter to the atmosphere in excess of 0.02 pounds per million British Thermal Units of heat input (higher heating value) as determined pursuant to Procedure I for fine particulate sampling from stationary coal burning equipment set forth in 20.2.14.300 NMAC -20.2.14.399 NMAC or an equivalent method approved by the Department.

[11/30/95; 20.2.14.201 NMAC - Rn, 20 NMAC 2.14.201 10/31/02]

**20.2.14.202 EMISSION LIMITATIONS - EXISTING EQUIPMENT GREATER THAN 250M BTU/HOUR AND LESS THAN 5000M BTU/HOUR HEAT CAPACITY:**

The owner or operator of existing coal burning equipment having a rated heat capacity greater than 250 million British Thermal Units and less than 5000 million British Thermal Units per hour (higher heating value) shall not permit, cause, suffer or allow:

**A.** Particulate matter emissions to the atmosphere in excess of 0.05 pounds per million British Thermal Units of heat input (higher heating value); or

**B.** Fine particulate matter emissions of less than two microns equivalent aerodynamic diameter to the atmosphere in excess of 0.04 pounds per million British Thermal Units of heat input (higher heating value) as determined pursuant to Procedure II for fine particulate sampling from stationary coal burning equipment set forth in 20.2.14.400 NMAC - 20.2.14.499 NMAC or an equivalent method approved by the Department.

[11/30/95; 20.2.14.202 NMAC - Rn, 20 NMAC 2.14.202 10/31/02]

**20.2.14.203 EMISSION LIMITATIONS--EXISTING EQUIPMENT EQUAL TO OR GREATER THAN 5000M BTU/HOUR:**

After December 31, 1982, The owner or operator of existing coal burning equipment having a rated heat capacity equal to or greater than 5000 million British Thermal Units per hour (higher heating value) shall not permit, cause, suffer, or allow:

**A.** Particulate matter emissions to the atmosphere in excess of 0.05 pounds per million British Thermal Units of heat input (higher heating value); or

**B.** Fine particulate matter emissions of less than two microns equivalent aerodynamic diameter to the atmosphere in excess of 0.04 pounds per million British Thermal Units of heat input (higher heating value) as determined pursuant to Procedure II for fine particulate sampling from stationary coal burning equipment set forth in 20.2.14.400 NMAC - 20.2.14.499 NMAC or an equivalent method approved by the Department.

[11/30/95; 20.2.14.203 NMAC - Rn, 20 NMAC 2.14.203 10/31/02]

**20.2.14.204 METHOD FOR DETERMINING EMISSIONS LIMITATIONS:**

Particulate matter emissions governed by 20.2.14.200 NMAC, and subsection A of 20.2.14.201 NMAC, subsection A of 20.2.14.202 NMAC, and subsection A of 20.2.14.203 NMAC, shall be determined by a method consistent with the method set forth by the US EPA at 40 CFR, Part 60, Appendix A, Methods 1 through 5, or any other method receiving prior approval from the Department.

[11/30/95; 20.2.14.204 NMAC - Rn, 20 NMAC 2.14.204 10/31/02]

**20.2.14.205 PETITION FOR TEST METHOD OF EMISSION LIMITATION FOR EXISTING EQUIPMENT - HEAT CAPACITY EQUAL TO OR GREATER THAN 5000M BTU/HOUR:**

**A.** With regard to existing coal burning equipment having a rated heat capacity greater than 250 million British Thermal Units and less than 5000 million British Thermal Units per hour (higher heating value) or with regard to existing coal burning equipment having a rated heat capacity equal to or greater than 5000 million British Thermal Units

per hour (higher heating value) the Department, any other interested person or any person owning or operating existing coal burning equipment of such capacities may petition the Board to amend subsection B of 20.2.14.202 NMAC or subsection B of 20.2.14.203 NMAC to require all existing coal burning equipment of the capacity specified in 20.2.14.202 NMAC or 20.2.14.203 NMAC, whichever is the subject of the petition, to comply with the emission limitation of subsection B of 20.2.14.201 NMAC pursuant to the test method contained therein.

**B.** The Board, after receipt of the petition, shall:

**(1)** Notify all persons owning or operating coal burning equipment which are the subject of the petition of the filing of said petition, and the date of the Board's regularly scheduled meeting at which the Board plans to consider the request for hearing;

**(2)** Make available for public inspection a copy of the petition at its office;

**(3)** Not less than 30 days nor more than forty-five days after the mailing of the notification provided in paragraph (1) of subsection B of 20.2.14.205 NMAC at its regularly scheduled meeting, consider setting the date, time and place of a public hearing on the petition; provided, however, that if any person owning or operating coal burning equipment of the capacities covered by the petition appears before the Board at such meeting and informs the Board that it does not possess sufficient testing information to determine whether its equipment does or does not comply with the emission limitation contained in paragraph (2) of subsection A of 20.2.14.201 NMAC pursuant to the test method specified therein, the Board, if it determines additional testing information is justified, shall specify a period of testing deemed adequate to permit such person to conduct such testing and shall set the date of the public hearing on the petition at its next regularly scheduled meeting following the expiration of such testing period;

**(4)** Within five days following the scheduling of the hearing, notify the petitioner and all persons who own or operate the coal burning equipment affected by the petition by certified mail of the date, time and place of the public hearing on the petition;

**(5)** Publish notice of the hearing and conduct the hearing according to the procedures set forth in the New Mexico Air Quality Control Act, section 74-2-6; and

**(6)** At the conclusion of the hearing on the petition or at the next Board meeting after transcripts of the hearing are available, if the Board determines that all the equipment regulated pursuant to 20.2.14.202 NMAC and 20.2.14.203 NMAC, whichever was the subject of the hearing, complies with the emission limitation of subsection B of 20.2.14.201 NMAC pursuant to the test method contained therein, the Board may amend subsection B of 20.2.14.202 NMAC or subsection B of 20.2.14.203 NMAC, whichever was the subject of the hearing.

[11/30/95; 20.2.14.205 NMAC - Rn, 20 NMAC 2.14.205 10/31/02]

**20.2.14.206-20.2.14.299 [RESERVED]**

**20.2.14.300 PROCEDURE I, INTRODUCTION:**

A method is specified for use in sampling the emissions from stationary coal-burning equipment for particulate matter of less than two microns (2u) equivalent aerodynamic diameter. This procedure shall be used for testing emissions from coal-burning equipment operating in the State of New Mexico for compliance with 20.2.14 NMAC (Particulate Emissions from Coal Burning Equipment), as specified within the regulation. It is generally intended that sampling for fine particulates, as described below, be carried out only on those stacks (or ducts) which are controlled for gross particulates and which have already been demonstrated to be in compliance with the sections of the regulation for total particulate emissions.

[11/30/95; 20.2.14.300 NMAC - Rn, 20 NMAC 2.14.300 10/31/02]

**20.2.14.301 PROCEDURE I, METHOD:**

**A.** Principle: Particulate matter is withdrawn at an approximately isokinetic rate from the source, the large (over 2u) [over 2 micrometer] particles separated from the gas stream, and the fine particles collected on a filter. The weight of the fine particles is determined gravimetrically after removal of uncombined water.

**B.** Apparatus:

**(1)** Sampling Train: The recommended sampling train is shown schematically in Figure 1 (20.2.14.302 NMAC). It is based on the US EPA sampling train described in the Code of Federal Regulations, Title 40, Part 60, Appendix A, Method 5, Section 2.1 (hereinafter referred to as US EPA Method 5). To the Method 5 train is added a particle separator. The purpose of the particle separator is to trap essentially all of the particles greater than 2u [two micrometers]; to do this, a certain gas flowrate is required through this device as specified in Section 2.2.1.3.

**(2)** Nozzle: Stainless steel (type 304 or 316).

**(3)** Probe: Pyrex glass, insulated and heated uniformly to a temperature sufficient to prevent condensation from occurring at any point in the tube. For lengths greater than about 8 feet, a metal tube may be used. Incoloy 825 is preferred, but types 304 or 316 stainless steel are acceptable. Long probes shall be reinforced or supported to prevent excessive droop or gas stream whip. For sampling stacks carrying electrically charged particles (as for installations using electrostatic precipitators), the probe shall be grounded to prevent electrical shock to personnel and the inner shell of the probe shall be electrically conductive and shall be grounded to prevent size discriminative trapping of particles within the probe.

**(4) Particulate Separator and Filter:** The particle separator and filter system shall be housed in a temperature-controlled container.

**(a) Particle Separator:** The particle separator shall be a cascade impactor, such as the Andersen Mark II or Mark III Stack Head, manufactured by 2000 Inc., Atlanta, Georgia, or other if approved by the Department. The stack head must be modified to use only five of the collection plates arranged in the following order 0, 1, 2, 3, 4, 1 (manufacturer's numbers) and a filter holder as specified in subparagraph (b) of paragraph (4) of subsection B of 20.2.14.301 NMAC. The complete arrangement is shown in Figure 2 (20.2.14.303 NMAC). The gas flowrate through the stack head must be controlled to maintain a particle impaction efficiency of 50% on plate 4 for particles of 2 microns aerodynamic diameter. The procedure for doing this is described in paragraphs (3) and (4) of subsection D of 20.2.14.301 NMAC.

**(b) Filter Holder:** The filter holder shall immediately follow the last collection plate, as indicated in Figure 2 (20.2.14.303 NMAC), and contain a filter similar to those specified in paragraph (2) of subsection C of 20.2.14.301 NMAC.

**(5) Metering System:** Vacuum gage, leak-free pumps, thermometers capable of measuring to within 3 degrees Fahrenheit., dry test meter with 2 percent accuracy, and related equipment, as required to maintain an approximately isokinetic sampling rate through the probe and specified flowrate through the Andersen Stack Head, and to determine sample volume.

**(6) Other Sampling Train Equipment:** Pitot tube (type S, or equivalent), impingers/condensers, and barometer shall be as specified in US EPA Method 5, Section 2.1. Note that an equivalent condenser may be used in place of the impinger train.

**(7) Sample Recovery Accessories:** As specified in Section 2.2 of US EPA Method 5.

**(8) Analytical Accessories:** As specified in US EPA Method 5, Section 2.3.

### **C. Reagents:**

**(1) Sampling:**

**(2) Filters:** Glass fiber type, having high efficiency for collecting small particles (99% or higher efficiency for particles 0.3 microns or larger in diameter). Cambridge Media CM-114 or Gelman Type A filters are acceptable types.

**(3) Other Sampling Reagents:** As specified in US EPA Method 5, Section 3.1.

**(4) Sample Recovery and Analytical Reagents:** Acetone and water, as specified in Sections 3.2 and 3.3 of US EPA Method 5.

#### D. Sampling Procedure:

**(1) Selection of Sampling Site and Sampling Points:** The sampling site is preferably located in a vertical duct or stack, at least eight stack diameters downstream and two diameters upstream of a major disturbance (bend, expansion, contraction, or visible flame). In large ducts (of 20 feet or greater diameter), a distance five diameters downstream of a disturbance will be considered adequate, providing the velocity traverse does not show the flow to be highly irregular. Under these recommended conditions, a single sampling point is considered to be adequate (See Industrial Gas Cleaning Institute, Test Procedures for Gas Scrubbers, Publication No. 1, p. 6): This point shall be located between 0.2 and 0.5 of the diameter from the outside toward the center of the stack, preferably at a point whose velocity approximates the average velocity of the flue gases. For conditions which do not meet the criteria given above, additional sampling points must be considered and will be determined as agreed upon between the coal-burning equipment operator and the Department.

**(2) Determination of Stack Pressure, Temperatures, Moisture and Distribution of Velocity Heads:** Prior to actual sampling for particulates, a preliminary survey of stack pressure, temperature, moisture content, and velocity distribution shall be made to assess overall sampling conditions and establish isokinetic sampling velocities.

**(a) Stack Pressure and Temperature:** Stack pressure shall be obtained at one or more points at the sampling station using a water-filled U-tube manometer to sense pressure from a hole in the side of the stack or duct to within 0.1 in water. Temperatures shall be determined from a thermocouple (or equivalent device) attached to the pitot tube, capable of measuring to within 1.5% of the minimum absolute stack temperature.

**(b) Distribution of Velocity Heads:** The US EPA Method 1 (40 CFR, Part 60, Appendix A) shall be used as a general guide in determining the number and distribution of pitot tube traverse points. US EPA Method 2 (40 CFR, Part 60, Appendix A) shall be used as a guide in selection of pitot tube equipment, procedure for making and recording measurements, and calibration of the instrument. In calibration, the procedure shall be modified in that the pitot tube to be used in testing shall be mounted on the probe and the probe shall have attached to it a 1/4-inch sampling nozzle so that the arrangement is similar to that used in testing. A complete velocity traverse shall be done each day of testing.

**(c) Moisture Determination:** Moisture content of the gas stream is determined by extracting a measured quantity of gas from the stack, condensing the moisture in an external condenser (or in the impingers), and measuring the volume of condensate. A single, preliminary measurement shall be made using either the stack sampling train or a simplified apparatus consisting mainly of a filter, condenser, pump, and dry gas meter. If liquid drops are present in the gas stream, proceed as follows: Assume the stream to be saturated, determine the average stack gas temperature from the data obtained in subparagraph (a) of paragraph (2) of subsection D of 20.2.14.301 NMAC above, and use a psychrometric chart with appropriate altitude correction along with steam tables to

calculate the approximate percentage of moisture. A further determination of moisture content is made as a part of the particulate sampling as described below.

**(3)** Preparation of Collection Train: Check to see that the probe, nozzle, etc., are clean and that there is sufficient ice to fill the ice bath, place 100 ml. of water in the first two impingers, leave the third impinger empty, and place approximately 200 g. of preweighed indicating silica gel in the fourth impinger. Complete the preparation by desiccating the filter, checking the train for leaks and adjusting the probe heater, generally as specified in US EPA Method 5, Section 4.1.2. To establish near isokinetic sampling conditions at the start of testing, the desired flowrate through the particle separator is corrected to stack conditions and the desired sample nozzle size is calculated. To do this record the temperature of the container surrounding the particle separator. Find this temperature in the abscissa of the graph in Figure 3 (20.2.14.304 NMAC), go up to the curve and read the correction factor on the ordinate of the graph. Multiply the correction factor by 2 microns and obtain the temperature corrected aerodynamic diameter. Locate the corrected aerodynamic diameter on the abscissa of the graph on Figure 4 (20.2.14.305 NMAC), go up to the curve and read on the ordinate the flowrate needed to maintain an impaction efficiency of 50% on plate #4. Correct this flowrate to stack conditions by adjusting for the difference in particle separator temperature and stack temperature. Using the equation  $Q = VA$  where  $Q$  = volumetric flowrate through the separator adjusted to stack temperature (cfm),  $V$  = velocity of the stack gas at the point in the stack where the sampling is to take place (fpm) and  $A$  is area of the nozzle (sq. ft.) calculate the desired sampling nozzle diameter. Attach a nozzle to the probe that matches this calculated diameter within 1%. To establish at the start of testing the correct gas flow through the separator, using the dry gas meter, correct the desired flowrate through the separator to meter conditions by correcting for the difference in temperature between the separator and the dry gas meter and subtract out that portion of the gas volume which will be condensed in the impingers.

**(4)** Particulate Train Operation: To begin sampling, position the nozzle at the selected point in the stack with the nozzle tip pointing directly into the gas stream. Immediately after, start the pump and adjust the dry gas meter to the flowrate calculated in paragraph (3) of subsection D of 20.2.14.301 NMAC. Sample for at least 5 minutes and then record the temperature of the gas on the outlet end of the separator. If the temperature is different from that of the container surrounding the separator readjust the dry gas meter flowrate by repeating the steps described in paragraph (3) of subsection D of 20.2.14.301 NMAC using Figures 3 (20.2.14.304 NMAC) and 4 (20.2.14.305 NMAC) excluding the step used in calculating nozzle diameter. Continue the run until 30 standard cubic feet (70 degrees Fahrenheit, 29.92 inches Hg) have been drawn through the sampling train. For each run record the required data on a sheet such as the one shown in Figure 5-2 of US EPA Method 5 and include the temperature monitored at the outlet of the separator. Record the data after every 5 minutes of testing. At the end of the run, turn off the pump and record the final readings. Remove the probe and nozzle from the stack. Remove the filter from the separator and place in a container. Repeat the sampling procedure until three runs have been obtained. Desiccate the filters for at

least 24 hours and weigh to the nearest 0.5 mg in a room where the relative humidity is less than 50%.

**E. Calibration:** Use approved methods and equipment for calibration of the particle separator, orifice meter, pitot tube, temperature sensors and dry test meter. Recalibrate after every third test or three months whichever comes first except for the particle separator which shall be recalibrated as agreed upon between the owner or operator of the coal burning equipment and the Department.

**F. Calculations:** After completing the test series, average the dry gas meter temperatures and average orifice pressure drops, correct the sample volume measure to standard conditions and calculate the water vapor and moisture content. Calculate the concentration of particulate matter in the stack gas in pounds per standard cubic foot on a dry basis by using equation 5-5 given in Section 6.6.2 of US EPA Method 5. Use only the weight of the particulate collected on the filter. Using the stack volumetric flowrate corrected to standard conditions on a dry basis calculate the emission rate in pounds per hour. Using the average heat input to the coal burning equipment during the time of testing, in million Btu per hour, calculate the emission rate in pounds per million Btu. Average the emission rate for the three runs.

**G. Acceptable results:** Validity of each run shall be determined by calculating the actual flow through the particle separator from the recorded data. If the flowrate is within 10% of the ideal flow calculated from Figure 4 (20.2.14.305 NMAC) the run will be considered valid. Deviations from isokinetic sampling rate shall not invalidate the test.

[11/30/95; 20.2.14.301 NMAC - Rn, 20 NMAC 2.14.301 10/31/02]

#### **20.2.14.302 SAMPLING TRAIN FOR FINE PARTICULATE MATTER, PROCEDURE I:**

Figure 1.

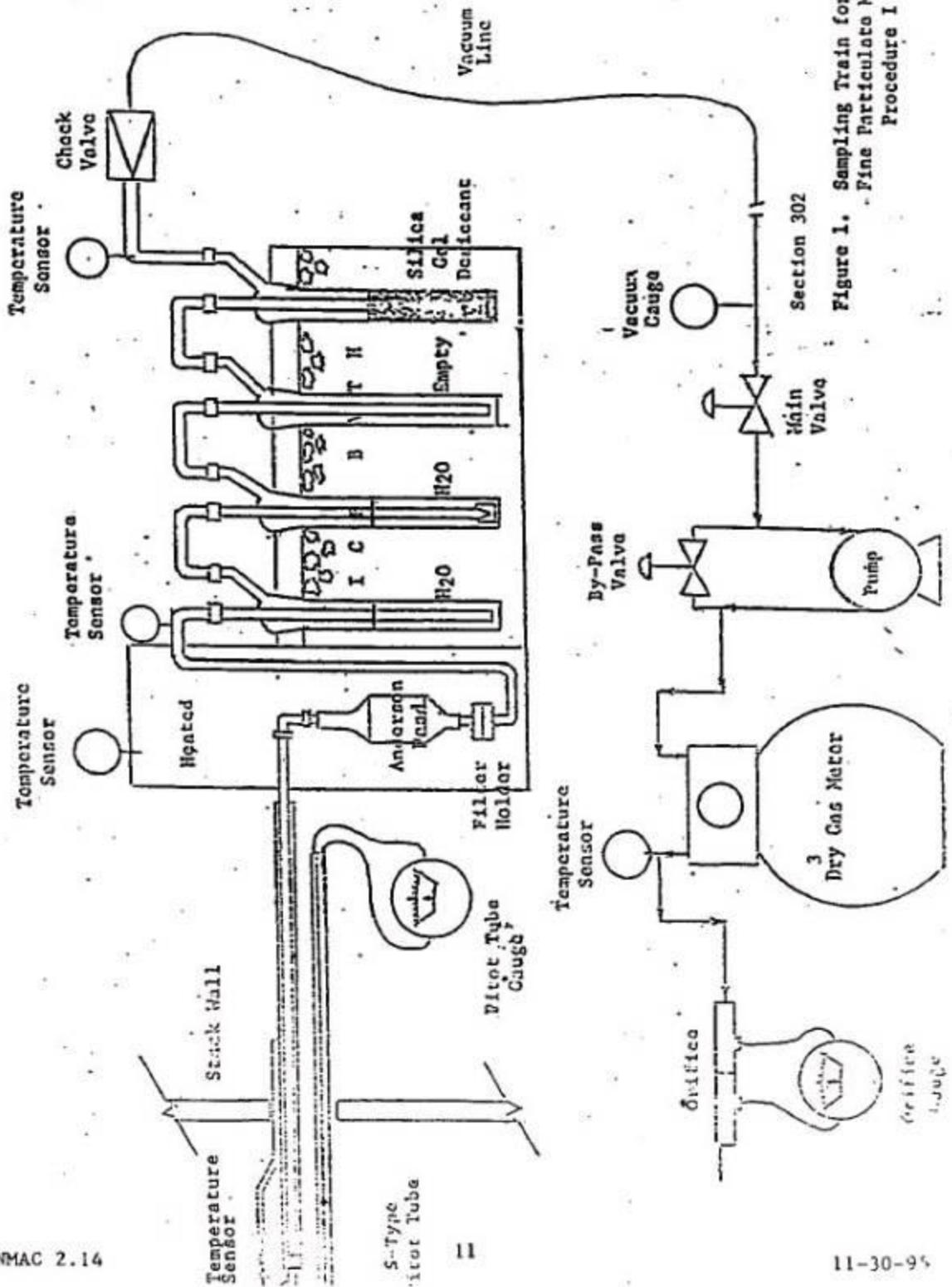
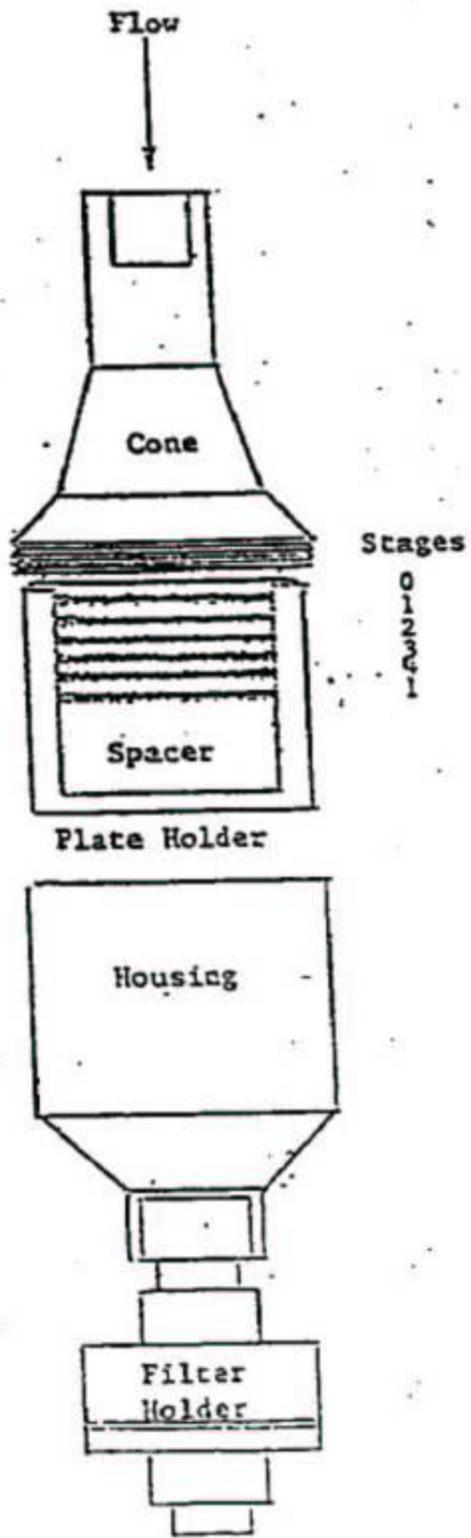


Figure 1. Sampling Train for Fine Particulate Matter. Procedure I

[11/30/95; 20.2.14.302 NMAC - Rn, 20 NMAC 2.14.302 10/31/02]

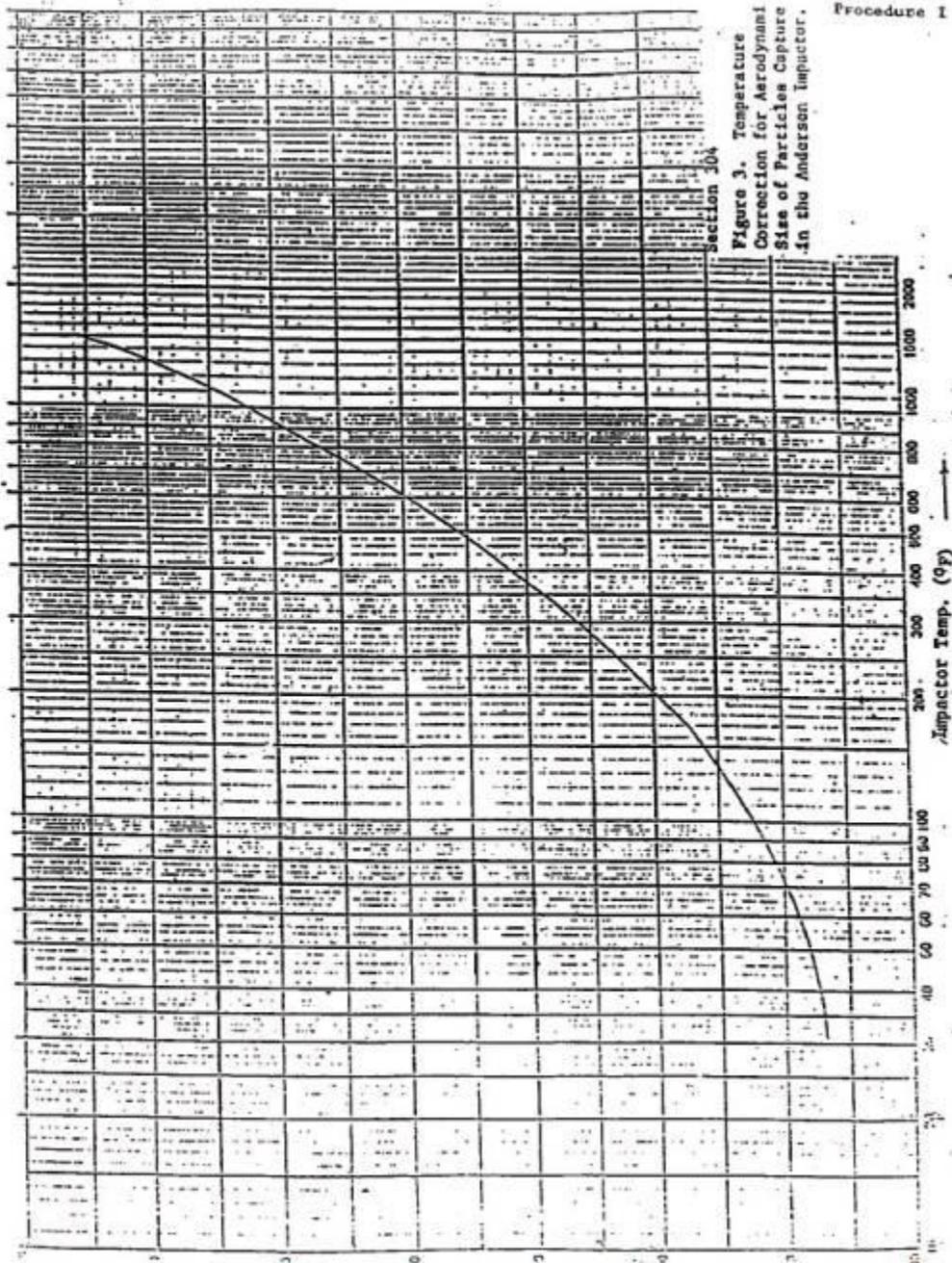
**20.2.14.303 ARRANGEMENT OF IMPACTION PLATES AND FILTER HOLDER IN THE ANDERSON IMPACTOR, PROCEDURE I:**

Figure 2.



**20.2.14.304 TEMPERATURE CORRECTION FOR AERODYNAMIC SIZE OF PARTICLES CAPTURED IN THE ANDERSON IMPACTOR, PROCEDURE I:**

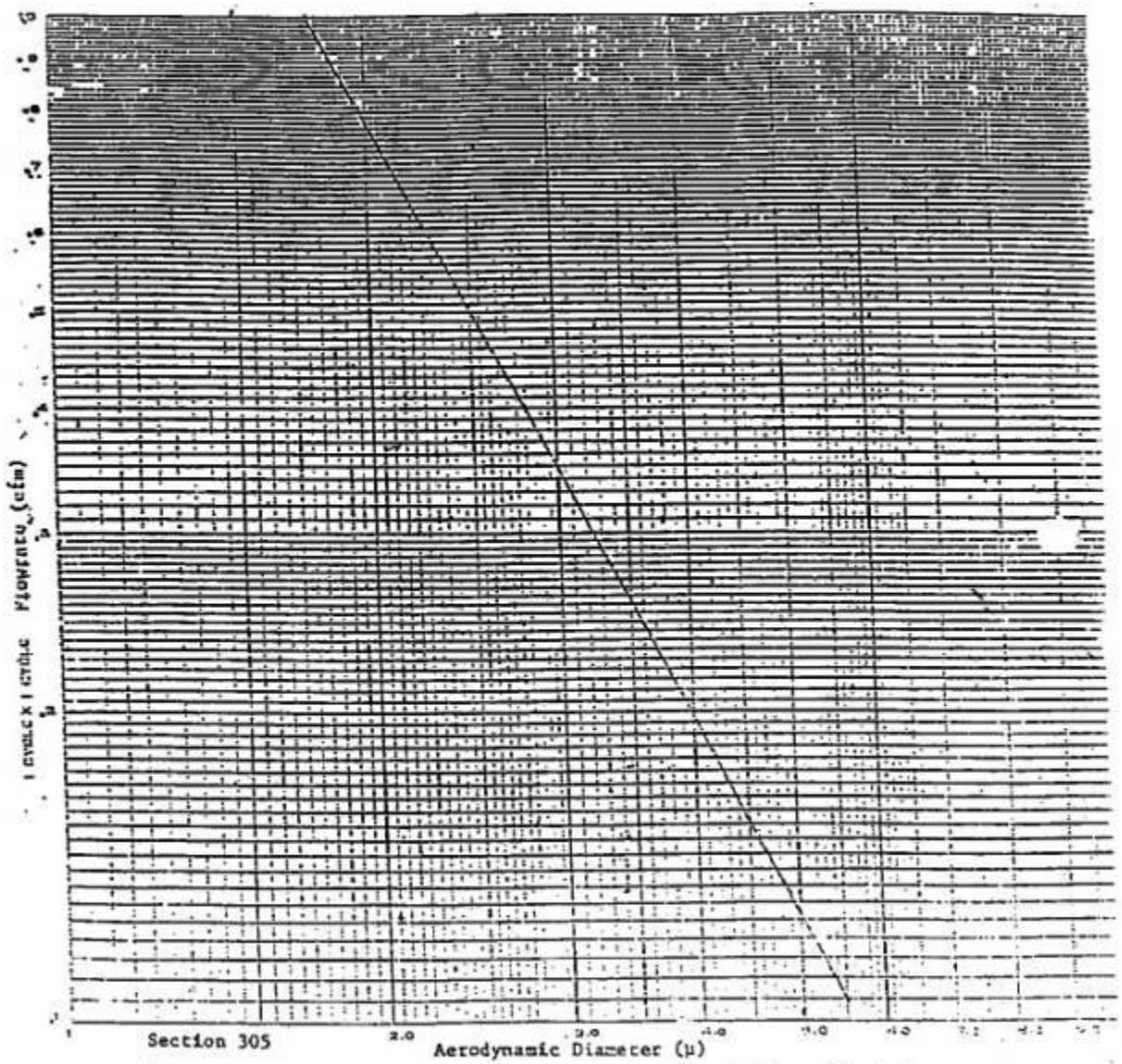
Figure 3.



[11/30/95; 20.2.14.304 NMAC - Rn, 20 NMAC 2.14.304 10/31/02]

**20.2.14.305 AERODYNAMIC DIAMETER VS. FLOWRATE THROUGH PLATE 44 OF THE ANDERSON IMPACTOR (50% IMPACTION EFFICIENCY), PROCEDURE I:**

Figure 4.



[11/30/95; 20.2.14.305 NMAC - Rn, 20 NMAC 2.14.305 10/31/02]

**20.2.14.306-20.2.14.399 [RESERVED]**

**20.2.14.400 PROCEDURE II, INTRODUCTION:**

A method is specified for use in sampling the emissions from stationary coal burning equipment for particulate matter of less than two microns (2μ) equivalent aerodynamic diameter. This procedure shall be used for testing emissions from coal burning equipment in the State of New Mexico for compliance with 20.2.14 NMAC (Particulate Emissions from Coal Burning Equipment), as specified within that regulation. It is generally intended that sampling for fine particulates, as described below, be carried out

only on those stacks (or ducts) which have already been demonstrated to be in compliance with the sections of the regulation for total particulate emissions.

[11/30/95; 20.2.14.400 NMAC - Rn, 20 NMAC 2.14.400 10/31/02]

#### **20.2.14.401 PROCEDURE II, METHOD:**

**A.** Principle: Particulate matter is withdrawn at an approximately isokinetic rate from the source. The particles are then separated by equivalent aerodynamic diameter by an in-stack size separating device to determine the percentage by mass of particles less than 2 microns equivalent aerodynamic diameter. This percentage is then applied to the total mass loading in pounds per million British Thermal Units as determined by US EPA Method 5, contained in 40 CFR, Part 60, Appendix A, in order to determine emissions of particulates of less than two micron equivalent aerodynamic diameter in pounds per million British Thermal Units.

#### **B.** Apparatus:

##### **(1)** Sampling Train:

**(a)** The sampling train for total mass loading is described by the Environmental Protection Agency in 40 CFR, Part 60, Appendix A, Method 5 (hereinafter referred as US EPA Method 5). The percentage by mass of particles less than two microns equivalent aerodynamic diameter shall be as follows.

**(b)** The recommended sampling train is shown in Figure 1 (20.2.14.402 NMAC). It is based on the sampling train described in US EPA Method 5, Section 2.1, with the addition of an Andersen Mark III in-stack sampler. The purpose of the in-stack particle collector is to collect the particles and segregate them by aerodynamic size; to do this, a certain gas flowrate is required through this device as specified in paragraph (4) of subsection B of 20.2.14.401 NMAC.

##### **(2)** Nozzle: Stainless steel (type 304 or 316).

**(3)** Probe: Pyrex glass, insulated and heated uniformly to a temperature sufficient to prevent condensation from occurring at any point in the tube. For lengths greater than about 8 feet, a metal tube may be used. Incoloy 825 is preferred, but types 304 or 316 stainless steel are acceptable. Long probes shall be reinforced or supported to prevent excessive droop or gas stream whip. For sampling stacks carrying electrically charged particles (as for installations using electrostatic precipitators), the probe shall be grounded to prevent electrical shock to personnel and the inner shell of the probe shall be electrically conductive and shall be grounded to prevent size discriminative trapping of particles within the probe.

**(4)** Particulate Separator: The particle collector shall be heated so that the temperature of the collection plates and back up filter is above the dew point of the stack gases.

**(5)** Particle Collector: The particle collector shall be a cascade impactor, such as the Andersen Mark III Stack Sampler (Mark III sampler) manufactured by 2000 Inc., Atlanta, Georgia or other similar cascade impactor approved by the Department. The Mark III Sampler shall use a complete set of collector plates consisting of the following: Ten plates numbered 0, 1, 2, 3, 4, 5, 6, 7, 8, and F, eleven spacers, eight crossbars, eight glass fiber collection discs, one glass fiber filter, and one plate holder. Collector plates are installed as follows; 0, 1, 2, 3, 4, 5, 6, 7, 8, F. The complete arrangement is shown in Figure 2 (20.2.14.403 NMAC). The gas flowrate through the Mark III Sampler must be controlled to maintain a particle impaction efficiency of 50% on plate 4 for particles of 2 microns aerodynamic diameter. The procedure for doing this is described in paragraphs (4) and (5) of subsection D of 20.2.14.401 NMAC.

**(6)** Metering System: Vacuum gage, leak-free pumps, thermometers capable of measuring to within 3 degrees Fahrenheit., dry test meter with 2 percent accuracy, and related equipment, as required to maintain an approximately isokinetic sampling rate through the probe and specified flowrate through the Mark III Sampler, and to determine sample volume.

**(7)** Other Sampling Train Equipment: Pitot tube (type S, or equivalent), impingers/condensers, and barometer shall be as specified in US EPA method 5, Section 2.1. Note that an equivalent condenser may be used in place of the impinger train.

**(8)** Sample Recovery Accessories: As specified in US EPA Method 5, Section 2.2.

**(9)** Analytical Accessories: As specified in US EPA Method 5, Section 2.3.

#### **C. Reagents:**

**(1)** Sampling: Sampling for total particulate mass loading shall be in accordance with US EPA Method 5. Procedures for determining the percent by mass of particles less than two microns equivalent aerodynamic diameter shall be as follows.

**(2)** Filters: Glass fiber type, having high efficiency for collecting small particles (99% or higher efficiency for particles 0.3 microns or larger in diameter). Cambridge Media CM-114 or Gelman Type A filters are acceptable types.

**(3)** Other Sampling Reagents: As specified in US EPA Method 5, Section 3.1.

**(4)** Sample Recovery and Analytical Reagents: Acetone and water, as specified in US EPA Method 5, Sections 3.2 and 3.3.

#### **D. Sampling Procedure:**

**(1) Procedures:** Sampling procedures for total particulate mass loading shall be in accordance with US EPA Method 5. Procedures for determining the percent by mass of particles less than two microns equivalent aerodynamic diameter shall be as follows.

**(2) Selection of Sampling Site and Sampling Points:** The sampling site is preferably located in a vertical duct or stack, at least eight stack diameters downstream and two diameters upstream of a major disturbance (bend, expansion, contraction or visible flame). In large ducts (of 20 feet or greater diameter), a distance five diameters downstream of a disturbance will be considered adequate, providing the velocity traverse does not show the flow to be highly irregular. Under these recommended conditions, a single sampling point is considered to be adequate (See Industrial Gas Cleaning Institute, Test Procedures for Gas Scrubbers, Publication No. 1, p.6): This point shall be located between 0.2 and 0.5 of the diameter from the outside toward the center of the stack, preferably at a point whose velocity approximates the average velocity of the flue gases. For conditions which do not meet the criteria given above, additional sampling points must be considered and will be determined as agreed upon between the coal burning equipment operator and the Department.

**(3) Determination of Stack, Pressure, Temperatures, Moisture and Distribution of Velocity Heads:** Prior to actual sampling for particulates, a preliminary survey of stack pressure, temperatures, moisture content, and velocity distribution shall be made to assess overall sampling conditions and establish isokinetic sampling velocities.

**(a) Stack Pressure and Temperature:** Stack pressure shall be obtained at one or more points at the sampling station using a water-filled U-tube manometer to sense pressure from a hole in the side of the stack or duct to within 0.1 in water. Temperatures shall be determined from a thermocouple (or equivalent device) attached to the pitot tube, capable of measuring to within 1.5% of the minimum absolute stack temperature.

**(b) Distribution of Velocity Heads:** The US EPA Method 1 (found in 40 CFR, Part 60, Appendix A) shall be used as a general guide in determining the number and distribution of pitot tube traverse points. US EPA Method 2, (found in 40 CFR, Part 60, Appendix A) shall be used as a guide in selection of pitot tube equipment, procedure for making and recording measurements, and calibration of the instrument. In calibration, the procedure shall be modified in that the pitot tube to be used in testing shall be mounted on the probe and the probe shall have attached the Mark III Sampler and nozzle so that the arrangement is similar to that used in testing. A complete velocity traverse shall be done each day of testing.

**(c) Moisture Determination:** Moisture content of the gas stream is determined by extracting a measured quantity of gas from the stack, condensing the moisture in an external condenser (or in the impingers), and measuring the volume of condensate. A

single, preliminary measurement shall be made using either the stack sampling train or a simplified apparatus consisting mainly of a filter, condenser, pump, and dry gas meter. If liquid drops are present in the gas stream proceed as follows: Assume the stream to be saturated, determine the average stack gas temperature from the data obtained in subparagraph (a) of paragraph (3) of subsection D of 20.2.14.401 NMAC above, and use a psychrometric chart with appropriate altitude correction along with steam tables to calculate the approximate percentage of moisture. A further determination of moisture content is made as a part of the particulate sampling as described below.

**(4)** Preparation of Collection Train: Check to see that the probe, nozzle, etc., are clean and that there is sufficient ice to fill the ice bath, place 100 ml. of water in the first two impingers, leave the third impinger empty, and place approximately 200 g. of preweighed indicating silica gel in the fourth impinger. Complete the preparation by desiccating the filter, checking the train for leaks and adjusting the probe heater, generally as specified in the US EPA Method 5, Section 4.1.2. To establish near isokinetic sampling conditions at the start of testing, the desired flowrate through the particle separator is corrected to stack conditions and the desired sample nozzle size is calculated. To do this record the temperature of the in-stack Mark III Sampler. Find this temperature in the abscissa of the graph on Figure 3 (20.2.14.404 NMAC), go up to the curve and read the correction factor on the ordinate of the graph. Multiply the correction factor by two microns and obtain the temperature corrected aerodynamic diameter. Locate the corrected aerodynamic diameter on the abscissa of the graph on Figure 4 (20.2.14.405 NMAC) go up to the curve and read on the ordinate the flowrate needed to maintain an impaction efficiency of 50% on plate #4. Correct this flowrate to stack conditions by adjusting for the difference in particle separator temperature and stack temperature. Using the equation  $Q = VA$  where  $Q$  = volumetric flowrate through the separator adjusted to stack temperature (cfm),  $V$  = velocity of the stack gas at the point in the stack where the sampling is to take place (fpm) and  $A$  is area of the nozzle (sq. ft.) calculate the desired sampling nozzle diameter. Attach a nozzle to the probe that matches this calculated diameter within 1%. To establish at the start of testing the correct gas flow through the separator, using the dry gas meter, correct the desired flowrate through the separator to meter conditions by correcting for the difference in temperature between the separator and the dry gas meter and subtract out that portion of the gas volume which will be condensed in the impingers.

**(5)** Particulate Train Operation: To begin sampling, position the nozzle at the selected point in the stack with the nozzle tip pointing directly into the gas stream. Immediately after, start the pump and adjust the dry gas meter to the flowrate calculated in paragraph (4) of subsection D of 20.2.14.401 NMAC. Sample for at least 5 minutes and then record the temperature of the gas on the outlet end of the separator. If the temperature is different from that of the container surrounding the separator readjust the dry gas meter flowrate by repeating the steps described in paragraph (4) of subsection D of 20.2.14.401 NMAC using Figures 3 (20.2.14.404 NMAC) and 4 (20.2.14.405 NMAC) excluding the step used in calculating nozzle diameter. Continue the run until 30 standard cubic feet (70 degrees Fahrenheit, 29.92 inches Hg) have been drawn through the sampling train. For each run record the required data on a sheet such as the one

shown in Figure 5-2 of the US EPA Method 5 and include the temperature monitored at the outlet of the separator. Record the data after every 5 minutes of testing. At the end of the run, turn off the pump and record the final readings. Remove the probe and nozzle from the stack. Remove the filter and glass fiber collection discs from the separator and place each in a separate container. Collect in a container all particles brushed and washed from the nozzle, the impactor inlet cone and the zero stage plate. Repeat the sampling procedure until three runs have been obtained. Filter wash-solution and dry filter. Desiccate the filters and collection discs for at least 24 hours and weigh to the nearest 0.5 mg in a room where the relative humidity is less than 50%.

**E. Calibration:** Use methods and equipment for calibration of the particle separator, orifice meter, pitot tube, temperature sensors and dry test meter approved by the Department. Recalibrate after every third test or three months whichever comes first except for the particle separator which shall be recalibrated as agreed upon between the owner or operator of the coal burning equipment and the Department. Figures 3 (20.2.14.404 NMAC) and 4 (20.2.14.405 NMAC) shall reflect results of such calibration.

**F. Calculations:**

**(1) Total Particulate Emissions:** After completing the test series, average the dry gas meter temperatures and average orifice pressure drops, then correct the sample volumes measured to standard conditions and calculate the water vapor and moisture content. Using data gathered, using US EPA Method 5, calculate the concentration of total particulate matter in the stack gas in pounds per standard cubic foot on a dry basis by using equation 5-5 given in Section 6.6.2 of US EPA Method 5. Using the stack volumetric flowrate corrected to standard conditions on a dry basis calculate the emission rate in pounds per hour. Using the average heat input to the coal burning equipment during the time of testing, in millions of British Thermal Units per hour, calculate the emission rate in pounds per million British Thermal Units. Average the emission rate for the three runs to determine total particulate emissions.

**(2) Percent of Particles Less Than Two Microns:** The data obtained from the Mark III Sampling shall be used to determine the quantity of particulate matter larger than two microns Equivalent Aerodynamic Diameter and the quantity of particulate matter less than two microns Equivalent Aerodynamic Diameter. Particulate matter larger than two microns equivalent aerodynamic diameter shall be defined to be the particulate matter collected on the glass fiber collection discs from plates numbered 1, 2, 3, and 4 and the material brushed and washed from the nozzle, the impactor inlet cone and the zero stage plate. Particulate matter less than two microns equivalent aerodynamic diameter shall be defined to be the particulate material collected on the glass fiber collection discs from plates numbered 5, 6, 7 and 8 and the particulate matter collected on the glass fiber filter. The sum of the mass' of the particulates which are greater than two microns Equivalent Aerodynamic Diameter and the particles less than two microns equivalent aerodynamic diameter is the total particulate collected for the purposes of determining percent less than two microns. After determining the quantity of particulate collected, determine the percent by mass of the total particulate

collected which is compassed of particles of less than two microns equivalent aerodynamic diameter.

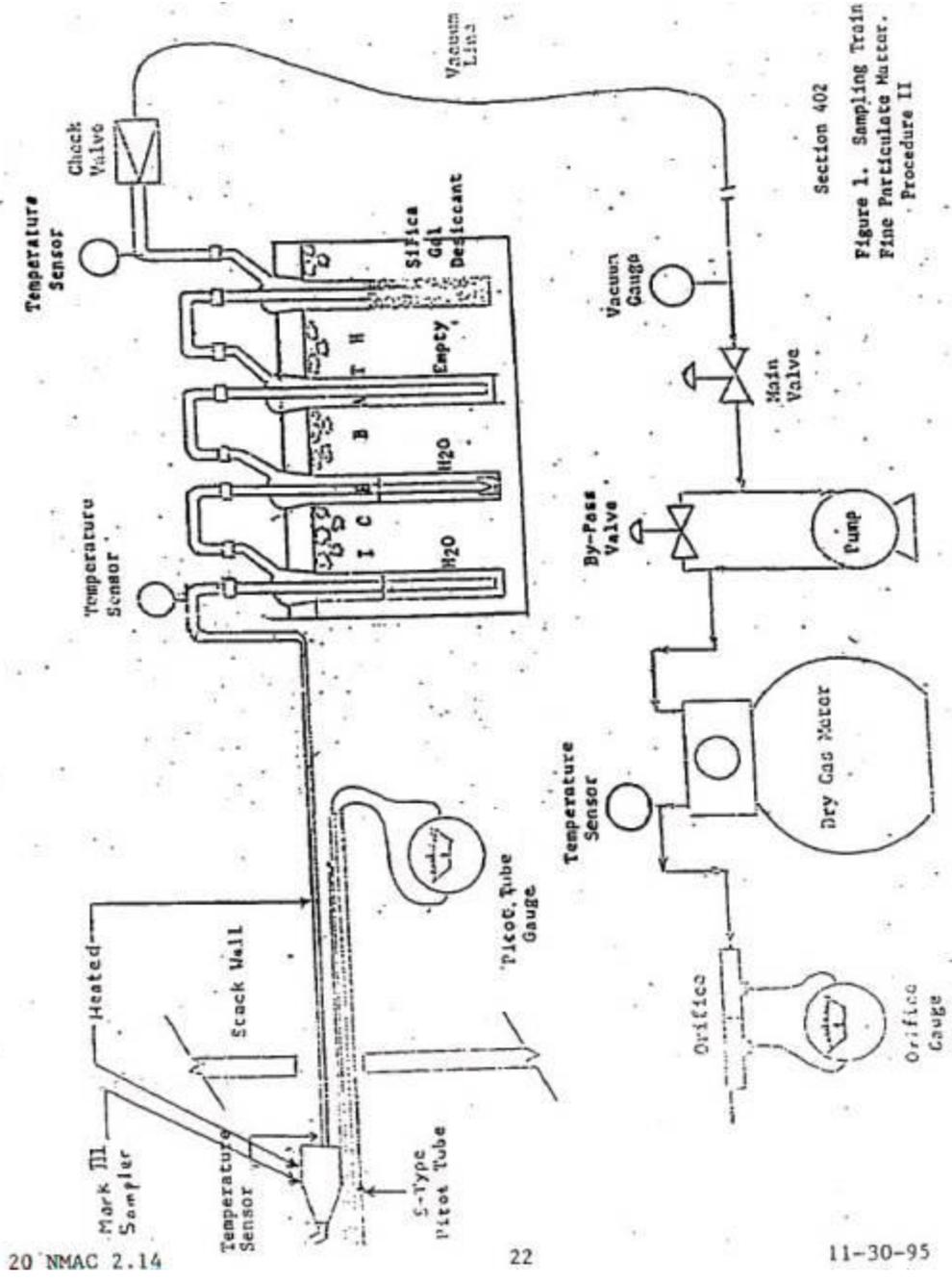
**(3)** Loading of Particles Less Than Two Microns: The percentage by mass of particles as determined from the Mark III sampling results as described in the previous paragraph is applied to the total mass loading in pounds per million British Thermal Units as determined by US EPA Method 5. The resulting loading in pounds per million British Thermal Units of particulates less than two microns equivalent aerodynamic diameter shall be used to determine compliance with the particulate emission limitations contained in subsection B of 20.2.14.202 NMAC and subsection B of 20.2.14.203 NMAC.

**G.** Acceptable results: Validity of each run shall be determined by calculating the actual flow through the particle separator from the recorded data. If the flowrate is within 10% of the calculated flow from Figure 4 (20.2.14.405 NMAC), the run will be considered valid. Deviations from isokinetic sampling rate by more than 10% shall invalidate the test.

[11/30/95; 20.2.14.401 NMAC - Rn, 20 NMAC 2.14.401 10/31/02]

#### **20.2.14.402 SAMPLING TRAIN FOR FINE PARTICULATE MATTER, PROCEDURE II:**

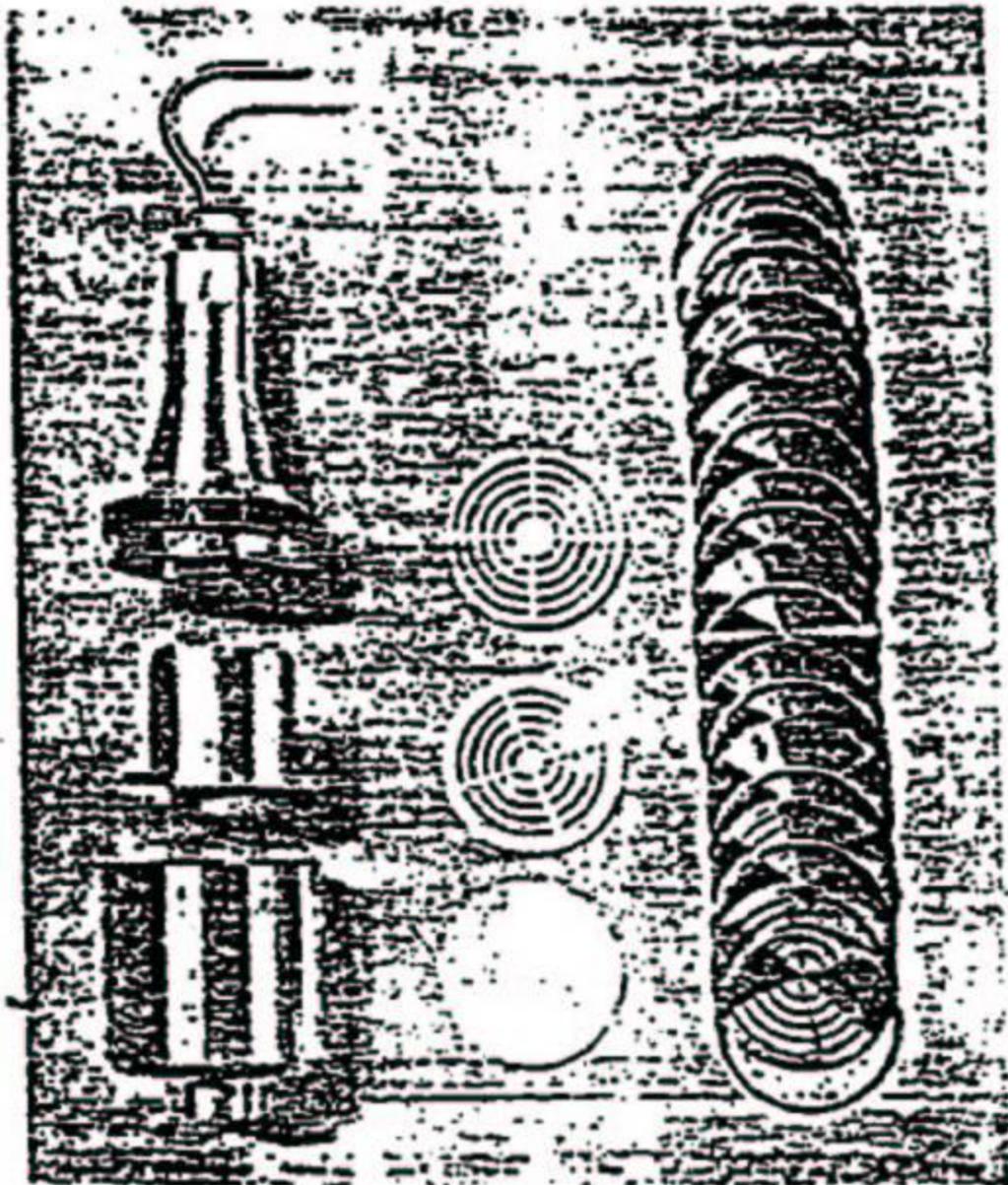
Figure 1.



[11/30/95; 20.2.14.402 NMAC - Rn, 20 NMAC 2.14.402 10/31/02]

**20.2.14.403 ARRANGEMENT OF IMPACTION PLATES AND FILTER IN THE ANDERSON IMPACTOR, PROCEDURE II:**

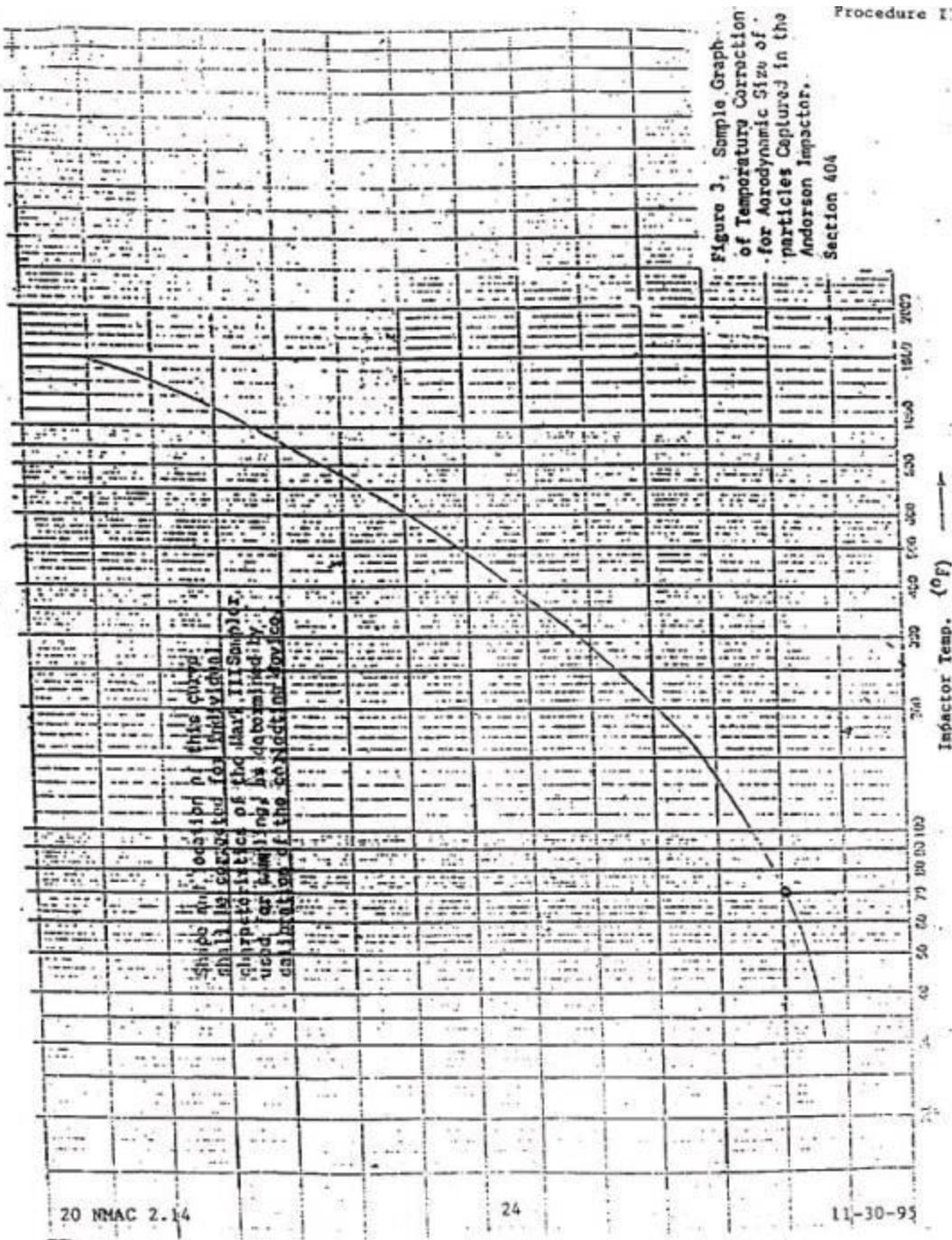
Figure 2.



[11/30/95; 20.2.14.403 NMAC - Rn, 20 NMAC 2.14.403 10/31/02]

**20.2.14.404 SAMPLE GRAPH OF TEMPERATURE CORRECTION FOR  
AERODYNAMIC SIZE OF PARTICLES CAPTURED IN THE ANDERSON IMPACTOR,  
PROCEDURE II:**

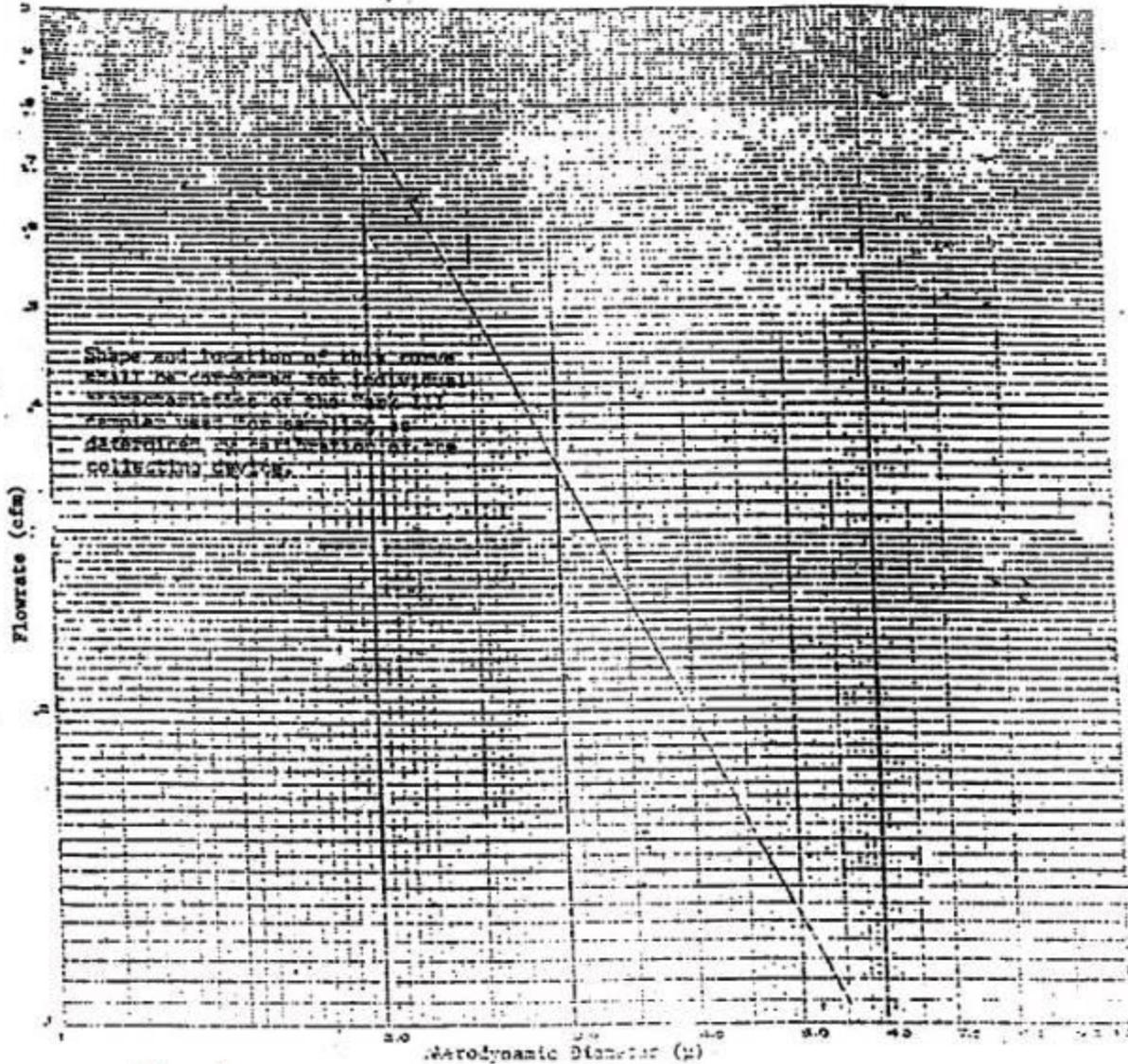
Figure 3.



[11/30/95; 20.2.14.404 NMAC - Rn, 20 NMAC 2.14.404 10/31/02]

**20.2.14.405 SAMPLE GRAPH OF AERODYNAMIC DIAMETER VS. FLOWRATE THROUGH PLATE #4 OF THE ANDERSON IMPACTOR (50% IMPACTION EFFICIENCY), PROCEDURE II:**

Figure 4.



[11/30/95; 20.2.14.405 NMAC - Rn, 20 NMAC 2.14.405 10/31/02]

## PART 15: PUMICE, MICA AND PERLITE PROCESSING EQUIPMENT

### 20.2.15.1 ISSUING AGENCY:

Environmental Improvement Board.

[11/30/95; 20.2.15.1 NMAC - Rn, 20 NMAC 2.15.100 10/31/02]

### 20.2.15.2 SCOPE:

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.15.2 NMAC - Rn, 20 NMAC 2.15.101 10/31/02]

**20.2.15.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.15.3 NMAC - Rn, 20 NMAC 2.15.102 10/31/02]

**20.2.15.4 DURATION:**

Permanent.

[11/30/95; 20.2.15.4 NMAC - Rn, 20 NMAC 2.15.103 10/31/02]

**20.2.15.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.15.5 NMAC - Rn, 20 NMAC 2.15.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.15.6 OBJECTIVE:**

The objective of this Part is to establish particulate matter emission standards for pumice, mica and perlite process equipment.

[11/30/95; 20.2.15.6 NMAC - Rn, 20 NMAC 2.15.105 10/31/02]

**20.2.15.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**B. "Process weight"** means the total of all materials including solid fuel but not including liquid or gaseous fuel or combustion air introduced into any specific process.

**C. "Process weight per hour"** means a quantity derived by dividing the total process weight by the number of hours in the complete operation, excluding any time during which the equipment is idle.

[11/30/95; 20.2.15.7 NMAC - Rn, 20 NMAC 2.15.107 10/31/02]

**20.2.15.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 505 -- Pumice, Mica and Perlite Process Equipment last filed September 13, 1971.

**A.** All references to AQCR 505 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 505 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 505.

[11/30/95; 20.2.15.8 NMAC - Rn, 20 NMAC 2.15.106 10/31/02]

**20.2.15.9-20.2.15.107 [RESERVED]**

**20.2.15.108 EMISSION LIMITATIONS:**

**A.** The owner or operator of pumice, mica or perlite process equipment shall not permit, cause, suffer or allow particulate matter emissions to the atmosphere from a stack or stacks in excess of the maximum amounts specified in the following table:

Process Rate Pounds per Hour	Maximum Stack Emission Rate Pounds per Hour
10,000	10
20,000	15
30,000	22
40,000	28
50,000	31
100,000	33
200,000	37
300,000	40
400,000	43
500,000	47
600,000 & above	50

**B.** When the process rate is between any two consecutive process rates in the table, the maximum stack emission rate is determined by interpolation. Where an operation has more than one stack, the maximum stack emission rate applies to the total of the emissions from all stacks.

[11/30/95; 20.2.15.108 NMAC - Rn, 20 NMAC 2.15.108 10/31/02]

#### **20.2.15.109 STACK CONFINEMENT OF EMISSIONS:**

Within technical feasibility, all particulate matter emissions to the atmosphere resulting directly from the operation of pumice, mica or perlite process equipment shall be limited to the stack outlet or outlets. Particulate matter emissions not governed by this section are governed by 20.2.15.110 NMAC.

[11/30/95; 20.2.15.109 NMAC - Rn, 20 NMAC 2.15.109 10/31/02]

#### **20.2.15.110 OTHER PARTICULATE CONTROL:**

The owner or operator of pumice, mica or perlite process equipment shall not permit, cause, suffer or allow any material to be handled, transported, stored or disposed of or a building or road to be used, constructed, altered or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne.

[11/30/95; 20.2.15.110 NMAC - Rn, 20 NMAC 2.15.110 10/31/02]

### **PART 16: NONFERROUS SMELTERS (NEW AND EXISTING) - PARTICULATE MATTER**

#### **20.2.16.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.16.1 NMAC - Rn, 20 NMAC 2.16.100 10/31/02]

#### **20.2.16.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.16.2 NMAC - Rn, 20 NMAC 2.16.101 10/31/02]

#### **20.2.16.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.16.3 NMAC - Rn, 20 NMAC 2.16.102 10/31/02]

#### **20.2.16.4 DURATION:**

Permanent.

[11/30/95; 20.2.16.4 NMAC - Rn, 20 NMAC 2.16.103 10/31/02]

**20.2.16.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.16.5 NMAC - Rn, 20 NMAC 2.16.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.16.6 OBJECTIVE:**

The objective of this Part is to establish particulate matter emission standards for nonferrous smelters.

[11/30/95; 20.2.16.6 NMAC - Rn, 20 NMAC 2.16.105 10/31/02]

**20.2.16.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Construction"** means fabrication, erection or installation of an affected facility.

**B. "Commenced"** means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time a continuous program of construction.

**C. "Existing nonferrous smelter"** means nonferrous smelter that was fully constructed and operational prior to September 1, 1971.

**D. "Modification"** means a physical change or change in the manner of operation which increases the amount of any air contaminant emitted by the nonferrous smelter or which results in the emission of any air contaminant not previously emitted.

**E. "New nonferrous smelter"** means nonferrous smelter the construction or modification of which was commenced after September 1, 1971.

**F. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**G. "Standard conditions"** means temperature of 68 degrees Fahrenheit and pressure of 29.92 inches of mercury.

[11/30/95; 20.2.16.7 NMAC - Rn, 20 NMAC 2.16.107 10/31/02]

**20.2.16.8 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 506 -- Nonferrous Smelters -- Particulate Matter last filed November 21, 1978.

**A.** All references to AQCR 506 in any other rule shall be construed as a reference to this Part

**B.** The amendment and supersession of AQCR 506 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 506.

[11/30/95; 20.2.16.8 NMAC - Rn, 20 NMAC 2.16.106 10/31/02]

#### **20.2.16.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.16.9 NMAC - Rn, 20 NMAC 2.16.108 10/31/02]

#### **20.2.16.10-20.2.16.108 [RESERVED]**

#### **20.2.16.109 ALLOWABLE EMISSION RATES:**

**A.** The owner or operator of a new nonferrous smelter shall not permit, cause, suffer or allow particulate matter emissions to the atmosphere in excess of 0.03 grains per dry cubic foot of discharge gas measured at standard conditions.

**B.** The owner or operator of an existing nonferrous smelter shall not permit, cause, suffer or allow particulate matter emissions to the atmosphere from:

**(1)** The stack or stacks connected directly to the reverberatory furnace in excess of 1100 pounds per hour;

**(2)** The stack or stacks serving the acid plant in excess of 0.05 grains per dry cubic foot of discharge gas measured at standard conditions;

**(3)** The stack or stacks serving the reverberatory feed dryer in excess of 0.05 grains per dry cubic foot of discharge gas measured at standard conditions;

**(4)** The stack or stacks serving the fire refining furnace in excess of:

**(a)** 30 pounds per hour during the charging operation;

**(b)** 50 pounds per hour during the blowing operation;

- (c) 200 pounds per hour during the poling operation; and
- (d) 550 pounds per hour during the fluxing operation.

**C.** The stack or stacks used solely for venting captured fugitive emissions from the matte tapping, matte ladle, and slag skimming areas on the reverberatory furnace of an existing nonferrous smelter do not have a particulate limitation.

[11/30/95; 20.2.16.109 NMAC - Rn, 20 NMAC 2.16.109 10/31/02]

#### **20.2.16.110 TEST METHODS:**

Compliance with subsections A and B of 20.2.16.109 NMAC shall be determined by a method consistent with the method set forth by the US EPA at 40 CFR, Part 60, Appendix A, Methods 1 through 5, except that Method 5 is modified as follows: The distilled water specified in the first impinger of Method 5 is replaced with isopropyl alcohol solution as specified within Method 8 of 40 CFR, Part 60, Appendix A. The temperature of the probe and oven containing the cyclone and filter should be maintained above the dew point of sulfuric acid mist in order to prevent condensation of acid mist within the probe or on the filter. After sample collection, the isopropyl alcohol solution within the first impinger is analyzed for sulfur trioxide and sulfuric acid mist as described in Method 8. Solid particulate matter is collected within the nozzle, probe, cyclone and filter while liquid particulate matter is collected within the isopropyl alcohol impinger. Compliance with subsections A and B of 20.2.16.109 NMAC shall be determined by comparison of the sum of the solid and liquid particulate matter to the applicable emission limitation. Upon request of the Department, the owner or operator of nonferrous smelters subject to this Part shall perform stack testing according to the method stated above and report the results of such tests in the format and time period specified by the Department. The owner or operator shall inform the Department of the dates and times of such testing so that the Department may have the opportunity to have an observer present during testing.

[11/30/95; 20.2.16.110 NMAC - Rn, 20 NMAC 2.16.110 10/31/02]

### **PART 17: NONFERROUS SMELTERS (EXISTING) - PARTICULATE MATTER**

#### **20.2.17.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.17.1 NMAC - Rn, 20 NMAC 2.17.100 10/31/02]

#### **20.2.17.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.17.2 NMAC - Rn, 20 NMAC 2.17.101 10/31/02]

**20.2.17.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4)and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5 (A), (B) and (C).

[11/30/95; 20.2.17.3 NMAC - Rn, 20 NMAC 2.17.102 10/31/02]

**20.2.17.4 DURATION:**

Permanent.

[11/30/95; 20.2.17.4 NMAC - Rn, 20 NMAC 2.17.103 10/31/02]

**20.2.17.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.17.5 NMAC - Rn, 20 NMAC 2.17.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.17.6 OBJECTIVE:**

The objective of this Part is to establish particulate matter emission standards for existing nonferrous smelters.

[11/30/95; 20.2.17.6 NMAC - Rn, 20 NMAC 2.17.105 10/31/02]

**20.2.17.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Existing nonferrous smelter"** means a nonferrous smelter which was constructed and fully operational prior to September 1, 1971.

**B. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.;

**C. "Standard conditions"** means temperature of 68 degrees Fahrenheit and pressure of 29.92 inches of mercury.

[11/30/95; 20.2.17.7 NMAC - Rn, 20 NMAC 2.17.107 10/31/02]

#### **20.2.17.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 506.1 -- Existing Nonferrous Smelters -- Particulate Matter -- Additional Requirements last filed March 16, 1979.

**A.** All references to AQCR 506.1 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 506.1 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 506.1.

[11/30/95; 20.2.17.8 NMAC - Rn, 20 NMAC 2.17.106 10/31/02]

#### **20.2.17.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.17.9 NMAC - Rn, 20 NMAC 2.17.108 10/31/02]

#### **20.2.17.10-20.2.17.108 [RESERVED]**

#### **20.2.17.109 EMISSION LIMITATION:**

The owner or operator of an existing nonferrous smelter shall not permit, cause, suffer or allow particulate matter emissions to the atmosphere in excess of 0.05 grains per dry cubic foot of discharge gas, adjusted to standard conditions, from the stack or stacks serving the reverberatory furnace or any smelting furnace which replaces the reverberatory furnace.

[11/30/95; 20.2.17.109 NMAC - Rn, 20 NMAC 2.17.109 10/31/02]

#### **20.2.17.110 COMPLIANCE DETERMINATION:**

Compliance with 20.2.17.109 NMAC shall be determined by a method consistent with the method set forth by the US EPA at 40 CFR, Part 60, Appendix A, Methods 1 through 5, except that Method 5 is modified as follows: The distilled water specified in the first impinger of Method 5 is replaced with isopropyl alcohol solution as specified within Method 8 of 40 CFR, Part 60, Appendix A. The temperature of the probe and oven containing the cyclone and filter should be maintained above the dew point of sulfuric acid mist in order to prevent condensation of acid mist within the probe or on the filter. After sample collection, the isopropyl alcohol solution within the first impinger is analyzed for sulfur trioxide and sulfuric acid mist as described in Method 8. Solid

particulate matter is collected within the nozzle, isopropyl alcohol impinger. Compliance with 20.2.17.109 NMAC shall be determined by comparison of the sum of the solid and liquid particulate matter to the applicable emission limitation.

[11/30/95; 20.2.17.110 NMAC - Rn, 20 NMAC 2.17.110 10/31/02]

#### **20.2.17.111 STACK TESTING:**

Upon request of the Department, the owner or operator of nonferrous smelters subject to this Part shall perform stack testing according to the method stated above and report the results of such tests in the format and time period specified by the Department. The owner or operator shall inform the Department of the dates and times of such testing so that the Department may have the opportunity to have an observer present during testing.

[11/30/95; 20.2.17.111 NMAC - Rn, 20 NMAC 2.17.111 10/31/02]

### **PART 18: OIL BURNING EQUIPMENT - PARTICULATE MATTER**

#### **20.2.18.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.18.1 NMAC - Rn, 20 NMAC 2.18.100 10/31/02]

#### **20.2.18.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.18.2 NMAC - Rn, 20 NMAC 2.18.101 10/31/02]

#### **20.2.18.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5 (A), (B) and (C).

[11/30/95; 20.2.18.3 NMAC - Rn, 20 NMAC 2.18.102 10/31/02]

#### **20.2.18.4 DURATION:**

Permanent.

[11/30/95; 20.2.18.4 NMAC - Rn, 20 NMAC 2.18.103 10/31/02]

#### **20.2.18.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.18.5 NMAC - Rn, 20 NMAC 2.18.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

#### **20.2.18.6 OBJECTIVE:**

The objective of this Part is to establish particulate matter emission standards for oil burning equipment.

[11/30/95; 20.2.18.6 NMAC - Rn, 20 NMAC 2.18.105 10/31/02]

#### **20.2.18.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

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

**B. "Construction"** means fabrication, erection or installation of an affected facility.

**C. "Existing oil-burning equipment"** means oil burning equipment that was fully constructed and operational or under construction prior to August 17, 1971. Existing oil burning equipment also includes any gas burning equipment that is converted to burn oil for energy considerations if the gas burning equipment was fully constructed and operational on January 21, 1979.

**D. "New oil burning equipment"** means oil burning equipment the construction of which is commenced after August 17, 1971.

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

**F. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**G. "Visible emissions"** means particulate or gaseous matter which can be detected by the human eye.

[11/30/95; 20.2.18.7 NMAC - Rn, 20 NMAC 2.18.107 10/31/02]

#### **20.2.18.8 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 507 -- Oil Burning Equipment -- Particulate Matter last filed December 21, 1978.

**A.** All references to AQCR 507 in any other rule shall be construed as a reference to this Part.;

**B.** The amendment and supersession of AQCR 507 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 507.

[11/30/95; 20.2.18.8 NMAC - Rn, 20 NMAC 2.18.106 10/31/02]

#### **20.2.18.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.18.9 NMAC - Rn, 20 NMAC 2.18.108 10/31/02]

#### **20.2.18.10-20.2.18.108 [RESERVED]**

#### **20.2.18.109 EMISSION LIMITATIONS -- NEW EQUIPMENT:**

The owner or operator of new oil burning equipment having a rated heat capacity greater than 250 million British Thermal Units per hour (higher heating value) per unit shall not permit, cause, suffer or allow particulate matter emissions to the atmosphere in excess of 0.03 pounds per million British Thermal Units of heat input (higher heating value) or visible emissions in excess of an opacity of twenty percent (20%) except as provided in 20.2.18.111 NMAC

[11/30/95; 20.2.18.109 NMAC - Rn, 20 NMAC 2.18.109 10/31/02]

#### **20.2.18.110 EMISSION LIMITATIONS -- EXISTING EQUIPMENT:**

The owner or operator of existing oil burning equipment having a rated heat capacity greater than 250 million British Thermal Units per hour (higher heating value) per unit shall not permit, cause, suffer or allow particulate matter emissions to the atmosphere:

**A.** in excess of 0.05 pounds per million British Thermal Units of heat input (higher heating value) from equipment used to generate steam or electrical power for other than on-site use;

**B.** in excess of 0.10 pounds per million British Thermal Units of heat input (higher heating value) from equipment used to generate steam or electrical power for on-site use only and constructed on or after January 1, 1950; and

C. in excess of 0.20 pounds per million British Thermal Units of heat input (higher heating value) from equipment used to generate steam or electrical power for on-site use only and constructed before January 1, 1950.

[11/30/95; 20.2.18.110 NMAC - Rn, 20 NMAC 2.18.110 10/31/02]

**20.2.18.111 VISIBLE EMISSIONS EXCEPTIONS:**

Visible emissions resulting from light off of new flames, blowing tubes and flues, or changing fuels while operating shall not be deemed violations provided the visible emissions do not exceed twenty-seven percent (27%) opacity for a period or periods aggregating not more than 6 minutes in any 60 minute period for units governed by 20.2.18.109 NMAC.

[11/30/95; 20.2.18.111 NMAC - Rn, 20 NMAC 2.18.111 10/31/02]

**20.2.18.112 EMISSIONS DETERMINATIONS:**

Particulate matter emissions governed by 20.2.18.109 NMAC and 20.2.18.110 NMAC shall be determined by a method consistent with the method set forth by the US EPA at 40 CFR, Part 60, Appendix A, Methods 1 through 5 or any other equivalent method receiving prior approval from the Department. Upon request of the Department, the owner or operator of oil burning equipment regulated by 20.2.18.109 NMAC and 20.2.18.110 NMAC shall perform stack testing according to the method stated above and report the results of such tests in the format and time period specified by the Department. The owner or operator shall inform the Department of the dates and times of such testing so that the Department may have an opportunity to have an observer present during testing.

[11/30/95; 20.2.18.112 NMAC - Rn, 20 NMAC 2.18.112 10/31/02]

**20.2.18.113 OPACITY DETERMINATIONS:**

Opacity of emissions from oil burning equipment subject to this Part shall be determined consistent with the method set forth by the US EPA at 40 CFR, Part 60, Appendix A, Method 9 or any other equivalent method receiving prior approval from the Department. The time period for taking opacity readings shall be for a minimum of six minutes.

[11/30/95; 20.2.18.113 NMAC - Rn, 20 NMAC 2.18.113 10/31/02]

**PART 19: POTASH, SALT OR SODIUM SULFATE PROCESSING EQUIPMENT - PARTICULATE MATTER**

**20.2.19.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.19.1 NMAC - Rn, 20 NMAC 2.19.100 10/31/02]

**20.2.19.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.19.2 NMAC - Rn, 20 NMAC 2.19.101 10/31/02]

**20.2.19.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7) and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-4(A), (B), and (C).

[11/30/95; 20.2.19.3 NMAC - Rn, 20 NMAC 2.19.102 10/31/02]

**20.2.19.4 DURATION:**

Permanent.

[11/30/95; 20.2.19.4 NMAC - Rn, 20 NMAC 2.19.103 10/31/02]

**20.2.19.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.19.5 NMAC - Rn, 20 NMAC 2.19.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.19.6 OBJECTIVE:**

The objective of this Part is to establish particulate matter emission standards for potash, salt or sodium sulfate processing equipment.

[11/30/95; 20.2.19.6 NMAC - Rn, 20 NMAC 2.19.105 10/31/02]

**20.2.19.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Best engineering practices"** means, with respect to control of fugitive particulate matter emissions, the installation and use of hoods, enclosures, ducts, covers, sprays, or other equipment or measures on potash, salt or sodium sulfate processing equipment as necessary to prevent particulate matter from becoming airborne.

**B. "Compactor operations"** means compaction of fine muriate of potash materials and recrushing, screening or other size classification, and drying of the compacted materials.

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

**D. "Existing potash, salt or sodium sulfate processing equipment"** means process equipment in which the fabrication, erection or installation was commenced prior to January 1, 1979, and includes all crushers, grinders, screens, and other size-classification units, compactors, granulators, evaporators, dryers, conveyors, storage piles (including ore, product or other storage piles), facilities for bagging and loading, and any other process units with particulate matter emissions to the atmosphere.

**E. "Fugitive particulate matter emissions"** means particulate matter emissions which escape from potash, salt or sodium sulfate processing equipment due to leakage, materials handling, transfer and storage or other causes without being ducted through a stack.

**F. "Good engineering practice"** means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles. Such height shall not exceed:

(1) a thirty meters for stacks not influenced by the source itself, nearby structures or terrain; or

(2) for stacks that are influenced by nearby structures or terrain, the height determined by use of the equation  $H_g = H + 1.5 L$ , where:  $H_g$  = good engineering practice stack heights;  $H$  = the height of the source or nearby structure; and  $L$  = the lesser dimension (height or width) of the source or nearby structure.

**G. "Modification"** means a physical change or change in the manner of operation which increases the amount of any air contaminant emitted by the potash, salt or sodium sulfate processing equipment or which results in the emission of any air contaminant not previously emitted.

**H. "New potash, salt or sodium sulfate processing equipment"** means process equipment or process unit thereof, the fabrication, erection, installation or modification of which is commenced on or after January 1, 1979, and includes all crushers, grinders, screens and other size-classification units, compactors, granulators, evaporators, dryers, conveyors, storage piles (including ore, product or other storage piles) facilities for bagging and loading, and any other process units with particulate matter emissions

to the atmosphere. New potash, salt or sodium sulfate processing equipment does not include process equipment installed solely to replace equivalent equipment installed prior to January 1, 1979, if the replacement equipment will not result in a significant increase in capacity.

**I. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**J. "Potash"** means muriate potash (the chemical compound potassium chloride, KCl), sulfate of potash (the chemical compound sulfate  $K_2SO_4$ ), and langbeinite (the chemical compound potassium magnesium sulfate,  $K_2SO_4 \cdot 2MgSO_4$ ), or any other potassium, magnesium or mixed-potassium salts, and includes ores, intermediates, products and reaction products of such compounds.

**K. "Salt"** means the chemical compound sodium chloride (NaCl) and includes ores, intermediates, products and reaction products of this compound.

**L. "Sodium sulfate"** means the chemical compound sodium sulfate ( $Na_2SO_4$ ) and includes ores, intermediates, products and reaction products of this compound.

**M. "Standard conditions"** means temperature of 68 degrees Fahrenheit and pressure of 29.92 inches of mercury.

**N. "Submerged combustion evaporators"** means vessels in which combustion occurs beneath the surface of a solution of dissolved potash, salt or sodium sulfate materials for the purpose of evaporating water.

[11/30/95; 20.2.19.7 NMAC - Rn, 20 NMAC 2.19.107 10/31/02]

#### **20.2.19.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 508 -- Potash, Salt or Sodium Sulfate Processing Equipment -- Particulate Matter last filed July 16, 1986.

**A.** All references to AQCR 508 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 508 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 508.

[11/30/95; 20.2.19.8 NMAC - Rn, 20 NMAC 2.19.106 10/31/02]

#### **20.2.19.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.19.9 NMAC - Rn, 20 NMAC 2.19.108 10/31/02]

**20.2.19.10-20.2.19.108 [RESERVED]**

**20.2.19.109 ALLOWABLE EMISSIONS:**

**A.** The owner or operator of new potash, salt or sodium sulfate processing equipment shall not permit, cause, suffer or allow particulate matter emissions to the atmosphere:

(1) to exceed 0.10 grains per dry cubic foot of discharge gas adjusted to standard conditions from dryers; or

(2) to exceed 0.04 grains per dry cubic foot of discharge gas adjusted to standard conditions from all other processing equipment.

**B.** The owner or operator of existing potash, salt or sodium sulfate processing equipment shall not permit, cause, suffer or allow particulate matter emissions to the atmosphere:

(1) in excess of a total of 90 pounds per hour from all stacks serving equipment used in drying muriate of potash and all associated compactor operations;

(2) in excess of a total of 90 pounds per hour from all stacks serving equipment used in drying langbeinite;

(3) in excess of a total of 35 pounds per hour from all stacks serving equipment used in drying sulfate of potash and associated screening operations;

(4) in excess of a total of 15 pounds per hour from all stacks serving equipment used in dry milling of fine langbeinite; and

(5) in excess of a total of 50 pounds per hour from all stacks serving equipment used in drying salt or sodium sulfate.

**C.** The owner or operator of existing potash, salt or sodium sulfate processing equipment shall not permit, cause, suffer or allow particulate matter emissions to the atmosphere in excess of a total of 30 pounds per hour from all stacks serving evaporators.

**D.** The owner or operator of existing potash, salt or sodium sulfate processing equipment shall not permit, cause, suffer or allow particulate matter emissions from any

equipment not regulated by subsections A, B, or C of 20.2.19.109 NMAC to exceed the allowable rates specified within Table 1.

(1) Interpolation of rates not specified within the table shall be accomplished by use of the equation:  $E = 0.045 \text{ times } q \text{ raised to the power } 0.62$ , where E is the allowable emission rate expressed in pounds per hour and q is the stack volumetric flow rate expressed in dry cubic feet per minute adjusted to standard conditions.

(2) Table 1 - Allowable Particulate Emission Rates for Specific Stack Volumetric Flow Rates:

Volumetric Flow Rate (dscfm)	Allowable Emission Rate (lb/hr)
1,000 or less	3.3
2,000	5.0
4,000	7.7
6,000	9.9
8,000	11.8
10,000	13.6
20,000	20.9
30,000	26.9
40,000	32.1
50,000	36.9
60,000	41.3
70,000 or greater	45.4

[11/30/95; 20.2.19.109 NMAC - Rn, 20 NMAC 2.19.109 10/31/02]

**20.2.19.110 PROCESSING EQUIPMENT AND STACKS:**

**A.** The owner or operator of potash, salt or sodium sulfate processing equipment shall not install or utilize any equipment or mechanism which increases the volume of gases emitted from a stack or stacks so as to decrease the apparent concentration of particulate matter within the gas stream so as to circumvent the requirements of subsection A of 20.2.19.109 NMAC above or increase the allowable emission rate as specified within subsection D of 20.2.19.109 NMAC.

**B.** The owner or operator of potash, salt or sodium sulfate processing equipment shall not permit, cause, suffer or allow emissions of particulate matter to the atmosphere except through stacks equipped with sampling ports and platforms in such number, location and size to allow accurate sampling to be performed. Stack height shall meet standards for good engineering practice. When it is not feasible to direct certain emissions through a stack, the owner or operator must utilize best engineering practices to minimize the release of fugitive particulate matter emissions to the atmosphere.

**C.** Where a stack or stacks regulated by subsection B or C of 20.2.19.109 NMAC also carry discharge gases from equipment regulated by subsection D of 20.2.19.109 NMAC, the allowable emission limit for the stack or stacks shall be increased by the allowable emission rate for the volume of discharge gases arising from the equipment regulated by subsection D of 20.2.19.109 NMAC. The additional allowed emissions shall be calculated as specified within subsection D of 20.2.19.109 NMAC based upon a determination of the volume of discharge gases prior to the point at which they are combined with discharged gases from equipment regulated by subsections B or C of 20.2.19.109 NMAC. In no case shall the allowable emissions from a stack or stacks which carry combined discharge gases exceed the sum of the allowable emission if the discharge gases were not combined.

[11/30/95; 20.2.19.110 NMAC - Rn, 20 NMAC 2.19.110 10/31/02]

#### **20.2.19.111 TEST METHODS:**

Compliance with 20.2.19.109 NMAC shall be determined consistent with the method for manual stack testing set forth by the US EPA at 40 CFR, Part 60, Appendix A, Methods 1 through 5, or any other method receiving prior approval from the Department. Upon request of the Department, the owner or operator of potash, salt or sodium sulfate processing equipment shall perform stack testing according to the method stated above and report the results of such tests in the format and time period specified by the Department. The Department shall not require testing of a stack or stacks more frequently than annually unless the Department has reason to believe that the emissions from the stack or stacks may be in violation of applicable emission limits, or a test is necessary to demonstrate compliance after the completion of measures intended to gain compliance on a stack or stacks previously determined to be in violation of applicable emission limits. The owner or operator shall inform the Department of the dates and times of such testing so that the Department may have the opportunity to have an observer present during testing.

[11/30/95; 20.2.19.111 NMAC - Rn, 20 NMAC 2.19.110 10/31/02]

### **PART 20: LIME MANUFACTURING PLANTS - PARTICULATE MATTER [REPEALED]**

### **PART 21: FUGITIVE PARTICULATE MATTER EMISSIONS FROM NONFERROUS SMELTERS**

#### **20.2.21.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.21.1 NMAC - Rn, 20 NMAC 2.21.100 10/31/02]

#### **20.2.21.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.21.2 NMAC - Rn, 20 NMAC 2.21.101 10/31/02]

**20.2.21.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.21.3 NMAC - Rn, 20 NMAC 2.21.102 10/31/02]

**20.2.21.4 DURATION:**

Permanent.

[11/30/95; 20.2.21.4 NMAC - Rn, 20 NMAC 2.21.103 10/31/02]

**20.2.21.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.21.5 NMAC - Rn, 20 NMAC 2.21.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.21.6 OBJECTIVE:**

The objective of this Part is to establish fugitive particulate matter emission standards for nonferrous smelters.

[11/30/95; 20.2.21.6 NMAC - Rn, 20 NMAC 2.21.105 10/31/02]

**20.2.21.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Existing nonferrous smelter"** means a nonferrous smelter that was constructed and operational prior to September 1, 1971.

**B. "Fugitive particulate matter"** means particulate matter emissions which escape to the atmosphere due to leakage, materials handling, transfer or storage, travel over unpaved roads or parking areas, or other activities and are not ducted through primary exhaust systems.

**C. "New nonferrous smelter"** means nonferrous smelter the construction or modification of which was commenced after September 1, 1971.

**D. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

[11/30/95; 20.2.21.7 NMAC - Rn, 20 NMAC 2.21.107 10/31/02]

#### **20.2.21.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 510 -- Fugitive Particulate Matter Emissions from Nonferrous Smelters last filed on July 16, 1986.

**A.** All references to AQCR 510 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 510 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 510.

[11/30/95; 20.2.21.8 NMAC - Rn, 20 NMAC 2.21.106 10/31/02]

#### **20.2.21.9-20.2.21.107 [RESERVED]**

#### **20.2.21.108 CONTROL REQUIREMENTS:**

**A.** The owner or operator of an existing nonferrous smelter shall not permit, cause, suffer, or allow the operation of the nonferrous smelter unless the owner or operator:

**(1)** Installs and operates well-designed exhaust hoods, fans and ducts, or other control systems approved by the Department as at least as effective to capture fugitive particulate matter emissions from the matte tapping, transfer, ladle filling and slag skimming operation of the reverberatory furnace;

**(2)** Maintains and operates all furnaces, converters and converter hoods so that fugitive particulate matter emissions are minimized to the maximum extent practicable; and

**(3)** Maintains all ducts, flues, waste-heat boilers and stacks in as near, leak-free condition as practicable.

**B.** The owner or operator of an existing nonferrous smelter shall not permit, cause, suffer or allow the transfer or conveying of particulate matter from electrostatic

precipitators, waste-heat boilers or other dry particulate control equipment unless fugitive particulate matter emissions are controlled by:

(1) Production of a pelletized, wet, or other non-dusting product within an enclosed system to prevent the escape of fugitive particulate matter to the atmosphere; or

(2) The use of hoods or enclosures and venting collected particulate matter through fabric filters or other control systems approved by the Department as at least as effective to reduce fugitive particulate matter emissions to the atmosphere.

[11/30/95; 20.2.21.108 NMAC - Rn, 20 NMAC 2.21.108 10/31/02]

#### **20.2.21.109 STORAGE PILES:**

The owner or operator of an existing nonferrous smelter shall not permit, cause, suffer or allow the establishment, operation, or use of storage piles for copper ore concentrate, copper precipitate, lime or limestone, or fine silica flux materials within the boundary of the smelter unless the storage and associated materials handling areas are enclosed or other control methods approved by the Department as at least as effective to reduce fugitive particulate matter emissions to the atmosphere are utilized.

[11/30/95; 20.2.21.109 NMAC - Rn, 20 NMAC 2.21.109 10/31/02]

#### **20.2.21.110 ROADWAYS AND PARKING AREAS:**

The owner or operator of an existing nonferrous smelter shall not permit, cause, suffer, or allow the use of any roadway or parking area within the boundaries of the smelter and associated facilities unless the roadway or parking area is paved and frequently cleaned, or other control measures approved by the Department as at least effective to reduce fugitive particulate matter emissions to the atmosphere are utilized. Where the owner or operator of an existing nonferrous smelter demonstrates to the satisfaction of the Department that certain roadways or parking areas are used infrequently, the Department may allow the use of less effective control measures such as the application of crushed stone or periodic treatment with dust suppressant chemicals or oils to such roadways or parking areas.

[11/30/95; 20.2.21.110 NMAC - Rn, 20 NMAC 2.21.110 10/31/02]

### **PART 22: FUGITIVE PARTICULATE MATTER EMISSIONS FROM ROADS WITHIN THE TOWN OF HURLEY**

#### **20.2.22.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.22.1 NMAC - Rn, 20 NMAC 2.22.100 10/31/02]

**20.2.22.2 SCOPE:**

The town of Hurley, New Mexico.

[11/30/95; 20.2.22.2 NMAC - Rn, 20 NMAC 2.22.101 10/31/02]

**20.2.22.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.22.3 NMAC - Rn, 20 NMAC 2.22.102 10/31/02]

**20.2.22.4 DURATION:**

Permanent:

[11/30/95; 20.2.22.4 NMAC - Rn, 20 NMAC 2.22.103 10/31/02]

**20.2.22.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.22.5 NMAC - Rn, 20 NMAC 2.22.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.22.6 OBJECTIVE:**

The objective of this Part is to establish fugitive particulate matter emission standards for roads within the town of Hurley.

[11/30/95; 20.2.22.6 NMAC - Rn, 20 NMAC 2.22.105 10/31/02]

**20.2.22.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Fugitive particulate matter emissions"** means dust or other solid material released to the atmosphere from any road surface.

**B. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**C. "Road"** means streets or highways, including the shoulders thereof, but does not include driveways, alleys or parking areas.

[11/30/95; 20.2.22.7 NMAC - Rn, 20 NMAC 2.22.107 10/31/02]

#### **20.2.22.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 511 -- Fugitive Particulate Matter Emissions from Roads Within the Town of Hurley last filed on November 21, 1978.

**A.** All references to AQCR 511 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 511 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 511.

[11/30/95; 20.2.22.8 NMAC - Rn, 20 NMAC 2.22.106 10/31/02]

#### **20.2.22.9-20.2.22.107 [RESERVED]**

#### **20.2.22.108 REQUIREMENTS:**

The owner or person responsible for maintaining any road within the municipal limits of the town of Hurley shall not permit, cause, suffer, or allow the use of such roads unless the surface of the road is paved, maintained with adequate cover of crushed stone, treated periodically with dust suppressant chemicals or oils, or utilize other control measures approved by the Department to minimize the release of fugitive particulate matter emissions to the atmosphere.

[11/30/95; 20.2.22.108 NMAC - Rn, 20 NMAC 2.22.108 10/31/02]

### **PART 23: FUGITIVE DUST CONTROL**

#### **20.2.23.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.23.1 NMAC - N, 01/01/2019]

#### **20.2.23.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[20.2.23.2 NMAC - N, 01/01/2019]

**20.2.23.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, Section 74-1-1 to 74-1-16 NMSA 1978, including specifically Paragraph (4) and (7) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Sections 74-2-1 to 74-2-22 NMSA 1978, including specifically Subsections A, B and C of Section 74-2-5 NMSA 1978.

[20.2.23.3 NMAC - N, 01/01/2019]

**20.2.23.4 DURATION:**

Permanent.

[20.2.23.4 NMAC - N, 01/01/2019]

**20.2.23.5 EFFECTIVE DATE:**

January 01, 2019.

[20.2.23.5 NMAC - N, 01/01/2019]

**20.2.23.6 OBJECTIVE:**

The objective of this part is to limit human-caused emissions of fugitive dust into the ambient air by ensuring that control measures are utilized to protect human health and welfare.

[20.2.23.6 NMAC - N, 01/01/2019]

**20.2.23.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC, as used in this part, the following definitions apply.

**A. "Agricultural facility"** means any land, building, structure, pond, impoundment, appurtenance, machinery or equipment that is used for the production of crops or livestock.

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

**C. "Construction" or "construction activity"** means any activity preparatory to, or related to building or demolishing a structure, road construction or maintenance, or altering, rehabilitating or improving land, including grading, excavation, loading, crushing, pavement milling, cutting, clearing, grubbing, topsoil removal, blading, shaping, dry sweeping, blasting and ground breaking.

**D. "Control measure"** means a technique, process, practice or procedure used to prevent or minimize the generation, emission, entrainment, suspension or airborne transport of fugitive dust, including those more fully described in 20.2.23.111 NMAC.

**E. "Disturbed surface area"** means an area of the earth's surface that may become a fugitive dust source or track-out due to construction or other activity.

**F. "Dust suppressant" or "suppressant"** means water, hygroscopic material, solution of water and chemical surfactant, foam, non-toxic chemical stabilizer or any other material, which is not prohibited for ground surface application by the U.S. environmental protection agency or the New Mexico environment department, or any applicable law, rule or regulation, as a treatment material for reducing fugitive dust emissions.

**G. "Fugitive dust"** means particulate matter emissions which may become entrained in the atmosphere due to mechanical or wind forces, or both; construction activity; materials handling, transfer or storage; disturbed surface areas; or similar commercial or industrial activities, and; which are not ducted through exhaust systems.

**H. "Inactive disturbed surface area"** means any disturbed surface area on which construction or other activity is not presently occurring, but which continues to be a potential fugitive dust source or track-out.

**I. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the environmental improvement board.

**J. "Paved" or "paving"** means asphalt, recycled asphalt, concrete or asphaltic concrete, routinely maintained asphalt millings or combinations thereof, that covers a surface traveled or used by motor vehicles.

**K. "Roadway" or "road"** means any public or private paved or unpaved surface that can be entered or used with the primary purpose of public or private travel by motor vehicles or is used for maintenance of electrical or other transmission lines. This definition does not include roadways under construction or easements, rights of way, or access roads used in association with construction activity, bulk material handling and transport, disturbed surface areas or inactive disturbed surface areas.

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

**M. "Stockpile"** means the depositing of bulk material by mechanical means for the purpose of creating a pile formation on top of an existing or man-made surface.

**N. "Track-out"** means bulk material deposited by a motor vehicle or vehicles upon an unpaved or paved publicly or privately owned roadway if the bulk material can become airborne due to mechanical or wind action.

[20.2.23.7 NMAC - N, 01/01/2019]

#### **20.2.23.8 CONSTRUCTION:**

This part shall be liberally construed to carry out its purpose.

[20.2.23.8 NMAC - N, 01/01/2019]

#### **20.2.23.9 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.23.9 NMAC - N, 01/01/2019]

#### **20.2.23.10 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local laws, rules or regulations, including more stringent controls on fugitive dust emissions.

[20.2.23.10 NMAC - N, 01/01/2019]

#### **20.2.23.11-20.2.23.107 [RESERVED]**

#### **20.2.23.108 APPLICABILITY:**

**A.** This part shall apply to persons owning or operating the following fugitive dust sources in areas requiring a mitigation plan in accordance with 40 CFR Part 51.930:

(1) disturbed surface areas or inactive disturbed surface areas, or a combination thereof, encompassing an area equal to or greater than one acre;

(2) any commercial or industrial bulk material processing, handling, transport or storage operations.

**B.** The following fugitive dust sources are exempt from this part:

(1) agricultural facilities, as defined in this part;

- (2) roadways, as defined in this part;
- (3) operations issued permits pursuant to the state of New Mexico Air Quality Control Act, Mining Act or Surface Mining Act; and
- (4) lands used for state or federal military activities.

[20.2.23.108 NMAC - N, 01/01/2019]

**20.2.23.109 GENERAL PROVISIONS:**

No person subject to this part, shall cause or allow visible emissions from fugitive dust sources that:

- A. pose a threat to public health;
- B. interfere with public welfare, including animal or plant injury or damage, visibility or the reasonable use of property.

[20.2.23.109 NMAC - N, 01/01/2019]

**20.2.23.110 EMISSION LIMITATIONS:**

A. No person shall cause or allow visible emissions from the following fugitive dust sources subject to this part to traverse any exterior property line of the property on which the source is located for more than a total of five minutes in any consecutive 60 minutes:

- (1) construction or other activity, disturbed surface areas and inactive disturbed surface areas;
- (2) bulk material handling; or
- (3) bulk material storage.

B. Compliance with this condition shall be determined by a visible emissions test conducted in accordance with reference method 22 in 40 CFR Subpart 60, Appendix A.

C. Alternative test methods to determine compliance including opacity observations, visible crust determinations and vegetation cover determinations, may be approved by the department on a case-by-case basis.

[20.2.23.110 NMAC - N, 01/01/2019]

**20.2.23.111 CONTROL MEASURES FOR FUGITIVE DUST SOURCES AND IMPLEMENTATION:**

Every person subject to this part shall utilize one or more control measures included in 20.2.23.111 NMAC or one or more other control measure(s) for fugitive dust sources under their control as necessary to meet the requirements of 20.2.23.110 NMAC.

**A. Implementation.** Control measures must be implemented before, after, and during any dust-generating operation, including during weekends, after work hours and on holidays.

**B. Disturbed surface areas and inactive disturbed surface areas.** Control measures include:

- (1) scheduling or phasing of active operations to include consideration of such factors as time of year and prevailing wind direction;
- (2) limiting disturbance of natural vegetation;
- (3) application and maintenance of mulch, dust suppressants or other control measures in accordance with manufacturer's specifications;
- (4) geotextiles, plastic covers, or erosion control mats or blankets;
- (5) wind fencing;
- (6) landscaping to include xeriscaping, reseeding and conventional techniques;
- (7) installing permanent perimeter and interior walls;
- (8) restricting public access and use by fencing and signage;
- (9) paving or application of gravel sufficient to prevent fugitive dust emissions;
- (10) prevention, clean up and removal of track-out material;
- (11) restricting vehicle speed;
- (12) substitution of conveyor systems for haul trucks and covering of conveyor systems when conveyed loads are subject to wind erosion; and
- (13) cessation of operations.

**C. Bulk material handling.** Control measures include:

- (1) use of spray bars;

(2) application of dust suppressants in accordance with manufacturer's specifications;

(3) reduced process rates;

(4) reduced drop heights; and

(5) cessation of operations.

**D. Bulk material storage.** Control measures include:

(1) use of enclosures with at least three sides;

(2) application of dust suppressants in accordance with manufacturer's specifications;

(3) use of wind breaks; and

(4) limit stockpile height to no higher than 15 feet and limit surface area.

[20.2.23.111 NMAC - N, 01/01/2019]

**20.2.23.112 DUST CONTROL PLAN:**

The owner or operator of a fugitive dust source shall develop and maintain a dust control plan. This plan shall be kept by the owner or operator and shall be available upon request to the department. A dust control plan shall, at a minimum, contain all of the following information:

**A.** Name(s), address(es) and telephone numbers of person(s) responsible for the development and implementation of the dust control plan and responsible for the dust-generating operation.

**B.** A drawing, on eight and one-half inch by eleven inch paper, that shows:

(1) the entire project site including property lines;

(2) the acreage to be disturbed with linear dimensions;

(3) the nearest public road(s);

(4) private roads within the project site; and

(5) the planned exit locations onto paved areas accessible to the public.

**C.** Documentation of the control measure(s), as described in Section 20.2.23.111 NMAC, utilized to meet the requirements of 20.2.23.110 NMAC for every actual and potential dust-generating source or operation, including, as applicable, the specific dust suppressants to be applied, together with the product specifications or label instructions for approved usage. The control measure(s) shall be documented in the dust control plan on a department approved form. The dust control plan shall include the following record keeping requirements for the use of control measure(s):

**(1)** for persons that utilize a control measure(s) requiring recurring application, operation or maintenance activities, including the use of dust suppressants or cleanup of track out, the date, time, frequency, quantity and location(s) of the actions taken to implement the control measure(s) shall be recorded on a weekly basis; and

**(2)** for persons that utilize a control measure(s) requiring a single action, including changes in operating procedure, cessation of operations, or installation of landscaping or fencing, the date, time and length of activities or changes in operations to implement the control measure(s) shall be recorded.

**D.** Specific surface treatment(s) or control measures implemented for material track-out and sedimentation where unpaved roadways or access points join paved areas accessible to the public.

**E.** The records required by this subpart shall be maintained for a period of two years after the date of collection.

**F.** The dust control plan shall be enforceable to the same extent as the provisions of this part.

[20.2.23.112 NMAC-N, 01/01/2019]

### **20.2.23.113 DUST CONTROL PLAN REVISIONS:**

**A.** If the department determines that a dust control plan does not contain the minimum requirements of 20.2.23.112 NMAC, then the department may issue a written notice to the person identified in Subsection A of 20.2.23.112 NMAC explaining such determination.

**B.** If the department determines that a dust control plan meeting the requirements of 20.2.23.112 NMAC has been followed, yet fugitive dust emissions from any fugitive dust source still exceed the standards of 20.2.23.110 NMAC, then the department may issue a written notice to the person identified in the dust control plan explaining this determination.

**C.** Once notified that a dust control plan does not meet minimum requirements or that fugitive dust emissions still exceed the standards despite a dust control plan being in place, the owner or operator of a fugitive dust source shall make written revisions to

the fugitive dust plan and submit such revised dust control plan to the department within 14 days of receipt of the department's written notice, unless such time period is extended by the department, upon request, for good cause. During the time that the owner or operator is preparing revisions to the dust control plan, such owner or operator shall still comply with all requirements of this part.

[20.2.23.113 NMAC-N, 01/01/2019]

## **PART 24-29: [RESERVED]**

## **PART 30: KRAFT MILLS**

### **20.2.30.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.30.1 NMAC - Rn, 20 NMAC 2.30.100 10/31/02]

### **20.2.30.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.30.2 NMAC - Rn, 20 NMAC 2.30.101 10/31/02]

### **20.2.30.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5 (A), (B) and (C).

[11/30/95; 20.2.30.3 NMAC - Rn, 20 NMAC 2.30.102 10/31/02]

### **20.2.30.4 DURATION:**

Permanent.

[11/30/95; 20.2.30.4 NMAC - Rn, 20 NMAC 2.30.103 10/31/02]

### **20.2.30.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.30.5 NMAC - Rn, 20 NMAC 2.30.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

#### **20.2.30.6 OBJECTIVE:**

The objective of this Part is to regulate emissions from kraft mills.

[11/30/95; 20.2.30.6 NMAC - Rn, 20 NMAC 2.30.105 10/31/02]

#### **20.2.30.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Kraft mill"** means any industrial operation which uses for a cooking liquor an alkaline solution containing sulfur compounds in its pulping process.

**B. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**C. "Recovery furnace stack"** means the stack from which the products of combustion are emitted to the ambient air from the recovery furnace.

[11/30/95; 20.2.30.7 NMAC - Rn, 20 NMAC 2.30.107 10/31/02]

#### **20.2.30.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 601 -- Regulation Governing Emission from Kraft Mills last filed January 27, 1970.

**A.** All references to AQCR 601 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 601 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 601.

[11/30/95; 20.2.30.8 NMAC - Rn, 20 NMAC 2.30.106 10/31/02]

#### **20.2.30.9-20.2.30.107 [RESERVED]**

#### **20.2.30.108 EMISSIONS LIMITATIONS:**

**A.** The owner or operator of a kraft mill shall not permit, cause, suffer or allow the daily average emission of total reduced sulfur from a recovery furnace stack to exceed 0.1 pounds of sulfur per ton of equivalent air-dried kraft pulp expressed as H<sub>2</sub>S on a dry gas basis, or 4.0 pounds of particulate matter per ton of pulp on the same basis.

**B.** The owner or operator of a kraft mill shall not permit, cause, suffer or allow the daily average emission of particulate matter from lime kilns to exceed one pound per ton of equivalent air-dried kraft pump.

**C.** The owner or operator of a kraft mill shall not permit, cause, suffer or allow the daily average emission of particulate matter from smelt tanks to exceed one-half pound per ton of air-dried kraft pulp.

**D.** The owner or operator of a kraft mill shall not permit, cause, suffer or allow the daily average emission of total reduced sulfur from any and all operations of a kraft mill to exceed 0.2 pounds per ton of air- dried kraft pulp

[11/30/95; 20.2.30.108 NMAC - Rn, 20 NMAC 2.30.108 10/31/02]

## **PART 31: COAL BURNING EQUIPMENT - SULFUR DIOXIDE**

### **20.2.31.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.31.1 NMAC - Rn, 20 NMAC 2.31.100 10/31/02]

### **20.2.31.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.31.2 NMAC - Rn, 20 NMAC 2.31.101 10/31/02]

### **20.2.31.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.31.3 NMAC - Rn, 20 NMAC 2.31.102 10/31/02]

### **20.2.31.4 DURATION:**

Permanent:

[11/30/95; 20.2.31.4 NMAC - Rn, 20 NMAC 2.31.103 10/31/02]

### **20.2.31.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.31.5 NMAC - Rn, 20 NMAC 2.31.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

#### **20.2.31.6 OBJECTIVE:**

The objective of this Part is to establish sulfur dioxide emission standards for coal burning equipment.

[11/30/95; 20.2.31.6 NMAC - Rn, 20 NMAC 2.31.105 10/31/02]

#### **20.2.31.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

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

**B. "Commercial operation"** means operation within sixty days after achieving the maximum production rate at which the equipment will be operated but not later than 180 days after initial startup.

**C. "Construction"** means fabrication, erection, or installation of an affected facility.

**D. "Excess emissions"** means the emission of sulfur dioxide in excess of any applicable emission limitation of this Part.

**E. "Existing coal burning equipment"** means coal burning equipment that was fully constructed and operational or under construction prior to September 1, 1971.

**F. "Existing coal burning station"** means one or the combination of two or more units of existing coal burning equipment at one location.

**G. "Modules"** means pollution control devices that remove sulfur dioxide for the flue gas that can be operated independently of each other.

**H. "New coal burning equipment or units"** means coal burning equipment the construction of which is commenced after September 1, 1971 and the commercial operation of which is initiated as shown hereinafter:

(1) Vintage 1 -- coal burning equipment which began commercial operating between the period of December 31, 1976 to October 31, 1979;

(2) Vintage 2 -- coal burning equipment which began commercial operation between the period of November 1, 1979 to March 31, 1982;

(3) Vintage 3 -- coal burning equipment which began commercial operation between the period of April 1, 1982 to December 31, 1982;

(4) Vintage 4 -- coal burning equipment which is not Vintage 1, 2 or 3.

I. **"Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

[11/30/95; 20.2.31.7 NMAC - Rn, 20 NMAC 2.31.107 10/31/02]

#### **20.2.31.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 602 -- Coal Burning Equipment -- Sulfur Dioxide last filed on November 17, 1993.

A. All references to AQCR 602 in any other rule shall be construed as a reference to this Part.

B. The amendment and supersession of AQCR 602 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 602.

[11/30/95; 20.2.31.8 NMAC - Rn, 20 NMAC 2.31.106 10/31/02]

#### **20.2.31.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.31.9 NMAC - Rn, 20 NMAC 2.31.108 10/31/02]

#### **20.2.31.10-20.2.31.108 [RESERVED]**

#### **20.2.31.109 NEW EQUIPMENT:**

New coal burning equipment is subject to the following requirements:

A. The owner or operator of Vintage 4 new coal burning equipment having a power generating capacity in excess of 25 megawatts or a rated heat input of greater than 250 million British Thermal Units per hour (higher heating value) shall not permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere in excess of 0.34 pounds per

million British Thermal Units of heat input (higher heating value) averaged over a 3 hour period.

**B.** The owner or operator of Vintage 1, 2, or 3 new coal burning equipment having a power generating capacity in excess of 25 megawatts or a heat input of greater than 250 million British Thermal Units per hour (higher heating value) shall not permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere in excess of 1.2 pounds per million British Thermal Units of heat input (higher heating value) averaged over a 3 hour period as determined by 20.2.31.111 NMAC, which emission limitation shall apply, effective January 1, 1983 and thereafter, to these vintage units.

**C.** The owner or operator of a station consisting of any combination of at least one Vintage 1, 2, or 3 new and existing coal burning equipment, after December 31, 1982, shall not permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere in excess of 0.55 pounds per million British Thermal Units of heat input (higher heating value) averaged over a thirty day period, and in excess of 13,000 pounds per hour averaged over a three hour period, both determined on a total station basis. Existing coal burning equipment in a station with Vintage 1, 2, or 3 units must continue to meet the requirements of 20.2.31.110 NMAC.

**D.** If the owner or operator of a station consisting of any combination of at least one Vintage 1, 2, or 3 new and existing coal burning equipment, in the optimum operation of their sulfur dioxide equipment, cannot meet on a continuous basis with a two module operation per unit, excluding upset conditions, the 0.55 pounds per million British Thermal Units requirement, then in that event such station shall, after a showing of its inability to do so to the Board, in no event permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere, in excess of 0.65 pounds per million British Thermal Units of heat input, averaged over a thirty day period, but shall continue to meet the 13,000 pounds per hour averaged over a three hour period that is required by subsection C of 20.2.31.109 NMAC. Additionally, existing coal burning equipment must continue to meet the requirements of 20.2.31.110 NMAC.

[11/30/95; 20.2.31.109 NMAC - Rn, 20 NMAC 2.31.109 10/31/02]

#### **20.2.31.110 EXISTING EQUIPMENT:**

**A.** The owner or operator of existing coal burning equipment shall not permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere in excess of 28 percent on or after December 31, 1981 of that which is produced by the coal burning equipment averaged over any thirty-day period, if such coal burning equipment has a rated heat capacity greater than 3,000 million British Thermal Units per hour (higher heating value) and less than or equal to 5,000 million British Thermal Units per hour (higher heating value).

**B.** After December 31, 1984, The owner or operator of a coal burning station consisting of two or more units of existing coal burning equipment having a rated heat

capacity greater than 250 million British Thermal Units per hour (higher heating value) shall not permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere:

(1) In excess of 28 percent of that which is produced by such existing coal burning equipment, averaged over any thirty-day period, determined on a total station basis; or

(2) More than once per year, total sulfur dioxide emissions in excess of 17,900 pounds per hour, averaged over any three-hour period, determined on a total station basis.

C. Prior to December 31, 1984, the owner or operator of an existing coal burning station consisting of two or more units of existing coal burning equipment shall submit to the Department individual stack emission limitations expressed in pounds per hour for all stacks from which flue gases are released from existing coal burning equipment of the station such that total sulfur dioxide emissions from the station do not exceed 17,900 pounds per hour. Upon request of the owner or operator of an existing coal burning station, the Department may later approve alternative individual emission limitations for each stack serving existing coal burning equipment of the station as long as the total of the individual stack emission limitations from the station do not exceed 17,900 pounds per hour, averaged over any three-hour period. Until alternative individual stack emission limitations are approved by the Department, the previously approved individual emission limitations shall remain in effect.

[11/30/95; 20.2.31.110 NMAC - Rn, 20 NMAC 2.31.110 10/31/02]

#### **20.2.31.111 COMPLIANCE:**

A. Compliance with the emission limitations contained within this Part shall be determined by a method consistent with the manual method of sampling for sulfur dioxide set forth by the Environmental Protection Agency at 40 CFR, Part 60 Appendix A, Methods 1 through 4 and 6, except for the thirty-day average and the station requirements contained within subsections C and D of 20.2.31.109 NMAC, and subsection A and paragraph (1) of subsection B of 20.2.31.110 NMAC in which the determination of compliance shall be based upon continuous emissions monitoring as required by 20.2.31.112 NMAC. Compliance with the percentage removal requirements of 20.2.31.110 NMAC shall be determined based upon continuous monitoring of sulfur dioxide concentrations within the flue gases both prior to entering the sulfur dioxide removal system and at all locations at which sulfur dioxide emissions are released to the atmosphere, unless the Department has approved an alternative means of determining sulfur dioxide concentrations prior to the sulfur dioxide removal system.

B. Compliance with the pounds per hour station emission limitation contained within paragraph (2) of subsection B of 20.2.31.110 NMAC shall be determined as follows: Individual stacks serving existing coal burning equipment shall be sampled by use of the manual sampling method for sulfur dioxide referenced above. Emissions in excess of

the approved individual emission limitation applicable to a specific stack shall be deemed a violation of this Part unless the owner or operator demonstrates to the satisfaction of the Department, by continuous stack emission monitoring or other means, that the total sulfur dioxide emissions from all stacks serving existing coal burning equipment within the station do not exceed 17,900 pounds per hour.

[11/30/95; 20.2.31.111 NMAC - Rn, 20 NMAC 2.31.111 10/31/02]

#### **20.2.31.112 MONITORING:**

**A.** The owner or operator of new or existing coal burning equipment subject to this Part shall not permit, cause, suffer or allow operation of the coal burning equipment without normally maintaining in good operating condition at least one monitor, approved by the Department, which shall continuously measure and record sulfur dioxide concentrations in the gases within each stack from which flue gases serving coal burning equipment are released to the atmosphere. All sampling points for monitoring sulfur dioxide concentrations shall be approved by the Department. Existing coal burning equipment having a rated heat capacity less than or equal to 5,000 million British Thermal Units per hour shall be equipped and operated with such continuous sulfur dioxide monitors as soon as practicable but in no case later than December 31, 1981. Existing coal burning equipment having a rated heat capacity greater than 5,000 million British Thermal Unit per hour shall be equipped and operated with such continuous sulfur dioxide monitors no later than December 31, 1984.

**B.** Coal burning equipment subject to the percentage removal requirements of 20.2.31.110 NMAC shall also continuously measure and record sulfur dioxide concentrations within the flue gases prior to their entering any sulfur dioxide removal system, unless the Department has approved an alternative means of determining sulfur dioxide concentrations within the flue gases prior to their entry into the sulfur dioxide removal system based upon a finding by the Department that continuous monitoring at such locations is infeasible or otherwise unreasonable.

**C.** Instruments and sampling systems installed and used pursuant to this section shall be calibrated in accordance with the methods prescribed by manufacturer's recommended zero adjustment and calibration check procedures at least once every 24-hours of operation, unless the instrument manufacturer specifies or recommends calibration checks more frequently; provided however, that no calibration and adjustments shall be required during the period when coal burning equipment is not operating. The reference method shall be consistent with the method for manual sampling of sulfur dioxide specified in 20.2.31.111 NMAC. The owner or operator of coal burning equipment shall retain for a period of two years all raw data and quality assurance measurements and procedures.

[11/30/95; 20.2.31.112 NMAC - Rn, 20 NMAC 2.31.112 10/31/02]

#### **20.2.31.113 REPORTING AND RECORDKEEPING:**

**A.** To aid the Department in determining compliance with this Part, persons owning or operating existing coal burning equipment subject to this Part shall, after the applicable date when continuous monitoring is required pursuant to 20.2.31.112 NMAC, submit quarterly reports to the Department for the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 of each year, each report to be received by the Department within forty-five days of the end of the quarterly period. The quarterly reports shall contain the following:

(1) Hourly average of the concentrations of sulfur dioxide, expressed in parts per million, in the gases which are being emitted to the atmosphere, except for periods of instrument calibration and zero adjustments;

(2) Hourly averages of the percent excess oxygen in the gases coming from the coal burning equipment;

(3) Rate of heat input (higher heating value) into the coal burning equipment calculated for each day; and

(4) Daily average or daily composite percent sulfur and heat content (higher heating value) of the coal utilized by the coal burning equipment determined for each day.

**B.** To aid the Department in determining compliance with this Part, persons owning or operating new coal burning equipment subject to 20.2.31.109 NMAC shall, after the date for compliance provided in 20.2.31.109 NMAC, submit quarterly reports to the Department for the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 of each year, each report to be received by the Department within forty-five days of the end of the quarterly period. The quarterly report shall contain the following:

(1) A report of excess emissions, including the nature and cause of the excess emissions (if known), the magnitude of the excess emissions and the time period(s) when the excess emissions occurred. Excess emissions shall be reported for and in the units of both total station emission limits in subsection C of 20.2.31.109 NMAC;

(2) Specific identification of each period of excess emissions that occur during startups, shutdowns, and malfunctions of the affected facility, including the nature and causes of any malfunctions and the corrective action taken or preventative measures taken;

(3) The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments; and

(4) When no excess emissions have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

C. Upon request, the Department may approve alternative methods of monitoring and reporting the information specified in subsection A of 20.2.31.113 NMAC.

[11/30/95; 20.2.31.113 NMAC - Rn, 20 NMAC 2.31.113 10/31/02]

#### **20.2.31.114 PERFORMANCE TESTS:**

Instruments and sampling systems installed and used pursuant to 20.2.31.112 NMAC, shall be operated, installed and maintained in accordance with the performance specifications and other requirements set forth by the US EPA in 40 CFR Part 60, Appendix B. In the event of significant breakdown of the monitoring system, the owner or operator shall demonstrate to the Department after the repair work that the system continues to meet the applicable performance specifications. The Department may require the owner or operator to conduct a performance test of the equipment as specified in 40 CFR, Part 60, Appendix B, but not more frequently than once per year unless the Department has reason to believe that the continuous monitoring equipment is not operating within the applicable performance specifications. The Department may approve alternate means of verifying the performance of the continuous monitoring system. The Department may also perform independent audit on the continuous monitoring system utilizing the method specified in 20.2.31.111 NMAC.

[11/30/95; 20.2.31.114 NMAC - Rn, 20 NMAC 2.31.114 10/31/02]

### **PART 32: COAL BURNING EQUIPMENT - NITROGEN DIOXIDE**

#### **20.2.32.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.32.1 NMAC - Rn, 20 NMAC 2.32.100 10/31/02]

#### **20.2.32.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.32.2 NMAC - Rn, 20 NMAC 2.32.101 10/31/02]

#### **20.2.32.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.32.3 NMAC - Rn, 20 NMAC 2.32.102 10/31/02]

**20.2.32.4 DURATION:**

Permanent.

[11/30/95; 20.2.32.4 NMAC - Rn, 20 NMAC 2.32.103 10/31/02]

**20.2.32.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.32.5 NMAC - Rn, 20 NMAC 2.32.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.32.6 OBJECTIVE:**

The objective of this Part is to establish nitrogen dioxide emission standards for coal burning equipment.

[11/30/95; 20.2.32.6 NMAC - Rn, 20 NMAC 2.32.105 10/31/02]

**20.2.32.7 DEFINITIONS:**

In addition to the terms defined in 20.2.32 NMAC (Definitions), as used in this Part:

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

**B. "Construction"** means fabrication, erection, or installation of an affected facility.

**C. "Daily average"** means the arithmetic average of the hourly values measured in a 24-hour period from midnight to midnight.

**D. "Existing coal burning equipment"** means coal burning equipment that was fully constructed and operational or under construction prior to August 17, 1971.

**E. "Heat input"** means heat derived from combustion of fuel in a steam generating unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources, such as gas turbines, internal combustion engines, kilns, etc.

**F. "Malfunction"** means any sudden and unavoidable failure of air pollution control equipment, process equipment, or process to operate in an expected manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or other preventable equipment breakdown shall not be considered a malfunction..

**G. "New coal burning equipment"** means coal burning equipment the construction of which commenced after August 17, 1971.

**H. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**I. "Shutdown"** means the cessation of operation of any air pollution control equipment, process equipment, or process for any purpose, except routine phasing out of process units.

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

**K. "Station"** means all coal burning equipment at one location.

**L. "Vintage A"** means coal burning equipment that was fully constructed and operational prior to December 31, 1963.

**M. "Vintage B"** means coal burning equipment that was fully constructed and became operational in the period from December 31, 1963, to December 31, 1964.

**N. "Vintage C"** means coal burning equipment that was fully constructed and became operational in the period from January 1, 1965 to August 17, 1971.

**O. "Vintage D"** means coal burning equipment the construction of which commenced prior to, and which became operational after August 17, 1971.

[11/30/95; 20.2.32.7 NMAC - Rn, 20 NMAC 2.32.107 10/31/02]

#### **20.2.32.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 603 -- Coal Burning Equipment -- Nitrogen Dioxide last filed on July 9, 1991.

**A.** All references to AQCR 603 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 603 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 603.

[11/30/95; 20.2.32.8 NMAC - Rn, 20 NMAC 2.32.106 10/31/02]

**20.2.32.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.32.9 NMAC - Rn, 20 NMAC 2.32.108 10/31/02]

**20.2.32.10-20.2.32.108 [RESERVED]**

**20.2.32.109 EMISSION LIMITATION -- NEW COAL BURNING EQUIPMENT:**

The owner or operator of new coal burning equipment having a power generating capacity in excess of 25 megawatts or a heat input of greater than 250 million British Thermal Units (BTU) per hour shall not permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of 0.45 pounds per million BTU of heat input.

[11/30/95; 20.2.32.109 NMAC - Rn, 20 NMAC 2.32.109 10/31/02]

**20.2.32.110 EMISSION LIMITATIONS -- EXISTING COAL BURNING EQUIPMENT:**

**A.** The owner or operator of Vintage A coal burning equipment having a power generating capacity in excess of 25 megawatts or a heat input of greater than 250 million BTU per hour shall not permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of 0.85 pounds per million BTU of heat input.

**B.** The owner or operator of Vintage B or Vintage C coal burning equipment having a power generating capacity in excess of 25 megawatts or a heat input of greater than 250 million BTU per hour shall not permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of 0.65 pounds per million BTU of heat input.

**C.** The owner or operator of Vintage D coal burning equipment having a power generating capacity in excess of 25 megawatts or a heat input of greater than 250 million BTU per hour shall not permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of 0.7 pounds per million BTU of heat input.

[11/30/95; 20.2.32.110 NMAC - Rn, 20 NMAC 2.32.110 10/31/02]

**20.2.32.111 TOTAL EMISSION LIMITATION:**

**A.** After April 30, 1992, the owner or operator of a facility with Vintage A, B, and C coal burning equipment shall not permit, cause, suffer or allow, on a station-wide basis, nitrogen dioxide emissions to the atmosphere in excess of 335,000 pounds per day, measured from midnight to midnight.

**B.** For periods when coal burning equipment identified in subsection A of 20.2.32 NMAC is not operated, the station-wide limitation shall be reduced by the following amounts:

- (1) Vintage A or Vintage B coal burning equipment -- 1542 pounds per hour.
- (2) Vintage C coal burning equipment -- 4667 pounds per hour.

[11/30/95; 20.2.32.111 NMAC - Rn, 20 NMAC 2.32.111 10/31/02]

#### **20.2.32.112 COMPLIANCE DETERMINATION METHODS:**

**A.** Unless otherwise required by 40 CFR Part 60, a facility subject to an emission limitation of 20.2.32.109 NMAC or 20.2.32.110 NMAC shall use any of the applicable reference methods specified by the US EPA at 40 CFR Part 60, Appendix A to determine compliance with the nitrogen dioxide emission limitation.

**B.** Compliance with the total emission limitation of 20.2.32.111 NMAC shall be based on measurements using a continuous emission monitoring system (CEMS) as required by 20.2.32.114 NMAC. Compliance determinations shall be performed using the following formula:

$$TE = \sum_{i=1}^n E_i \cdot H_i$$

where:

TE = total station-wide nitrogen dioxide emissions (lb NO<sub>2</sub>/day);

E<sub>i</sub> = daily average emission rate of each unit (lb NO<sub>2</sub>/MBTU);

H<sub>i</sub> = daily average heat input for each unit (MBTU);

n = the number of units of coal burning equipment operated during the day.

[11/30/95; 20.2.32.112 NMAC - Rn, 20 NMAC 2.32.112 10/31/02]

### **20.2.32.113 EMISSION TESTING:**

The owner or operator of any coal burning equipment subject to the emission limitations of subsections A or B of 20.2.32.110 NMAC shall conduct the reference method tests required under subsection A of 20.2.32.112 NMAC semi-annually.

[11/30/95; 20.2.32.113 NMAC - Rn, 20 NMAC 2.32.113 10/31/02]

### **20.2.32.114 EMISSION MONITORING:**

**A.** The owner or operator of a facility subject to 20.2.32.111 NMAC shall install, calibrate, maintain and operate a CEMS, approved by the Department, which shall continuously measure and record nitrogen dioxide concentrations in the flue gases released into the atmosphere from each unit of coal burning equipment. Continuous emissions monitoring shall apply during all periods of operation of the coal burning equipment, including periods of startup, shutdown and malfunction, except for CEMS breakdowns, repair, calibration checks, and zero and span adjustment. All sampling points for monitoring nitrogen dioxide concentrations shall be approved in writing by the Department.

**B.** The CEMS required by this section shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15 minute period. One-hour averages shall be computed from four or more data points equally spaced over each one-hour period. Data recorded during periods of CEMS breakdown, repairs, calibration checks and zero and span adjustments shall not be included in the daily averages computed under this paragraph.

**C.** When CEMS emission data required under this section are not obtained because of CEMS breakdowns, repairs, calibration checks and zero and span adjustments, emission data will be obtained by using other monitoring systems approved by the Department and the Administrator or one of the reference methods specified by the US EPA in 40 CFR Part 60, Appendix A, to provide emission data for a minimum of 18 hours in each day, midnight to midnight, in at least 22 out of 30 successive days.

**D.** The CEMS installed and used pursuant to this section shall be operated, installed and maintained in accordance with the performance specifications and other requirements set forth by the US EPA in 40 CFR Part 60, Appendix B, Performance Specifications 2 and 3. In the event of significant breakdown of the CEMS, the owner or operator shall demonstrate to the Department after the repair work that the CEMS continues to meet the applicable performance specifications. The Department may require the owner or operator to conduct a performance test of the equipment as specified in 40 CFR Part 60, Appendix B, but not more frequently than once per year unless the Department has reason to believe that the CEMS is not operating within the applicable performance specifications. An alternate means of verifying the performance of the CEMS may be used if approved by the Department and the Administrator. The Department may also perform independent audits on the CEMS.

**E.** Each CEMS required under this section shall be subject to the quality assurance requirements of 40 CFR Part 60, Appendix F. All reports required thereunder shall be submitted to the Department.

[11/30/95; 20.2.32.114 NMAC - Rn, 20 NMAC 2.32.114 10/31/02]

**20.2.32.115 REPORTING REQUIREMENTS:**

**A.** Persons subject to 20.2.32.113 NMAC shall submit reports to the Department for each semi-annual period, each report to be received by the Department within 30 days after the end of the period. The semi-annual report shall contain the following information:

- (1) Date of test;
- (2) Reference method used for the test;
- (3) Coal burning equipment tested;
- (4) Emissions data obtained by sample number, expressed in pounds nitrogen dioxide emitted per million BTU;
- (5) Arithmetic average of sample data, expressed in pounds nitrogen dioxide emitted per million BTU;
- (6) Any variances from the reference method.

**B.** Persons subject to 20.2.32.111 NMAC shall submit reports on the CEMS-based data to the Department for each calendar quarter, each report to be received by the Department within 45 days after the end of the quarterly period. The quarterly reports for each unit of coal burning equipment shall contain the following:

- (1) Hourly and daily averages of the concentrations of nitrogen dioxide, expressed in pounds per million BTU, in the gases which are being emitted to the atmosphere, except for periods of instrument calibration and zero adjustments;
- (2) Hourly and daily averages of the percent excess oxygen in the gases coming from the coal burning equipment;
- (3) Hourly and daily average generation output of the coal burning equipment, expressed in megawatts;
- (4) Daily average heat input into each unit of coal burning equipment;
- (5) Total nitrogen dioxide discharged per day, on a station-wide basis, expressed in pounds per day, measured midnight to midnight;

(6) Nitrogen dioxide discharged per day per unit of coal burning equipment, measured from midnight to midnight, expressed as pounds per day and the number of hours used to calculate the limits in subsection B of 20.2.32.111 NMAC;

(7) The date and time identifying each period during which the CEMS was inoperative except for zero and span checks and the nature of the systems repairs or adjustments;

(8) Identification of the times when daily average emission data have been obtained by other monitoring systems or reference methods pursuant to subsection C of 20.2.32.114 NMAC;

(9) Identification of the days for which nitrogen dioxide or diluent data have not been obtained by an approved method for at least 18 hours of operation of the facility; justification for not obtaining sufficient data; and description of corrective actions taken;

(10) Identification of times when the nitrogen dioxide concentration as measured by the CEMS exceeded the full span of the CEMS;

(11) A report of emissions in excess of the limitation contained in 20.2.32.111 NMAC, the magnitude of the excess emissions and the time period(s) when the excess emissions occurred;

(12) Specific identification of each period of emissions in excess of the limitation contained in 20.2.32.111 NMAC that occurred during startup, shutdowns, and malfunctions of the affected facility, including the nature and causes of any malfunctions and the corrective action taken or preventative measures taken;

(13) Description of any modifications to the CEMS which could affect the ability of the continuous monitoring system to comply with the operating specifications of subsection D of 20.2.32.114 NMAC.

[11/30/95; 20.2.32.115 NMAC - Rn, 20 NMAC 2.32.115 10/31/02]

## **PART 33: GAS BURNING EQUIPMENT - NITROGEN DIOXIDE**

### **20.2.33.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.33.1 NMAC - Rn, 20 NMAC 2.33.100 10/31/02]

### **20.2.33.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.33.2 NMAC - Rn, 20 NMAC 2.33.101 10/31/02]

**20.2.33.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.33.3 NMAC - Rn, 20 NMAC 2.33.102 10/31/02]

**20.2.33.4 DURATION:**

Permanent.

[11/30/95; 20.2.33.4 NMAC - Rn, 20 NMAC 2.33.103 10/31/02]

**20.2.33.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.33.5 NMAC - Rn, 20 NMAC 2.33.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.33.6 OBJECTIVE:**

The objective of this Part is to establish nitrogen dioxide emission standards for gas burning equipment.

[11/30/95; 20.2.33.6 NMAC - Rn, 20 NMAC 2.33.105 10/31/02]

**20.2.33.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Existing gas burning equipment"** means gas burning equipment, the construction or modification of which is commenced prior to February 17, 1972.

**B "New gas burning equipment"** means gas burning equipment, the construction or modification of which is commenced after February 17, 1972.

**C. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

[11/30/95; 20.2.33.7 NMAC - Rn, 20 NMAC 2.33.107 10/31/02]

### **20.2.33.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 604 -- Gas Burning Equipment -- Nitrogen Dioxide last filed on February 17, 1972.

**A.** All references to AQCR 604 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 604 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 604.

[11/30/95; 20.2.33.8 NMAC - Rn, 20 NMAC 2.33.106 10/31/02]

### **20.2.33.9-20.2.33.107 [RESERVED]**

### **20.2.33.108 REQUIREMENTS:**

**A.** The owner or operator of new gas burning equipment having a heat input of greater than 1,000,000 million British Thermal Units per year per unit shall not permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of 0.2 pounds per million British Thermal Units of heat input.

**B.** The owner or operator of existing gas burning equipment having a heat input of greater than 1,000,000 million British Thermal Units per year per unit shall not permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of 0.3 pounds per million British Thermal Units of heat input.

[11/30/95; 20.2.33.108 NMAC - Rn, 20 NMAC 2.33.108 10/31/02]

## **PART 34: OIL BURNING EQUIPMENT - NITROGEN DIOXIDE**

### **20.2.34.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.34.1 NMAC - Rn, 20 NMAC 2.34.100 10/31/02]

### **20.2.34.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.34.2 NMAC - Rn, 20 NMAC 2.34.101 10/31/02]

### **20.2.34.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.34.3 NMAC - Rn, 20 NMAC 2.34.102 10/31/02]

**20.2.34.4 DURATION:**

Permanent.

[11/30/95; 20.2.34.4 NMAC - Rn, 20 NMAC 2.34.103 10/31/02]

**20.2.34.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.34.5 NMAC - Rn, 20 NMAC 2.34.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.34.6 OBJECTIVE:**

The objective of this Part is to establish nitrogen dioxide emission standards for oil burning equipment.

[11/30/95; 20.2.34.6 NMAC - Rn, 20 NMAC 2.34.105 10/31/02]

**20.2.34.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part: "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

[11/30/95; 20.2.34.7 NMAC - Rn, 20 NMAC 2.34.107 10/31/02]

**20.2.34.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 606 -- Oil Burning Equipment -- Nitrogen Dioxide last filed February 17, 1972.

**A.** All references to AQCR 606 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 606 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 606.

[11/30/95; 20.2.34.8 NMAC - Rn, 20 NMAC 2.34.106 10/31/02]

**20.2.34.9-20.2.34.107 [RESERVED]**

**20.2.34.108 REQUIREMENT:**

The owner or operator of oil burning equipment having a heat input of greater than 1,000,000 million British Thermal Units per year per unit shall not permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of 0.3 pounds per million British Thermal Units of heat input.

[11/30/95; 20.2.34.108 NMAC - Rn, 20 NMAC 2.34.108 10/31/02]

**PART 35: NATURAL GAS PROCESSING PLANT - SULFUR**

**20.2.35.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.35.1 NMAC - Rn, 20 NMAC 2.35.100 10/31/02]

**20.2.35.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.35.2 NMAC - Rn, 20 NMAC 2.35.101 10/31/02]

**20.2.35.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B), and (C).

[11/30/95; 20.2.35.3 NMAC - Rn, 20 NMAC 2.35.102 10/31/02]

**20.2.35.4 DURATION:**

Permanent.

[11/30/95; 20.2.35.4 NMAC - Rn, 20 NMAC 2.35.103 10/31/02]

**20.2.35.5 EFFECTIVE DATE:**

November 30, 1995, except where a later date is cited at the end of a section.

[11/30/95; 20.2.35.5 NMAC - Rn, 20 NMAC 2.35.104 10/31/02; A, 11/10/07]

[The latest effective date of any section in this Part is 11/10/07.]

#### **20.2.35.6 OBJECTIVE:**

The objective of this Part is to establish sulfur emission standards for natural gas processing plants.

[11/30/95; 20.2.35.6 NMAC - Rn, 20 NMAC 2.35.105 10/31/02]

#### **20.2.35.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Existing natural gas processing plant"** means a gas processing plant the fabrication, erection or installation of which was commenced prior to July 1, 1974, and includes all vessels, boilers, heaters, compressors (engines and turbines), sweetening and regeneration units, dehydration units, piping, storage and loading facilities, sulfur recovery facilities, flares and any other facility connected with the processing or storage of field gas, sour residue gas, and other hydrocarbons associated with field gas.

**B. "New natural gas processing plant"** means a natural gas processing plant, or part thereof the fabrication, erection, installation, or modification of which is commenced on or after July 1, 1974, and includes all vessels, boilers, heaters, compressors (engines and turbines), sweetening and regeneration units, dehydration units, piping, storage and loading facilities, sulfur recovery facilities, flares and any other facility connected with the processing or storage of field gas, sour residue gas and other hydrocarbons associated with field gas.

**C. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**D. "Plant processes"** includes but is not limited to fuel burning, including flaring of sour gas, and regeneration.

**E. "Sulfur"** means elemental sulfur and the sulfur component of any mixture or compound.

[11/30/95; 20.2.35.7 NMAC - Rn, 20 NMAC 2.35.107 10/31/02]

#### **20.2.35.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 621, -- Natural Gas Processing Plant -- Sulfur last filed February 8, 1983.

**A.** All references to AQCR 621 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 621 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 621.

[11/30/95; 20.2.35.8 NMAC - Rn, 20 NMAC 2.35.106 10/31/02]

#### **20.2.35.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.35.9 NMAC - Rn, 20 NMAC 2.35.108 10/31/02]

#### **20.2.35.10-20.2.35.108 [RESERVED]**

#### **20.2.35.109 EXISTING NATURAL GAS PROCESSING PLANTS:**

**A.** The owner or operator of an existing natural gas processing plant that releases an average of ten tons a day or greater of sulfur in plant processes and that has an off-gas stream that undiluted contains greater than 20 mole percent hydrogen sulfide shall not permit, cause, suffer or allow at any time sulfur emissions to the atmosphere in excess of 10 pounds of sulfur for every 100 pounds of sulfur released in plant processes.

**B.** The owner or operator of an existing natural gas processing plant that releases an average of ten tons a day or greater of sulfur in plant processes and that has an off-gas stream that undiluted contains less than or equal to 20 mole percent hydrogen sulfide shall not permit, cause, suffer or allow at any time sulfur emissions to the atmosphere in excess of 12 pounds of sulfur for every 100 pounds of sulfur released in plant processes.

**C.** The owner or operator of an existing natural gas processing plant that releases an average of 7.5 or more tons a day but less than 10 tons a day of sulfur in plant processes and has an off-gas stream that undiluted contains greater than 20 mole percent hydrogen sulfide shall not permit, cause, suffer or allow at any time sulfur emissions to the atmosphere in excess of 10 pounds of sulfur for every 100 pounds of the sulfur released in plant processes.

**D.** The owner or operator of an existing natural gas processing plant that releases an average of 7.5 or more tons a day but less than 10 tons a day of sulfur in plant processes and has an off-gas stream that undiluted contains less than or equal to 20 mole percent hydrogen sulfide shall not permit, cause, suffer or allow sulfur emissions to the atmosphere in excess of 12 pounds of sulfur for every 100 pounds of sulfur released in plant processes.

**E.** The owner or operator of an existing natural gas processing plant that sends residue gas containing greater than 0.25 grains hydrogen sulfide per 100 cubic feet of gas to a facility, other than the natural gas processing plant, for the purpose of residue gas purification; shall not permit, cause, suffer or allow sulfur emissions to the atmosphere, in excess of 10 pounds of sulfur for every 100 pounds of sulfur released in plant processes; unless the natural gas processing plant releases less than 2 1/2 tons a day of sulfur in plant processes.

**F.** The owner or operator of an existing natural gas processing plant that is governed by a sulfur emission limitation of an Air Quality Control Regulation shall not permit, cause, suffer or allow gas coming off any off-gas sweetening regeneration unit or other sulfur releasing unit to be sent to a facility other than the natural gas processing plant for the purpose of sulfur recovery or disposal:

**(1)** unless all the gas coming off a gas sweetening regeneration unit or other sulfur releasing unit is sent to the facility other than the natural gas processing plant, except mercaptan gas, and the amount of sulfur in the off-gas stream from fuel burning equipment does not exceed the quantity of sulfur that would exist if the sulfur content of the gas used for fuel was 10 grains of sulfur per 100 standard cubic feet of fuel gas; or

**(2)** unless only a portion of the gas coming off a gas sweetening regeneration unit or other sulfur releasing unit is sent to the facility other than the natural gas processing plant; and

**(a)** if the natural gas processing plant releases a average of 7.5 tons a day or greater of sulfur in plant processes and has an off-gas stream that undiluted contains greater than 20 mole percent hydrogen sulfide, sulfur emissions from the existing natural gas processing plant do not exceed 10 pounds of sulfur for every 100 pounds of sulfur that are released in plant processes but not sent for sulfur recovery or disposal to another facility; or

**(b)** if the natural gas processing plant releases a average of 7.5 tons a day or greater of sulfur in plant processes and has an off-gas stream that undiluted contains less than or equal to 20 mole percent hydrogen sulfide, sulfur emissions from the existing natural gas processing plant do not exceed 12 pounds of sulfur for every 100 pounds of sulfur that are released in plant processes but not sent for sulfur recovery or disposal to another facility.

## **20.2.35.110 NEW NATURAL GAS PROCESSING PLANTS:**

**A.** The owner or operator of a new natural gas processing plant that releases an average of five or more tons a day and less than twenty tons a day of sulfur in plant processes shall not permit, cause, suffer or allow sulfur emissions to the atmosphere in excess of 10 pounds of sulfur for every 100 pounds of sulfur released in plant processes.

**B.** The owner or operator of a new natural gas processing plant that releases an average of 20 or more tons a day and less than 50 tons a day of sulfur in plant processes shall not permit, cause, suffer or allow sulfur emissions to the atmosphere in excess of 4,000 pounds per day.

**C.** The owner or operator of a new natural gas processing plant that releases an average of 50 tons a day or greater of sulfur in plant processes shall not permit, cause, suffer or allow sulfur emissions to the atmosphere in excess of 2 pounds of sulfur for every 100 pounds of sulfur released in plant processes.

**D.** The owner or operator of a new natural gas processing plant that is governed by a sulfur emission limitation of an Air Quality Control Regulation shall not permit, cause, suffer or allow gas coming off any off-gas sweetening regeneration unit or other sulfur releasing unit to be sent to a facility other than the natural gas processing plant for the purpose of sulfur recovery or disposal:

**(1)** unless all the gas coming off the gas sweetening regeneration unit or other sulfur releasing unit is sent to the facilities other than the natural gas processing plant, except mercaptan gas, and the amount of sulfur in the off-gas stream from fuel burning equipment does not exceed the quantity of sulfur that would exist if the sulfur content of the gas used for fuel was 10 grains of sulfur per 100 standard cubic feet of fuel gas; or

**(2)** unless only a portion of the gas coming off the gas sweetening regeneration unit or other sulfur releasing unit is sent to the facility other than the natural gas processing plant; and

**(a)** if the natural gas processing plant is a new natural gas processing plant that releases an average of five or more tons a day but less than twenty tons a day of sulfur in plant processes, sulfur emissions from the new natural gas processing plant do not exceed 10 pounds of sulfur for every 100 pounds of sulfur that are released in plant processes but not sent for sulfur recovery or disposal to another facility; or

**(b)** if the natural gas processing plant is a new natural gas processing plant that releases an average of twenty tons a day or greater of sulfur in plant processes, sulfur emissions from the new natural gas processing plant do not exceed 2 pounds of sulfur for every 100 pounds of sulfur in plant processes but not sent for sulfur recovery or disposal to another facility.

[11/30/95; 20.2.35.110 NMAC - Rn, 20 NMAC 2.35.110 10/31/02]

### **20.2.35.111 STACK HEIGHT:**

**A.** The owner or operator of a natural gas processing plant shall not permit, cause, suffer or allow sulfur compounds to be emitted to the atmosphere unless the sulfur compound emission is from a stack of a sufficient physical height to prevent concentrations of sulfur compounds near ground level equal to or exceed any state or federal ambient air standard. The necessary physical stack height shall be determined by the following graph in 20.2.35.115 NMAC (Figure 1) or through the use of dispersion modeling approved by the department.

**B.** If the natural gas processing plant is an existing natural gas processing plant, the requirements of this section shall not apply to that existing natural gas processing plant until January 1, 1977.

**C.** By January 1, 1977, any person owning or operating an existing natural gas processing plant must file with the department the following:

- (1) the height of all stacks from which sulfur is emitted;
- (2) the quantity of the sulfur emitted from each stack;
- (3) the exit gas temperature for each stack;
- (4) the total mass flow rate of the stack effluent gases (for flares, the total effluent mass flow rate shall consist of the stack effluent mass flow rate plus that amount of air required for complete combustion); and
- (5) any other information the department deems necessary to determine whether or not the physical height of any stack from which sulfur is emitted complies with the requirements of this subsection.

[11/30/95; 20.2.35.111 NMAC - Rn, 20 NMAC 2.35.111 10/31/02; A, 11/10/07]

### **20.2.35.112 RECORD KEEPING AND REPORTING REQUIREMENTS:**

**A.** To aid the Department in determining compliance with this Part, the owner or operator of a natural gas processing plant to which this Part applies shall submit to the Department quarterly reports in the months of January, April, July and October of each year containing the following information:

- (1) the sulfur content of feedstock entering the natural gas processing plant, determined no less frequently than three times per week; and no more frequently than once every twenty-four hours;

(2) the sulfur content of all fuel burned in the plant and the amount of each type of fuel burned determined no less frequently than quarterly;

(3) the sulfur content of the products produced by the natural gas processing plant determined no less frequently than weekly;

(4) the sulfur content of the inlet and outlet gas stream or streams of the sulfur recovery plant determined no less frequently than quarterly; and

(5) the weight of the recovered sulfur determined no less frequently than weekly.

**B.** If it appears necessary, the Department may require reports on a more frequent basis, but no more frequently than monthly.

**C.** The Department may, upon the request of the owner or operator of a natural gas processing plant, alter the sampling periods specified in this section.

[11/30/95; 20.2.35.112 NMAC - Rn, 20 NMAC 2.35.112 10/31/02]

#### **20.2.35.113 DECLINING EMISSION NATURAL GAS PROCESSING PLANTS:**

**A.** Subsections A, B, D and E of 20.2.35.109 NMAC, and 20.2.35.112 NMAC shall not apply to a natural gas processing plant that the Department has certified as a "declining emission natural gas processing plant".

**B.** The department shall certify an existing natural gas processing plant as a "declining emission natural gas processing plant" and include in the certification a "sulfur release schedule" setting forth the maximum amounts of sulfur that may be released in plant processes in quarterly increments through January 1, 1980, if all of the following are met:

(1) the sulfur released in plant processes in the plant will decrease to the extent that by January 1, 1980, less than 7.5 tons of sulfur per day will be released in plant processes;

(2) the decrease in the amount of sulfur released in plant processes will be a continuous decrease due to reduction in the amount of sour feedstock into the plant;

(3) the owner or operator of the plant has furnished a schedule to the Department detailing the projected decreases in sour feedstock that will result in the continuous decrease of sulfur released in plant processes to less than 7.5 tons by 1980;

(4) the owner or operator of the plant has stated his intention to follow the submitted schedule setting forth the projected decreases in sour feedstock to the plant;

(5) the plant does not have a sulfur recovery plant;

(6) the owner or operator of the plant has furnished to the Department all of the information requested in Subsection N [20.2.35.113 NMAC] and has certified the accuracy and completeness of the information furnished;

(7) the Department has reviewed the application and all of the information submitted in support thereof, solicited and reviewed comments of the Oil Conservation Commission, and reviewed all comments received in writing from interested persons; and

(8) the Department has determined, after considering the information specified in the above paragraphs and such other information as it may wish to consider, that the processing of sour feedstock by the plant will decrease according to the "sulfur release schedule" resulting in a continuous decrease of sulfur in plant processes to less than 7.5 tons per day by January 1, 1980.

C. Application to the Department for certification as a "declining emission natural gas processing plant" must be filed with the Department no later than January 1, 1975, and contain the following:

(1) the applicant's name and address;

(2) date of the application;

(3) description of the facility for which the certification is sought;

(4) detailed description, including sulfur content, of the feedstock into the plant and its sources at the time of application, for the preceding two years and projected through 1985;

(5) the amount of sulfur released in plant processes, specifying each process and the amount of sulfur released in each process at the time of application, for the preceding two years and projected through 1985;

(6) the amount of sulfur leaving the plant at the time of application, for the preceding two years and projected through 1985;

(7) such additional information as the Department, after conferring with the Oil Conservation Commission, may require relating to reservoir data;

(8) a "sulfur release schedule" setting forth the amounts of sulfur expected to be released in plant processes in quarterly increments through January 1, 1980; and

(9) such additional information as the Department may require.

**D.** The owner or operator of a natural gas processing plant that is certified as a "declining emission natural gas processing plant" may petition the Department for a modification of the "sulfur release schedule". The Department may grant the petition for modification of the "sulfur release schedule" if all of the requirements of subsection B of 20.2.35.113 NMAC are met. The petition should explain in detail the reasons why the modification is necessary and include supporting data and such additional information as the Department may require.

**E.** The Department shall notify the applicant or petitioner and all interested persons who submitted written comments of the Department's action on the application for certification or petition for modification of the "sulfur release schedule" and the reasons therefore. The Department shall notify the applicant or petitioner by certified mail. If the Department denies certification or the petition for modification, the applicant or petitioner may appeal the decision of the Department to the Board by filing a petition for review within thirty days of the date of denial. If the Department grants the certification of the petition for modification, any interested person who submitted written comments opposing the certification or modification may appeal the decision of the Department to the Board by filing a petition for review within thirty days of the date of the granting of certification or modification.

**F.** The owner or operator of a "declining emission natural gas processing plant" shall submit to the Department quarterly reports for the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 of each year, each report to be received by the Department within 45 days of the end of the quarterly period:

**(1)** The amount of gas received into the plant for the three month period including the average sulfur content of the gas determined no less frequently than three times per week and no more frequently than once every twenty-four hours and the total amount of sulfur received into plant processes in the three month period;

**(2)** the sulfur content of all fuel burned in the plant and the amount of each type of fuel burned determined no less frequently than weekly;

**(3)** the amount and sulfur content of the products produced by the plant determined no less frequently than weekly;

**(4)** the amount of sulfur released in plant processes, specifying each process and the amount of sulfur released in each;

**(5)** the quantity of sulfur disposed of and the method of disposal determined no less frequently than weekly;

**(6)** such information as the Department, after consulting with the Oil Conservation Commission, may require relating to new wells or re-worked wells from which the plant receives feedstock; and

(7) such additional information as the Department may require, including but not limited to new recovery techniques being used in the field.

(8) If it appears necessary, the Department may require reports on a more frequent basis, but no more frequently than monthly.

G. The owner or operator of a "declining emission natural gas processing plant" that has for any quarterly report period exceeded by more than one thousand pounds the average daily amount of sulfur (averaged over the quarterly period) that was projected by the "sulfur release schedule" for that quarterly period shall submit to the Department within 30 days after the filing of the quarterly report information as to why the projected average daily sulfur emission rate was exceeded.

H. The Department shall revoke any natural gas processing plant's certification as a "declining emission natural gas processing plant" if the natural gas processing plant exceeds by more than one thousand pounds for any two consecutive quarterly periods the amount of sulfur to be released in plant processes as set forth in the "sulfur release schedule" contained in the "declining emission natural gas processing plant" certification. The Department shall notify the owner or operator of the natural gas processing plant by certified mail of the revocation of the plant's certification as a "declining emission natural gas processing plant".

I. The owner or operator of a natural gas processing plant whose certification as a "declining emission natural gas processing plant" has been revoked may appeal to the Environmental Improvement Board the Department's determination that the "declining emission natural gas processing plant" exceeded by more than one thousand pounds for two consecutive quarterly periods the amount of sulfur to be released in plant processes as set forth in the "sulfur release schedule" contained in the "declining emission natural gas processing plant" certification. A petition for review of the Department's determination must be filed with the board within twenty days of receipt of the certified notice of revocation.

[11/30/95; 20.2.35.113 NMAC - Rn, 20 NMAC 2.35.113 10/31/02]

#### **20.2.35.114 HEARINGS -- ACTIONS BY THE BOARD:**

A. Upon receipt by the board of a petition for review pursuant to subsections E and I of 20.2.35.113 NMAC, the Secretary shall mail notice of hearing to the petitioner, all persons who have submitted written comments on the application, and all persons who have requested notice of hearings held pursuant to this subsection.

B. At least seven days prior to the hearing date, the Secretary shall publish notice of the date, time, place, and subject of the hearing in a newspaper of general circulation in the county in which the facility is located and in a newspaper of general circulation in the state.

**C.** Public hearings shall be held before the board not less than fifteen days and no more than forty-five days from the date the Secretary mails the notice of the hearing to the petitioner.

**D.** Public hearings shall be held in Santa Fe unless the board and the petitioner agree upon another site in the state.

**E.** The board may designate a hearing officer to take evidence at the hearing.

**F.** A record shall be made at each hearing, the cost of which shall be borne by the Department. Transcript costs shall be paid by those persons requesting transcripts. The cost of providing transcripts to the board members shall be borne by the Department.

**G.** In the hearing, the technical rules of evidence and the rules of civil procedure shall not apply, but the hearings shall be conducted so that all relevant views are amply and fairly presented without undue repetition. The board may require reasonable substantiation of statements or records tendered and may require any view to be stated in writing when the circumstances justify.

**H.** The board shall allow all persons a reasonable opportunity at a hearing to submit written and oral evidence and arguments, introduce exhibits, and cross-examine persons who testify.

**I.** A petitioner may represent himself at the hearing or be represented by any other individual.

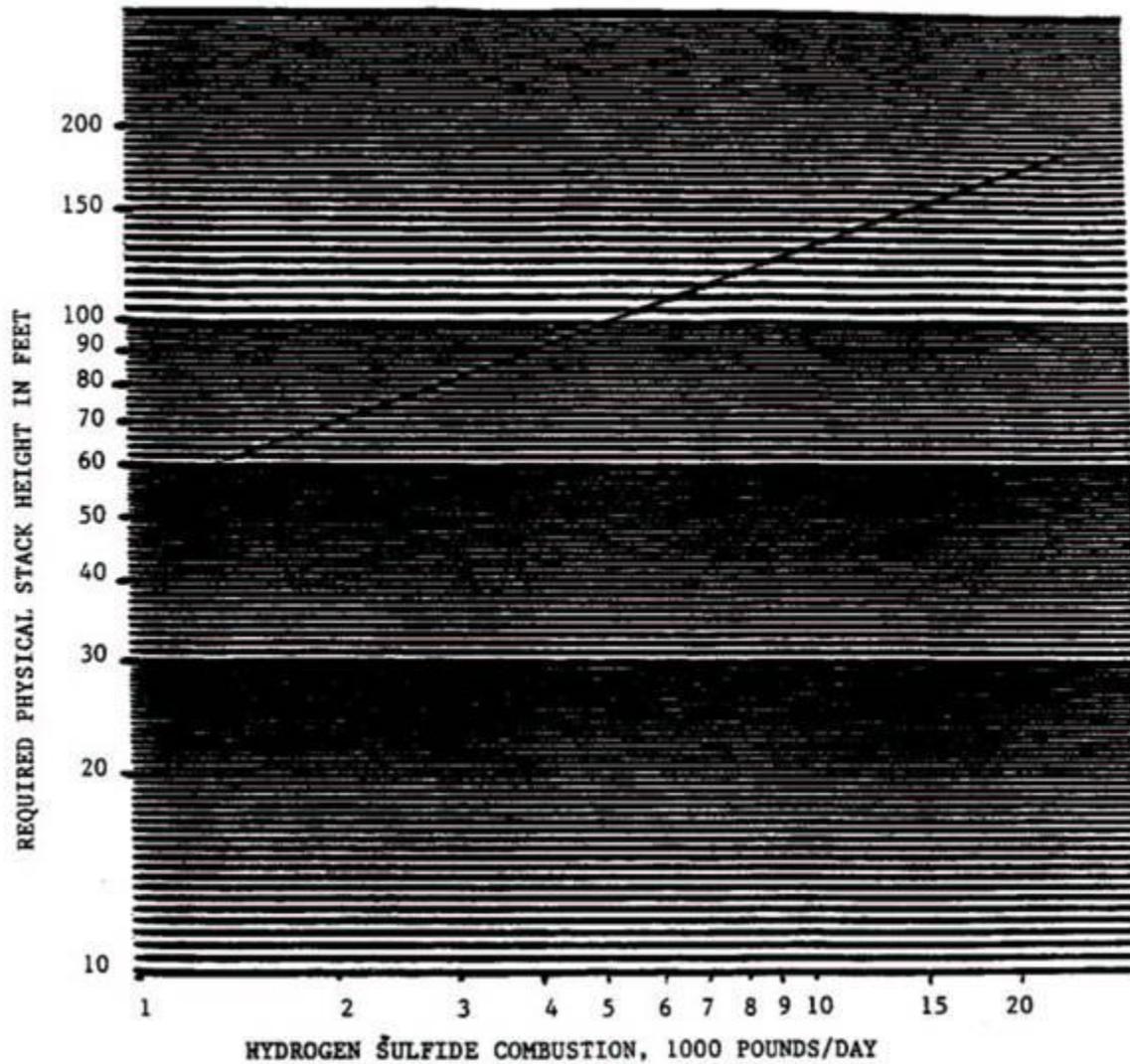
**J.** The board shall render its decision based upon the transcript of the hearing as soon as possible following the preparation of the transcript.

**K.** The owner or operator of any plant whose certification as a "declining emission natural gas processing plant" has been revoked shall comply with the requirements of the applicable subsections of this section [sections of this Part] within twelve months after the revocation of certification becomes final.

**L.** As used in subsections B, C, F, G, and I of 20.2.35.113 NMAC the sulfur released in plant processes shall include the sulfur content of any gas sent from the plant for further processing.

[11/30/95; 20.2.35.114 NMAC - Rn, 20 NMAC 2.35.114 10/31/02]

20.2.35.115 FIGURE 1 - REQUIRED STACK HEIGHT:



[11/30/95; 20.2.35.115 NMAC - Rn, 20 NMAC 2.35.115 10/31/02]

**PART 36: PETROLEUM REFINERY - SULFUR [REPEALED]**

[This part was repealed on February 15, 2016.]

**PART 37: PETROLEUM PROCESSING FACILITIES [REPEALED]**

[This part was repealed on September 12, 2016.]

## **PART 38: HYDROCARBON STORAGE FACILITIES**

### **20.2.38.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.38.1 NMAC - Rn, 20 NMAC 2.38.100 10/31/02]

### **20.2.38.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.38.2 NMAC - Rn, 20 NMAC 2.38.101 10/31/02]

### **20.2.38.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B), and (C).

[11/30/95; 20.2.38.3 NMAC - Rn, 20 NMAC 2.38.102 10/31/02]

### **20.2.38.4 DURATION:**

Permanent.

[11/30/95; 20.2.38.4 NMAC - Rn, 20 NMAC 2.38.103 10/31/02]

### **20.2.38.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.38.5 NMAC - Rn, 20 NMAC 2.38.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

### **20.2.38.6 OBJECTIVE:**

The objective of this Part is to minimize hydrogen sulfide emissions from hydrocarbon storage facilities.

[11/30/95; 20.2.38.6 NMAC - Rn, 20 NMAC 2.38.105 10/31/02]

### **20.2.38.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "New hydrocarbon storage facility"** means any hydrocarbon storage facility, or part thereof, the fabrication, erection, installation, or modification of which is commenced on or after January 1, 1975.

**B. "New tank battery"** means any tank battery, or part thereof, the fabrication, erection, installation, or modification of which is commenced on or after January 1, 1975.

**C. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**D. "Petroleum production facility"** includes tank batteries, separators and heater-treaters used in producing or storing any crude oil, condensate or natural gas that has been extracted from a well.

**E. "Tank battery"** means a tank or group of tanks that receive crude oil or condensate from a well for storage until shipment.

[11/30/95; 20.2.38.7 NMAC - Rn, 20 NMAC 2.38.107 10/31/02]

#### **20.2.38.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 631, -- Hydrocarbon Storage Facilities last filed February 8, 1983.

**A.** All references to AQCR 631 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 631 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 631.

[11/30/95; 20.2.38.8 NMAC - Rn, 20 NMAC 2.38.106 10/31/02]

#### **20.2.38.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.38.9 NMAC - Rn, 20 NMAC 2.38.108 10/31/02]

#### **20.2.38.10-20.2.38.108 [RESERVED]**

**20.2.38.109 TANK STORAGE ASSOCIATED WITH PETROLEUM PRODUCTION OR PROCESSING FACILITY:**

The owner or operator shall not place, hold or store hydrocarbons containing hydrogen sulfide in a container associated with a petroleum production facility or petroleum processing facility and having a capacity of 20,000 gallons or greater with a throughput of at least 30,000 gallon per week, unless the container is equipped with:

**A.** a method of discharging the hydrocarbons into the container below the liquid level; or

**B.** any other method or device equally effective to minimize hydrocarbon and hydrogen sulfide loss to the atmosphere.

[11/30/95; 20.2.38.109 NMAC - Rn, 20 NMAC 2.38.109 10/31/02]

**20.2.38.110 TANK BATTERY OR STORAGE FACILITY -- WITHIN MUNICIPALITY:**

The owner or operator of, within the corporate limits of a municipality, a tank battery having a throughput greater than 10,000 barrels (420,000 gallons) per year operated in conjunction with a petroleum production facility, or a hydrocarbon storage facility operated in conjunction with a petroleum processing facility, shall not place, store or hold in a stationary tank or other container any hydrocarbon liquids, the vapor of which contains at any time 24 ppm or more of hydrogen sulfide unless the tank or other container is equipped with:

**A.** a well-maintained vapor-recovery system consisting of:

**(1)** a vapor-gathering system capable of collecting the vapor and gases discharged; and

**(2)** a vapor-disposal system capable of processing the vapor and gases so as to minimize emission of sulfur compounds to the atmosphere; or

**B.** any other device that is at least as efficient to minimize the loss of vapor or gas containing sulfur or its compounds to the atmosphere; or

**C.** a floating roof, consisting of an external floating roof, internal floating cover or covered floating roof, which is equipped with a closure seal or seals maintained in good repair to close the space between the roof or cover edge and tank wall, if the stationary tank or other container is equipped with a floating roof on January 1, 1974.

[11/30/95; 20.2.38.110 NMAC - Rn, 20 NMAC 2.38.110 10/31/02]

**20.2.38.111 TANK BATTERY OR STORAGE FACILITY -- WITHIN FIVE MILES OF MUNICIPALITY OF TWENTY THOUSAND OR MORE:**

The owner or operator of, within five miles, of the corporate limits of a municipality that has a population of twenty thousand or greater, a tank battery having a throughput greater than 50,000 barrels (2,100,000 gallons) per year operated in conjunction with a petroleum production facility, or a hydrocarbon storage facility operated in conjunction with a petroleum processing facility, shall not place, store, or hold in a stationary tank or other container any hydrocarbon liquids the vapor of which contains at any time 24 ppm or more of hydrogen sulfide unless the tank or other container is equipped as required in 20.2.38.110 NMAC.

[11/30/95; 20.2.38.111 NMAC - Rn, 20 NMAC 2.38.111 10/31/02]

#### **20.2.38.112 NEW TANK BATTERY -- MORE THAN 65,000 GALLONS CAPACITY:**

The owner or operator of a new tank battery operated in conjunction with a petroleum production facility shall not place, store, or hold in a stationary tank or other container, if the tank battery has a storage capacity of 65,000 gallons or greater, any hydrocarbon liquid unless the tank or other container is equipped with:

**A.** a floating roof, consisting of an external floating roof, internal floating cover or covered floating roof, which is equipped with a closure seal or seals maintained in good repair to close the space between the roof or cover edge and tank wall; or

**B.** a well-maintained vapor-recovery system consisting of:

**(1)** a vapor-gathering system capable of collecting the organic compound vapors and gases discharged; and

**(2)** a vapor-disposal system capable of collecting the organic vapor and gases so as to minimize their emission to the atmosphere; or

**C.** any other device which is at least as effective to minimize vapor or gas loss to the atmosphere.

[11/30/95; 20.2.38.112 NMAC - Rn, 20 NMAC 2.38.112 10/31/02]

#### **20.2.38.113 NEW TANK BATTERY AND THE PECOS-PERMIAN INTERSTATE AIR QUALITY CONTROL REGION:**

The owner or operator of a new tank battery operated in conjunction with a petroleum production facility, or a new hydrocarbon storage facility operated in conjunction with a petroleum processing facility, located outside the Pecos-Permian intrastate air quality control region, located within the corporate limits of any municipality within the state or located within five miles of the corporate limits of any municipality within the state that has a population of twenty thousand or greater shall not place, store, or hold in a stationary tank or other container any hydrocarbon liquid, the vapor of which contains at

any time 24 ppm or more of hydrogen sulfide, unless the tank or other container is equipped with:

**A.** a well-maintained vapor-recovery system consisting of:

**(1)** a vapor-gathering system capable of collecting the vapors and gases discharged; and

**(2)** a vapor-disposal system capable of processing the vapors and gases so as to minimize emission of sulfur compounds to the atmosphere; or

**B.** any other device that is at least as effective to minimize the loss of vapor or gas containing sulfur or its compounds to the atmosphere.

[11/30/95; 20.2.38.113 NMAC - Rn, 20 NMAC 2.38.113 10/31/02]

## **PART 39: SULFUR RECOVERY PLANT - SULFUR**

### **20.2.39.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.39.1 NMAC - Rn, 20 NMAC 2.39.100 10/31/02]

### **20.2.39.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.39.2 NMAC - Rn, 20 NMAC 2.39.101 10/31/02]

### **20.2.39.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B), and (C).

[11/30/95; 20.2.39.3 NMAC - Rn, 20 NMAC 2.39.102 10/31/02]

### **20.2.39.4 DURATION:**

Permanent.

[11/30/95; 20.2.39.4 NMAC - Rn, 20 NMAC 2.39.103 10/31/02]

### **20.2.39.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.39.5 NMAC - Rn 20 NMAC 2.39.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.39.6 OBJECTIVE:**

The objective of this Part is to establish sulfur emission standards for sulfur recovery plants which are not part of petroleum or natural gas processing facilities.

[11/30/95; 20.2.39.6 NMAC - Rn, 20 NMAC 2.39.105 10/31/02]

**20.2.39.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**B. "Sulfur"** means elemental sulfur and the sulfur component of any mixture or compound.

[11/30/95; 20.2.39.7 NMAC - Rn, 20 NMAC 2.39.107 10/31/02]

**20.2.39.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 632, -- Sulfur Recovery Plant -- Sulfur last filed February 8, 1983.

**A.** All references to AQCR 632 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 632 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 632.

[11/30/95; 20.2.39.8 NMAC - Rn, 20 NMAC 2.39.106 10/31/02]

**20.2.39.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.39.9 NMAC - Rn, 20 NMAC 2.39.108 10/31/02]

**20.2.39.10-20.2.39.109 [RESERVED]**

**20.2.39.110 EXISTING SULFUR RECOVERY PLANT:**

The owner or operator of an existing (the fabrication, erection, or installation of which was commenced before August 14, 1974) sulfur recovery plant shall not permit, cause, suffer or allow at any time sulfur emissions to the atmosphere in excess of 12 pounds of sulfur for every 100 pounds of sulfur introduced into the plant.

[11/30/95; 20.2.39.110 NMAC - Rn, 20 NMAC 2.39.110 10/31/02]

**20.2.39.111 SULFUR RECOVERY PLANT -- LESS THAN 20 TONS PER DAY OF SULFUR:**

The owner or operator of a new (the fabrication, erection, installation, or modification of which was commenced on or after August 14, 1974) sulfur recovery plant that introduces less than twenty tons a day of sulfur into the plant shall not permit, cause, suffer or allow at any time sulfur emissions to the atmosphere in excess of 10 pounds of sulfur for every 100 pounds of sulfur introduced into the plant.

[11/30/95; 20.2.39.111 NMAC - Rn, 20 NMAC 2.39.111 10/31/02]

**20.2.39.112 SULFUR RECOVERY PLANT -- MORE THAN 20 TONS PER DAY OF SULFUR:**

The owner or operator of a new (the fabrication, erection, installation, or modification of which was commenced on or after August 14, 1974) sulfur recovery plant that introduces twenty tons a day or greater of sulfur into the plant shall not permit, cause, suffer or allow at any time sulfur emissions to the atmosphere in excess of 2 pounds of sulfur for every 100 pounds of sulfur introduced into the plant.

[11/30/95; 20.2.39.112 NMAC - Rn, 20 NMAC 2.39.112 10/31/02]

**20.2.39.113 SULFUR RECOVERY PLANTS OTHERWISE REGULATED:**

This Part shall not apply to a sulfur recovery plant for which a sulfur emission limitation is established by any other air quality control regulation. For purposes of this section, the establishment by an air quality control regulation of a limitation on the amount of hydrogen sulfide that may be emitted is not the establishment of a sulfur emission limitation.

[11/30/95; 20.2.39.113 NMAC - Rn, 20 NMAC 2.39.113 10/31/02]

**20.2.39.114 REPORTING REQUIREMENTS:**

**A.** To aid the Department in determining compliance with this Part, the owner or operator of a sulfur recovery plant to which this Part applies shall submit to the Department quarterly reports for the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 of each year, each report to be received by the Department within 45 days of the end of the quarterly period. The quarterly report shall contain the following:

(1) the sulfur content of feedstock entering the sulfur recovery plant, determined no less frequently than weekly;

(2) the weight of the recovered sulfur, determined no less frequently than weekly; and

(3) the concentration of sulfur dioxide and hydrogen sulfide in the exit gas stream or streams, determined no less frequently than monthly.

**B.** When the sulfur recovery plant has at some time during the quarterly period operated under the provisions of 20.2.7 NMAC (Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance), and complied with the notification requirements of that regulation, quantities and time periods involved in the quarterly reports may be modified to exclude the time periods and the quantities involved during those time periods if the quantities are determined separately for those time periods and submitted in the quarterly report.

[11/30/95; 20.2.39.114 NMAC - Rn, 20 NMAC 2.39.114 10/31/02]

## **PART 40: SULFURIC ACID PRODUCTION UNITS - SULFUR DIOXIDE, ACID MIST AND VISIBLE EMISSIONS**

### **20.2.40.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.40.1 NMAC - Rn, 20 NMAC 2.40.100 10/31/02]

### **20.2.40.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.40.2 NMAC - Rn, 20 NMAC 2.40.101 10/31/02]

### **20.2.40.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.40.3 NMAC - Rn, 20 NMAC 2.40.102 10/31/02]

**20.2.40.4 DURATION:**

Permanent.

[11/30/95; 20.2.40.4 NMAC - Rn, 20 NMAC 2.40.103 10/31/02]

**20.2.40.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.40.5 NMAC - Rn, 20 NMAC 2.40.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.40.6 OBJECTIVE:**

The objective of this Part is to establish requirements and standards for sulfuric acid production units to minimize emissions.

[11/30/95; 20.2.40.6 NMAC - Rn, 20 NMAC 2.40.105 10/31/02]

**20.2.40.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Acid mist"** means sulfuric acid mist as measured by the method referenced in 20.2.40.110 NMAC and includes liquid mist as well as sulfur trioxide and sulfuric acid vapor.

**B. "Commenced"** means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete within a reasonable time a continuous program of construction.

**C. "Construction"** means fabrication, erection or installation of an affected facility.

**D. "Existing sulfuric acid production unit"** means a sulfuric acid production unit the construction or modification of which was commenced on or before August 17, 1971.

**E. "Good engineering practice"** means:

**(1)** With respect to stack heights less than 65 meters, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any

pollutant in the immediate vicinity of the source as result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles. Such height shall not exceed:

(a) Thirty meters for stacks not influenced by the source itself, nearby structures or terrain; or

(b) The height determined by use of the equation:  $H_g = H + 1.5 L$ ; where:  $H_g$  = good engineering practice stack heights;  $H$  = the height of the source or nearby structure; and  $L$  = the lesser dimension (height or width) of the source or nearby structure for stacks that are influenced by nearby structures or terrain;

(2) With respect to stack heights equal to or greater than 65 meters, the owner or operator must satisfy all provisions and obtain all applicable approvals required under 20.2.80 NMAC (Stack Heights).

**F. "Modification"** means a physical change or change in the manner of operation which increases the amount of any air contaminant emitted by the sulfuric acid production unit or which results in the emission of any air contaminant not previously emitted.

**G. "Pecos-Permian Basin Intrastate Air Quality Control Region"** means Chaves, Curry, De Baca, Eddy, Lea, Quay and Roosevelt Counties.

**H. "Sulfuric acid"** means the chemical compound  $H_2SO_4$ .

**I. "Sulfuric acid produced"** means the production expressed as 100 percent  $H_2SO_4$ .

**J. "Sulfuric acid production unit"** means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides and mercaptans, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

**K. "Ton"** means 2,000 pounds.

[11/30/95; 20.2.40.7 NMAC - Rn, 20 NMAC 2.40.107 10/31/02]

#### **20.2.40.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 651 -- Sulfuric Acid Production Units -- Sulfur Dioxide, Acid Mist and Visible Emissions last filed November 17, 1993:

**A.** All references to AQCR 651 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 651 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 651.

[11/30/95; 20.2.40.8 NMAC - Rn, 20 NMAC 2.40.106 10/31/02]

#### **20.2.40.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.40.9 NMAC - Rn, 20 NMAC 2.40.108 10/31/02]

#### **20.2.40.10-20.2.40.108 [RESERVED]**

#### **20.2.40.109 EXISTING UNITS:**

**A.** The owner or operator of an existing sulfuric acid production unit located within the Pecos-Permian Basin Intrastate Air Quality Control Region shall not permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere in excess of 575 pounds per hour, with a minimum stack height of 40 meters, or acid mist emissions in excess of 0.5 pounds per ton of sulfuric acid produced. Stack height shall meet standards for good engineering practice.

**B.** The owner or operator of an existing sulfuric acid production unit located outside the Pecos-Permian Basin Intrastate Air Quality Control Region shall not permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere in excess of 680 pounds per hour, or acid mist emissions in excess of 0.5 pounds per ton of sulfuric acid produced.

[11/30/95; 20.2.40.109 NMAC - Rn, 20 NMAC 2.40.109 10/31/02]

#### **20.2.40.110 COMPLIANCE:**

Compliance with sulfur dioxide and acid mist emission limitations of this Part shall be determined consistent with the method and procedures specified by the US EPA in 40 CFR Section 60.85 or any other equivalent method and procedures receiving prior approval from the Department and the US EPA. Upon request of the Department, the owner or operator of sulfuric acid production units subject to this regulation shall perform stack testing for sulfur dioxide and acid mist emissions according to the method stated above and report the results of such tests in the format and time period specified by the Department. The owner or operator shall inform the Department of the dates and

times of such testing so that the Department may have opportunity to have an observer present during testing.

[11/30/95; 20.2.40.110 NMAC - Rn, 20 NMAC 2.40.110 10/31/02]

#### **20.2.40.111 VISIBLE EMISSIONS:**

Opacity of visible emissions from existing sulfuric acid production units shall be determined consistent with the method set forth by the US EPA in 40 CFR Part 60, Appendix A, Method 9 or any other equivalent method receiving prior approval from the Department and the US EPA. The time period for taking opacity readings shall be for a minimum of six minutes.

[11/30/95; 20.2.40.111 NMAC - Rn, 20 NMAC 2.40.111 10/31/02]

#### **20.2.40.112 MONITORING:**

**A.** The owner or operator of an existing sulfuric acid production unit shall not permit, cause, suffer or allow operation of the sulfuric acid production unit without maintaining in good operating condition a monitor which continuously measures and records the sulfur dioxide concentration in the gases within the stack from which the gases are emitted to the atmosphere. The sampling point for monitoring emissions and the method for determining the volumetric flow rate of the gases shall be approved by the Department. Instruments and sampling systems installed and used pursuant to this section shall be calibrated in accordance with the methods prescribed by the manufacturer's recommended zero adjustment and calibration check procedures at least once every 24 hours of operation, unless the manufacturer specifies or recommends more frequent calibration checks. The owner or operator of a sulfuric acid production unit shall retain for a period of two years all raw data and quality assurance measurements and procedures. This section is applicable to existing sulfuric acid production units after December 31, 1980.

**B.** Instruments and sampling systems installed and used pursuant to subsection A of 20.2.40.112 NMAC shall be installed, operated and maintained in accordance with the performance specifications and other requirements set forth by the US EPA in 40 CFR Section 60.84. The continuous emission monitoring system shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. In the event that significant repair work is performed on the monitoring system, the owner or operator of a sulfuric acid production unit shall demonstrate to the Department that the system continues to meet applicable performance specifications. The Department may require the owner or operator to conduct performance tests as specified at 40 CFR Part 60, Appendix B at any time that the Department determines that such a test is necessary to verify the performance of the monitoring system. An alternative means of verifying the performance of the monitoring system may be used if approved by the Department and the US EPA. The

Department may also perform independent audits on the continuous monitoring system using the method referenced above, or other applicable methods.

[11/30/95; 20.2.40.112 NMAC - Rn, 20 NMAC 2.40.112 10/31/02]

#### **20.2.40.113 REPORTING:**

To aid the Department in determining compliance with this Part, persons owning or operating existing sulfuric acid production units subject to this Part shall submit quarterly reports to the Department for the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 of each year; each report to be received by the Department within 45 days of the end of the quarterly period. The quarterly reports shall contain:

**A.** For each day that the plant is operating, the maximum 3-hour integrated average sulfur dioxide emissions, expressed in terms of pounds of sulfur dioxide per hour; and

**B.** All 3-hour periods during which the integrated average sulfur dioxide emissions exceed the sulfur dioxide emission limit.

[11/30/95; 20.2.40.113 NMAC - Rn, 20 NMAC 2.40.113 10/31/02]

### **PART 41: NONFERROUS SMELTERS - SULFUR**

#### **20.2.41.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.41.1 NMAC - Rn, 20 NMAC 2.41.100 10/31/02]

#### **20.2.41.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.41.2 NMAC - Rn, 20 NMAC 2.41.101 10/31/02]

#### **20.2.41.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.41.3 NMAC - Rn, 20 NMAC 2.41.102 10/31/02]

#### **20.2.41.4 DURATION:**

Permanent.

[11/30/95; 20.2.41.4 NMAC - Rn, 20 NMAC 2.41.103 10/31/02]

**20.2.41.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.41.5 NMAC - Rn, 20 NMAC 2.41.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.41.6 OBJECTIVE:**

The objective of this Part is to establish requirements and standards for nonferrous smelters to minimize sulfur emissions.

[11/30/95; 20.2.41.6 NMAC - Rn, 20 NMAC 2.41.105 10/31/02]

**20.2.41.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Captured fugitive emissions"** means sulfur emissions which escape from various points in the smelting process and are captured.

**B. "Exceedance"** means the state of being exceeded.

**C. "Existing nonferrous smelter"** means a nonferrous smelter which was constructed and fully operational prior to September 1, 1971.

**D. "Good operating conditions"** means monitors operated in accordance with the specifications at 40 CFR Part 52, Appendices D and E.

**E. "Malfunction"** means any sudden and unavoidable failure of air pollution control equipment, process equipment or process to operate in an expected manner. Failures that are caused entirely or in part by poor maintenance, careless operation or any other preventable equipment breakdown shall not be considered a malfunction.

**F. "Median"** means the middle value in a series of numbers below and above which fall an equal number of values.

**G. "Modification"** means a modification as defined by section 74- 2-2(M), NMSA 1978.

**H. "Modified nonferrous smelter"** means any existing smelter that has incorporated a modification.

**I. "New nonferrous smelter"** means a nonferrous smelter, the construction of which commenced after September 1, 1971.

**J. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**K. "Startup"** means the setting into operation of any air pollution control equipment, process equipment or process for any purpose.

**L. "Sulfur"** means elemental sulfur and the sulfur component of any sulfur mixtures or compounds.

**M. "Sulfur dioxide"** means the chemical compound containing two atoms of oxygen and one of sulfur.

**N. "Uncaptured fugitive emissions"** means sulfur emissions which escape to the atmosphere from various points in the smelting process due to leakage, materials charging and handling, transfer and storage, or other causes.

[11/30/95; 20.2.41.7 NMAC - Rn, 20 NMAC 2.41.107 10/31/02]

#### **20.2.41.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 652 -- Nonferrous Smelters -- Sulfur last filed November 17, 1993.

**A.** All references to AQCR 652 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 652 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 652.

[11/30/95; 20.2.41.8 NMAC - Rn, 20 NMAC 2.41.106 10/31/02]

#### **20.2.41.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.41.9 NMAC - Rn, 20 NMAC 2.41.108 10/31/02]

**20.2.41.10-20.2.41.108 [RESERVED]**

**20.2.41.109 EMISSION LIMITATIONS -- EXISTING OR MODIFIED NONFERROUS SMELTER:**

The owner or operator of any existing or modified nonferrous smelter shall not permit, cause, suffer or allow:

**A.** Annual average emissions in excess of 7000 pounds of sulfur dioxide per hour except as provided for in 20.2.41.112 NMAC;

**B.** A median 3-hour running average to exceed 5309 pounds of sulfur dioxide per hour during any 365-day compliance period;

**C.** More than N occurrences of three-hour running average sulfur dioxide emissions in excess of the corresponding E values shown in the following table in any 365-day compliance period when there are malfunction or startup conditions:

N	E
(number of occurrences)	(pounds per hour of sulfur dioxide emissions)
0	3,000
1	49,000
2	45,500
4	42,300
7	39,200
12	36,200
20	33,400
32	31,300
48	29,200
68	27,200
94	25,600
130	23,800
180	21,700
245	20,000
330	18,700
435	17,200
560	15,800
710	14,600
890	13,200
1100	12,200
[greater than] 1100	7,800

**D.** More than N occurrences of three-hour running average sulfur dioxide emissions in excess of the corresponding E values shown in the following table in any 365-day compliance period when there are not malfunction or startup conditions:

N	E
(number of occurrences)	(pounds per hour of sulfur dioxide emissions)
0	12,200
240	10,700
510	9,800
810	8,700
1,140	7,800

**(1)** Any three-hour average that includes a period of time when there are malfunction or startup conditions shall be included in either the cumulative occurrence limits of subsections C and D of 20.2.41.109 NMAC, at the choice of the smelter owner or operator;

**(2)** Any three-hour average that does not include a period of time when there are malfunction or startup conditions shall be included in the cumulative occurrence table in subsection D of 20.2.41.109 NMAC.

**E.** The release of fugitive sulfur emissions to the atmosphere unless the owner or operator utilizes best engineering practices to minimize the release of such fugitive emissions. Best engineering practices shall, as a minimum, include:

**(1)** Maintaining and operating all furnaces, converters, and converter hoods so that leakage of gases to the atmosphere will be minimized to the maximum extent practicable;

**(2)** Maintaining all ducts, flues, and stacks in leak-free condition;

**(3)** Installing and operating tight-fitting exhaust hoods where feasible on all tapholes, launders, and other significant sources of fugitive sulfur emissions; and

**(4)** Venting all captured fugitive emissions through the tallest stack serving the smelter;

**F.** Operation of the smelter without including all measured emissions to the atmosphere in compliance calculations.

[11/30/95; 20.2.41.109 NMAC - Rn, 20 NMAC 2.41.109 10/31/02]

**20.2.41.110 EMISSION LIMITATIONS -- NEW NONFERROUS SMELTER:**

The owner or operator of a new nonferrous smelter shall not permit, cause, suffer or allow:

**A.** sulfur emissions to the atmosphere in excess of ten pounds of sulfur for every one hundred pounds of sulfur fed to the smelter;

**B.** the release of fugitive sulfur emissions to the atmosphere unless best engineering practices, including practices listed in subsection E of 20.2.41.109 NMAC, are utilized to minimize the release of such fugitive emissions.

[11/30/95; 20.2.41.110 NMAC - Rn, 20 NMAC 2.41.110 10/31/02]

**20.2.41.111 MONITORING -- EXISTING OR MODIFIED NONFERROUS SMELTER:**

**A.** Continuous Monitoring: The owner or operator of an existing or modified nonferrous smelter shall maintain monitors in good operating condition which continuously measure and record the sulfur dioxide concentration and stack gas volumetric flow rate of the gases within the stacks serving all furnaces, liquid sulfur dioxide plants, converters, acid plants, reverberatory feed dryers, and stacks from which captured fugitive emissions are vented to the atmosphere. Any continuous monitors required by this section (20.2.41.111 NMAC) shall record the sulfur dioxide concentration and stack gas volumetric flow rate at least 95 percent of the time for any twelve consecutive calendar months. The 95 percent data recovery shall only apply for the time or times that the stack is used to release sulfur dioxide to the atmosphere. If the monitor does not measure the sulfur dioxide concentration and stack gas volumetric flow rate for the required amount of time, the smelter owner shall use alternative methods approved by the Department and the US EPA to supply the missing concentration data.

**B.** Sampling Locations: The sampling point or points of the continuous monitoring system shall be located at least eight stack diameters (diameter measured at sampling point) downstream and two diameters upstream from any flow disturbance such as a bend, expansion, constriction or flame, unless another location is approved by the Department. The sampling point for monitoring emissions shall be in the duct at the centroid (geometrical centered 1.0 per cent area) of the cross-section if the cross-sectional area is less than 113 square feet or at a point no closer to the wall than six feet if the cross-sectional area is more than 113 square feet unless otherwise approved by the Department. The sampling point shall be in an area of low spatial concentration gradient and shall be representative of the concentration in the duct.

**C.** Exemptions: Upon the request of the owner or operator of the smelter, the Department may exempt stacks from this monitoring requirement if the Department determines that they do not carry more than ten (10) pounds per hour sulfur dioxide emissions.

**D. Instrument Calibration and Data Retention:** Instruments and sampling systems installed and used pursuant to this section shall be calibrated in accordance with the methods prescribed by manufacturer's recommended zero adjustment and calibration check procedures at least once every 24 hours of operation, unless the manufacturer specifies or recommends calibration checks more frequently. The owner or operator of the smelter shall retain all raw data and quality assurance measurements and procedures for a minimum of three years.

**E. Performance Audits of Monitoring System:** Instruments and sampling systems installed and used pursuant to subsections A, B and C of 20.2.41.111 NMAC, shall be installed, operated and maintained in accordance with the performance specifications and other requirements set forth at 40 CFR Part 52, Appendices D and E. Alternative procedures for this paragraph may be used with approval of the Department and the EPA. In the event that repair work is performed on the monitoring system, that could result in inaccurate readings, the owner or operator of the smelter shall demonstrate to the Department that the system continues to meet the applicable performance specifications. The Department may require the owner or operator of the smelter to conduct performance tests as specified at 40 CFR Part 52, Appendices D and E at any time that the Department determines that such a test is necessary to verify the performance of the monitoring system. The Department and the US EPA may approve alternative means of verifying the performance of the continuous monitoring system. The Department may also perform independent audits on the continuous monitoring system, utilizing Methods 1, 2, 4 and 8, found at 40 CFR Part 60, Appendix A, or other applicable methods.

**F. Test Notification, Reporting and Reevaluation of CEMS:** The owner or operator of an existing or modified nonferrous smelter shall:

(1) Notify the Department at least forty-five (45) days in advance of the start of the field tests required at 40 CFR Part 52, Appendices D and E;

(2) Submit a report to the Department within forty-five (45) days of the completion of any performance specification test required by this Part or the Department; and

(3) Reevaluate the continuous emission monitoring systems installed and operated pursuant to subsection E of 20.2.41.111 NMAC at least once during any twelve (12) calendar months following the installation of such systems. The evaluation shall demonstrate acceptability of zero and calibration drift, relative accuracy error, and calibration error of measurements contained in the applicable performance specification at 40 CFR Part 52, Appendices D and E, or as otherwise approved by the Department.

[11/30/95; 20.2.41.111 NMAC - Rn, 20 NMAC 2.41.111 10/31/02]

**20.2.41.112 COMPLIANCE -- EXISTING OR MODIFIED NONFERROUS SMELTERS:**

Compliance with 20.2.41.109 NMAC shall be determined in accordance with the requirements specified in this section:

**A.** Annual running average emissions shall be calculated at the end of each calendar day. The smelter shall be in violation if two (2) consecutive annual averages exceed the emission limit and the second average exceeds the first average. The smelter shall also be in violation if ten (10) consecutive annual averages exceed the annual average emission limit;

**B.** The median running 3-hour average for the previous 365 days shall be calculated at the end of each calendar day. Such compliance determinations shall be calculated at the end of each day for each compliance period;

**C.** Compliance with the cumulative occurrence tables in 20.2.41.109 NMAC shall be determined on the basis of all running three-hour averages measured in the previous 365 days or less. Such compliance determinations shall be calculated at the end of each day. Three-hour averages shall be calculated at the end of each clock hour by averaging the hourly emissions for the preceding three (3) consecutive hours whenever each hour was measured in accordance with 20.2.41.109 NMAC and subsections A, B and C of 20.2.41.111 NMAC.

**D.** If the smelter is not operating for an extended period of time, and with the approval of the Department, zeros may be recorded on an hourly basis without operating the continuous monitoring system if emissions to the atmosphere are shown to be below ten (10) pounds per hour;

**E.** A three-hour emissions average in excess of an emission level (E) is a violation if the number of all three-hour emissions averages that exceed the emission level (E) measured during the compliance period exceeds the cumulative occurrence limit (N);

**F.** The compliance period shall consist of the 365 days immediately preceding each day;

**G.** A three-hour emissions average can only violate the cumulative occurrence limit (N) of an emissions level (E) in the day containing the last hour in the average;

**H.** Multiple exceedances of a cumulative occurrence limit by different three-hour emissions averages containing any common hour constitute a single violation.

[11/30/95; 20.2.41.112 NMAC - Rn, 20 NMAC 2.41.112 10/31/02]

### **20.2.41.113 COMPLIANCE -- NEW NONFERROUS SMELTERS:**

Compliance with subsection A of 20.2.41.110 NMAC shall be determined in accordance with the requirements specified in this section:

**A.** It shall be a violation of this Part if the sulfur removal requirement in subsection A of 20.2.41.110 NMAC is not achieved for any calendar month;

**B.** The owner or operator of any new nonferrous smelter shall calculate the sulfur removal rate for the smelter for each calendar month. This calculation shall be done in accordance with a written plan approved by the Department and US EPA.

[11/30/95; 20.2.41.113 NMAC - Rn, 20 NMAC 2.41.113 10/31/02]

#### **20.2.41.114 REPORTING:**

Persons owning or operating any existing, modified or new nonferrous smelter shall submit quarterly reports to the Department for the periods January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31 of each year. Each report shall be filed with the Department within forty five (45) days of the end of the quarterly period.

##### **A. Existing and Modified Nonferrous Smelters:**

**(1)** The quarterly reports for existing and modified nonferrous smelters shall include:

**(a)** the annual average emissions in pounds of sulfur dioxide per hour calculated at the end of each day;

**(b)** all exceedances of the cumulative occurrence tables in 20.2.41.109 NMAC, including the associated date, time, E value and N value; and

**(c)** the twenty (20) highest running three-hour averages with the associated time and date of occurrence;

**(d)** the median 3-hour running average for each compliance period in pounds of sulfur dioxide per hour at the end of each day.

**(2)** All three-hour running averages, E-values, N-values, and continuous monitoring measurements shall be retained by the owner or operator of any existing or modified nonferrous smelter for at least three (3) years. Upon request, the owner or operator of the smelter shall report such data in a timely manner to the Department.

**B. New Nonferrous Smelters:** The quarterly reports for new nonferrous smelters shall include:

**(1)** Sulfur removal rates for each calendar month;

**(2)** Identification of all exceedances of the requirement in subsection A of 20.2.41.110 NMAC; and

(3) Identification of all periods of time for which notification was provided to the Department pursuant to 20.2.7 NMAC (Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance).

(4) The owner or operator of any new nonferrous smelter shall retain all records utilized as the basis for the quarterly report for a period of at least three (3) years. Upon request, such records shall be made accessible or reported to the Department.

[11/30/95; 20.2.41.114 NMAC - Rn, 20 NMAC 2.41.114 10/31/02]

#### **20.2.41.115 FUGITIVE EMISSIONS EVALUATION:**

No later than the end of the first two years of operation, the owner or operator of a modified smelter shall submit to the Department the results of an evaluation of the fugitive sulfur dioxide emissions from the smelter. The evaluation shall contain the following information:

**A.** A measurement or accurate estimate of captured and uncaptured fugitive emissions from the smelter. The measurement or estimate shall contain the amount of both short-term and long-term fugitive emissions from the smelter. The evaluation plan shall be approved in advance by the Department and shall specify the method used to determine the fugitive emission amounts;

**B.** A measurement or accurate estimate of the relative proportion (expressed as a percentage) of captured and uncaptured fugitive emissions produced by the following smelter processes: Roaster or dryer operation; Calcine or dried concentrate transfer; Furnace operations (including feeding, slag return, matte and slag tapping); Matte transfer; and Converter operations. The measurement technique or method of estimation used to fulfill this requirement shall be approved in advance by the Department;

**C.** the results of a one year fugitive emission impact analysis. The study shall utilize sufficient measurements of fugitive emissions, meteorological conditions and ambient sulfur dioxide concentrations to associate fugitive emissions with specific measured ambient concentrations of sulfur dioxide. The study shall describe in detail the techniques used to make the required determinations. It shall include an analysis of the feasibility of using sulfur balance figures for the above determinations. The design of the study shall be submitted within 60 days of the startup of the modified smelter for approval by the Department.

[11/30/95; 20.2.41.115 NMAC - Rn, 20 NMAC 2.41.115 10/31/02]

#### **20.2.41.116 MONITORING EQUIPMENT:**

In order to assess the sufficiency of the cumulative occurrence and emission limits contained in 20.2.41.109 NMAC and in order to maintain the ambient air quality standards for sulfur dioxide, the owner or operator of a smelter subject to 20.2.41.109 NMAC shall continue to calibrate, maintain and operate any ambient sulfur dioxide monitoring equipment owned by the smelter owner or operator and in operation on December 17, 1993. Such monitors shall be operated and maintained as prescribed at 40 CFR Parts 53 and 58. The location of ambient sulfur dioxide monitors and length of time such monitors remain at a location shall be determined by the Department.

[11/30/95; 20.2.41.116 NMAC - Rn, 20 NMAC 2.41.116 10/31/02]

#### **20.2.41.117 DATA SUBMISSION:**

The data accumulated from the programs detailed in 20.2.41.115 NMAC and 20.2.41.116 NMAC shall be submitted to the Department for its review. The reports should confirm whether or not the emission limitations contained in 20.2.41.109 NMAC are adequate to maintain state and federal ambient air quality standards. The Department, upon reasonable notice and at reasonable times, shall have access to all raw and verified data for verification purposes and shall be permitted access to the monitors, and shall have the opportunity to perform quality assurance audits.

[11/30/95; 20.2.41.117 NMAC - Rn, 20 NMAC 2.41.117 10/31/02]

### **PART 42: COAL MINING AND PREPARATION PLANTS - PARTICULATE MATTER**

#### **20.2.42.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.42.1 NMAC - Rn, 20 NMAC 2.42.100 10/31/02]

#### **20.2.42.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.42.2 NMAC - Rn, 20 NMAC 2.42.101 10/31/02]

#### **20.2.42.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/30/95; 20.2.42.3 NMAC - Rn, 20 NMAC 2.42.102 10/31/02]

**20.2.42.4 DURATION:**

Permanent.

[11/30/95; 20.2.42.4 NMAC - Rn, 20 NMAC 2.42.103 10/31/02]

**20.2.42.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.42.5 NMAC - Rn, 20 NMAC 2.42.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.42.6 OBJECTIVE:**

The objective of this Part is to establish requirements and standards for coal mines and preparation plants to minimize particulate matter emissions

[11/30/95; 20.2.42.6 NMAC - Rn, 20 NMAC 2.42.105 10/31/02]

**20.2.42.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part: "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

[11/30/95; 20.2.42.7 NMAC - Rn, 20 NMAC 2.42.107 10/31/02]

**20.2.42.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 672 -- Coal Mining and Preparation Plants - Particulate Matter last filed November 16, 1973.

**A.** All references to AQCR 672 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 672 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 672.

[11/30/95; 20.2.42.8 NMAC - 20 NMAC 2.42.106 10/31/02]

**20.2.42.9-20.2.42.107 [RESERVED]**

#### **20.2.42.108 EQUIPMENT:**

All persons operating coal preparation plants shall equip all crushers, conveyors, screens, cleaners, hoppers, and chutes, which are designed for the continuous transportation or preparation of coal at the coal preparation plant, with hoods, shields or sprays where reasonably necessary to prevent particulate matter from becoming airborne.

[11/30/95; 20.2.42.108 NMAC - Rn, 20 NMAC 2.42.108 10/31/02]

#### **20.2.42.109 HAUL ROADS:**

All persons operating a coal mine shall cause main coal haulage roads to be sprayed or to be otherwise treated where reasonably necessary to prevent particulate matter from becoming airborne.

[11/30/95; 20.2.42.109 NMAC - Rn, 20 NMAC 2.42.109 10/31/02]

### **PART 43: GASIFICATION PLANTS**

#### **20.2.43.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[11/23/98; 20.2.43.1 NMAC - Rn, 20 NMAC 2.43.100 10/31/02]

#### **20.2.43.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/23/98; 20.2.43.2 NMAC - Rn, 20 NMAC 2.43.101 10/31/02]

#### **20.2.43.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C).

[11/23/98; 20.2.43.3 NMAC - Rn, 20 NMAC 2.43.102 10/31/02]

#### **20.2.43.4 DURATION:**

Permanent.

[11/23/98; 20.2.43.4 NMAC - Rn, 20 NMAC 2.43.103 10/31/02]

#### **20.2.43.5 EFFECTIVE DATE:**

November 23, 1998, except where a later date is cited at the end of a section or paragraph.

[11/23/98; 20.2.43.5 NMAC - Rn, 20 NMAC 2.43.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

#### **20.2.43.6 OBJECTIVE:**

The objective of this Part is to establish emission standards for gasification plants.

[11/23/98; 20.2.43.6 NMAC - Rn, 20 NMAC 2.43.105 10/31/02]

#### **20.2.43.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Feed"** means those materials which enter directly into the manufacture of synthetic natural gas, and includes, but is not limited to coal, tars, oils and naphtha.

**B. "Gasification plant"** means a plant that manufactures synthetic gas and includes: all process gas streams and products produced in the gasification process; all operations associated with treatment of gasification products; ash removal equipment; regeneration of any absorbent or oxidizing agents (and any off gases so produced) used in the treatment or removal of products produced in the gasification process; catalyst regeneration; storage facilities for liquids, solids and gases; and pretreatment of coal. Gasification plant does not include the coal preparation plant, the sizing and briquetting of coal or any process gas streams after the streams enter a boiler and undergo combustion.

**C. "Sulfur"** means elemental sulfur and the sulfur component of any sulfur mixtures or compounds.

[11/23/98; 20.2.43.7 NMAC - Rn, 20 NMAC 2.43.107 10/31/02]

#### **20.2.43.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulations (AQCRs): 670, 671, 673, 674, 675, 676, 677, 678, 679, 680, 681, and 682. All references to these AQCRs in any other rule shall be understood as a reference to this Part. See 20.2.43.10 NMAC for detailed filing history.

[11/23/98; 20.2.43.8 NMAC - Rn, 20 NMAC 2.43.106 10/31/02]

#### **20.2.43.9 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Dr., or 2048 Galisteo St., Santa Fe, NM 87502 [87505].

[11/23/98; 20.2.43.9 NMAC - Rn, 20 NMAC 2.43.108 10/31/02]

#### **20.2.43.10 PRE-NMAC REGULATORY FILING HISTORY:**

The material in this Part was derived from that previously filed with the State Records Center and Archives under Air Quality Control Regulations (AQCRs): 670 - Gasification Plants - Monitoring, filed Nov. 16, 1973 and Feb. 8, 1983; 671 - Gasification Plants - Coal Briquet Forming Facility - Particulate Matter, filed Nov. 16, 1973, Feb. 8, 1983, and July 24, 1984; 673 - Gasification Plants - Hydrogen Sulfide - Carbon Disulfide - Carbon Oxysulfide, filed Nov. 16, 1973, Feb. 8, 1983, and July 24, 1984; 674 - Gasification Plants - Hydrogen Cyanide, filed Nov. 16, 1973, and Feb. 8, 1983; 675 - Gasification Plants - Hydrogen Chloride - Hydrochloric Acid, filed Nov. 16, 1973, and Feb. 8, 1983; 676 - Gasification Plants - Particulate Matter, filed Nov. 16, 1973, and Feb. 8, 1983; 677 - Gasification Plants - Ammonia, filed Nov. 16, 1973 and Feb. 8, 1983; 678 - Gasification Plants - Gas Burning Boilers - Particulate Matter, filed Nov. 16, 1973 and Feb. 8, 1983; 679 - Gasification Plants - Gas Burning Boilers - Sulfur Dioxide, filed Nov. 16, 1973, Feb. 8, 1983, and July 24, 1984; 680 - Gasification Plants - Sulfur, filed Nov. 16, 1973, Feb. 8, 1983, and July 24, 1984; 681 - Gasification Plants - Hydrocarbons - Storage - Handling - Pumping - Safety Relief Valves - Blowdown System, filed Nov. 16, 1973 and Feb. 8, 1983; 682 - Boilers Operated in Conjunction With Gasification Plants - Enforcement, filed Nov. 16, 1973, Feb. 8, 1983, and July 24, 1984.

[11/23/98; 20.2.43.10 NMAC - Rn, 20 NMAC 2.43.103A 10/31/02]

#### **20.2.43.11-20.2.43.108 [RESERVED]**

#### **20.2.43.109 MONITORING:**

No person owning or operating a gasification plant shall permit, cause, suffer or allow emissions of gas streams to the atmosphere except through stacks at least ten diameters in length equipped with sampling ports and platforms in such number, location and size as to allow for accurate sampling to be performed.

[11/23/98; 20.2.43.109 NMAC - Rn, 20 NMAC 2.43.109 10/31/02]

#### **20.2.43.110 COAL BRIQUET FORMING FACILITY - PARTICULATE MATTER:**

No person owning or operating a coal briquet forming facility in conjunction with a gasification plant shall permit, cause, suffer or allow particulate matter emissions to the atmosphere in excess of 0.03 grains per standard cubic foot of exhaust gas. Within

technical feasibility, all particulate matter emissions to the atmosphere shall be limited to a stack outlet or outlets.

[11/23/98; 20.2.43.110 NMAC - Rn, 20 NMAC 2.43.110 10/31/02]

**20.2.43.111 HYDROGEN SULFIDE - CARBON DISULFIDE- CARBON OXYSULFIDE:**

No person owning or operating a gasification plant shall permit, cause, suffer or allow any combination of hydrogen sulfide, carbon disulfide and carbon oxysulfide emissions to the atmosphere in excess of 100 ppm by volume in the effluent gas stream or streams. The hydrogen sulfide component in the combined effluent gas stream or streams is limited to 10 ppm by volume.

[11/23/98; 20.2.43.111 NMAC - Rn, 20 NMAC 2.43.111 10/31/02]

**20.2.43.112 HYDROGEN CYANIDE:**

No person owning or operating a gasification plant shall permit, cause, suffer or allow hydrogen cyanide emissions to the atmosphere in excess of 10 ppm by volume in the effluent gas stream or streams.

[11/23/98; 20.2.43.112 NMAC - Rn, 20 NMAC 2.43.112 10/31/02]

**20.2.43.113 HYDROGEN CHLORIDE - HYDROCHLORIC ACID:**

No person owning or operating a gasification plant shall permit, cause, suffer or allow any combination of hydrogen chloride and hydrochloric acid emissions to the atmosphere in excess of 5 ppm by volume in the effluent gas stream or streams.

[11/23/98; 20.2.43.113 NMAC - Rn, 20 NMAC 2.43.113 10/31/02]

**20.2.43.114 PARTICULATE MATTER:**

**A.** No person owning or operating a gasification plant shall permit, cause, suffer or allow particulate matter emissions to the atmosphere in excess of 0.03 grains per cubic foot of effluent gas at seventy degrees Fahrenheit and 14.7 pounds per square inch absolute.

**B.** Particulate matter emissions governed by this section shall be determined by the method described in 36 Federal Register No. 247, p. 24888 (Dec. 23, 1971) where technically feasible. Where not technically feasible to use this method, samples shall consist of at least one cubic foot of gas and collected over a period of at least twenty minutes.

**C.** No person owning or operating a gasification plant and related facilities shall permit, cause, suffer or allow any material to be handled, transported, stored or disposed of or a building or road to be used, constructed, altered or demolished without taking reasonable precautions to prevent particulate matter from becoming airborne.

[11/23/98; 20.2.43.114 NMAC - Rn, 20 NMAC 2.43.114 10/31/02]

**20.2.43.115 AMMONIA:**

**A.** No person owning or operating a gasification plant shall place, store or hold in any stationary tank or other container any ammonia unless the tank or other container is:

**(1)** A pressure tank capable of maintaining working pressures sufficient to prevent loss of ammonia to the atmosphere; or

**(2)** Equipped with other equally effective control equipment to prevent loss of ammonia to the atmosphere.

**B.** No person owning or operating a gasification plant shall permit, cause, suffer or allow ammonia emissions to the atmosphere in excess of 25 ppm by volume in the effluent gas stream or streams.

[11/23/98; 20.2.43.115 NMAC Rn, 20 NMAC 2.43.115 10/31/02]

**20.2.43.116 GAS BURNING BOILERS - PARTICULATE MATTER:**

**A.** No person owning or operating gas-burning boilers in conjunction with a gasification plant shall permit, cause, suffer or allow particulate matter emissions to the atmosphere in excess of 0.03 pounds per million British Thermal Units of heat input (lower heating value) to the boilers. For purposes of this section (20.2.43.116 NMAC) all gas-fired boilers will be considered as one unit for each gasification plant.

**B.** Particulate matter emissions governed by this section shall be determined by the method described in 36 Federal Register No. 247, p. 24888 (Dec. 23, 1971) where technically feasible. Where not technically feasible to use this method, samples shall consist of at least one cubic foot of gas and collected over a period of at least twenty minutes.

[11/23/98; 20.2.43.116 NMAC - Rn, 20 NMAC 2.43.116 10/31/02]

**20.2.43.117 GAS BURNING BOILERS - SULFUR DIOXIDE:**

No person owning or operating gas-burning boilers in conjunction with a gasification plant shall permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere in

excess of a total of 0.16 pounds per million British Thermal Units of heat input (lower heating value) fed to all boilers.

[11/23/98; 20.2.43.117 NMAC - Rn, 20 NMAC 2.43.117 10/31/02]

**20.2.43.118 SULFUR:**

No person owning or operating a gasification plant shall permit, cause, suffer or allow sulfur emissions to the atmosphere in excess of a total of 0.008 pounds per million British Thermal Units of heat input (higher heating value) contained in the feed introduced into the gasification plant.

[11/23/98; 20.2.43.118 NMAC - Rn, 20 NMAC 2.43.118 10/31/02]

**20.2.43.119 HYDROCARBONS -STORAGE - HANDLING - PUMPING - SAFETY RELIEF VALVES - BLOWDOWN SYSTEM:**

No person owning or operating a gasification plant shall:

**A.** Place, store or hold in any stationary tank or other container (except wastewater treatment basins, ponds, clarifiers, and settlers) any phenols or any organic compound having a Reid vapor pressure of 1.5 pounds per square inch or greater, unless the tank or other container is designed, equipped and maintained with:

**(1)** A floating roof, consisting of a pontoon-type, double-deck roof or internal floating cover, which rests on the surface of the liquid contents and is equipped with a closure seal or seals to close the space between the roof or cover edge and tank wall;

**(2)** A vapor recovery system consisting of:

**(a)** A vapor gathering system capable of collecting the organic compound vapors and gases discharged; and

**(b)** A vapor disposal system capable of processing the organic vapors and gases so as to prevent their emission to the atmosphere; or

**(3)** Any other device which is at least as efficient to prevent vapor or gas loss to the atmosphere.

**B.** Place, store or hold in any stationary tank or other container (except wastewater treatment basins, ponds, clarifiers, and settlers) any phenols or any organic compound having a Reid vapor pressure of 1.5 pounds per square inch or greater without the tank or other container gauging and sampling devices being gas tight, except when gauging or sampling is taking place.

**C.** Load or unload into any tank, truck or trailer any phenols or any organic compound having a Reid vapor pressure of 1.5 pounds per square inch or greater, unless:

**(1)** The loading facility is equipped with:

**(a)** A loading arm having a vapor collection adapter to force a vapor-tight seal between the adapter and the hatch and having a means of collecting the vented vapors and preventing their emission to the atmosphere; or

**(b)** Any other device which is at least as efficient to prevent vapor or gas loss to the atmosphere; and

**(2)** A means is provided to prevent liquid organic compound drainage from the loading device when it is removed from the hatch of any tank, truck or trailer or to accomplish complete drainage before its removal.

**D.** Use a pump or compressor which handles any phenols or any organic compound having a Reid vapor pressure of 1.5 pounds per square inch or greater, unless the pump or compressor is equipped with mechanical seals or other devices of equal or greater efficiency to prevent liquid or vapor losses.

**E.** Install safety relief valves, except valves installed on gas streams containing steam, product gas, nitrogen or oxygen, unless they are connected to a blowdown system.

**F.** Operate a blowdown system without disposing of the gases in a manner which will prevent hydrocarbon emissions to the atmosphere. If combustion is the means of disposal, it shall be by smokeless flare or similar means to achieve complete combustion.

[11/23/98; 20.2.43.119 NMAC - Rn, 20 NMAC 2.43.119 10/31/02]

#### **20.2.43.120 BOILERS OPERATED IN CONJUNCTION WITH GASIFICATION PLANTS - ENFORCEMENT:**

In gasification plants, if more than one fuel is fired simultaneously in a boiler:

**A.** The boiler shall be considered as two or more units, each firing the equivalent amount of fuel with the appropriate heat content separately but having a common stack for determination of allowable emissions.

**B.** Allowable emissions shall be calculated according to the following formula:  $ET = E_o Q_o + E_c Q_c + E_g Q_g$ , where ET is the total allowed emission in pounds per given period of time;  $E_o$  is the allowed emission from oil in pounds per million BTU's;  $E_c$  is the allowed emission from coal in pounds per million BTU's;  $E_g$  is the allowed emission

from gas in pounds per million BTU's;  $Q_o$  is the heat released by the oil based on the higher heating value in BTU's per period of time;  $Q_c$  is the heat released by the coal based on the higher heating value in BTU's per period of time; and  $Q_g$  is the heat released by the gas based on the lower heating value in BTU's per period of time.

**C.** In addition, the total allowable emissions of particulates two microns equivalent aerodynamic diameter or less shall be calculated according to:  $E_f = 0.40 E_c (Q_o + Q_c + Q_g)$  where:  $E_f$  is the total allowed emission of fine particulates in pounds per given period of time, and all other terms remain as previously defined.

[11/23/98; 20.2.43.120 NMAC - Rn, 20 NMAC 2.43.120 10/31/02]

## **PART 44-49: [RESERVED]**

## **PART 50 OIL AND GAS SECTOR – OZONE PRECURSOR POLLUTANTS**

### **20.2.50.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.50.1 NMAC – N, 08/05/2022]

### **20.2.50.2 SCOPE:**

This Part applies to sources located within areas of the state under the board's jurisdiction that, as of the effective date of this Part or anytime thereafter, are causing or contributing to ambient ozone concentrations that exceed ninety-five percent of the national ambient air quality standard for ozone, as measured by a design value calculated and based on data from one or more department monitors. As of the effective date, sources located in the following counties of the state are subject to this Part: Chaves, Dona Ana, Eddy, Lea, Rio Arriba, Sandoval, San Juan, and Valencia.

**A.** If, at any time after the effective date of this Part, sources in any other area(s) of the state not previously specified are determined to be causing or contributing to ambient ozone concentrations that exceed ninety-five percent of the national ambient air quality standard for ozone, as measured by a design value calculated by the U.S. Environmental Protection Agency based on data from one or more department monitors, the department shall petition the Board to amend this Part to incorporate the sources in those areas.

(1) The notice of proposed rulemaking shall be published no less than 180 days before sources in the affected areas will become subject to this Part, and shall include, in addition to the requirements of the board's rulemaking procedures at 20.1.1.301 NMAC:

(a) a list of the areas that the department proposed to incorporate into this Part, and the date upon which the sources in those areas will become subject to this Part; and

(b) proposed implementation dates, consistent with the time provided in the phased implementation schedules provided for throughout this Part, for sources within the areas subject to the proposed rulemaking to come into compliance with the provisions of this Part.

(2) In any rulemaking pursuant to this section, the board shall be limited to consideration of only those proposed changes necessary to incorporate other areas of the state into this Part.

**B.** Once a source becomes subject to this Part based upon its potential to emit, all requirements of this Part that apply to the source are irrevocably effective unless the source obtains a federally enforceable limit on the potential to emit that is below the applicability thresholds established in this Part, or the relevant section contains a threshold below which the requirements no longer apply.

[20.2.50.2 NMAC – N, 08/05/2022]

**20.2.50.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, Section 74-1-1 to 74-1-16 NMSA 1978, including specifically Paragraph (4) and (7) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Sections 74-2-1 to 74-2-22 NMSA 1978, including specifically Subsections A, B, C, D, F, and G of Section 74-2-5 NMSA 1978 (as amended through 2021).

[20.2.50.3 NMAC - N, 08/05/2022]

**20.2.50.4 DURATION:**

Permanent.

[20.2.50.4 NMAC - N, 08/05/2022]

**20.2.50.5 EFFECTIVE DATE:**

August 05, 2022, except where a later date is specified in another section.

[20.2.50.5 NMAC - N, 08/05/2022]

**20.2.50.6 OBJECTIVE:**

The objective of this Part is to establish emission standards for volatile organic compounds (VOC) and oxides of nitrogen (NOx) for oil and gas production, processing, compression, and transmission sources.

[20.2.50.6 NMAC - N, 08/05/2022]

#### **20.2.50.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC - Definitions, as used in this Part, the following definitions apply.

**A. Definitions beginning with the letter "A": "Auto-igniter"** means a device that automatically attempts to relight the pilot flame of a control device in order to combust VOC emissions, or a device that will automatically attempt to combust the VOC emission stream.

**B. Definitions beginning with the letter "B": "Bleed rate"** means the rate in standard cubic feet per hour at which gas is continuously vented from a pneumatic controller.

#### **C. Definitions beginning with the letter "C":**

**(1) "Calendar year"** means a year beginning January 1 and ending December 31.

**(2) "Centrifugal compressor"** means a machine used for raising the pressure of natural gas by drawing in low-pressure natural gas and discharging significantly higher-pressure natural gas by means of a mechanical rotating vane or impeller. A screw, sliding vane, and liquid ring compressor is not a centrifugal compressor.

**(3) "Closed vent system"** means a system that is designed, operated, and maintained to route the VOC emissions from a source or process to a process stream or control device with no loss of VOC emissions to the atmosphere during operation.

**(4) "Commencement of operation"** means for an oil and natural gas well site, the date any permanent production equipment is in use and product is consistently flowing to a sales line, gathering line or storage vessel from the first producing well at the stationary source, but no later than the end of well completion operation.

**(5) "Component"** means a pump seal, flange, pressure relief device (including thief hatch or other opening on a storage vessel), connector or valve that contains or contacts a process stream with hydrocarbons, except for components where process streams consist solely of glycol, amine, produced water, or methanol.

(6) **"Connector"** means flanged, screwed, or other joined fittings used to connect pipeline segments, tubing, pipe components (such as elbows, reducers, "T's" or valves) to each other; or a pipeline to a piece of equipment; or an instrument to a pipe, tube, or piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this Part.

(7) **"Construction"** means fabrication, erection, or installation of a stationary source, including but not limited to temporary installations and portable stationary sources, but does not include relocations or like-kind replacements of existing equipment.

(8) **"Control device"** means air pollution control equipment or emission reduction technologies that thermally combust, chemically convert, or otherwise destroy or recover air contaminants. Examples of control devices may include but are not limited to open flares, enclosed combustion devices (ECDs), thermal oxidizers (TOs), vapor recovery units (VRUs), fuel cells, condensers, catalytic converters (oxidative, selective, and non-selective), or other emission reduction equipment. A control device may also include any other air pollution control equipment or emission reduction technologies approved by the department to comply with emission standards in this Part. A VRU or other equipment used primarily as process equipment is not considered a control device.

#### **D. Definitions beginning with the letter "D":**

(1) **"Department"** means the New Mexico environment department.

(2) **"Design value"** means the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration.

(3) **"Downtime"** means the period of time when equipment is not in operation.

(4) **"Drilling" or "drilled"** means the process to bore a hole to create a well for oil and/or natural gas production.

(5) **"Drill-out"** means the process of removing the plugs placed during hydraulic fracturing or refracturing. Drill-out ends after the removal of all stage plugs and the initial wellbore cleanup.

#### **E. Definitions beginning with the letter "E":**

(1) **"Enclosed combustion device"** means a combustion device where waste gas is combusted in an enclosed chamber solely for the purpose of destruction. This may include, but is not limited to, an enclosed flare or combustor.

(2) **"Existing"** means constructed or reconstructed before the effective date of this Part.

#### **F. Definitions beginning with the letter "F":**

(1) **"Flowback"** means the process of allowing fluids and entrained solids to flow from a well following stimulation, either in preparation for a subsequent phase of treatment or in preparation for cleanup and placing the well into production. The term flowback also means the fluids and entrained solids flowing from a well after drilling or hydraulic fracturing or refracturing. Flowback ends when all temporary flowback equipment is removed from service. Flowback does not include drill-out.

(2) **"Flowback vessel"** means a vessel that contains flowback.

#### **G. Definitions beginning with the letter "G". [RESERVED]**

(1) **"Gathering and boosting station"** means a facility, including all equipment and compressors, located downstream of a well site that collects or moves natural gas prior to the inlet of a natural gas processing plant; or prior to a natural gas transmission pipeline or transmission compressor station if no gas processing is performed; or collects, moves, or stabilizes crude oil or condensate prior to an oil transmission pipeline or other form of transportation. Gathering and boosting stations may include equipment for liquids separation, natural gas dehydration, and tanks for the storage of water and hydrocarbon liquids.

(2) **"Glycol dehydrator"** means a device in which a liquid glycol absorbent, including ethylene glycol, diethylene glycol, or triethylene glycol, directly contacts a natural gas stream and absorbs water.

#### **H. Definitions beginning with the letter "H":**

(1) **"High-bleed pneumatic controller"** means a continuous bleed pneumatic controller that is designed to have a continuous bleed rate that emits in excess of 6 standard cubic feet per hour (scfh) of natural gas to the atmosphere.

(2) **"Hydraulic fracturing"** means the process of directing pressurized fluids containing any combination of water, proppant, and any added chemicals to penetrate tight formations, such as shale, coal, and tight sand formations, that subsequently requires flowback to expel fracture fluids and solids.

(3) **"Hydraulic refracturing"** means conducting a subsequent hydraulic fracturing operation at a well that has previously undergone a hydraulic fracturing operation.

**(4) "Hydrocarbon liquid"** means any naturally occurring, unrefined petroleum liquid and can include oil, condensate, and intermediate hydrocarbons. Hydrocarbon liquid does not include produced water.

**I. Definitions beginning with the letter "I":**

**(1) "Inactive well site"** means a well site where the well is not being used for beneficial purposes, such as production or monitoring, and is not being drilled, completed, repaired or worked over.

**(2) "Injection well site"** means a well site where the well is used for the injection of air, gas, water or other fluids into an underground stratum.

**(3) "Intermittent pneumatic controller"** means a pneumatic controller that is not designed to have a continuous bleed rate but is designed to only release natural gas above de minimis amounts to the atmosphere as part of the actuation cycle.

**J. Definitions beginning with the letter "J": [RESERVED]**

**K. Definitions beginning with the letter "K": [RESERVED]**

**L. Definitions beginning with the letter "L":**

**(1) "Liquid unloading"** means the removal of accumulated liquid from the wellbore that reduces or stops natural gas production.

**(2) "Liquid transfer"** means the unloading of a hydrocarbon liquid from a storage vessel to a tanker truck or tanker rail car for transport.

**(3) "Local distribution company custody transfer station"** means a metering station where the local distribution company receives a natural gas supply from an upstream supplier, which may be an interstate transmission pipeline or a local natural gas producer, for delivery to customers through the local distribution company's intrastate transmission or distribution lines.

**(4) "Low-bleed pneumatic controller"** means a continuous bleed pneumatic controller that is designed to have a continuous bleed rate that emits less than or equal to 6 scfh of natural gas to the atmosphere.

**M. Definitions beginning with the letter "M": [RESERVED]**

**N. Definitions beginning with the letter "N": "non-porous"** means multi-use items such as metal, glass and plastic;

(1) **"Natural gas-fired heater"** means an enclosed device using a controlled flame and with a primary purpose to transfer heat directly to a process material or to a heat transfer material for use in a process.

(2) **"Natural gas processing plant"** means the processing equipment engaged in the extraction of natural gas liquid from natural gas or fractionation of mixed natural gas liquid to a natural gas product, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

(3) **"New"** means constructed or reconstructed on or after the effective date of this Part.

(4) **"Non-emitting controller"** means a device that monitors a process parameter such as liquid level, pressure, or temperature and sends a signal to a control valve in order to control the process parameter and does not emit natural gas to the atmosphere. Examples of non-emitting controllers include but are not limited to instrument air or inert gas pneumatic controllers, electric controllers, mechanical controllers and Routed Pneumatic Controllers.

#### **O. Definitions beginning with the letter "O":**

(1) **"Occupied area"** means the following:

(a) a building or structure used as a place of residence by a person, family, or families, and includes manufactured, mobile, and modular homes, except to the extent that such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes;

(b) indoor or outdoor spaces associated with a school that students use commonly as part of their curriculum or extracurricular activities;

(c) five-thousand (5,000) or more square feet of building floor area in commercial facilities that are operating and normally occupied during working hours; and

(d) an outdoor venue or recreation area, such as a playground, permanent sports field, amphitheater, or similar place of outdoor public assembly.

(2) **"Operator"** means the person or persons responsible for the overall operation of a stationary source.

(3) **"Optical gas imaging (OGI)"** means an imaging technology that utilizes a high-sensitivity infrared camera designed for and capable of detecting hydrocarbons.

(4) **"Owner"** means the person or persons who own a stationary source or part of a stationary source.

**P. Definitions beginning with the letter "P":**

(1) **"Permanent pit or pond"** means a pit or pond used for collection, retention, or storage of produced water or brine and is installed for longer than one year.

(2) **"Pneumatic controller"** means a device that monitors a process parameter such as liquid level, pressure, or temperature and uses pressurized gas (which may be released to the atmosphere during normal operation) and sends a signal to a control valve in order to control the process parameter. Controllers that do not utilize pressurized gas are not pneumatic controllers.

(3) **"Pneumatic diaphragm pump"** means a positive displacement pump powered by pressurized gas that uses the reciprocating action of flexible diaphragms in conjunction with check valves to pump a fluid. A pump in which a fluid is displaced by a piston driven by a diaphragm is not considered a diaphragm pump. A lean glycol circulation pump that relies on energy exchange with the rich glycol from the contactor is not considered a diaphragm pump.

(4) **"Potential to emit (PTE)"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on the hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is federally enforceable. The PTE for nitrogen dioxide shall be based on total oxides of nitrogen.

(5) **"Pre-production operations"** means the drilling through the hydrocarbon bearing zones, hydraulic fracturing or refracturing, drill-out, and flowback of an oil and/or natural gas well.

(6) **"Produced water"** means a liquid that is an incidental byproduct from well completion and the production of oil and gas.

(7) **"Produced water management unit"** means a recycling facility or a permanent pit or pond that is a natural topographical depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to accumulate produced water and has a design storage capacity equal to or greater than 50,000 barrels.

**Q. Definitions beginning with the letter "Q": "Qualified Professional Engineer"** means an individual who is licensed by a state as a professional engineer to practice one or more disciplines of engineering and who is qualified by education, technical

knowledge, and experience to make the specific technical certifications required under this Part.

**R. Definitions beginning with the letter "R":**

(1) **"Reciprocating compressor"** means a piece of equipment that increases the pressure of process gas by positive displacement, employing linear movement of a piston rod.

(2) **"Reconstruction"** means a modification that results in the replacement of the components or addition of integrally related equipment to an existing source, to such an extent that the fixed capital cost of the new components or equipment exceeds fifty percent of the fixed capital cost that would be required to construct a comparable entirely new facility.

(3) **"Recycling facility"** means a stationary or portable facility used exclusively for the treatment, re-use, or recycling of produced water and does not include oilfield equipment such as separators, heater treaters, and scrubbers in which produced water may be used.

(4) **"Responsible official"** means one of the following:

(a) for a corporation: president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative.

(b) for a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(5) **"Routed pneumatic controller"** means a pneumatic controller of any type that releases natural gas to a process, sales line, or to a combustion device instead of directly to the atmosphere.

**S. Definitions beginning with the letter "S":**

(1) **"Small business facility"** means, for the purposes of this Part, a source that is independently owned or operated by a company that is not a subsidiary or a division of another business, that employs no more than 10 employees at any time during the calendar year, and that has a gross annual revenue of less than \$250,000. Employees include part-time, temporary, or limited-service workers.

(2) **"Stabilized"** means, when used to refer to stored condensate, that the condensate has reached substantial equilibrium with the atmosphere and that any emissions that occur are those commonly referred to within the industry as "working and breathing losses."

(3) **"Standalone tank battery"** means a tank battery that is not designated as associated with a well site, gathering and boosting station, natural gas processing plant, or transmission compressor station.

(4) **"Startup"** means the setting into operation of air pollution control equipment or process equipment.

(5) **"Stationary source" or "source"** means any building, structure, equipment, facility, installation (including temporary installations), operation, process, or portable stationary source that emits or may emit any air contaminant. Portable stationary source means a source that can be relocated to another operating site with limited dismantling and reassembly.

(6) **"Storage vessel"** means a single tank or other vessel that is designed to contain an accumulation of hydrocarbon liquid or produced water and is constructed primarily of non-earthen material including wood, concrete, steel, fiberglass, or plastic, which provide structural support. A well completion vessel that receives recovered liquid from a well after commencement of operation for a period that exceeds 60 days is considered a storage vessel. A storage vessel does not include a vessel that is skid-mounted or permanently attached to a mobile source and located at the site for less than 180 consecutive days, such as a truck or railcar; a process vessel such as a surge control vessel, bottom receiver, or knockout vessel; a pressure vessel designed to operate in excess of 204.9 kilopascals (29.72 psi) without emissions to the atmosphere; or a floating roof tank complying with 40 CFR Part 60, Subpart Kb.

#### **T. Definitions beginning with the letter "T":**

(1) **"Tank battery"** means a storage vessel or group of storage vessels that receive or store crude oil, condensate, or produced water from a well or wells for storage. The owner or operator shall designate whether a tank battery is a standalone tank battery or is associated with a well site, gathering and boosting station, natural gas processing plant, or transmission compressor station. The owner or operator shall maintain records of this designation and make them available to the department upon request. A tank battery associated with a well site, gathering or boosting station, natural gas processing plant, or transmission compressor station is subject to the requirements in this Part for those facilities, as applicable. Tank battery does not include storage vessels at saltwater disposal facilities or produced water management units.

(2) **"Temporarily abandoned well site"** means an inactive well site where the well's completion interval has been isolated. The completion interval is the reservoir interval that is open to the borehole and is isolated when tubing and artificial equipment has been removed and a bottom plug has been set.

(3) **"Transmission compressor station"** means a facility, including all equipment and compressors, that moves pipeline quality natural gas at increased pressure from a well site or natural gas processing plant through a transmission pipeline

for ultimate delivery to the local distribution company custody transfer station, underground storage, or to other industrial end users. Transmission compressor stations may include equipment for liquids separation, natural gas dehydration, and tanks for the storage of water and hydrocarbon liquids.

**U. Definitions beginning with the letter "U": [RESERVED]**

**V. Definitions beginning with the letter "V": "Vessel measurement system"** means equipment and methods used to determine the quantity of the liquids inside a vessel (including a flowback vessel) without requiring direct access through the vessel thief hatch or other opening.

**W. Definitions beginning with the letter "W":**

**(1) "Wellhead only facility"** means a well site that does not contain any production or processing equipment other than artificial lift natural gas driven pneumatic controllers and emergency shutdown device natural gas driven pneumatic controllers.

**(2) "Well workover"** means the repair or stimulation of an existing production well for the purpose of restoring, prolonging, or enhancing the production of hydrocarbons.

**(3) "Well site"** means the equipment under the operator's control directly associated with one or more oil wells or natural gas wells upstream of the natural gas processing plant or gathering and boosting station, if any. A well site may include equipment used for extraction, collection, routing, storage, separation, treating, dehydration, artificial lift, combustion, compression, pumping, metering, monitoring, and product piping. A well site does not include an injection well site.

[20.2.50.7 NMAC - N, 08/05/2022]

**20.2.50.8 SEVERABILITY:**

If any provision of this Part, or the application of this provision to any person or circumstance is held invalid, the remainder of this Part, or the application of this provision to any person or circumstance other than those as to which it is held invalid, shall not be affected thereby.

[20.2.50.8 NMAC - N, 08/05/2022]

**20.2.50.9 CONSTRUCTION:**

This Part shall be liberally construed to carry out its purpose.

[20.2.50.9 NMAC - N, 08/05/2022]

**20.2.50.10 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of this Part shall not affect administrative or judicial action initiated under those prior versions.

[20.2.50.10 NMAC - N, 08/05/2022]

#### **20.2.50.11 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this Part does not relieve a person from the responsibility to comply with other applicable federal, state, or local laws, rules or regulations, including more stringent controls.

[20.2.50.11 NMAC - N, 08/05/2022]

#### **20.2.50.12 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the New Mexico environment department, air quality bureau.

[20.2.50.12 NMAC - N, 08/05/2022]

#### **20.2.50.13-20.2.50.110 [RESERVED]**

#### **20.2.50.111 APPLICABILITY:**

**A.** This Part applies to certain crude oil and natural gas production and processing equipment associated with operations that extract, collect, separate, dehydrate, store, process, transport, transmit, or handle hydrocarbon liquids or produced water in the areas specified in 20.2.50.2 NMAC and are located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and transmission compressor stations, up to the point of the local distribution company custody transfer station.

**B.** In determining if any source is subject to this Part, including a small business facility as defined in this Part, the owner or operator shall calculate the Potential to Emit (PTE) of such source and shall have the PTE calculation certified by a qualified professional engineer or an inhouse engineer with expertise in the operation of oil and gas equipment, vapor control systems, and pressurized liquid samples. The emission standards and requirements of this Part may not be considered in the PTE calculation required in this Section or in determining if any source is subject to this Part. The calculation shall be kept on file for a minimum of five years and shall be provided to the department upon request. This certified calculation shall be completed before startup for new sources, and within two years of the effective date of this Part for existing sources.

**C.** An owner or operator of a small business facility as defined in this Part shall comply with the requirements of this Part as specified in 20.2.50.125 NMAC.

D. Oil transmission pipelines, oil refineries, natural gas transmission pipelines (except transmission compressor stations), and saltwater disposal facilities are not subject to this Part.

[20.2.50.111 NMAC - N, 08/05/2022]

#### **20.2.50.112 GENERAL PROVISIONS:**

##### **A. General requirements:**

(1) Sources subject to emissions standards and requirements under this Part shall be operated and maintained consistent with manufacturer specifications, or good engineering and maintenance practices. When used in this Part, the term manufacturer specifications means either the original equipment manufacturer (or successor) emissions-related design specifications, maintenance practices and schedules, or an alternative set of specifications, maintenance practices and schedules sufficient to operate and maintain such sources in good working order, which have been approved by qualified maintenance personnel based on engineering principles and field experience. The owner or operator shall keep manufacturer specifications on file when available, as well as any alternative specifications that are being followed, and make them available upon request by the department. The terms of Paragraph (1) of Subsection A of 20.2.50.112 NMAC apply any time reference to manufacturer specifications occurs in this Part.

(2) Sources, including associated air pollution control equipment and monitoring equipment, subject to emission standards or requirements under this Part shall at all times, including periods of startup, shutdown, and malfunction, be operated and maintained in a manner consistent with safety and good air pollution control practices for minimizing emissions of VOC and NOx. During a period of startup, shutdown, or malfunction, this general duty to minimize emissions requires that the owner or operator reduce emissions from the affected source to the greatest extent consistent with safety and good air pollution control practices. The general duty to minimize emissions does not require the owner or operator to make any further efforts to reduce emissions beyond levels required by the applicable standard under this Part. The terms of Paragraph (2) of Subsection A of 20.2.50.112 NMAC apply any time reference to minimizing emissions occurs in this Part.

(3) Within two years of the effective date of this Part, owners and operators of a source requiring equipment monitoring, testing, or inspection shall develop and implement a data system(s) capable of storing information for each source in a manner consistent with this Section. The owner or operator shall maintain information regarding each source requiring equipment monitoring, testing, or inspection in a data system(s), including the following information in addition to the required information specified in an applicable section of this Part:

(a) unique identification number;

- (b) location (latitude and longitude) of the source;
- (c) type of source (e.g., tank, VRU, dehydrator, pneumatic controller, etc.);
- (d) for each source, the controlled VOC (and NO<sub>x</sub>, if applicable) emissions in lbs./hr. and tpy;
- (e) make, model, and serial number; and
- (f) a link to the manufacturer maintenance schedule or repair recommendations, or company-specific operational and maintenance practices.

(4) The data system(s) shall be maintained by the owner or operator of the facility.

(5) The owner or operator shall manage the source's record of data in the data system(s). The owner or operator shall generate a Compliance Database Report (CDR) from the information in the data system. The CDR is an electronic report maintained by the owner or operator and that can be submitted to the department upon request.

(6) The CDR is a report distinct from the owner or operator's data system(s). The department does not require access to the owner or operator's data system(s), only the CDR.

(7) The owner or operator's authorized representative must be able to access and input data in the data system(s) record for that source. That access is not required to be at any time from any location.

(8) The owner or operator shall contemporaneously track each monitoring event, and shall comply with the following:

(a) data gathered during each monitoring or testing event shall be uploaded into the data system as soon as practicable, but no later than three business days of each compliance event, and when the final reports are received;

(b) certain sections of this Part require a date and time stamp, including a GPS display of the location, for certain monitoring events. No later than one year from the effective date of this Part, the department shall finalize a list of approved technologies to comply with date and time stamp requirements, and shall post the approved list on its website. Owners and operators shall comply with this requirement using an approved technology no later than two years from the effective date of this Part. Prior to such time, owners and operators may comply with this requirement by making a written or electronic record of the date and time of any affected monitoring event; and

(c) data required by this Part shall be maintained in the data system(s) for at least five years.

(9) The department for good cause may request that an owner or operator retain a third party at their own expense to verify any data or information collected, reported, or recorded pursuant to this Part, and make recommendations to correct or improve the collection of data or information. Such requests may be made no more than once per year. The owner or operator shall submit a report of the verification and any recommendations made by the third party to the department by a date specified and implement the recommendations in the manner approved by the department. The owner or operator may request a hearing on whether good cause was demonstrated or whether the recommendations approved by the department must be implemented.

(10) Where Part 50 refers to applicable federal standards or requirements, the references are to the applicable federal standards or requirements that were in effect at the time of the effective date of this Part, unless the applicable federal standards or requirements have been superseded by more stringent federal standards or requirements.

(11) Prior to modifying an existing source, including but not limited to increasing a source's throughput or emissions, the owner or operator shall determine the applicability of this Part in accordance with 20.2.50.111.B NMAC.

**B. Monitoring requirements:** In addition to any monitoring requirements specified in the applicable sections of this Part, owners and operators shall comply with the following:

(1) Unless otherwise specified, the term monitoring as used in this Part includes, but is not limited to, monitoring, testing, or inspection requirements.

(2) If equipment is shut down at the time of periodic testing, monitoring, or inspection required under this Part, the owner or operator shall not be required to restart the unit for the sole purpose of performing the testing, monitoring, or inspection, but shall note the shut down in the records kept for that equipment for that monitoring event.

**C. Recordkeeping requirements:** In addition to any recordkeeping requirements specified in the applicable sections of this Part, owners and operators shall comply with the following:

(1) Within three business days of a monitoring event and when final reports are received, an electronic record shall be made of the monitoring event and shall include the information required by the applicable sections of this Part.

(2) The owner or operator shall keep an electronic record required by this Part for five years.

(3) By July 1 of each calendar year starting in 2024, the owner or operator shall generate a Compliance Database Report (CDR) on all assets under its control that are subject to the CDR requirements of this Part at the time the CDR is prepared and keep this report on file for five years.

**D. Reporting requirements:** In addition to any reporting requirements specified in the applicable sections in this Part, the owner or operator shall respond within three business days to a request for information by the department under this Part. The response shall provide the requested information for each source subject to the request by electronically submitting a CDR to the department's Secure Extranet Portal (SEP), or by other means and formats specified by the department in its request. If the department requests a CDR from multiple facilities, additional time will be given as appropriate.

[20.2.50.112 NMAC - N, 08/05/2022]

### **20.2.50.113 ENGINES AND TURBINES:**

**A. Applicability:** Portable and stationary natural gas-fired spark ignition engines, compression ignition engines, and natural gas-fired combustion turbines located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and transmission compressor stations, with a rated horsepower greater than the horsepower ratings of table 1, 2, and 3 of 20.2.50.113 NMAC are subject to the requirements of 20.2.50.113 NMAC. Non-road engines as defined in 40 C.F.R. §§ 1068.30 are not subject to 20.2.50.113 NMAC.

#### **B. Emission standards:**

(1) The owner or operator of a portable or stationary natural gas-fired spark ignition engine, compression ignition engine, or natural gas-fired combustion turbine shall ensure compliance with the emission standards by the dates specified in Subsection B of 20.2.50.113 NMAC, except as otherwise specified under an Alternative Compliance Plan approved pursuant to Paragraph (10) of Subsection B of 20.2.50.113 NMAC or alternative emissions standards approved pursuant to Paragraph (11) of Subsection B of 20.2.50.113 NMAC.

(2) The owner or operator of an existing natural gas-fired spark ignition engine shall complete an inventory of all existing engines subject to this Part by January 1, 2023, and shall prepare a schedule to ensure that each existing engine does not exceed the emission standards in table 1 of Paragraph (2) of Subsection B of 20.2.50.113 NMAC as follows, except as otherwise specified under an Alternative Compliance Plan (ACP) approved pursuant to Paragraph (10) of Subsection B of 20.2.50.113 NMAC or alternative emissions standards approved pursuant to Paragraph (11) of Subsection B of 20.2.50.113 NMAC:

(a) by January 1, 2025, the owner or operator shall ensure at least thirty percent of the company's existing engines meet the emission standards.

(b) by January 1, 2027, the owner or operator shall ensure at least an additional thirty-five percent of the company's existing engines meet the emission standards.

(c) by January 1, 2029, the owner or operator shall ensure that the remaining thirty-five percent of the company's existing engines meet the emission standards.

(d) in lieu of meeting the emission standards for an existing natural gas-fired spark ignition engine, an owner or operator may reduce the annual hours of operation of an engine such that the annual PTE of NO<sub>x</sub> and VOC emissions are reduced to achieve an equivalent allowable ton per year emission reduction as set forth in table 1 of Paragraph (2) of Subsection B of 20.2.50.113 NMAC, or by at least ninety-five percent per year.

Table 1 - EMISSION STANDARDS FOR EXISTING NATURAL GAS-FIRED SPARK IGNITION ENGINES

Engine Type	Rated bhp	NO <sub>x</sub>	CO	NMNEHC (as propane)
2 Stroke Lean Burn	>1,000	3.0 g/bhp-hr	0.60 g/bhp-hr	0.70 g/bhp-hr
4-Stroke Lean Burn	>1,000 bhp and <1,775 bhp	2.0 g/bhp-hr	0.60 g/bhp-hr	0.70 g/bhp-hr
4-Stroke Lean Burn	≥1,775 bhp	0.5 g/bhp-hr	0.60 g/bhp-hr	0.70 g/bhp-hr
Rich Burn	>1,000 bhp	0.5 g/bhp-hr	0.60 g/bhp-hr	0.70 g/bhp-hr

(3) The owner or operator of a new natural gas-fired spark ignition engine shall ensure the engine does not exceed the emission standards in table 2 of Paragraph (3) of Subsection B of 20.2.50.113 NMAC upon startup.

Table 2 - EMISSION STANDARDS FOR NEW NATURAL GAS-FIRED SPARK IGNITION ENGINES

Engine Type	Rated bhp	NO <sub>x</sub>	CO	NMNEHC (as propane)
Lean-burn	> 500 and < 1875	0.50 g/bhp-hr	0.60 g/bhp-hr	0.70 g/bhp-hr
Lean-burn	≥ 1875	0.30 g/bhp-hr	0.60 g/bhp-hr	0.70 g/bhp-hr

Rich-burn	>500	0.50 g/bhp-hr	0.60 g/bhp-hr	0.70 g/bhp-hr
-----------	------	---------------	---------------	---------------

(4) The owner or operator of a natural gas-fired spark ignition engine with NOx emission control technology that uses ammonia or urea as a reagent shall ensure that the exhaust ammonia slip is limited to 10 ppmvd or less, corrected to fifteen percent oxygen.

(5) The owner or operator of a compression ignition engine shall ensure compliance with the following emission standards:

(a) a new portable or stationary compression ignition engine with a maximum design power output equal to or greater than 500 horsepower that is not subject to the emission standards under Subparagraph (b) of Paragraph (5) of Subsection B of 20.2.50.113 NMAC shall limit NOx emissions to not more than nine g/bhp-hr upon startup.

(b) a stationary compression ignition engine that is subject to and complying with Subpart IIII of 40 CFR Part 60, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, is not subject to the requirements of Subparagraph (a) of Paragraph (5) of Subsection B of 20.2.50.113 NMAC.

(6) The owner or operator of a portable or stationary compression ignition engine with NOx emission control technology that uses ammonia or urea as a reagent shall ensure that the exhaust ammonia slip is limited to 10 ppmvd or less, corrected to fifteen percent oxygen.

(7) The owner or operator of a stationary natural gas-fired combustion turbine with a maximum design rating equal to or greater than 1,000 bhp shall comply with the applicable emission standards for an existing, new, or reconstructed turbine listed in table 3 of Paragraph (7) of Subsection B of 20.2.50.113 NMAC: The owner or operator of an existing stationary natural gas-fired combustion turbine shall complete an inventory of all existing turbines subject to Part 50 by July 1, 2023, and shall prepare a schedule to ensure that each subject existing turbine does not exceed the emission standards in table 3 of Paragraph (7) of Subsection B of 20.2.50.113 NMAC as follows, except as otherwise specified under an Alternative Compliance Plan approved pursuant to Paragraph (10) of Subsection B of 20.2.50.113 NMAC or alternative emissions standards approved pursuant to Paragraph (11) of Subsection B of 20.2.50.113 NMAC:

(a) by January 1, 2024, the owner or operator shall ensure at least thirty percent of the company's existing turbines meet the emission standards.

(b) by January 1, 2026, the owner or operator shall ensure at least an additional thirty-five percent of the company's existing turbines meet the emission standards.

(c) by January 1, 2028, the owner or operator shall ensure that the remaining thirty-five percent of the company's existing turbines meet the emission standards.

(d) in lieu of meeting the emission standards for an existing stationary natural gas-fired combustion turbine, an owner or operator may reduce the annual hours of operation of a turbine such that the annual PTE of NOx and VOC emissions are reduced to achieve an equivalent allowable ton per year emission reduction as set forth in table 3 of Paragraph (7) of Subsection B of 20.2.50.113 NMAC, or by at least ninety-five percent per year.

Table 3 - EMISSION STANDARDS FOR STATIONARY COMBUSTION TURBINES

<b>For each applicable existing natural gas-fired combustion turbine, the owner or operator shall ensure the turbine does not exceed the following emission standards no later than the schedule set forth in Paragraph (7)(a) of Subsection B of 20.2.50.113 NMAC:</b>			
Turbine Rating (bhp)	NO <sub>x</sub> (ppmvd @15% O <sub>2</sub> )	CO (ppmvd @ 15% O <sub>2</sub> )	NMNEHC (as propane, ppmvd @15% O <sub>2</sub> )
≥1,000 and <4,100	150	50	9
≥4,100 and <15,000	50	50	9
≥15,000	50	50 or 93% reduction	5 or 50% reduction
<b>For each applicable new natural gas-fired combustion turbine, the owner or operator shall ensure the turbine does not exceed the following emission standards upon startup:</b>			
Turbine Rating (bhp)	NO <sub>x</sub> (ppmvd @15% O <sub>2</sub> )	CO (ppmvd @ 15% O <sub>2</sub> )	NMNEHC (as propane, ppmvd @15% O <sub>2</sub> )
≥1,000 and <4,000	100	25	9
≥4,000 and <15,900	15	10	9
≥15,900	9.0 Uncontrolled or 2.0 with Control	10 Uncontrolled or 1.8 with Control	5

(8) The owner or operator of a stationary natural gas-fired combustion turbine with NOx emission control technology that uses ammonia or urea as a reagent shall ensure that the exhaust ammonia slip is limited to 10 ppmvd or less, corrected to fifteen percent oxygen.

(9) The owner or operator of an emergency use engine as defined by 40 C.F.R. §§ 60.4211, 60.4243, or 63.6675 is not subject to the emissions standards in this

Part but shall be equipped with a non-resettable hour meter to monitor and record any hours of operation.

(10) In lieu of complying with the emission standards for individual engines and turbines established in Subsection B of 20.2.50.113 NMAC, an owner or operator may elect to comply with the emission standards through an Alternative Compliance Plan (ACP) approved by the department. An ACP must include the list of engines or turbines subject to the ACP, and a demonstration that the total allowable emissions for the engines or turbines subject to the ACP will not exceed the total allowable emissions under the emission standards of this Part. Prior to submitting a proposed ACP to the Department, the owner or operator shall comply with the following requirements in the order listed:

(a) The owner or operator shall contract with an independent third-party engineering or consulting firm to conduct a technical and regulatory review of the ACP proposal. The selected firm shall review the proposal to determine if it meets the requirements of this Part, and shall prepare and certify an evaluation of the proposed ACP indicating whether the ACP proposal adheres to the requirements of this Part.

(b) Following the independent third-party review, the owner or operator shall provide the ACP, along with the third-party evaluation and findings, to the department for posting on the department's website. The department shall post the ACP and the third-party review within 15 days of receipt.

(c) Following posting by the department, the owner or operator shall publish a notice in a newspaper of general circulation announcing the ACP proposal, the dates it will be available for review and comment by the public, and information on how and where to submit comments. The dates specified in the public notice must provide for a thirty-day comment period.

(d) Following the close of the thirty-day notice and comment period, the department shall send the comments submitted on the ACP proposal and findings to the owner or operator. The owner or operator shall provide written responses to all comments to the department.

(e) Following receipt of the owner or operator's responses to comments received during the thirty-day comment period, the department shall make a determination whether to approve or deny the ACP proposal within 90 days. The department shall approve an ACP that meets the requirements of this Part, unless the department determines that the total allowable emissions under the ACP exceed the total allowable emissions under the emission standards of 20.2.50.113 NMAC. If approved by the department, the emission reductions and associated emission limits for the affected engines or turbines shall become enforceable terms under this Part.

(11) The owner or operator may submit a request for alternative emission standards for a specific engine or turbine based on technical impracticability or

economic infeasibility. The owner or operator is not required to submit an ACP proposal under Paragraph (10) of Subsection B of 20.2.50.113 NMAC prior to submission of a request for alternative emissions standards under this Paragraph (11), provided that the owner or operator satisfies Subparagraph (b) of Paragraph (11) of Subsection B of 20.2.50.113 NMAC, below. To qualify for an alternative emission standard, an owner or operator must comply with the following requirements:

(a) Prepare a reasonable demonstration detailing why it is not technically practicable or economically feasible for the individual engine or turbine to achieve the emissions standards in table 1 of Paragraph (2) of Subsection B of 20.2.50.113 NMAC or table 3 of Paragraph (7) of Subsection B of 20.2.50.113 NMAC, as applicable;

(b) Prepare a demonstration detailing why emissions from the individual engine or turbine cannot be addressed through an ACP in a technically practicable or economically feasible manner;

(c) Prepare a technical analysis for the affected engine or turbine specifying the emission reductions that can be achieved through other means, such as combustion modifications or capacity limitations. The technical analysis shall include an analysis of any previous modifications of the source and a determination whether such modifications meet the definition of a reconstructed source, such that the source should be considered a new source under federal regulations. The analysis shall include a certification that the modifications to the source are not in violation of any state or federal air quality regulation; and

(d) Fulfill the requirements of Subparagraphs (a) through (c) of Paragraph (10) of Subsection B of 20.2.50.113 NMAC.

(e) Following the close of the thirty-day notice and comment period, the department shall send the comments submitted on the alternative emission standards and findings to the owner or operator. The owner or operator shall provide written responses to all comments to the department.

(f) Following receipt of the owner or operator's responses to comments received during the thirty-day comment period, the department shall make a determination whether to approve or deny the alternative emission standards within 90 days. If approved by the department, the emission reductions and alternative emission standards for the affected engine or turbine shall become enforceable terms under this Part.

(g) If approved by the department, the emissions reductions and alternative standards for the affected engine or turbine shall become enforceable terms under this Part.

(12) A short-term replacement engine may be substituted for any engine subject to Section 20.2.50.113 NMAC consistent with any applicable air quality permit

containing allowances for short term replacement engines, including but not limited to New Source Review and General Construction Permits issued under 20.2.72 NMAC. A short-term replacement engine is not considered a "new" engine for purposes of this Part unless the engine it replaces is a "new" engine within the meaning of this Part. The reinstallation of the existing engine following removal of the short-term replacement engine is not considered a "new" engine under this Part unless the engine was "new" prior to the temporary replacement.

**C. Monitoring requirements:**

(1) Maintenance and repair for a spark ignition engine, compression ignition engine, and stationary combustion turbine shall meet the manufacturer recommended maintenance schedule as defined in 20.2.50.112 NMAC.

(2) Maintenance conducted consistent with an applicable NSPS or NESHAP requirement shall be deemed to be in compliance with Paragraph (1) of Subsection (C) of 20.2.50.113 NMAC.

(3) Catalytic converters (oxidative, selective, and non-selective) and AFR controllers shall be inspected and maintained according to manufacturer specifications as defined in 20.2.50.112 NMAC, and shall include replacement of oxygen sensors as necessary for oxygen-based controllers. During periods of catalytic converter or AFR controller maintenance, the owner or operator shall shut down the engine or turbine until the catalytic converter or AFR controller can be replaced with a functionally equivalent spare to allow the engine or turbine to return to operation.

(4) For equipment operated for 500 hours per year or more, compliance with the emission standards in Subsection B of 20.2.50.113 NMAC shall be demonstrated within 180 days of the effective date applicable to the source as defined by Paragraphs (2) and (7) of Subsection B of this Section or, if installed more than 180 days after the effective date, within 60 days after achieving the maximum production rate at which the source will be operated, but not later than 180 days after initial startup of such source. Compliance with the applicable emission standards shall be demonstrated by performing an initial emission test for NO<sub>x</sub> and VOC, as defined in 40 CFR 51.100(s) using U.S. EPA reference methods or ASTM D6348. Periodic monitoring shall be conducted annually to demonstrate compliance with the allowable emission standards and may be demonstrated utilizing a portable analyzer or EPA reference methods. For units with g/hp-hr emission standards, the engine load shall be calculated using the following equations:

Where: LVH = lower heating value, btu/scf, or btu/gal, as appropriate; and

BSFC = brake specific fuel consumption

If the manufacturer's rated BSFC is not available, an operator may use an alternative load calculation methodology based on available data.

(a) emissions testing shall be conducted within 10 percent of 100 percent peak (or the highest achievable) load. The load and the parameters used to calculate it shall be recorded to document operating conditions at the time of testing and shall be included with the test report.

(b) emissions testing utilizing a portable analyzer shall be conducted in accordance with the requirements of the current version of ASTM D6522. If a portable analyzer has met a previously approved department criterion, the analyzer may be operated in accordance with that criterion until it is replaced.

(c) the default time period for a test run shall be at least 20 minutes.

(d) an emissions test shall consist of three separate runs, with the arithmetic mean of the results from the three runs used to determine compliance with the applicable emission standard.

(e) during emissions tests, pollutant and diluent concentration shall be monitored and recorded. Fuel flow rate shall be monitored and recorded if stack gas flow rate is determined utilizing U.S. EPA reference method 19. This information shall be included with the periodic test report.

(f) stack gas flow rate shall be calculated in accordance with U.S. EPA reference method 19 utilizing fuel flow rate (scf) determined by a dedicated fuel flow meter and fuel heating value (Btu/scf). The owner or operator shall provide a contemporaneous fuel gas analysis (preferably on the day of the test, but no earlier than three months before the test date) and a recent fuel flow meter calibration certificate (within the most recent quarter) with the final test report. Alternatively, stack gas flow rate may be determined by using U.S. EPA reference methods 1 through 4 or through the use of manufacturer provided fuel consumption rates.

(g) upon request by the department, an owner or operator shall submit a notification and protocol for an initial or annual emissions test.

(h) emissions testing shall be conducted at least once per calendar year. Emission testing required by Subparts GG, IIII, JJJJ, or KKKK of 40 CFR 60, or Subpart ZZZZ of 40 CFR 63, may be used to satisfy the emissions testing requirements if it meets the requirements of 20.2.50.113 NMAC and is completed at least once per calendar year.

(i) The results of emissions testing demonstrating compliance with the emission standard for CO may be used as a surrogate to demonstrate compliance with the emission standard for NMNEHC.

(5) The owner or operator of equipment operated less than 500 hours per year shall monitor the hours of operation using a non-resettable hour meter and shall

test the unit at least once per 8760 hours of operation in accordance with the emissions testing requirements in Paragraph (4) of Subsection C of 20.2.50.113 NMAC.

(6) An owner or operator of an emergency use engine as defined by 40 C.F.R. §§ 60.4211, 60.4243, or 63.6675 shall monitor the hours of operation by a non-resettable hour meter.

(7) An owner or operator limiting the annual operating hours of an engine or turbine to meet the requirements of Paragraph (2) or (7) of Subsection B of 20.2.50.113 NMAC shall monitor the hours of operation by a non-resettable hour meter.

(8) Prior to any monitoring, testing, inspection, or maintenance of an engine or turbine, the owner or operator shall date and time stamp the event, and the monitoring data entry shall be made in accordance with the requirements of 20.2.50.112 and 113 NMAC.

**D. Recordkeeping requirements:**

(1) The owner or operator of a spark ignition engine, compression ignition engine, or stationary combustion turbine shall maintain a record in accordance with 20.2.50.112 NMAC for the engine or turbine. The record shall include:

(a) the make, model, serial number, and unique identification number for the engine or turbine;

(b) location of the source (latitude and longitude);

(c) a copy of the engine, turbine, or control device manufacturer recommended maintenance and repair schedule as defined in 20.2.50.112 NMAC; and

(d) all inspection, maintenance, or repair activity on the engine, turbine, and control device, including:

(i) the date and time stamp(s), including GPS of the location, of an inspection, maintenance, or repair;

(ii) the date a subsequent analysis was performed (if applicable);

(iii) the name of the person(s) conducting the inspection, maintenance or repair;

(iv) a description of the physical condition of the equipment as found during the inspection;

(v) a description of maintenance or repair conducted; and

(vi) the results of the inspection and any required corrective actions.

(2) The owner or operator of a spark ignition engine, compression ignition engine, or stationary combustion turbine shall maintain records of initial and annual emissions testing for the engine or turbine for a period of five years. The records shall include:

(a) make, model, and serial number for the tested engine or turbine;

(b) the date and time stamp(s), including GPS of the location, of any monitoring event, including sampling or measurements;

(c) date analyses were performed;

(d) name of the person(s) and the qualified entity that performed the analyses;

(e) analytical or test methods used;

(f) results of analyses or tests;

(g) calculated emissions of NO<sub>x</sub> and VOC in lb/hr and tpy; and

(h) operating conditions at the time of sampling or measurement.

(3) The owner or operator of an emergency use engine as defined by 40 C.F.R. §§ 60.4211, 60.4243, or 63.6675 shall record the total annual hours of operation as recorded by the non-resettable hour meter.

(4) The owner or operator limiting the annual operating hours of an engine or turbine to meet the requirements of Paragraph (2) or (7) of Subsection B of 20.2.50.113 NMAC shall record the hours of operation by a non-resettable hour meter. The owner or operator shall calculate and record the annual NO<sub>x</sub> and VOC emission calculation, based on the engine or turbine's actual hours of operation, to demonstrate that an equivalent allowable ton per year emission reduction as set forth in table 1 or table 3 of Paragraph (2) or (7) of Subsection B of 20.2.50.113 NMAC, or the ninety-five percent emission reduction requirement is met.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.113 NM-C - N, 08/05/2022]

#### **20.2.50.114 COMPRESSOR SEALS:**

**A. Applicability:**

(1) Centrifugal compressors using wet seals and located at tank batteries, gathering and boosting stations, and natural gas processing plants are subject to the requirements of 20.2.50.114 NMAC. Centrifugal compressors located at well sites and transmission compressor stations are not subject to the requirements of 20.2.50.114 NMAC.

(2) Reciprocating compressors located at tank batteries, gathering and boosting stations, and natural gas processing plants are subject to the requirements of 20.2.50.114 NMAC. Reciprocating compressors located at well sites and transmission compressor stations are not subject to the requirements of 20.2.50.114 NMAC.

**B. Emission standards:**

(1) The owner or operator of an existing centrifugal compressor with wet seals shall control VOC emissions from a centrifugal compressor wet seal fluid degassing system by at least ninety-five percent within two years of the effective date of this Part. Emissions shall be captured and routed via a closed vent system to a control device, recovery system, fuel cell, or a process stream.

(2) The owner or operator of an existing reciprocating compressor shall, either:

(a) replace the reciprocating compressor rod packing after every 26,000 hours of compressor operation or every 36 months, whichever is reached later. The owner or operator shall begin counting the hours of compressor operation toward the first replacement of the rod packing upon the effective date of this Part; or

(b) beginning no later than two years from the effective date of this Part, collect emissions from the rod packing, and route them via a closed vent system to a control device, recovery system, fuel cell, or a process stream.

(3) The owner or operator of a new centrifugal compressor with wet seals shall control VOC emissions from the centrifugal compressor wet seal fluid degassing system by at least ninety-five percent upon startup. Emissions shall be captured and routed via a closed vent system to a control device, recovery system, fuel cell, or process stream.

(4) The owner or operator of a new reciprocating compressor shall, upon startup, either:

(a) replace the reciprocating compressor rod packing after every 26,000 hours of compressor operation, or every 36 months, whichever is reached later; or

(b) collect emissions from the rod packing and route them via a closed vent system to a control device, a recovery system, fuel cell, or a process stream.

(5) The owner or operator complying with the emission standards in Subsection B of 20.2.50.114 NMAC through use of a control device shall comply with the control device requirements in 20.2.50.115 NMAC.

**C. Monitoring requirements:**

(1) The owner or operator of a reciprocating compressor complying with Subparagraph (a) of Paragraph (2) or Subparagraph (a) of Paragraph (4) of Subsection B of 20.2.50.114 NMAC shall continuously monitor the hours of operation with a non-resettable hour meter and track the number of hours since initial startup or since the previous reciprocating compressor rod packing replacement.

(2) The owner or operator of a reciprocating compressor complying with Subparagraph (b) of Paragraph (2) or Subparagraph (b) of Paragraph (4) of Subsection B of 20.2.50.114 NMAC shall monitor the rod packing emissions collection system semiannually to ensure that it operates as designed and routes emissions through a closed vent system to a control device, recovery system, fuel cell, or process stream.

(3) The owner or operator of a centrifugal or reciprocating compressor complying with the requirements in Subsection B of 20.2.50.114 NMAC through use of a closed vent system or control device shall comply with the monitoring requirements in 20.2.50.115 NMAC.

(4) The owner or operator of a centrifugal or reciprocating compressor shall comply with the monitoring requirements in 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

(1) The owner or operator of a centrifugal compressor using a wet seal fluid degassing system shall maintain a record of the following:

(a) the location (latitude and longitude) of the centrifugal compressor;

(b) the date of construction or reconstruction of the centrifugal compressor;

(c) the monitoring required in Subsection C of 20.2.50.114 NMAC, including the time and date of the monitoring, the person(s) conducting the monitoring, a description of any problem observed during the monitoring, and a description of any corrective action taken; and

(d) the type, make, model, and unique identification number or equivalent identifier of a control device used to comply with the control requirements in Subsection B of 20.2.50.114 NMAC.

(2) The owner or operator of a reciprocating compressor shall maintain a record of the following:

- (a) the location (latitude and longitude) of the reciprocating compressor;
- and
- (b) the date of construction or reconstruction of the reciprocating compressor;
- (c) the monitoring required in Subsection C of 20.2.50.114 NMAC, including:
  - (i) the number of hours of operation since the effective date, initial startup after the effective date, or the last rod packing replacement, as applicable;
  - (ii) data showing the effectiveness of the rod packing emissions collection system, as applicable; and
  - (iii) the time and date of the inspection, the person(s) conducting the inspection, a description of any problems observed during the inspection, and a description of corrective actions taken.

(3) The owner or operator of a centrifugal or reciprocating compressor complying with the requirements in Subsection B of 20.2.50.114 NMAC through use of a control device or closed vent system shall comply with the recordkeeping requirements in 20.2.50.115 NMAC.

(4) The owner or operator of a centrifugal or reciprocating compressor shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator of a centrifugal or reciprocating compressor shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.114 NMAC - N, 08/05/2022]

### **20.2.50.115 CONTROL DEVICES AND CLOSED VENT SYSTEMS:**

**A. Applicability:** These requirements apply to control devices and closed vent systems as defined in 20.2.50.7 NMAC and used to comply with the emission standards and emission reduction requirements in this Part.

**B. General requirements:**

(1) Control devices used to demonstrate compliance with this Part shall be installed, operated, and maintained consistent with manufacturer specifications, and good engineering and maintenance practices.

(2) Control devices shall be adequately designed and sized to achieve the control efficiency rates required by this Part and to handle the reasonably expected range of inlet VOC or NO<sub>x</sub> concentrations or volumes.

(3) The owner or operator shall inspect control devices visually or consistent with applicable federally approved inspection methods at least monthly to identify defects, leaks, and releases, and to ensure proper operation. Prior to an inspection or monitoring event, the owner or operator shall date and time stamp the event, and the required monitoring data entry shall be made in accordance with this Part.

(4) The owner or operator shall ensure that a control device used to comply with emission standards in this Part operates as a closed vent system that captures and routes VOC emissions to the control device, in order to minimize venting of unburnt gas to the atmosphere.

(5) The owner or operator of a permanent closed vent system for a centrifugal compressor wet seal fluid degassing system, reciprocating compressor, natural gas driven pneumatic pump, or storage vessel using a control device or routing emissions to a process shall:

(a) ensure the control device or process is of sufficient design and capacity to accommodate the expected range of emissions from the affected sources;

(b) conduct an assessment to confirm that the closed vent system is of sufficient design and capacity to ensure that emissions from the affected equipment are routed to the control device or process; and

(c) have the assessment certified by a qualified professional engineer or an in-house engineer with expertise regarding the design and operation of closed vent system(s) in accordance with Items (i) and (ii) of Subparagraph (c) of this section.

(i) The assessment of the closed vent system shall be prepared under the direction or supervision of a qualified professional engineer or an in-house engineer who signs the certification in Item (ii) of Subparagraph (c) of this section.

(ii) The owner or operator shall provide the following certification, signed and dated by a qualified professional engineer or an in-house engineer: "I certify that the closed vent system assessment was prepared under my direction or supervision. I further certify that the closed vent system assessment was conducted, and this report was prepared, pursuant to the requirements of this Part. Based on my professional knowledge and experience, and inquiry of personnel involved in the assessment, the certification submitted herein is true, accurate, and complete."

(d) An owner or operator of an existing closed vent system shall comply with the requirements of Paragraph (5) of Subsection B of 20.2.50.115 NMAC within three years of the effective date of this Part and within 90 days of startup for a new closed vent system.

(6) The owner or operator shall keep manufacturer specifications for all control devices on file. The information shall include the unique identification number,

type of unit, manufacturer name, make, model, capacity, and destruction or reduction efficiency data.

**C. Requirements for open flares:**

(1) Emission standards:

(a) the flare shall be properly sized and designed to ensure proper combustion efficiency to combust the gas sent to the flare, and combustion shall be maintained for the duration of time that gas is sent to the flare. The owner or operator shall not send gas to the flare in excess of the manufacturer maximum rated capacity.

(b) The owner or operator shall equip each new and existing flare (except those flares required to meet the requirements of Subparagraph (c) of this Subsection) with a continuous pilot flame, an operational auto-igniter, or require manual ignition, and shall comply with the following no later than one year after the effective date of this part, unless otherwise specified:

(i) a flare with a continuous pilot flame or an auto-igniter shall be equipped with a system to ensure the flare is operated with a flame present at all times when gas is being sent to the flare.

(ii) The owner or operator of a flare with manual ignition shall inspect and ensure a flame is present upon initiating a flaring event.

(iii) A new flare controlling a continuous gas stream shall be equipped with a continuous pilot flame upon startup.

(iv) An existing flare controlling a continuous gas stream shall be equipped with a continuous pilot.

(c) An existing flare located at a site with an annual average daily production of equal to or less than 10 barrels of oil per day or an average daily production of 60,000 standard cubic feet of natural gas shall be equipped with an auto-igniter, continuous pilot, or technology (e.g. alarm) that alerts the owner or operator of a flare malfunction, if replaced or reconstructed after the effective date of this Part.

(d) The owner or operator shall operate a flare with no visible emissions, except for periods not to exceed a total of 30 seconds during any 15 consecutive minutes. The flare shall be designed so that an observer can, by means of visual observation from the outside of the flare or by other means such as a continuous monitoring device, determine whether it is operating properly. The observation may be terminated if visible emissions are observed and recorded and action is taken to address the visible emissions.

(e) The owner or operator shall repair the flare within three business days of any thermocouple or other flame detection device alarm activation.

(2) Monitoring requirements:

(a) the owner or operator of a flare with a continuous pilot or auto-igniter shall continuously monitor the presence of a pilot flame, or presence of flame during flaring if using an auto-igniter, using a thermocouple equipped with a continuous recorder and alarm to detect the presence of a flame. An alternative equivalent technology alerting the owner or operator of failure of ignition of the gas stream may be used in lieu of a continuous recorder and alarm, if approved by the department;

(b) the owner or operator of a manually ignited flare shall monitor the presence of a flame using continuous visual observation during a flaring event;

(c) the owner or operator shall, at least quarterly, and upon observing visible emissions, perform a U.S. EPA method 22 observation while the flare pilot or auto-igniter flame is present to certify compliance with visible emission requirements. The observation period shall be a minimum of 15 consecutive minutes. The observation may be terminated if visible emissions are observed and recorded and action is taken to address the visible emissions;

(d) prior to an inspection or monitoring event, the owner or operator shall date and time stamp the event, and the required monitoring data entry shall be made in accordance with this Part; and

(e) the owner or operator shall monitor the technology that alerts the owner or operator of a flare malfunction and any instances of technology or alarm activation.

(3) Recordkeeping requirements: The owner or operator of an open flare shall keep a record of the following:

(a) any instance of thermocouple, other approved technology, or flame detection device alarm activation, including the date and cause of alarm activation, action taken to bring the flare into a normal operating condition, the name of the person(s) conducting the inspection, and any maintenance activity performed;

(b) the results of the U.S. EPA method 22 observations;

(c) the monitoring of the presence of a flame on a manual flare during a flaring event as required under Subparagraph (b) of Paragraph (2) of Subsection C of 20.2.50.115 NMAC;

(d) the results of the most recent gas analysis for the gas being flared, including VOC content and heating value; and

(e) the date and time stamp(s), including GPS of the location, of any monitoring event.

(4) Reporting requirements: The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

**D.** Requirements for enclosed combustion devices (ECD) and thermal oxidizers (TO):

(1) Emission standards:

(a) the ECD/TO shall be properly sized and designed to ensure proper combustion efficiency to combust the gas sent to the ECD/TO. The owner or operator shall not send gas to the ECD/TO in excess of the manufacturer maximum rated capacity.

(b) The owner or operator shall equip each new ECD/TO with a continuous pilot flame or an auto-igniter upon startup. Existing ECD/TO shall be equipped with a continuous pilot flame or an auto-igniter no later than two years after the effective date of this Part.

(c) ECD/TO with a continuous pilot flame or an auto-igniter shall be equipped with a system to ensure that the ECD/TO is operated with a flame present at all times when gas is sent to the ECD/TO. Combustion shall be maintained for the duration of time that gas is sent to the ECD/TO. New ECD/TOs shall comply with this requirement upon startup, and existing ECD/TOs shall comply with this requirement within 2 years of the effective date of this Part.

(d) The owner or operator shall operate an ECD/TO with no visible emissions, except for periods not to exceed a total of 30 seconds during any 15 consecutive minutes. The ECD/TO shall be designed so that an observer can, by means of visual observation from the outside of the ECD/TO or by other means such as a continuous monitoring device, determine whether it is operating properly. The observation may be terminated if visible emissions are observed and recorded and action is taken to address the visible emissions.

(2) Monitoring requirements:

(a) the owner or operator of an ECD/TO with a continuous pilot or an auto-igniter shall continuously monitor the presence of a pilot flame, or of a flame during combustion if using an auto-igniter, using a thermocouple equipped with a continuous recorder and alarm to detect the presence of a flame. An alternative equivalent technology alerting the owner or operator of failure of ignition of the gas stream may be used in lieu of a continuous recorder and alarm, if approved by the department.

(b) The owner or operator shall, at least quarterly, and upon observing visible emissions, perform a U.S. EPA method 22 observation while the ECD/TO pilot flame or auto-igniter flame is present to certify compliance with the visible emission requirements. The period of observation shall be a minimum of 15 consecutive minutes. The observation may be terminated if visible emissions are observed and recorded and action is taken to address the visible emissions.

(c) Prior to an inspection or monitoring event, the owner or operator shall date and time stamp the event, and the required monitoring data entry shall be made in accordance with the monitoring requirements of this Part.

(3) Recordkeeping requirements: The owner or operator of an ECD/TO shall keep records of the following:

(a) any instance of thermocouple, other approved technology, or flame detection device alarm activation, including the date and cause of the activation, any action taken to bring the ECD/TO into normal operating condition, the name of the person(s) conducting the inspection, and any maintenance activities performed;

(b) the results of the U.S. EPA method 22 observations;

(c) the date and time stamp(s), including GPS of the location, of any monitoring event; and

(d) the results of the most recent gas analysis for the gas being combusted, including VOC content and heating value.

(4) Reporting requirements: The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

**E. Requirements for vapor recovery units (VRU):**

(1) Emission standards:

(a) the owner or operator shall operate the VRU as a closed vent system that captures and routes all VOC emissions directly back to the process or to a sales pipeline and does not vent to the atmosphere.

(b) The owner or operator shall control VOC emissions during startup, shutdown, maintenance, or other VRU downtime with a backup control device (e.g. flare, ECD, TO) or redundant VRU during the period of VRU downtime, unless otherwise approved in an air permit issued prior to the effective date of this Part. Alternatively, the owner or operator may shut down and isolate the source being controlled by the VRU. For sites that already have a VRU installed as of the effective date of this Part, the owner or operator shall install backup control devices or redundant VRUs within three years of the effective date of this Part.

(2) Monitoring Requirements:

(a) the owner or operator shall comply with the standards for equipment leaks in 20.2.50.116 NMAC, or alternatively, shall implement a program that meets the requirements of Subpart OOOOa of 40 CFR 60.

(b) Prior to a VRU inspection or monitoring event, the owner or operator shall date and time stamp the event, and the required monitoring data entry shall be made in accordance with the requirements of this Part.

(3) Recordkeeping requirements: For a VRU inspection or monitoring event, the owner or operator shall record the result of the event, including the name of the person(s) conducting the inspection, any maintenance or repair activities required, and the date and time stamp(s), including GPS of the location, of any monitoring event. The owner or operator shall record the type of redundant control device used during VRU downtime, or keep records of the source shut down and isolated and the time period during which it was shut down, or records of compliance with an air permit issued prior to the effective date of this Part.

(4) Reporting requirements: The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

**F.** Recordkeeping requirements: In addition to the general recordkeeping requirements of 20.2.50.112 NMAC, the owner or operator of a control device or closed vent system shall maintain a record of the following:

(1) the certification of the closed vent system assessment, where applicable, and as required by this Part; and

(2) the information required in Paragraph (6) of Subsection B of 20.2.50.115 NMAC.

**G.** Reporting requirements: The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.115 NMAC - N, 08/05/2022]

**20.2.50.116 EQUIPMENT LEAKS AND FUGITIVE EMISSIONS:**

**A.** Applicability: Well sites, tank batteries, gathering and boosting stations, natural gas processing plants, transmission compressor stations, and associated piping and components are subject to the requirements of 20.2.50.116 NMAC. Components in water or air service are not subject to the requirements of 20.2.50.116 NMAC. The requirements of this Part may be considered in the facility-wide PTE and in determining the monitoring frequency requirements of this section.

**B. Emission standards:** The owner or operator of oil and gas production and processing equipment located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, or transmission compressor stations shall demonstrate compliance with this Part by performing the monitoring, recordkeeping, and reporting requirements specified in 20.2.50.116 NMAC. Tank batteries supporting multiple facilities are subject to the requirements for the most stringently regulated facility of which they are a part.

**C. Default monitoring requirements:** Owners and operators shall comply with the following monitoring requirements:

(1) The owner or operator of a facility with an annual average daily production or average daily throughput of greater than 10 barrels of oil per day or an average daily production of greater than 60,000 standard cubic feet per day of natural gas shall, at least weekly, conduct an external audio, visual, and olfactory (AVO) inspection of thief hatches, closed vent systems, pumps, compressors, pressure relief devices, open-ended valves or lines, valves, flanges, connectors, piping, and associated equipment to identify defects and leaking components as follows:

(a) conduct an external visual inspection for defects, which may include cracks, holes, or gaps in piping or covers; loose connections; liquid leaks; broken or missing caps; broken, cracked or otherwise damaged seals or gaskets; broken or missing hatches; or broken or open access covers or other closure or bypass devices;

(b) conduct an audio inspection for pressure leaks and liquid leaks;

(c) conduct an olfactory inspection for unusual or strong odors; and

(d) any positive detection during the AVO inspection shall be repaired in accordance with Subsection E if not repaired at the time of discovery.

(2) The owner or operator of a facility with an annual average daily production or average daily throughput of equal to or less than 10 barrels of oil per day or an average daily production of equal to or less than 60,000 standard cubic feet per day of natural gas shall, at least monthly, conduct an external audio, visual, and olfactory (AVO) inspection of thief hatches, closed vent systems, pumps, compressors, pressure relief devices, open-ended valves or lines, valves, flanges, connectors, piping, and associated equipment to identify defects and leaking components as specified in Subparagraphs (a) through (d) of Paragraph (1) of Subsection C of 20.2.50.116 NMAC; except that an owner or operator of a well site within 1,000 feet (as measured from the center of the well site to the applicable structure or area of public assembly) of an occupied area shall conduct the AVO inspection at least weekly.

(3) The owner or operator of the following facilities shall conduct an inspection using U.S. EPA method 21 or optical gas imaging (OGI) of thief hatches, closed vent systems, pumps, compressors, pressure relief devices, open-ended valves or lines,

valves, flanges, connectors, piping, and associated equipment to identify leaking components at a frequency determined according to the following schedules, and upon request by the department for good cause shown:

(a) for existing well sites and standalone tank batteries, the owner or operator shall comply with these requirements no later than two years from the effective date of this Part.

(b) for well sites and standalone tank batteries:

(i) annually at facilities with a PTE less than two tpy VOC;

(ii) semi-annually at facilities with a PTE equal to or greater than two tpy and less than five tpy VOC; and

(iii) quarterly at facilities with a PTE equal to or greater than five tpy VOC.

(c) for gathering and boosting stations and natural gas processing plants:

(i) quarterly at facilities with a PTE less than 25 tpy VOC; and

(ii) monthly at facilities with a PTE equal to or greater than 25 tpy VOC.

(d) For transmission compressor stations, quarterly or in compliance with the federal equipment leak and fugitive emissions monitoring requirements of New Source Performance Standards, 40 C.F.R. Part 60, as may be revised, so long as the federal equipment leak and fugitive emissions monitoring requirements are at least as stringent as the New Source Performance Standards OOOOa, 40 CFR Part 60, in existence as of the effective date of this Part.

(e) Quarterly at well sites within 1,000 feet of an occupied area.

(f) For existing wellhead only facilities, annual inspections shall be completed on the following schedule: thirty percent by January 1, 2024; sixty-five percent by January 1, 2025; and one-hundred percent by January 1, 2026.

(g) for inactive well sites:

(i) for well sites that are inactive on or before the effective date of this Part, annually beginning within six months of the effective date of this Part;

(ii) for well sites that become inactive after the effective date of this Part, annually beginning 30 days after the site becomes an inactive well site.

(4) Inspections using U.S. EPA method 21 shall meet the following requirements:

(a) the instrument shall be calibrated before each day of use by the procedures specified in U.S. EPA method 21 and the instrument manufacturer; and

(b) a leak is detected if the instrument records a measurement of 500 ppm or greater of hydrocarbons, and the measurement is not associated with normal equipment operation, such as pneumatic device actuation and crank case ventilation.

(5) Inspections using OGI shall meet the following requirements:

(a) the instrument shall comply with the specifications, daily instrument checks, and leak survey requirements set forth in Subparagraphs (1) through (3) of Paragraph (i) of 40 CFR 60.18; and

(b) a leak is detected if the emission images recorded by the OGI instrument are not associated with normal equipment operation, such as pneumatic device actuation or crank case ventilation.

(6) Components that are difficult, unsafe, or inaccessible to monitor, as determined by the following conditions, are not required to be inspected until it becomes feasible to do so:

(a) difficult to monitor components are those that require elevating the monitoring personnel more than two meters above a supported surface;

(b) unsafe to monitor components are those that cannot be monitored without exposing monitoring personnel to an immediate danger as a consequence of completing the monitoring; and

(c) inaccessible to monitor components are those that are buried, insulated, or obstructed by equipment or piping that prevents access to the components by monitoring personnel.

(7) Owners and operators of well sites must conduct an evaluation to determine applicability of Subparagraph (e) of Paragraph (3) of Subsection C of Section 20.2.50.116 NMAC within 30 days of constructing a new well site, and within 90 days of the effective date of this Part for existing well sites.

(8) An owner or operator conducting an evaluation pursuant to Paragraph (7) of Subsection C of Section 20.2.50.116 NMAC shall measure the distance from the latitude and longitude of each well at a well site to the following points for each type of occupied area:

(a) the property line for indoor or outdoor spaces associated with a school that students use commonly as part of their curriculum or extracurricular activities and outdoor venues or recreation areas;

(b) the property line for outdoor venues or recreation areas, such as a playground, permanent sports field, amphitheater, or other similar place of outdoor public assembly;

(c) the location of a building or structure used as a place of residency by a person, a family, or families; and

(d) the location of a commercial facility with five-thousand (5,000) or more square feet of building floor area that is operating and normally occupied during working hours.

(9) Injection well sites and temporarily abandoned well sites are not subject to the leak survey requirements of Paragraphs (3) through (6) of Subsection C of 20.2.50.116 NMAC.

(10) Prior to any monitoring event, the owner or operator shall date and time stamp the monitoring event.

**D. Alternative equipment leak monitoring plans:** An owner or operator may comply with the equipment leak requirements of Subsection C of 20.2.50.116 NMAC through an equally effective and enforceable alternative monitoring plan, which may include the use of alternative monitoring methods and technologies, as follows:

(1) An owner or operator may comply with an individual alternative monitoring plan, subject to the following requirements:

(a) the proposed alternative monitoring plan shall be submitted to the department on an application form provided by the department. Within 90 days of receipt, the department shall issue a letter approving or denying the requested alternative monitoring plan. An owner or operator shall comply with the default monitoring requirements of Section 20.2.50.116 NMAC and may not operate under an alternative monitoring plan until it has been approved by the department.

(b) the department may terminate an approved alternative monitoring plan if the department finds that the owner or operator failed to comply with a provision of the plan and failed to correct and disclose the violation to the department within 15 calendar days of identifying the violation.

(c) upon department denial or termination of an approved alternative monitoring plan, the owner or operator shall comply with the default monitoring requirements of Subsection C of 20.2.50.116 NMAC within 15 days.

(2) An owner or operator may comply with a pre-approved alternative monitoring plan maintained by the department, subject to the following requirements:

(a) the owner or operator shall notify the department in writing of the intent to conduct monitoring under a pre-approved alternative monitoring plan, and identify which pre-approved plan will be used, at least 15 days prior to conducting the first monitoring under that plan.

(b) the department may terminate the use of a pre-approved alternative monitoring plan by the owner or operator if the department finds that the owner or operator failed to comply with a provision of the plan and failed to correct and disclose the violation to the department within 15 calendar days of identifying the violation.

(c) upon department denial or termination of a pre-approved alternative monitoring plan, the owner or operator shall comply with the default monitoring requirements of Subsection C of 20.2.50.116 NMAC within 15 days.

**E. Repair requirements:** For a leak detected pursuant to monitoring conducted under 20.2.50.116 NMAC:

(1) the owner or operator shall place a visible tag on the leaking component not otherwise repaired at the time of discovery until the component has been repaired;

(2) leaks shall be repaired as soon as practicable but no later than 30 days from discovery;

(3) the equipment must be re-monitored no later than 15 days after the repair of the leak to demonstrate that it has been repaired;

(4) if the leak cannot be repaired within 30 days of discovery without a process unit shutdown, the leak may be designated "Repair delayed," the date of the next scheduled process unit shutdown must be identified, and the leak must be repaired before the end of the scheduled process unit shutdown or within 2 years, whichever is earlier; and

(5) if the leak cannot be repaired within 30 days of discovery due to shortage of parts, the leak may be designated "Repair delayed," and must be repaired within 15 days of resolution of such shortage.

**F. Recordkeeping requirements:**

(1) The owner or operator shall keep a record of the following for all AVO, RM 21, OGI, or alternative equipment leak monitoring inspections conducted as required under 20.2.50.116 NMAC, and shall provide the record to the department upon request:

(a) facility location (latitude and longitude);

- (b) time and date stamp, including GPS of the location, of any monitoring;
- (c) monitoring method (e.g. AVO, RM 21, OGI, approved alternative method);
- (d) name of the person(s) performing the inspection;
- (e) a description of any leak requiring repair or a note that no leak was found;

and

- (f) whether a visible tag was placed on the leak.

(2) The owner or operator shall keep the following record for any leak that is detected:

- (a) the date the leak is detected;

- (b) the date of attempt to repair;

(c) for a leak with a designation of "repair delayed" the following shall be recorded:

- (i) reason for delay if a leak is not repaired within the required number of days after discovery. If a delay is due to a parts shortage, a record documenting the attempt to order the parts and the unavailability due to a shortage is required;

- (ii) the date of next scheduled process unit shutdown by which the repair will be completed; and

- (iii) name of the person(s) who determined that the repair could not be implemented without a process unit shutdown.

- (d) date of successful leak repair;

- (e) date the leak was monitored after repair and the results of the monitoring;

and

- (f) a description of the component that is designated as difficult, unsafe, or inaccessible to monitor, an explanation stating why the component was so designated, and the schedule for repairing and monitoring the component.

(3) For a leak detected using OGI, the owner or operator shall keep records of the specifications, the daily instrument check, and the leak survey requirements specified at 40 CFR 60.18(i)(1)-(3).

(4) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**G. Reporting requirements:**

(1) The owner or operator shall certify the use of an alternative equipment leak monitoring plan under Subsection D of 20.2.50.116 NMAC to the department annually, if used.

(2) The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.116 NMAC - N, 08/05/2022]

**20.2.50.117 NATURAL GAS WELL LIQUID UNLOADING:**

**A. Applicability:** Liquid unloading operations resulting in the venting of natural gas at natural gas wells are subject to the requirements of 20.2.50.117 NMAC. Liquid unloading operations that do not result in the venting of any natural gas are not subject to this Part. Owners and operators of a natural gas well subject to this Part must comply with the standards set forth in Paragraph (1) of Subsection B of 20.2.50.117 NMAC within two years of the effective date of this Part.

**B. Emission standards:**

(1) The owner or operator of a natural gas well shall implement at least one of the following best management practices during the life of the well to avoid the need for venting of natural gas associated with liquid unloading:

- (a) use of a plunger lift;
- (b) use of artificial lift;
- (c) use of a control device;
- (d) use of an automated control system; or
- (e) other practices if approved by the department.

(2) The owner or operator of a natural gas well shall implement the following best management practices during venting associated with liquid unloading to minimize emissions, consistent with well site conditions and good engineering practices:

- (a) reduce wellhead pressure before blowdown or venting to atmosphere;
- (b) monitor manual venting associated with liquid unloading in close proximity to the well or via remote telemetry; and

(c) close vents to the atmosphere and return the well to normal production operation as soon as practicable.

**C. Monitoring requirements:**

(1) The owner or operator shall monitor the following parameters during venting associated with liquid unloading:

- (a) wellhead pressure;
- (b) flow rate of the vented natural gas (to the extent feasible); and
- (c) duration of venting to the storage vessel, tank battery, or atmosphere.

(2) The owner or operator shall calculate the volume and mass of VOC emitted during a venting event associated with a liquid unloading event.

(3) The owner or operator shall comply with the monitoring requirements of 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

(1) The owner or operator shall keep the following records for liquid unloading:

(a) unique identification number and location (latitude and longitude) of the well;

(b) date of the unloading event;

(c) wellhead pressure;

(d) flow rate of the vented natural gas (to the extent feasible. If not feasible, the owner or operator shall use the estimated flow rate in the emission calculation);

(e) duration of venting to the storage vessel, tank battery, or atmosphere;

(f) a description of the best management practices used to minimize venting of VOC emissions during the life of the well and before and during the liquid unloading; and

(g) a calculation of the VOC emissions vented during a liquid unloading event based on the duration, calculated volume, and composition of the produced gas.

(2) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.117 NMAC - N, 08/05/2022]

**20.2.50.118 GLYCOL DEHYDRATORS:**

**A. Applicability:** Glycol dehydrators with a PTE equal to or greater than two tpy of VOC and located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and transmission compressor stations are subject to the requirements of 20.2.50.118 NMAC.

**B. Emission standards:**

(1) Existing glycol dehydrators with a PTE equal to or greater than two tpy of VOC shall achieve a minimum combined capture and control efficiency of ninety-five percent of VOC emissions from the still vent and flash tank (if present) no later than two years after the effective date of this Part. If a combustion control device is used, the combustion control device shall have a minimum design combustion efficiency of ninety-eight percent.

(2) New glycol dehydrators with a PTE equal to or greater than two tpy of VOC shall achieve a minimum combined capture and control efficiency of ninety-five percent of VOC emissions from the still vent and flash tank (if present) upon startup. If a combustion control device is used, the combustion control device shall have a minimum design combustion efficiency of ninety-eight percent.

(3) The owner or operator of a glycol dehydrator shall comply with the following requirements:

(a) the still vent and flash tank emissions shall be routed at all times to the reboiler firebox, condenser, combustion control device, fuel cell, to a process point that either recycles or recompresses the VOC emissions or uses the emissions as fuel, or to a VRU that reinjects the VOC emissions back into the process stream or natural gas pipeline;

(b) if a VRU is used, it shall consist of a closed loop system of seals, ducts, and a compressor that reinjects the vapor into the process or the natural gas pipeline. The VRU shall be operational at least ninety-five percent of the time the facility is in operation, resulting in a minimum combined capture and control efficiency of ninety-five percent, which shall supersede any inconsistent requirements in 20.2.50.115 NMAC. The VRU shall be installed, operated, and maintained according to the manufacturer's specifications; and

(c) the still vent and flash tank emissions shall not be vented directly to the atmosphere during normal operation.

(4) An owner or operator complying with the requirements in Subsection B of 20.2.50.118 NMAC through use of a control device shall comply with the requirements in 20.2.50.115 NMAC.

(5) The requirements of Subsection B of 20.2.50.118 NMAC cease to apply when the actual annual VOC emissions from a new or existing glycol dehydrator are less than two tpy of VOC.

**C. Monitoring requirements:**

(1) The owner or operator of a glycol dehydrator shall conduct an annual extended gas analysis on the dehydrator inlet gas and calculate the uncontrolled and controlled VOC emissions in tpy.

(2) The owner or operator of a glycol dehydrator shall inspect the glycol dehydrator, including the reboiler and regenerator, and the control device or process the emissions are being routed, semi-annually to ensure it is operating as initially designed and in accordance with the manufacturer recommended operation and maintenance schedule.

(3) Prior to any monitoring event, the owner or operator shall date and time stamp the event, and the monitoring data entry shall be made in accordance with the requirements of this Part.

(4) An owner or operator complying with the requirements in Subsection B of 20.2.50.118 NMAC through the use of a control device shall comply with the monitoring requirements in 20.2.50.115 NMAC.

(5) Owners and operators shall comply with the monitoring requirements in 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

(1) The owner or operator of a glycol dehydrator shall maintain a record of the following:

(a) unique identification number and dehydrator location (latitude and longitude);

(b) glycol circulation rate, monthly natural gas throughput, and the date of the most recent throughput measurement;

(c) data and methodology used to estimate the PTE of VOC (must be a department approved calculation methodology);

(d) controlled and uncontrolled VOC emissions in tpy;

(e) type, make, model, and unique identification number of the control device or process the emissions are being routed;

(f) time and date stamp, including GPS of the location, of any monitoring;

(g) results of any equipment inspection, including maintenance or repair activities required to bring the glycol dehydrator into compliance; and

(h) a copy of the glycol dehydrator manufacturer specifications.

(2) An owner or operator complying with the requirements in Paragraph (1) or (2) of Subsection B of 20.2.50.118 NMAC through use of a control device as defined in this Part shall comply with the recordkeeping requirements in 20.2.50.115 NMAC.

(3) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.118 NMAC - N, 08/05/2022]

### **20.2.50.119 HEATERS:**

**A. Applicability:** Natural gas-fired heaters with a rated heat input equal to or greater than 20 MMBtu/hour including heater treaters, heated flash separators, evaporator units, fractionation column heaters, and glycol dehydrator reboilers in use at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and transmission compressor stations are subject to the requirements of 20.2.50.119 NMAC.

#### **B. Emission standards:**

(1) Natural gas-fired heaters shall comply with the emission limits in table 1 of 20.2.50.119 NMAC.

Table 1 - EMISSION STANDARDS FOR NO<sub>x</sub> AND CO

Date of Construction:	NO <sub>x</sub> (ppmvd @ 3% O <sub>2</sub> )	CO (ppmvd @ 3% O <sub>2</sub> )
Constructed or reconstructed before the effective date of 20.2.50 NMAC	30	400
Constructed or reconstructed on or after the effective date of 20.2.50 NMAC	30	400

(2) Existing natural gas-fired heaters shall comply with the requirements of 20.2.50.119 NMAC no later than three years after the effective date of this Part.

(3) New natural gas-fired heaters shall comply with the requirements of 20.2.50.119 NMAC upon startup.

**C. Monitoring requirements:**

(1) The owner or operator shall:

(a) conduct emission testing for NO<sub>x</sub> and CO within 180 days of the compliance date specified in Paragraph (2) or (3) of Subsection B of 20.2.50.119 NMAC and at least every two years thereafter.

(b) inspect, maintain, and repair the heater in accordance with the manufacturer specifications at least once every two years following the applicable compliance date specified in 20.2.50.119 NMAC. The inspection, maintenance, and repair shall include the following:

(i) inspecting the burner and cleaning or replacing components of the burner as necessary;

(ii) inspecting the flame pattern and adjusting the burner as necessary to optimize the flame pattern consistent with the manufacturer specifications;

(iii) inspecting the AFR controller and ensuring it is calibrated and functioning properly, if present;

(iv) optimizing total emissions of CO consistent with the NO<sub>x</sub> requirement and manufacturer specifications, and good combustion practices; and

(v) measuring the concentrations in the effluent stream of CO in ppmvd and O<sub>2</sub> in volume percent before and after adjustments are made in accordance with Subparagraph (c) of Paragraph (2) of Subsection C of 20.2.50.119 NMAC.

(2) The owner or operator shall comply with the following periodic testing requirements:

(a) conduct three test runs of at least 20-minutes duration within ten percent of one-hundred percent peak, or the highest achievable, load;

(b) determine NO<sub>x</sub> and CO emissions and O<sub>2</sub> concentrations in the exhaust with a portable analyzer used and maintained in accordance with the manufacturer specifications and following the procedures specified in the current version of ASTM D6522;

(c) if the measured NOX or CO emissions concentrations are exceeding the emissions limits of table 1 of 20.2.50.119 NMAC, the owner or operator shall repeat the inspection and tune-up in Subparagraph (b) of Paragraph (1) of Subsection C of 20.2.50.119 NMAC within 30 days of the periodic testing; and

(d) if at any time the heater is operated in excess of the highest achievable load in a prior test plus ten percent, the owner or operator shall perform the testing specified in Subparagraph (a) of Paragraph (2) of Subsection C of 20.2.50.119 NMAC within 60 days from the anomalous operation.

(3) When conducting periodic testing of a heater, the owner or operator shall follow the procedures in Paragraph (2) of Subsection C of 20.2.50.119 NMAC. An owner or operator may deviate from those procedures by submitting a written request to use an alternative procedure to the department at least 60 days before performing the periodic testing. In the alternative procedure request, the owner or operator must demonstrate the alternative procedure's equivalence to the standard procedure. The owner or operator must receive written approval from the department prior to conducting the periodic testing using an alternative procedure.

(4) Prior to a monitoring event, the owner or operator shall date and time stamp the event, and the required monitoring data entry shall be made in accordance with this Part.

(5) The owner or operator shall comply with the monitoring requirements of 20.2.50.112 NMAC.

**D. Recordkeeping requirements:** The owner or operator shall maintain a record of the following:

(1) unique identification number and location (latitude and longitude) of the heater;

(2) summary of the complete test report and the results of periodic testing;

(3) inspections, testing, maintenance, and repairs, which shall include at a minimum:

(a) the date and time stamp, including GPS of the location, of the inspection, testing, maintenance, or repair conducted;

(b) name of the person(s) conducting the inspection, testing, maintenance, or repair;

(c) concentrations in the effluent stream of CO in ppmv and O2 in volume percent; and

(d) the results of the inspections and any the corrective action taken.

(4) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.119 NMAC - N, 08/05/2022]

### **20.2.50.120 HYDROCARBON LIQUID TRANSFERS:**

**A. Applicability:** Hydrocarbon liquid transfers located at existing well sites, standalone tank batteries, gathering and boosting stations with one or more controlled storage vessels, natural gas processing plants, or transmission compressor stations are subject to the requirements of 20.2.50.120 NMAC within two years of the effective date of this Part. Hydrocarbon liquid transfers at existing gathering and boosting stations (including associated tank batteries) without any controlled storage vessels are subject to the requirements of 20.2.50.120 NMAC on the schedule specified in Paragraph 1 of Subsection B of 20.2.50.123 NMAC. Hydrocarbon liquid transfers located at new well sites, standalone tank batteries, gathering and boosting stations, natural gas processing plants, or transmission compressor stations are subject to the requirements of 20.2.50.120 NMAC upon startup. The following facilities and operations are not subject to the requirements of this Section:

(1) Any facility connected to an oil sales pipeline that is routinely used for hydrocarbon liquid transfers;

(2) Well sites, standalone tank batteries, gathering and boosting stations, natural gas processing plants, or transmission compressor stations not connected to an oil sales pipeline that load out hydrocarbon liquids to trucks fewer than thirteen (13) times in a calendar year; and

(3) Transfers of hydrocarbon liquid from a transfer vessel to a storage vessel subject to the emission standards in 20.2.50.123 NMAC.

#### **B. Emission standards:**

(1) The owner or operator of a hydrocarbon liquid transfer operation shall use vapor balance, vapor recovery, or a control device to control VOC emissions by at least ninety-five percent, when transferring hydrocarbon liquid from a storage vessel to a tanker truck or tanker railcar for transport. If a combustion control device is used, the combustion device shall have a minimum design combustion efficiency of ninety-eight percent.

(2) An owner, operator, or personnel conducting the hydrocarbon liquid transfer using vapor balance shall:

(a) transfer the vapor displaced from the transfer truck or railcar being loaded back to the storage vessel being emptied via a pipe or hose connected before the start of the transfer operation. If multiple storage vessels are manifolded together in a tank battery, the vapor may be routed back to any storage vessel in the tank battery;

(b) ensure that the transfer does not begin until the vapor collection and return system is properly connected;

(c) inspect connector pipes, hoses, couplers, valves, and pressure relief devices for leaks;

(d) check the hydrocarbon liquid and vapor line connections for proper connections before commencing the transfer operation; and

(e) operate transfer equipment at a pressure that is less than the pressure relief valve setting of the receiving transport vehicle or storage vessel.

(3) Connector pipes and couplers shall be inspected and maintained to ensure there are no liquid leaks.

(4) Connections of hoses and pipes used during hydrocarbon liquid transfers shall be supported on drip trays that collect any leaks, and the materials collected shall be returned to the process or disposed of in a manner compliant with state law.

(5) Liquid leaks that occur shall be cleaned and disposed of in a manner that minimizes emissions to the atmosphere, and the material collected shall be returned to the process or disposed of in a manner compliant with state law.

(6) An owner or operator complying with Paragraph (1) of Subsection B of 20.2.50.120 NMAC through use of a control device shall comply with the control device requirements in 20.2.50.115 NMAC.

**C. Monitoring requirements:**

(1) The owner, operator, or their designated representative shall visually inspect the hydrocarbon liquid transfer equipment monthly at staffed locations and semi-annually at unstaffed locations to ensure that hydrocarbon liquid transfer lines, hoses, couplings, valves, and pipes are not dripping or leaking. At least once per calendar year, the inspection shall occur during a transfer operation. Leaking components shall be repaired to prevent dripping or leaking before the next transfer operation, or measures must be implemented to mitigate leaks until the necessary repairs are completed.

(2) The owner or operator of a hydrocarbon liquid transfer operation controlled by a control device must follow manufacturer specifications for the device.

(3) Owners and operators complying with Paragraph (1) of Subsection B of 20.2.50.120 NMAC through use of a control device shall comply with the monitoring requirements in 20.2.50.115 NMAC.

(4) Prior to any monitoring event, the owner or operator shall date and time stamp the event, and the monitoring data entry shall be made in accordance with the requirements of this Part.

(5) The owner or operator shall comply with the monitoring requirements in 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

(1) The owner or operator shall maintain a record of the following:

(a) the location of the facility;

(b) if using a control device, the type, make, and model of the control device;

(c) the date and time stamp, including GPS of the location, of any inspection;

(d) the name of the person(s) conducting the inspection;

(e) a description of any problem observed during the inspection; and

(f) the results of the inspection and a description of any repair or corrective action taken.

(2) The owner or operator shall maintain a record for each site of the annual total hydrocarbon liquid transferred and annual total VOC emissions. Each calendar year, the owner or operator shall create a company-wide record summarizing the annual total hydrocarbon liquid transferred and the annual total calculated VOC emissions.

(3) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.120 NMAC - N, 08/05/2022]

**20.2.50.121 PIG LAUNCHING AND RECEIVING:**

**A. Applicability:** Individual pipeline pig launcher and receiver operations with a PTE equal to or greater than one tpy VOC located within the property boundary of, and under common ownership or control with, well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and transmission compressor stations are subject to the requirements of 20.2.50.121 NMAC.

**B. Emission standards:**

(1) Owners and operators of affected pipeline pig launcher and receiver operations shall capture and reduce VOC emissions from pigging operations by at least ninety-five percent within two years of the effective date of this Part. If a combustion control device is used, the combustion device shall have a minimum design combustion efficiency of ninety-eight percent.

(2) The owner or operator conducting an affected pig launching and receiving operation shall:

(a) employ best management practices to minimize the liquid present in the pig receiver chamber and to minimize emissions from the pig receiver chamber to the atmosphere after receiving the pig in the receiving chamber and before opening the receiving chamber to the atmosphere;

(b) employ a method to minimize emissions, such as installing a liquid ramp or drain, routing a high-pressure chamber to a low-pressure line or vessel, using a ball valve type chamber, or using multiple pig chambers;

(c) recover and dispose of receiver liquid in a manner that minimizes emissions to the atmosphere to the extent practicable; and

(d) ensure that the material collected is returned to the process or disposed of in a manner compliant with state law.

(3) The emission standards in Paragraphs (1) and (2) of Subsection B of 20.2.50.121 NMAC cease to apply to an individual pipeline pig launching and receiving operation if the actual annual VOC emissions of the launcher or receiver operation are less than one tpy of VOC.

(4) An owner or operator complying with Paragraphs (1) or (2) of Subsection B of 20.2.50.121 NMAC through use of a control device shall comply with the control device requirements in 20.2.50.115 NMAC.

**C. Monitoring requirements:**

(1) The owner or operator of an affected pig launching and receiving site shall inspect the equipment for leaks using AVO, RM 21, or OGI on either:

(a) a monthly basis if pigging operations at a site occur on a monthly basis or more frequently; or

(b) prior to the commencement and after the conclusion of the pig launching or receiving operation, if less frequent.

(2) The monitoring shall be performed using the methodologies outlined in Subsection C of 20.2.50.116 NMAC as applicable and at the frequency required in Paragraph (1) of Subsection C of 20.2.50.121 NMAC. The monitoring shall be performed when the pig trap is under pressure.

(3) An owner or operator complying with Paragraphs (1) or (2) of Subsection B of 20.2.50.121 NMAC through use of a control device shall comply with the monitoring requirements in 20.2.50.115 NMAC.

(4) The owner or operator shall comply with the monitoring requirements in 20.2.50.112 NMAC.

**D. Recordkeeping requirements:** In addition to complying with the recordkeeping requirements in 20.2.50.112 NMAC, the owner or operator of an affected pig launching and receiving site shall maintain a record of the following:

(1) the pigging operation, including the location, date, and time of the pigging operation;

(2) the data and methodology used to estimate the actual emissions to the atmosphere and used to estimate the PTE;

(3) date and time of any monitoring and the results of the monitoring; and

(4) the type of control device and its make and model.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.121 NMAC - N, 08/05/2022]

#### **20.2.50.122 PNEUMATIC CONTROLLERS AND PUMPS:**

**A. Applicability:** Natural gas-driven pneumatic controllers and pumps located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, and transmission compressor stations are subject to the requirements of 20.2.50.122 NMAC.

**B. Emission standards:**

(1) A new natural gas-driven pneumatic controller or pump shall comply with the requirements of 20.2.50.122 NMAC upon startup.

(2) An existing natural gas-driven pneumatic pump shall comply with the requirements of 20.2.50.122 NMAC within three years of the effective date of this Part.

(3) An owner or operator shall ensure that its existing natural gas-driven pneumatic controllers comply with the requirements of 20.2.50.122 NMAC according to the following schedule:

Table 1 – WELL SITES, STANDALONE TANK BATTERIES, GATHERING AND BOOSTING STATIONS

Total Historic Percentage of Non-Emitting Controllers	Total Required Percentage of Non-Emitting Controllers by January 1, 2024	Total Required Percentage of Non-Emitting Controllers by January 1, 2027	Total Required Percentage of Non-Emitting Controllers by January 1, 2030
> 75%	80%	85%	90%
> 60-75%	80%	85%	90%
> 40-60%	65%	70%	80%
> 20-40%	45%	70%	80%
0-20%	25%	65%	80%

Table 2 – TRANSMISSION COMPRESSOR STATIONS AND GAS PROCESSING PLANTS

Total Historic Percentage of Non-Emitting Controllers	Total Required Percentage of Non-Emitting Controllers by January 1, 2024	Total Required Percentage of Non-Emitting Controllers by January 1, 2027	Total Required Percentage of Non-Emitting Controllers by January 1, 2030
> 75%	80%	95%	98%
> 60-75%	80%	95%	98%
> 40-60%	65%	95%	98%
> 20-40%	50%	95%	98%
0-20%	35%	95%	98%

(4) Standards for natural gas-driven pneumatic controllers:

(a) new pneumatic controllers shall have an emission rate of zero. A natural gas driven pneumatic controller replacing an existing natural gas driven pneumatic controller at an existing facility is an existing pneumatic controller for purposes of Section 20.2.50.122 NMAC.

(b) owners and operators of existing pneumatic controllers shall meet the required percentage of non-emitting controllers within the deadlines in tables 1 and 2 of

Paragraph (3) of Subsection B of 20.2.50.122 NMAC, and shall comply with the following:

(i) by July 1, 2023, the owner or operator shall determine the total controller count for all controllers subject to each table separately at all of the owner or operator's affected facilities that commenced construction before the effective date of this Part. The total controller count for each table must include all emitting pneumatic controllers and all non-emitting pneumatic controllers, except that pneumatic controllers necessary for a safety or process purpose that cannot otherwise be met without emitting natural gas shall not be included in the total controller count. This final number is the total historic controller count. Controllers identified as required for a safety or process purpose after July 1, 2023, shall not affect the total historic controller count.

(ii) determine which controllers in the total controller count for each table are non-emitting and sum the total number of non-emitting controllers and designate those as total historic non-emitting controllers.

(iii) determine the total historic non-emitting percent of controllers for each table by dividing the total historic non-emitting controller count by the total historic controller count and multiplying by 100.

(iv) based on the percent calculated in (iii) above for each table, the owner or operator shall determine which provisions of tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC apply and the replacement schedule the owner or operator must meet.

(v) if an owner or operator meets at least seventy-five percent total non-emitting controllers using the calculation methodology in Subparagraph (b) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC by January 1, 2025, for either or both table 1 or table 2, the owner or operator is not thereafter subject to the requirements of tables 1 and/or 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC.

(vi) if after January 1, 2027, an owner or operator's remaining pneumatic controllers are not cost-effective to retrofit, the owner or operator may submit a cost analysis of retrofitting those remaining units to the department. The department shall review the cost analysis and determine whether those units qualify for a waiver from meeting additional retrofit requirements.

(c) owners and operators of existing natural gas driven pneumatic controllers shall demonstrate compliance with tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC, on January 1, 2024, January 1, 2027, and January 1, 2030, as follows:

(i) determine which controllers are emitting (excluding pneumatic controllers necessary for safety or process reasons pursuant to Subparagraph (d) of

Paragraph (4) of Subsection B of 20.2.50.122 NMAC) and sum the total number of emitting controllers for table 1 and table 2 facilities separately.

(ii) determine the percentage of non-emitting controllers by using the following equation for table 1 and table 2 facilities separately:

$$\text{Total Percentage of Non-Emitting Controllers} = 100 - ((\text{total emitting controllers} / \text{total historic controller count}) \times 100)$$

(iii) compliance is demonstrated if the Total Percentage of Non-Emitting Controllers calculated pursuant to Subparagraph (c) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC is less than or equal to the value for that year in the Total Historic Percentage of Non-Emitting Controllers row (as calculated pursuant to Subparagraph (b)(i)-(iv) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC) in table 1 or table 2, as applicable, of Paragraph (3) of Subsection B of 20.2.50.122 NMAC.

(d) No later than January 1, 2024, a pneumatic controller with a bleed rate greater than six standard cubic feet per hour is permitted when the owner or operator has demonstrated that a higher bleed rate is required based on functional needs, including response time, safety, and positive actuation. An owner or operator that seeks to maintain operation of an emitting pneumatic controller as excepted for process or safety reasons under Subparagraph (a)(i) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC must prepare and document the justification for the safety or process purpose prior to the installation of a new emitting controller or the retrofit of an existing controller. The justification shall be certified by a qualified professional or inhouse engineer.

(e) Temporary pneumatic controllers that emit natural gas and are used for well abandonment activities or used prior to or through the end of flowback, and pneumatic controllers used as emergency shutdown devices located at a well site, are not subject to the requirements of Subsection B of 20.2.50.122 NMAC.

(f) Temporary or portable pneumatic controllers that emit natural gas and are on-site for less than 90 days are not subject to the requirements of Subsection B of 20.2.50.122 NMAC.

(5) Standards for natural gas-driven pneumatic diaphragm pumps:

(a) new pneumatic diaphragm pumps located at natural gas processing plants shall have an emission rate of zero.

(b) new pneumatic diaphragm pumps located at well sites, tank batteries, gathering and boosting stations, or transmission compressor stations with access to commercial line electrical power shall have an emission rate of zero.

(c) existing pneumatic diaphragm pumps located at well sites, tank batteries, gathering and boosting stations, natural gas processing plants, or transmission compressor stations with access to commercial line electrical power shall have an emission rate of zero within two years of the effective date of this Part.

(d) owners and operators of pneumatic diaphragm pumps located at well sites, tank batteries, gathering and boosting stations, or transmission compressor stations without access to commercial line electrical power shall reduce VOC emissions from the pneumatic diaphragm pumps by ninety-five percent if it is technically feasible to route emissions to a control device, fuel cell, or process. If there is a control device available onsite but it is unable to achieve a ninety-five percent emission reduction, and it is not technically feasible to route the pneumatic diaphragm pump emissions to a fuel cell or process, the owner or operator shall route the pneumatic diaphragm pump emissions to the control device within two years of the effective date of this Part.

**C. Monitoring requirements:**

(1) Pneumatic controllers or diaphragm pumps not using natural gas or other hydrocarbon gas as a motive force are not subject to the monitoring requirements in Subsection C of 20.2.50.122 NMAC.

(2) No later than January 1, 2023, the owner or operator of a facility with one or more natural gas-driven pneumatic controllers subject to the deadlines set forth in tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC shall monitor the compliance status of each subject pneumatic controller at each facility.

(3) The owner or operator of a natural gas-driven pneumatic controller shall, on a monthly basis, conduct an AVO or OGI inspection, and shall also inspect the pneumatic controller, perform necessary maintenance (such as cleaning, tuning, and repairing a leaking gasket, tubing fitting and seal; tuning to operate over a broader range of proportional band; eliminating an unnecessary valve positioner), and maintain the pneumatic controller according to manufacturer specifications to ensure that the VOC emissions are minimized.

(4) Within two years of the effective date of this Part, the owner or operator's data systems shall contain the following for each in-service natural gas-driven pneumatic controller:

- (a) natural gas-driven pneumatic controller unique identification number;
- (b) type of controller (continuous or intermittent);
- (c) if continuous, design continuous bleed rate in standard cubic feet per hour;

(d) if intermittent, bleed volume per intermittent bleed in standard cubic feet;  
and

(e) if continuous, design annual bleed rate in standard cubic feet per year.

(5) Upon the effective date specified for the facility in 20.2.50.116 NMAC, the owner or operator of a natural gas-driven pneumatic diaphragm pump shall, on a monthly basis, conduct an AVO or OGI inspection and shall also inspect the pneumatic pump and perform necessary maintenance, and maintain the pneumatic pump according to manufacturer specifications to ensure that the VOC emissions are minimized.

(6) The owner or operator of a natural gas-driven pneumatic controller shall comply with the requirements in Paragraph (3) of Subsection C or Subsection D of 20.2.50.116 NMAC applicable to the facility type at which the pneumatic controller is installed on the effective date specified in 20.2.50.116 NMAC. During instrument inspections, operators shall use RM 21, OGI, or alternative instruments used under Subsection D of 20.2.50.116 NMAC to verify that intermittent controllers are not emitting when not actuating. Any intermittent controller emitting when not actuating shall be repaired consistent with Subsection E of 20.2.50.116 NMAC.

(7) Prior to any monitoring event, the owner or operator shall date and time stamp the event, and the monitoring data entry shall be made in accordance with the requirements of this Part.

(8) The owner or operator shall comply with the monitoring requirements in 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

(1) Non-emitting pneumatic controllers and diaphragm pumps are not subject to the recordkeeping requirements in Subsection D of 20.2.50.122 NMAC.

(2) The owner or operator shall maintain a record of the total controller count for all controllers at all of the owner or operator's affected facilities that commenced operation before the effective date of this Part. The total controller count must include all emitting and non-emitting pneumatic controllers.

(3) The owner or operator shall maintain a record of the total count of natural gas-driven pneumatic controllers necessary for a safety or process purpose that cannot otherwise be met without emitting VOC.

(4) The owner or operator of a natural gas-driven pneumatic controller subject to the requirements in tables 1 and 2 of Paragraph (3) of Subsection B of 20.2.50.122 NMAC shall generate a schedule for meeting the compliance deadlines for each pneumatic controller. The owner or operator shall keep a record of the compliance

status of each subject controller. On or before January 1, 2024, January 1, 2027 and January 1, 2030, the owner or operator shall make and retain the compliance demonstration set forth in Subparagraph (c) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC.

(5) The owner or operator shall maintain an electronic record for each natural gas-driven pneumatic controller. The record shall include the following:

- (a) pneumatic controller unique identification number;
- (b) time and date stamp, including GPS of the location, of any monitoring;
- (c) name of the person(s) conducting the inspection;
- (d) AVO or OGI inspection result;
- (e) AVO or OGI level discrepancy in continuous or intermittent bleed rate;
- (f) record of the controller type, bleed rate, or bleed volume required in Subparagraphs (b), (c), (d), and (e) of Paragraph (4) of Subsection C of 20.2.50.122 NMAC.
- (g) maintenance date and maintenance activity; and
- (h) a record of the justification and certification required in Subparagraph (c) of Paragraph (4) of Subsection B of 20.2.50.122 NMAC.

(6) The owner or operator of a natural gas-driven pneumatic controller with a bleed rate greater than six standard cubic feet per hour shall maintain a record documenting why a bleed rate greater than six scf/hr is necessary, as required in Subsection B of 20.2.50.122 NMAC. This demonstration shall be completed by July 1, 2023 for controllers with a bleed rate greater than six scf/hr and as necessary for controllers with a bleed rate less than or equal to six scf/hr.

(7) The owner or operator shall maintain a record for a natural gas-driven pneumatic pump with an emission rate greater than zero and the associated pump number at the facility. The record shall include:

- (a) for a natural gas-driven pneumatic diaphragm pump in operation less than 90 days per calendar year, a record for each day of operation during the calendar year.
- (b) a record of any control device designed to achieve at least ninety-five percent emission reduction, including an evaluation or manufacturer specifications indicating the percentage reduction the control device is designed to achieve.

(c) records of the engineering assessment and certification by a qualified professional or inhouse engineer that routing pneumatic pump emissions to a control device, fuel cell, or process is technically infeasible.

(8) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.122 NMAC - N, 08/05/2022]

### **20.2.50.123 STORAGE VESSELS:**

**A. Applicability:** New storage vessels with a PTE equal to or greater than two tpy of VOC, existing storage vessels with a PTE equal to or greater than three tpy of VOC in multi-tank batteries, and existing storage vessels with a PTE equal to or greater than four tpy of VOC in single tank batteries are subject to the requirements of 20.2.50.123 NMAC. Storage vessels in multi-tank batteries manifolded together such that all vapors are shared between the headspace of the storage vessels and are routed to a common outlet or endpoint may determine an individual storage vessel PTE by averaging the emissions across the total number of storage vessels. Storage vessels associated with produced water management units are required to comply with this Section to the extent specified in Subsection B of Section 20.2.50.126 NMAC.

#### **B. Emission standards:**

(1) An existing storage vessel subject to this Section shall have a combined capture and control of VOC emissions of at least ninety-five percent according to the following schedule. If a combustion control device is used, the combustion device shall have a minimum design combustion efficiency of ninety-eight percent.

(a) By January 1, 2025, an owner or operator shall ensure at least 30% of the company's existing storage vessels are controlled;

(b) By January 1, 2027, an owner or operator shall ensure at least an additional 35% of the company's existing storage vessels are controlled; and

(c) By January 1, 2029, an owner or operator shall ensure the company's remaining existing storage vessels are controlled.

(2) A new storage vessel subject to this Section shall have a combined capture and control of VOC emissions of at least ninety-five percent upon startup. If a combustion control device is used, the combustion device shall have a minimum design combustion efficiency of ninety-eight percent.

(3) The emission standards in Subsection B of 20.2.50.123 NMAC cease to apply to a storage vessel if the actual annual VOC emissions decrease to less than two tpy.

(4) If a control device is not installed by the date specified in Paragraphs (1) and (2) of Subsection B of 20.2.50.123 NMAC, an owner or operator may comply with Subsection B of 20.2.50.123 NMAC by shutting in the well supplying the storage vessel by the applicable date, and not resuming production from the well until the control device is installed and operational.

(5) The owner or operator of a new or existing storage vessel with a thief hatch shall ensure that the thief hatch is capable of opening sufficiently to relieve overpressure in the vessel and to automatically close once the vessel overpressure is relieved. Any pressure relief device installed must automatically close once the vessel overpressure is relieved.

(6) An owner or operator complying with Paragraphs (1) and (2) of Subsection B of 20.2.50.123 NMAC through use of a control device shall comply with the control device operational requirements in 20.2.50.115 NMAC.

**C. Storage vessel measurement requirements:** Owners and operators of new storage vessels required to be controlled pursuant to this Part at well sites, tank batteries, gathering and boosting stations, or natural gas processing plants shall use a storage vessel measurement system to determine the quantity of liquids in the storage vessel(s). New tank batteries receiving an annual average of 200 bbls oil/day or more with available grid power shall be outfitted with a lease automated custody transfer (LACT) unit(s).

(1) The owner or operator shall keep thief hatches (or other access points to the vessel) and pressure relief devices on storage vessels closed and latched during activities to determine the quantity of liquids in the storage vessel(s), except as necessary for custody transfer. Tank batteries equipped with LACT units shall use the LACT unit measurements in lieu of field testing of quantity and quality except in case of malfunction. Nothing in this paragraph shall be construed to prohibit the opening of thief hatches, pressure relief devices, or any other openings or access points to perform maintenance or similar activities designed to ensure the safety or proper operation of the storage vessel(s) or related equipment or processes. Where opening a thief hatch is necessary, owners and operators of new and existing storage vessels shall minimize the time the thief hatch is open.

(2) The owner or operator may inspect, test, and calibrate the storage vessel measurement system either semiannually, or as directed by the Bureau of Land Management (see 43 C.F.R. Section 374.6(b)(5)(ii)(B) (November 17, 2016)) or system manufacturer. Opening a thief hatch if required to inspect, test, or calibrate the vessel measurement system is not a violation of Paragraph (1) of this Subsection.

(3) The owner or operator shall install signage at or near the storage vessel that indicates which equipment and method(s) are used and the appropriate and necessary operating procedures for that system.

(4) The owner or operator shall develop and implement an annual training program for employees and third parties conducting activities subject to this Subsection that includes, at a minimum, operating procedures for each type of system.

(5) The owner or operator must make and retain the following records for at least two years and make such records available to the department upon request:

(a) date of construction of the storage vessel or facility;

(b) description of the storage vessel measurement system used to comply with this Subsection;

(c) date(s) of storage vessel measurement system inspections, testing, and calibrations that require opening the thief hatch pursuant to Paragraph (1) of this Subsection;

(d) manufacturer specifications regarding storage vessel measurement system inspections and/or calibrations, if followed pursuant to Paragraph (2) of this Subsection; and

(e) records of the annual training program, including the date and names of persons trained.

**D. Monitoring requirements:** No later than January 1, 2023, the owner or operator of a storage vessel shall:

(1) on a monthly basis, monitor, calculate, or estimate, the total monthly liquid throughput (in barrels) and the upstream separator pressure (in psig) if the storage vessel is directly downstream of a separator. When a storage vessel is unloaded less frequently than monthly, the throughput and separator pressure monitoring shall be conducted before the storage vessel is unloaded;

(2) conduct an AVO inspection on a weekly basis. If the storage vessel is unloaded less frequently than weekly, the AVO inspection shall be conducted before the storage vessel is unloaded;

(3) inspect the storage vessel monthly to ensure compliance with the requirements of 20.2.50.123 NMAC. The inspection shall include a check to ensure the vessel does not have a leak;

(4) prior to any monitoring event, date and time stamp the event and enter the monitoring data in accordance with the requirements of this Part;

(5) comply with the monitoring requirements in 20.2.50.115 NMAC if using a control device to comply with the requirements in Paragraphs (1) and (2) of Subsection B of 20.2.50.123 NMAC; and

(6) comply with the monitoring requirements of 20.2.50.112 NMAC.

**E. Recordkeeping requirements:** No later than January 1, 2023, the owner or operator of a storage vessel shall comply with the following requirements:

(1) Monthly, maintain a record for each storage vessel of the following:

(a) unique identification number and location (latitude and longitude);

(b) monitored, calculated, or estimated monthly liquid throughput;

(c) the upstream separator pressure, if a separator is present;

(d) the data and methodology used to calculate the actual emissions of VOC (tpy);

(e) the controlled and uncontrolled VOC emissions (tpy); and

(f) the type, make, model, and identification number of any control device.

(2) Verify each record of liquid throughput by dated liquid level measurements, a dated delivery receipt from the purchaser of the hydrocarbon liquid, the metered volume of hydrocarbon liquid sent downstream, or other proof of transfer.

(3) Make a record of the inspections required in Subsections C and D of 20.2.50.123 NMAC, including:

(a) the date and time stamp, including GPS of the location, of the inspection;

(b) the person(s) conducting the inspection;

(c) a description of any problem observed during the inspection; and

(d) a description and date of any corrective action taken.

(4) Comply with the recordkeeping requirements in 20.2.50.115 NMAC if complying with the requirements in Paragraphs (1) and (2) of Subsection B of 20.2.50.123 NMAC through use of a control device.

(5) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**F. Reporting requirements:**

(1) An owner or operator complying with the requirements in Paragraphs (1) and (2) of Subsection B of 20.2.50.123 NMAC through use of a control device shall comply with the reporting requirements in 20.2.50.115 NMAC.

(2) The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.123 NMAC - N, 08/05/2022]

**20.2.50.124 WELL WORKOVERS:**

**A. Applicability:** Workovers performed at oil and natural gas wells are subject to the requirements of 20.2.50.124 NMAC as of the effective date of this Part.

**B. Emission standards:** The owner or operator of an oil or natural gas well shall use the following best management practices during a workover to minimize emissions, consistent with the well site condition and good engineering or operational practices:

(1) reduce wellhead pressure before blowdown to minimize the volume of natural gas vented;

(2) monitor manual venting at the well until the venting is complete; and

(3) route natural gas to the sales line, if possible.

**C. Monitoring requirements:**

(1) The owner or operator shall monitor the following parameters during a workover:

(a) wellhead pressure;

(b) flow rate of the vented natural gas (to the extent feasible); and

(c) duration of venting to the atmosphere.

(2) The owner or operator shall calculate the estimated volume and mass of VOC vented during a workover.

(3) The owner or operator shall comply with the monitoring requirements in 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

- (1) The owner or operator shall keep the following record for a workover:
  - (a) unique identification number and location (latitude and longitude) of the well;
  - (b) date the workover was performed;
  - (c) wellhead pressure;
  - (d) flow rate of the vented natural gas to the extent feasible, and if measurement of the flow rate is not feasible, the owner or operator shall use the maximum potential flow rate in the emission calculation;
  - (e) duration of venting to the atmosphere;
  - (f) description of the best management practices used to minimize release of VOC emissions before and during the workover;
  - (g) calculation of the estimated VOC emissions vented during the workover based on the duration, volume, and gas composition; and
  - (h) the method of notification to the public and proof that notification was made to the affected public.

(2) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:**

(1) The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

(2) If it is not feasible to prevent VOC emissions from being emitted to the atmosphere from a workover event, the owner or operator shall notify by certified mail, or by other effective means of notice so long as the notification can be documented, all residents located within one-quarter mile of the well of the planned workover at least three calendar days before the workover event.

(3) If the workover is needed for routine or emergency downhole maintenance to restore production lost due to upsets or equipment malfunction, the owner or operator shall notify all residents located within one-quarter mile of the well of the planned workover at least 24 hours before the workover event.

[20.2.50.124 NMAC - N, 08/05/2022]

**20.2.50.125 SMALL BUSINESS FACILITIES:**

**A. Applicability:** Small business facilities as defined in this Part are subject to Sections 20.2.50.125 NMAC and 20.2.50.127 NMAC of this Part. Small business facilities are not subject to any other requirements of this Part unless specifically identified in 20.2.50.125 NMAC.

**B. General requirements:**

(1) The owner or operator shall ensure that all equipment is operated and maintained consistent with manufacturer specifications, and good engineering and maintenance practices. The owner or operator shall keep manufacturer specifications and maintenance practices on file and make them available to the department upon request.

(2) The owner or operator shall calculate the VOC and NO<sub>x</sub> emissions from the facility on an annual basis. The calculation shall be based on the actual production or processing rates of the facility.

(3) The owner or operator shall maintain a database of company-wide VOC and NO<sub>x</sub> emission calculations for all subject facilities and associated equipment and shall update the database annually.

(4) The owner or operator shall comply with Paragraph (9) of Subsection A of 20.2.50.112 NMAC if requested by the department.

**C. Monitoring requirements:** The owner or operator shall comply with the requirements in Subsections C or D of 20.2.50.116 NMAC. The owner or operator shall comply with Subsection B of 20.2.50.111 NMAC in determining applicability of the requirements in 20.2.50.116 NMAC.

**D. Repair requirements:** The owner or operator shall comply with the requirements of Subsection E of 20.2.50.116 NMAC.

**E. Recordkeeping requirements:** The owner or operator shall maintain the following electronic records for each facility:

(1) annual certification that the small business facility meets the definition in this Part;

(2) calculated annual VOC and NO<sub>x</sub> emissions from each facility and the company-wide annual VOC and NO<sub>x</sub> emissions for all subject facilities; and

(3) records as required under Subsection F of 20.2.50.116 NMAC.

**F. Reporting requirements:** The owner or operator shall submit to the department an initial small business certification within sixty days of the effective date of this Part, and by March 1 of each calendar year thereafter. The certification shall be made on a

form provided by the department. The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

**G. Failure to comply with 20.2.50.125 NMAC:** Notwithstanding the provisions of Section 20.2.50.125 NMAC, a source that meets the definition of a small business facility can be required to comply with the other Sections of 20.2.50 NMAC if the Secretary finds based on credible evidence that the source (1) presents an imminent and substantial endangerment to the public health or welfare or to the environment; (2) is not being operated or maintained in a manner that minimizes emissions of air contaminants; or (3) has violated any other requirement of 20.2.50.125 NMAC.

[20.2.50.125 NMAC - N, 08/05/2022]

### **20.2.50.126 PRODUCED WATER MANAGEMENT UNITS:**

**A. Applicability:** Produced water management units as defined in this Part and their associated storage vessels are subject to 20.2.50.126 NMAC and shall comply with these requirements no later than 180 days after the effective date of this Part.

**B. Emission standards:**

(1) The owner or operator shall use good operational or engineering practices to minimize emissions of VOC from produced water management units (PWMU) and their associated storage vessels.

(2) The owner or operator shall not allow any transfer of untreated produced water to a PWMU without first processing and treating the produced water in a separator and/or storage vessel to minimize entrained hydrocarbons.

(3) Within two years of the effective date of this Part for storage vessels associated with existing PWMUs, or upon startup for storage vessels associated with new PWMUs, the owner or operator shall either:

(a) control such storage vessels in accordance with the requirements of Section 20.2.50.123 NMAC that are applicable to tank batteries; or

(b) submit a VOC minimization plan to the department demonstrating that controlling VOC emissions from storage vessels associated with the PWMU in accordance with the requirements of Section 20.2.50.123 NMAC is technically infeasible without supplemental fuel. The plan shall state the good operational or engineering practices used to minimize VOC emissions. The plan shall be enforceable by the department upon submission. The department may require revisions to the plan, and must approve any proposed revisions to the plan.

**C. Monitoring requirements:** The owner or operator shall:

(1) develop a protocol to calculate the VOC emissions from each PWMU. The protocol shall include at a minimum: produced water throughput monitoring, semi-annual sampling and analysis of the liquid composition, hydrocarbon measurement method(s), representative sample size, and sample chain of custody requirements.

(2) calculate the monthly total VOC emissions in tons from each unit with the first month of emission calculations beginning within 180 days of the effective date of this Part;

(3) monthly, monitor the best management and good operational or engineering practices implemented to reduce emissions at each unit to ensure and demonstrate their effectiveness;

(4) upon written request by the department, sample the PWMU to determine the VOC content of the liquid; and

(5) comply with the monitoring requirements of 20.2.50.112 NMAC.

**D. Recordkeeping requirements:**

(1) The owner or operator shall maintain the following electronic records for each PWMU:

(a) unique identification number and UTM coordinates of the PWMU;

(b) the good operational or engineering practices used to minimize emissions of VOC from the PWMU;

(c) the VOC emissions calculation protocol required in Subsection C of 20.2.50.126 NMAC, including the results of the sampling conducted in accordance with the protocol; and

(d) the annual total VOC emissions from each PWMU.

(2) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.126 NMAC - N, 08/05/2022]

**20.2.50.127 FLOWBACK VESSELS AND PREPRODUCTION OPERATIONS:**

**A. Applicability:** Wells undergoing recompletions and new wells being completed at an existing wellhead site are subject to the requirements of 20.2.50.127 NMAC one year

after the effective date of this Part. New wells constructed at a new wellhead site that commence completion or recompletion on or after the effective date of this Part are subject to the requirements of 20.2.50.127 NMAC.

**B. Emissions standards:**

(1) The owner or operator of a well that begins flowback on or after the effective date of this Part must collect and control emissions from each flowback vessel on and after the date flowback is routed to the flowback vessel by routing emissions to an operating control device that achieves a hydrocarbon control efficiency of at least ninety-five percent. If a TO or ECD is used, it must have a design destruction efficiency of at least ninety-eight percent for hydrocarbons.

(2) The owner or operator shall ensure that a control device used to comply with the emission standards in 20.2.50.127 NMAC operates as a closed vent system that captures and routes VOC emissions to the control device, and that unburnt gas is not directly vented to the atmosphere.

(3) Flowback vessels shall be inspected, tested, and refurbished where necessary to ensure the flowback vessel is in compliance with Paragraph (2) of Subsection B of 20.2.50.127 NMAC prior to receiving flowback.

(4) The owner or operator shall use a vessel measurement system to determine the quantity of liquids in the flowback vessel(s).

(5) Thief hatches or other access points to the flowback vessel(s) must remain closed and latched during activities to determine the quantity of liquids in the flowback.

(6) Opening the thief hatch or other access point if required to inspect, test, or calibrate the vessel measurement system, or to add biocides or chemicals, is not a violation of Paragraph 2 of Subsection B of 20.2.50.127 NMAC.

**C. Monitoring requirements:** The owner or operator of a well with flowback that begins on or after the effective date of this Part shall conduct daily visual inspections of the flowback vessel and any associated equipment. Such inspections shall include:

(1) visual inspection of any thief hatch, pressure relief valve, or other access point to ensure that they are closed and properly seated;

(2) visual inspection or monitoring of the control device to ensure that it is operating; and

(3) visual inspection of the control device to ensure that the valves for the piping from the flowback vessel to the control device are open.

**D. Recordkeeping requirements:**

(1) The owner or operator of each flowback vessel subject to the emissions standards in Subsection B of 20.2.50.127 NMAC shall maintain the following records:

(a) the API number of the well and the associated facility location, including latitude and longitude coordinates;

(b) the date and time of the onset of flowback;

(c) the date and time that the flowback vessels were permanently disconnected, if applicable;

(d) the date and duration of any period where the control device was not operating; and

(e) records of the inspections required in Subsection C of 20.2.50.127 NMAC, including the following:

(i) time and date of each inspection;

(ii) a description of any problems observed;

(iii) a description of any corrective action(s) taken; and

(iv) the name and position of the person performing the corrective action(s).

(2) The owner or operator shall comply with the recordkeeping requirements in 20.2.50.112 NMAC.

**E. Reporting requirements:** The owner or operator shall comply with the reporting requirements in 20.2.50.112 NMAC.

[20.2.50.127 NMAC - N, 08/05/2022]

**20.2.50.128 PROHIBITED ACTIVITY AND CREDIBLE EVIDENCE:**

**A.** Failure to comply with the emissions standards, monitoring, recordkeeping, reporting or other requirements of this Part within the timeframes specified shall constitute a violation of this Part subject to enforcement action under Section 74-2-12 NMSA 1978.

**B.** If credible evidence or information obtained by the department or provided to the department by a third party indicates that a source is not in compliance with the

provisions of this Part that evidence or information may be used by the department for purposes of establishing whether a person has violated or is in violation of this Part.

[20.2.50.128 NMAC - N, 08/05/2022]

## **PART 51-59: [RESERVED]**

## **PART 60: OPEN BURNING**

### **20.2.60.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.60.1 NMAC - Rp 20.2.60.1 NMAC, 12/31/03]

### **20.2.60.2 SCOPE:**

All geographic areas within the jurisdiction of the environmental improvement board.

[20.2.60.2 NMAC - Rp 20.2.60.2 NMAC, 12/31/03]

### **20.2.60.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, Sections 74-1-1 to -15, including specifically Subsections 74-1-8(A) (4) and (7), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 to -22, including specifically Subsections 74-2-5(A), (B) and (C).

[20.2.60.3 NMAC - Rp 20.2.60.3 NMAC, 12/31/03]

### **20.2.60.4 DURATION:**

Permanent.

[20.2.60.4 NMAC - Rp 20.2.60.4 NMAC, 12/31/03]

### **20.2.60.5 EFFECTIVE DATE:**

December 31, 2003, except where a later date is cited at the end of a section.

[20.2.60.5 NMAC - Rp 20.2.60.5 NMAC, 12/31/03]

[The latest effective date of any section in this part is December 31, 2003.]

### **20.2.60.6 OBJECTIVE:**

The objective of this part is to protect public health and welfare by establishing controls on pollution produced by open burning. This part does not preempt any more stringent controls on open burning provided in:

**A.** any other New Mexico statute or regulation, or any local law, ordinance or regulation; or

**B.** any lawfully issued restriction on open burning, including those that may be issued for prevention of wildfires.

[20.2.60.6 NMAC - Rp 20.2.60.6 NMAC, 12/31/03]

#### **20.2.60.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part:

**A. "air pollution episode"** means an air pollution alert, warning, or emergency issued by the department pursuant to the air pollution episode contingency plan for New Mexico, as included in New Mexico's state implementation plan as adopted by the environmental improvement board, and Section 74-2-10 NMSA 1978;

**B. "household waste"** means any waste including garbage and trash, derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas;

**C. "nonattainment area"** means an area which has been designated under Section 107 of the federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by the federal environmental protection agency;

**D. "open burning"** means any manner of burning, whether caused, suffered or allowed, not in a device or chamber designed to achieve combustion, where the products of combustion are emitted, directly or indirectly, into the open air; open burning does not include detonation of manufactured explosives;

**E. "part"** means an air quality control regulation under Title 20, Chapter 2, of the New Mexico administrative code, unless otherwise noted, as adopted or amended by the board;

**F. "pile volume"** means the gross volume of a pile, including the air space between solid constituents, as calculated from the overall dimensions and shape of the pile;

**G. "salvage operation"** means any operation to salvage or reclaim any material for use or sale, such as reprocessing of used motor oils, metals, wire, chemicals, shipping containers, or drums, and specifically including automobile graveyards and junkyards; and

**H. "vegetative material"** means plant material, including:

(1) grass, grass clippings, leaves, conifer needles, bushes, shrubs, trees, and clippings from bushes, shrubs and trees, resulting from maintenance of yards or other private or public lands; and

(2) wood waste, clean lumber, wood and wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings, which have not been painted, pigment-stained, or treated with compounds containing chromium, copper, arsenic, pentachlorophenol, or creosote.

[20.2.60.7 NMAC - Rp 20.2.60.7 NMAC, 12/31/03]

**20.2.60.8-20.2.60.107 [RESERVED]**

**20.2.60.108 RESTRICTIONS ON OPEN BURNING:**

Any open burning not expressly allowed, not expressly prohibited, or not otherwise specifically addressed under this part or 20.2.65 NMAC (Smoke Management) shall be conducted only pursuant to 20.2.72 NMAC, upon issuance of a construction permit under 20.2.72 NMAC, regardless of the applicability requirements contained in 20.2.72 NMAC. Open burning as allowed or prohibited in this part is not considered a stationary source as defined in other parts of Title 20, Chapter 2, NMAC.

[20.2.60.108 NMAC - Rp 20.2.60.108 NMAC, 12/31/03]

**20.2.60.109 UNRESTRICTED OPEN BURNING:**

**A.** Open burning is allowed for recreational and ceremonial purposes, for barbecuing, for heating purposes in fireplaces, for the noncommercial cooking of food for human consumption and for warming by small wood fires at construction sites. This subsection does not apply to open burning for the purpose of waste disposal.

**B.** Open burning of natural gas is allowed at gasoline plant and compressor stations and when used or produced in drilling, completion and workover operations on oil and gas wells, when necessary to avoid serious hazard to safety.

[20.2.60.109 NMAC - Rp 20.2.60.109 NMAC, 12/31/03]

**20.2.60.110 OPEN BURNING OF HOUSEHOLD WASTE:**

**A.** Applicability:

**(1)** This section (20.2.60.110 NMAC) applies to open burning of household waste, except for household waste that consists solely of vegetative material as defined in 20.2.60.7 NMAC.

**(2)** This section (20.2.60.110 NMAC) does not apply to any kind of salvage operation. Open burning as part of a salvage operation is prohibited.

**B.** Effective June 1, 2004, open burning of household waste, other than vegetative material as defined in 20.2.60.7 NMAC, is prohibited.

**C.** Prior to June 1, 2004, open burning of household waste is allowed where all of the following conditions are met:

**(1)** household waste shall not be burned on property other than that property where it was generated;

**(2)** household waste shall not be burned on property which is served by any on-premises or curbside refuse collection service operated or contracted by a regional waste authority, county, or incorporated city, town, or village;

**(3)** household waste shall not be burned on any property less than ten miles by road from a convenience center, transfer station, or other receptacle made available for public use by a regional waste authority, county, or incorporated city, town, or village for the deposition and collection of refuse;

**(4)** household waste shall not be burned at any location nearer than three hundred feet from any occupied dwelling, workplace, or place where people congregate, on property owned by, or under possessory control of, another person;

**(5)** burning of the following materials is prohibited:

**(a)** natural or synthetic rubber products, including tires;

**(b)** waste oil or used oil filters;

**(c)** insulated wire;

**(d)** plastic, including polyvinyl chloride ("PVC") pipe, tubing, and connectors;

**(e)** tar, asphalt, asphalt shingles, or tar paper;

**(f)** railroad ties;

**(g)** wood, wood waste, or lumber which has been painted or which has been treated with preservatives containing arsenic, chromium, pentachlorophenol, or creosote;

- (h) batteries;
- (i) motor vehicle bodies or interiors;
- (j) pathogenic wastes; and
- (k) asbestos or asbestos containing materials;

**D.** Auxiliary fuel or incendiary devices may be used to start the burning allowed by this section, provided that:

- (1) no oil heavier than number two diesel shall be used; and
- (2) no more than the minimum amount of auxiliary fuel necessary to start the fire shall be used.

[20.2.60.110 NMAC - Rp 20.2.60.110 NMAC, 12/31/03]

#### **20.2.60.111 OPEN BURNING OF VEGETATIVE MATERIAL:**

**A.** Applicability:

(1) This section (20.2.60.111 NMAC) applies to open burning of vegetative material as defined in 20.2.60.7 NMAC, for purposes of disposal of such material, provided that burning of areas with non-piled vegetative material does not exceed ten acres per day, or burning of piled vegetative material, including material gathered in a pit or open container, does not exceed one thousand cubic feet of pile volume per day. In determining daily burn area and daily burn pile volume, areas or piles that are within three hundred feet of each other shall be considered to constitute a single burn if the burning occurs on the same day and on property under ownership or possessory control of the same person. Burning in excess of these daily limits is subject to 20.2.65 NMAC (Smoke Management).

(2) This section does not apply to any open burning of vegetative material which is subject to 20.2.65 NMAC.

(3) Open burning of vegetative material is prohibited in nonattainment areas.

**B.** Open burning of vegetative material under this section shall meet the following requirements:

(1) burning shall be conducted at least three hundred feet from any occupied dwelling, workplace, or place where people congregate, which is on property owned by, or under possessory control of, another person; burning that does not meet this requirement is subject to 20.2.65 NMAC (Smoke Management);

**(2)** burning shall begin no earlier than one hour after sunrise, and shall be extinguished no later than one hour before sunset; burning outside of this time limitation is subject to 20.2.65 NMAC (Smoke Management);

**(3)** burning shall be attended at all times;

**(4)** the appropriate local fire department or dispatch or firefighting authority shall be notified prior to burning;

**(5)** for burns exceeding one acre per day or one hundred cubic feet of pile volume per day, the burner shall provide prior notice of the date and location of the burn to all households within one quarter of a mile of the burn;

**(6)** burning shall be in compliance with 20.9.1 NMAC (Solid Waste Management);

**(7)** burning shall not be conducted when an air pollution episode is in effect;

**(8)** auxiliary fuel or incendiary devices may be used to ignite the burning allowed by this section, provided that:

**(a)** no oil heavier than number two diesel shall be used; and

**(b)** no more than the minimum amount of auxiliary fuel necessary to complete the burn shall be used;

**(9)** polyethylene sheeting may be burned with the vegetative materials, provided that:

**(a)** the sheeting has been covering piled vegetative material for at least one month prior to burning;

**(b)** the amount of sheeting burned is no more than the minimum necessary to cover the pile;

**(c)** removal of the sheeting before burning is impractical; and

**(d)** the burner is able to provide evidence, such as purchase records or package labeling, that the sheeting is polyethylene and not some other form of plastic;

**(10)** the burner shall consider alternatives to burning prior to igniting a burn; and

**(11)** material to be burned shall be as dry as practicable.

[20.2.60.111 NMAC - Rp 20.2.60.111 NMAC, 12/31/03]

### **20.2.60.112 BURNING OF MATERIALS AND STRUCTURES FOR FIREFIGHTER TRAINING:**

Burning of structures, buildings, facilities or materials for purposes of instruction and training of bona fide firefighting and fire-rescue personnel is allowed, provided that:

- A.** all regulated asbestos-containing material is removed prior to burning, in accordance with 40 CFR 61, Subpart M (National Emission Standard for Asbestos); and
- B.** the department is notified, prior to burning, using the form provided by the department.

[20.2.60.112 NMAC - Rp 20.2.60.112 NMAC, 12/31/03]

### **20.2.60.113 OPEN BURNING OF HAZARDOUS WASTE:**

Open burning of hazardous waste, as defined in the New Mexico Hazardous Waste Act, NMSA 1978, Sections 74-4-1 to -14, is allowed only when conducted in compliance with interim status regulations, or a permit issued, pursuant to the New Mexico Hazardous Waste Act and any other permits issued by the department.

[20.2.60.113 NMAC - Rp 20.2.60.113 NMAC 12/31/03]

### **20.2.60.114 EMERGENCY BURNING:**

Open burning is allowed for purposes of eliminating an imminent danger to public health, safety, or the environment, provided that:

- A.** no other practical and lawful method of abatement or disposal is available;
- B.** an emergency response specialist has determined that the situation requires immediate and expeditious action;
- C.** the burning is in compliance with all other applicable state laws and regulations; and
- D.** notice is provided to the department as soon as practical, but at least within two weeks after the burn.

[20.2.60.114 NMAC - Rp 20.2.60.114 NMAC, 12/31/03]

## **PART 61: SMOKE AND VISIBLE EMISSIONS**

### **20.2.61.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.61.1 NMAC - Rn, 20 NMAC 2.61.100 10/31/02]

**20.2.61.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.61.2 NMAC - Rn, 20 NMAC 2.61.101 10/31/02]

**20.2.61.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B), and (C).

[11/30/95; 20.2.61.3 NMAC - Rn, 20 NMAC 2.61.102 10/31/02]

**20.2.61.4 DURATION:**

Permanent.

[11/30/95; 20.2.61.4 NMAC - Rn, 20 NMAC 2.61.103 10/31/02]

**20.2.61.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.61.5 NMAC - Rn, 20 NMAC 2.61.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.61.6 OBJECTIVE:**

The objective of this Part is to establish controls on smoke and visible emissions from certain sources. This Part is not intended to preempt any more stringent controls on smoke and visible emissions provided in any other air quality control regulation or in any local ordinance or regulation.

[11/30/95; 20.2.61.6 NMAC - Rn, 20 NMAC 2.61.105 10/31/02]

**20.2.61.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Air curtain destructor"** means a combustion device or system designed to achieve controlled combustion of woodwaste and slash materials in an earthen trench or refractory-lined pit or bin through means of a fan-generated air curtain.

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

**C. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

**D. "Stationary combustion equipment"** means any stationary device or system used to oxidize solid, liquid, or gaseous materials, including fuels or wastes, and includes but is not limited to incinerators, wood-fired boilers, air curtain destructors, and stationary oil burning equipment.

**E. "Visible emissions"** means particulate or gaseous matter which can be detected by the human eye.

[11/30/95; 20.2.61.7 NMAC - Rn, 20 NMAC 2.61.107 10/31/02]

#### **20.2.61.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 401 -- Regulation to Control Smoke and Visible Emissions last filed July 15, 1986.

**A.** All references to AQCR 401 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 401 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 401.

[11/30/95; 20.2.61.8 NMAC - Rn, 20 NMAC 2.61.106 10/31/02]

#### **20.2.61.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.61.9 NMAC - Rn, 20 NMAC 2.61.108 10/31/02]

#### **20.2.61.10-20.2.61.108 [RESERVED]**

#### **20.2.61.109 STATIONARY COMBUSTION EQUIPMENT:**

The owner or operator of stationary combustion equipment shall not permit, cause, suffer or allow visible emissions from the stationary combustion equipment to equal or exceed an opacity of 20 percent; provided, however, stationary combustion equipment

which is regulated by Parts 20.2.10 NMAC through 20.2.18 NMAC, 20.2.37 NMAC, and 20.2.42 NMAC, and any other Part of Chapter 2 which specifically limits particulate emissions is exempted from this Part.

[11/30/95; 20.2.61.109 NMAC - Rn, 20 NMAC 2.61.109 10/31/02]

#### **20.2.61.110 DIESEL-POWERED VEHICLE:**

**A.** No person shall permit, cause, suffer or allow the emission into the open air of any smoke having an opacity greater than thirty percent for any period greater than ten seconds from any diesel-powered vehicle operating below 8,000 feet (mean sea level).

**B.** No person shall permit, cause, suffer or allow the emission into the open air of any smoke having an opacity greater than forty percent for any period greater than ten seconds from any diesel-powered vehicle operating above 8,000 feet (mean sea level).

[11/30/95; 20.2.61.110 NMAC - Rn, 20 NMAC 2.61.110 10/31/02]

#### **20.2.61.111 EXCLUSIONS:**

This Part does not apply to:

**A.** emissions from diesel-powered vehicles if the emissions are a direct result of a cold engine start-up;

**B.** off-highway, diesel-powered vehicles operating in non-urban areas; and

**C.** oil well drilling rigs and oil well servicing rigs.

**D.** for sources subject to the provisions of 20.2.70 NMAC (Operating Permits), emissions which result from insignificant activities as defined in 20.2.70 NMAC.

[11/30/95; 01/10/96; 20.2.61.111 NMAC - Rn, 20 NMAC 2.61.111 10/31/02]

#### **20.2.61.112 DIESEL-POWERED LOCOMOTIVES:**

**A.** No person shall permit, cause, suffer or allow the emissions into the open air of any smoke having an opacity greater than twenty percent for any period greater than ten seconds from any diesel-powered locomotive operating below 8,000 feet (mean sea level).

**B.** No person shall permit, cause, suffer or allow the emission into the open air of any smoke having an opacity greater than forty percent for any period greater than ten seconds from any diesel-powered locomotive:

**(1)** operating above 8,000 feet (mean sea level); or

(2) involved in switching and railroad yard use.

C. This Part does not apply to emissions for diesel-powered locomotives if the emissions are a direct result of a cold engine start-up.

11/30/95; 20.2.61.112 NMAC - Rn, 20 NMAC 2.61.112 10/31/02]

#### **20.2.61.113 AIR CURTAIN DESTRUCTORS:**

An exemption to this Part may be granted by the Department for start-up and burn-down periods of operation of air curtain destructors, if the owner or operator has demonstrated to the satisfaction of the Department that such an exemption is necessary and takes all actions necessary to minimize emissions during such periods.

11/30/95; 20.2.61.113 NMAC - Rn, 20 NMAC 2.61.113 10/31/02]

#### **20.2.61.114 OPACITY DETERMINATIONS:**

Opacity of emissions from equipment subject to 20.2.61.109 NMAC shall be determined consistent with the method set forth by the US EPA in 40 CFR, Part 60 Appendix A, Method 9, or any other method receiving prior approval from the Department. The minimum time period for taking opacity readings shall be ten minutes.

11/30/95; 20.2.61.114 NMAC - Rn, 20 NMAC 2.61.114 10/31/02]

### **PART 62: MUNICIPAL WASTE COMBUSTION**

#### **20.2.62.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.62.1 NMAC - Rn, 20 NMAC 2.62.100 10/31/02]

#### **20.2.62.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.62.2 NMAC - Rn, 20 NMAC 2.62.101 10/31/02]

#### **20.2.62.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C)(3).

[11/30/95; 20.2.62.3 NMAC - Rn, 20 NMAC 2.62.102 10/31/02]

**20.2.62.4 DURATION:**

Permanent.

[11/30/95; 20.2.62.4 NMAC - Rn, 20 NMAC 2.62.103 10/31/02]

**20.2.62.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.62.5 NMAC - Rn, 20 NMAC 2.62.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.62.6 OBJECTIVE:**

The objective of this Part is to establish requirements for emissions from, and design and operation of, municipal waste combustion units.

[11/30/95; 20.2.62.6 NMAC - Rn, 20 NMAC 2.62.105 10/31/02]

**20.2.62.7 DEFINITIONS:**

In additions to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Continuous emission monitor"** means the total equipment required to sample and analyze emissions or process parameters.

**B. "dscm"** means dry standard cubic meter with standard conditions being a temperature of 68 degrees Fahrenheit and a pressure of 29.92 inches Hg.

**C. "dscf"** means dry standard cubic foot with standard conditions being a temperature of 68 degrees Fahrenheit and a pressure of 29.92 inches Hg.

**D. "gr"** means grains.

**E. "mg"** means milligrams.

**F. "Municipal waste"** means all materials and substances discarded from residential dwellings and similar types of materials discarded from institutional, commercial, governmental, and industrial sources. The term does not include industrial process waste or hazardous wastes which are subject to regulation under Subtitle C of the Resource Conservation and Recovery Act, 42 USC 6901 et seq.

**G. "Municipal waste combustion unit"** means an incinerator, furnace, or boiler which is used to dispose of municipal waste by combustion either alone or with fossil fuel.

**H. "ng"** means nanograms.

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

**J. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

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

**L. "Refuse-derived fuel"** means municipal waste which has been processed and shredded prior to use as a fuel.

[11/30/95; 20.2.62.7 NMAC - Rn, 20 NMAC 2.62.107 10/31/02]

#### **20.2.62.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 2000 -- Municipal Waste Combustion filed November 16, 1990.

**A.** All references to AQCR 2000 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 2000 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 2000.

[11/30/95; 20.2.62.8 NMAC - Rn, 20 NMAC 2.62.106 10/31/02]

#### **20.2.62.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.62.9 NMAC - Rn, 20 NMAC 2.62.108 10/31/02]

#### **20.2.62.10-20.2.62.199 [RESERVED]**

#### **20.2.62.200 APPLICABILITY:**

**A. Affected Facility:** The requirements of this Part apply to the owner or operator of any municipal waste combustion unit.

**B. New Source Performance Standards:** In addition to the requirements of this Part, any applicable federal regulation in 40 CFR Part 60 -- Standards of Performance for New Stationary Sources shall apply in full. Whenever there is a conflict between this Part and a federal counterpart, the more stringent requirement shall apply.

[11/30/95; 20.2.62.200 NMAC - Rn, 20 NMAC 2.62.200 - 201 10/31/02]

#### **20.2.62.201 EMISSION LIMITS:**

**A. Emission Limits:** The owner or operator shall not cause or allow any emission limit in Table 1 (20.2.62.213 NMAC) to be exceeded.

**B. Compliance:**

**(1)** Compliance with emission limits for sulfur dioxide and nitrogen dioxide shall be determined by continuous emission monitor measurements as calculated in the form of 24-hour daily averages.

**(2)** Compliance with the emission limit for carbon monoxide shall be determined by continuous emission monitor measurements as calculated in the form of 4-hour block averages.

**(3)** Compliance with the emission limits for particulate matter, PCDD/PCDF, total hydrocarbon, hydrogen chloride and metals shall be determined by manual tests conducted in accordance with 20.2.62.204 NMAC. For metals, the percent removal shall be calculated as the percent difference between the measured concentrations at the inlet and outlet of the air pollution control system.

**(4)** Compliance with the opacity limit in Table 1 (20.2.62.213 NMAC) shall be determined by continuous emission monitor measurements and 40 CFR Part 60, Appendix A, Method 9 as calculated in the form of 6-minute averages.

[11/30/95; 20.2.62.201 NMAC - Rn, 20 NMAC 2.62.300 - 301 10/31/02]

#### **20.2.62.202 DESIGN AND OPERATIONAL REQUIREMENTS:**

**A. Operational Temperature:**

**(1)** The combustion temperature as monitored at the location specified by subsection C of 20.2.62.203 NMAC shall be a minimum of 1800 degrees Fahrenheit for a 30-minute averaging period.

**(2)** Flue gas temperature as monitored at the location specified by subsection C of 20.2.62.203 NMAC shall be a maximum of 300 degrees Fahrenheit for a 30-minute averaging period.

**B. Residence Time:** All combustion gases shall be retained for at least 1.0 second at the required combustion temperature of subsection A or C of 20.2.62.202 NMAC at a location beyond the final secondary air injection port, or an alternative location specified by the Department if such location better represents the fully mixed height of the incinerator.

**C. Equivalent Design:** The Department may approve a combustion unit design which does not have a minimum temperature of 1800 degrees Fahrenheit and a residence time of at least 1.0 second if it determines the proposed design will achieve a combustion efficiency equivalent to or greater than a unit meeting the requirements of paragraph (1) of subsection A of 20.2.62.202 NMAC and subsection B of 20.2.62.202 NMAC.

**D. Auxiliary Burner Capacity:**

**(1)** Auxiliary burners shall be installed which can supply at least 60 percent of the maximum rated heat capacity of the combustion unit.

**(2)** Auxiliary burners shall be capable of meeting the required combustion temperature of subsection A or C of 20.2.62.202 NMAC during periods of startup, shutdown, and malfunction.

**E. Turndown Restriction:** Municipal waste shall not be burned in an amount outside the range of 80 to 100 percent of the hourly design-rated capacity of the combustion unit.

**F. Automatic Waste Feed Cutoff:** The municipal waste combustion unit shall include automatic waste feed cutoff mechanisms which stop waste feed to the unit if a continuous emission monitor records an exceedance of any emission limit in Table 1 (20.2.62.213 NMAC) for which compliance is based on continuous monitoring or the temperature requirements of subsection A or C of 20.2.62.202 NMAC.

[11/30/95; 20.2.62.202 NMAC - Rn, 20 NMAC 2.62.400 - 405 10/31/02]

### **20.2.62.203 MONITORING:**

**A. Emission Monitoring:**

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

**(a)** oxygen;

- (b) carbon monoxide;
- (c) sulfur dioxide;
- (d) nitrogen dioxide; and
- (e) opacity.

(2) At least 45 days prior to initial startup, the owner or operator shall submit a report to the Department which describes for each monitor the location, specifications, procedures for calibration, operation, maintenance, data evaluation, and reporting. Monitoring equipment shall not be installed until the Department approves the report. The Department shall, within 45 days of receipt, approve or disapprove the subject report.

(3) The continuous emission monitors which measure oxygen, carbon monoxide, sulfur dioxide, and nitrogen dioxide shall complete a minimum of 1 cycle of operation for each successive 15-minute period. One-hour averages shall be calculated from 4 or more data points equally spaced over each 1-hour period.

(4) The continuous emission monitor which measures opacity shall complete a minimum of 1 cycle of operation for each successive 10 second period. Six-minute averages shall be calculated from 36 or more data points equally spaced over each 6-minute period.

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

(6) Emission data shall be obtained from each continuous emission monitor which represents a minimum of 75 percent of all operational hours for each 24-hour period beginning at 12 midnight. During periods of continuous emission monitor breakdowns, repairs, calibration checks, and zero and span adjustments, emission data may be obtained by other monitoring systems or reference methods approved by the Department. Such other monitoring systems or reference methods must comply, at a minimum, with performance specifications as found in 40 CFR Part 60, Appendix B. Failure to meet the 75 percent data capture requirement of this section shall cause the combustion unit to be shutdown as required by subsection C of 20.2.62.206 NMAC.

(7) The owner or operator shall ensure each continuous emission monitor meets the requirements of 40 CFR Part 60, Appendix F -- Quality Assurance Procedures and shall submit to the Department all reports specified by such requirements.

**B. Performance Evaluation:**

(1) During or within 30 days of the initial emission tests required by paragraph (2) of subsection A of 20.2.62.204 NMAC, the owner or operator shall conduct a performance evaluation of each continuous emission monitor in accordance with the procedures of 40 CFR Part 60, Appendix B -- Performance Specifications.

(2) The performance evaluation required by paragraph (1) of subsection B of 20.2.62.203 NMAC shall be repeated on an annual basis or at additional times when the Department has reason to believe the monitor performance is inadequate.

(3) The owner or operator shall provide at least 30 days prior notice to the Department before conducting any performance evaluation.

(4) A written report of each performance evaluation shall be furnished within 30 days from the end of the test period to the Department.

**C. Temperature monitors:**

(1) Continuous temperature monitors shall be installed, calibrated, maintained, operated, and continuously record measurements at the following locations:

(a) within 1 meter of the final secondary air injection port or at a different location specified by the Department which better represents the fully mixed height of the combustion chamber; and

(b) at the inlet to the particulate matter air pollution control device.

(2) Temperature monitors shall take measurements at least every ten seconds from which 30-minute averages shall be calculated.

[11/30/95; 20.2.62.203 NMAC - Rn, 20 NMAC 2.62.500 - 502 10/31/02]

**20.2.62.204 EMISSION TESTING:**

**A. Emission Testing Schedule:**

(1) Emission testing shall be conducted quarterly for total particulate matter, fine particulate matter, total hydrocarbon, PCDD/PCDF, hydrogen chloride and all metals listed in Table 1 (20.2.62.213 NMAC).

(2) Within 60 days of first achieving the maximum firing rate for the combustion unit, but not more than 180 days from the date of initial startup, the first quarterly emission tests shall be conducted.

(3) The Department shall require the owner or operator to conduct additional tests if there is a reasonable basis to believe the facility is not in compliance with the provisions of this Part or any applicable permit condition.

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

**B. Emission Testing Procedures:**

(1) Notice of the test date and a copy of the test protocol shall be given to the Department at least 30 days prior to the actual test date.

(2) A representative of the Department shall be given the opportunity to be present during all emission tests required by this Part.

(3) A written copy of all test results shall be furnished to the Department within 90 days from the test date.

(4) Emission tests shall be conducted utilizing the following methods:

(a) for total particulate matter -- 40 CFR Part 60, Appendix A, Method 5;

(b) for fine particulate matter -- California Air Resources Board, Method 501;

(c) for PCDD/PCDF -- 40 CFR Part 60, Appendix A, Method 23;

(d) for total hydrocarbon -- 40 CFR Part 60, Appendix A, Method 25A;

(e) for cadmium, chromium, and lead -- 40 CFR Part 60, Appendix A, Method 12;

(f) for arsenic -- 40 CFR Part 61, Appendix B, Method 108;

(g) for beryllium -- 40 CFR Part 61, Appendix B, Method 104;

(h) for mercury -- 40 CFR Part 61, Appendix B, Method 101A; and

(i) for hydrogen chloride -- 40 CFR Part 60, Appendix A, Method 26.

(5) The owner or operator may utilize test methods other than those in paragraph (4) of subsection B of 20.2.62.204 NMAC if the Department has approved the alternative method. The Department shall approve or disapprove proposed alternate test methods within 30 days of receipt of subject request.

[11/30/95; 20.2.62.204 NMAC - Rn, 20 NMAC 2.62.600 - 601 10/31/02]

**20.2.62.205 RECORDKEEPING AND REPORTING:**

**A. Quarterly Report:** The owner or operator shall submit a report containing the following information to the Department within 30 days from the end of each calendar quarter:

- (1) the hourly average waste feed rate to each combustion unit;
- (2) the 30-minute average temperature of the combustion unit and the inlet to the particulate matter control device;
- (3) the hourly and 24-hour average concentrations in mg/dscm corrected to 7% O<sub>2</sub> of sulfur dioxide and nitrogen dioxide as measured by continuous emission monitors;
- (4) the hourly and 4-hour average concentrations in mg/dscm corrected to 7% O<sub>2</sub> of carbon monoxide as measured by continuous emission monitors;
- (5) the hourly average percent oxygen and 6-minute average opacity as measured by continuous emission monitors;
- (6) the percent data capture for each 24-hour period for each continuous emission monitor;
- (7) the hourly auxiliary fuel use per combustion unit;
- (8) the identification of all periods of startup, shutdown, and excess emissions; and
- (9) the reason for any excess emissions and the corrective action taken.

**B. Records:**

(1) Records shall be maintained for a period of three years from the date created by the owner or operator for all parameters in subsection A of 20.2.62.205 NMAC and made available upon request for inspection and copying by the Department during normal operating hours.

(2) All information submitted to the Department in quarterly reports or emission test reports, or any other information created or obtained by the Department regarding the municipal waste combustion unit shall be available for public inspection and copying during normal business hours.

[11/30/95; 20.2.62.205 NMAC - Rn, 20 NMAC 2.62.700 - 701 10/31/02]

**20.2.62.206 STARTUP, SHUTDOWN, AND UPSET CONDITION:**

**A. Startup and Shutdown Procedure:**

**(1)** Waste shall not be placed into the combustion unit during startup until the auxiliary burners have achieved the required combustion temperature of subsection A or C of 20.2.62.202 NMAC.

**(2)** During shutdown, auxiliary burners shall be utilized to maintain the required combustion temperature of subsection A or C of 20.2.62.202 NMAC until the carbon monoxide emission limit specified in 20.2.62.201 NMAC can be achieved without their use.

**B. Upset Condition:**

**(1)** The provisions of 20.2.7 NMAC (Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance) shall not apply to any municipal waste combustion unit.

**(2)** Prior to the failure of the system to meet the temperature requirements of subsection A or C of 20.2.62.202 NMAC or any emission limit in 20.2.62.201 NMAC for which compliance is based on continuous emission monitoring, a visual and audible alarm shall notify the operator. The operator shall implement all reasonable measures to correct the impending upset condition.

**(3)** Whenever the temperature requirements of subsection A or C of 20.2.62.202 NMAC or any emission limit in 20.2.62.201 NMAC for which compliance is based on continuous emission monitoring is exceeded, the operator shall take the following actions:

**(a)** waste feed to the combustion unit shall automatically cut off and the unit be shutdown;

**(b)** notify the Department verbally of the exceedance within 4 hours of its occurrence or prior to 12 noon of the next business day should the exceedance occur during non-business hours;

**(c)** note in the operating record the time and date of the exceedance, when shutdown began, and when shutdown was complete;

**(d)** identify and correct the cause of the upset condition before resuming operation of the unit; and

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

**C. Continuous Emission Monitor Malfunction:** Whenever any required continuous emission monitor cannot meet the data capture requirement of paragraph (6) of subsection A of 20.2.62.203 NMAC, and the owner or operator does not obtain the required data from an alternate monitor or test method, the combustion unit shall be

shutdown for the time necessary to comply with paragraph (6) of subsection A of 20.2.62.203 NMAC.

**D. Disaster Plan for Catastrophic Failure:** No permit shall be approved for the operation of a municipal waste incinerator until the Department has approved a plan prepared by the applicant for prevention of harm to the surrounding population and environment in the event of a catastrophic failure at the incinerator. The plan shall include, but not be limited to, measures for protecting that population from releases into the environment of significant emissions from the incinerator.

[11/30/95; 20.2.62.206 NMAC - Rn, 20 NMAC 2.62.800 - 803 10/31/02]

#### **20.2.62.207 MANAGEMENT OF ASH:**

##### **A. Handling, Storage, and Transportation of Ash:**

**(1)** All handling and storage of fly ash and bottom ash shall be conducted in a closed system which prevents ash from becoming airborne.

**(2)** Transportation of fly ash and bottom ash offsite shall be conducted in a manner which prevents the release of any amount of ash to the atmosphere.

**B. Opacity of Ash Emissions:** Handling, storage, and transportation of fly ash and bottom ash shall not result in a release to the atmosphere exceeding 0 (zero) percent opacity. Compliance with this requirement shall be determined by visual observation as specified in 40 CFR Part 60, Appendix A, Method 9.

##### **C. Disposal of Ash:**

**(1)** Disposal of fly ash and bottom ash shall be in compliance with the applicable requirements of New Mexico Solid Waste Management Regulations (20.9.1 NMAC).

##### **(2) Transportation of Municipal Waste Combustion (MWC) ash:**

**(a)** No transporter shall accept or transport MWC ash unless it has been treated or is securely covered to prevent release of fugitive dust;

**(b)** Transporters shall cover vehicles to prevent fugitive dust loss during transport; and

**(c)** Transporters shall line or seal vehicles in such a manner to prevent any leakage of liquids or fugitive dust during transport.

**(3)** MWC ash that is temporarily stored at generation site awaiting transportation must be stored in such a manner as to prevent fugitive dust emissions.

[11/30/95; 20.2.62.207 NMAC - Rn, 20 NMAC 2.62.900 - 902 10/31/02]

**20.2.62.208 TRAINING:**

**A. Training Requirements:**

(1) During all operating hours plant operations shall be supervised by an individual who has received certification by the American Society of Mechanical Engineers as an operator of a resource recovery facility.

(2) All plant personnel shall receive adequate training specific to their job function prior to assuming a starting or new position which shall include instruction in:

- (a) operation and maintenance of equipment;
- (b) response to upset conditions; and
- (c) compliance with applicable environmental regulations and permit conditions.

**B. Recordkeeping of Training:** The following records shall be maintained and made available to the Department during normal operating hours:

- (1) documentation of certification of operators as required by paragraph (1) of subsection A of 20.2.62.208 NMAC;
- (2) a written description of the training program given to plant personnel; and
- (3) a list of current employees and their job titles.

[11/30/95; 20.2.62.208 NMAC - Rn, 20 NMAC 2.62.1000 - 1001 10/31/02]

**20.2.62.209 MATERIALS SEPARATION:**

**A. Materials Separation - Percent Reduction /requirement:**

(1) The owner or operator shall separate materials from municipal waste prior to combustion such that an overall 25 percent or greater reduction by weight on annual basis is achieved.

(2) The percent reduction requirement in this section shall be met by separation of some or all of the following materials:

- (a) Paper and paperboards;
- (b) Ferrous metals;

- (c) Nonferrous metals;
- (d) Glass;
- (e) Plastics;
- (f) Household batteries; and
- (g) Yard waste.

(3) A maximum of 10 percent reduction by weight shall be attributed to separation of yard waste.

(4) The percent reduction requirement may be achieved by mechanical or manual separation techniques either on or off-site and can include a community separation program.

**B. Materials Separation - Compliance:**

(1) The owner or operator shall record on a monthly basis the amount by weight of municipal waste combusted and the amount of separated materials by type and weight.

(2) The owner or operator shall calculate and record the percent reduction in municipal waste combusted by material separation for each month.

(3) Compliance with the annual percent reduction requirement in paragraph (1) of subsection A of 20.2.62.209 NMAC shall be determined by calculating the average of the monthly percent reduction amounts for the calendar year.

(4) By February 1 of each year, the owner or operator shall submit a report to the Department containing the monthly and annual average percent reduction calculations and results.

[11/30/95; 20.2.62.209 NMAC - Rn, 20 NMAC 2.62.1100 - 1101 10/31/02]

**20.2.62.210 RISK ASSESSMENT:**

**A. Assessment of Risk:** Each application for a permit to operate a municipal waste incinerator shall contain a formal assessment of risk to the population and the environment which may be affected by the incinerator. The factors which shall be addressed in the assessment shall include but not be limited to the quantity, volume, potency, toxicity, and hazardous nature of all substances emitted from the incinerator, the exposure pathways of those substances, potential receptors, including human populations, flora, and fauna, the proximity of the proposed incinerator to all human habitations, including but not limited to residences, hospitals, schools, day care centers,

and work sites, and any other factors which may contribute to or determine the risks posed by the proposed incinerator.

**B. Risk Assessment Evaluation:** The assessment of risk prepared by the applicant shall be considered by the Department in its decision on the application, and shall be addressed in any written determination made by the Department.

[11/30/95; 20.2.62.210 NMAC - Rn, 20 NMAC 2.62.1200 - 1201 10/31/02]

**20.2.62.211 LOCATION OF PUBLIC HEARINGS:**

Public hearings conducted subsequent to a permit application for construction of a municipal waste combustor shall be held in the geographic area most likely to be impacted by the source.

[11/30/95; 20.2.62.211 NMAC - Rn, 20 NMAC 2.62.1300 10/31/02]

**20.2.62.212 OFF-SITE MONITORING REQUIREMENTS:**

The owner or operator shall monitor at the facility boundary, where the population is, and one or more miles beyond the facility in all directions, in order to determine the concentrations of materials being emitted from the incinerator at the points of exposure to the population. Meteorological data shall be monitored at the stack and in all four directions in order to provide a better basis for surface monitoring.

[11/30/95; 20.2.62.212 NMAC - Rn, 20 NMAC 2.62.1400 10/31/02]

**20.2.62.213 MUNICIPAL WASTE COMBUSTION EMISSION LIMITS:**

TABLE 1.

Pollutant	Emission Limit (1)
Particulate Matter	
Total	0.01 gr/dscf
Fine (less than 2 microns)	0.008 gr/dscf
Sulfur Dioxide	80 mg/dscm
Hydrogen Chloride	40 mg/dscm
Carbon Monoxide	
Refuse-Derived Fuel	120 mg/dscm
All other designs	60 mg/dscm
Nitrogen Dioxide	100 ppmv
PCDD/PCDF	5 ng/dscm
Total Hydrocarbon (as CH <sub>4</sub> )	45 mg/dscm
Metals	
Arsenic	99% Removal

Beryllium	99% Removal
Cadmium	99% Removal
Chromium	99% Removal
Lead	99% Removal
Mercury	90% Removal
Opacity	10%

(1) The particulate matter emission limit is set at a condition of 12% CO<sub>2</sub>. All other emission limits are set at 7% O<sub>2</sub>.

[11/30/95; 20.2.62.213 NMAC - Rn, 20 NMAC 2.62.1500 10/31/02]

## **PART 63: BIOMEDICAL WASTE COMBUSTION**

### **20.2.63.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.63.1 NMAC - Rn, 20 NMAC 2.63.100 10/31/02]

### **20.2.63.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[11/30/95; 20.2.63.2 NMAC - Rn, 20 NMAC 2.63.101 10/31/02]

### **20.2.63.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B) and (C)(3).

[11/30/95; 20.2.63.3 NMAC - Rn, 20 NMAC 2.63.102 10/31/02]

### **20.2.63.4 DURATION:**

Permanent.

[11/30/95; 20.2.63.4 NMAC - Rn, 20 NMAC 2.63.103 10/31/02]

### **20.2.63.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.63.5 NMAC - Rn, 20 NMAC 2.63.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

#### **20.2.63.6 OBJECTIVE:**

The objective of this Part is to establish requirements for emissions from, and design and operation of, biomedical waste combustion units.

[11/30/95; 20.2.63.6 NMAC - Rn, 20 NMAC 2.63.105 10/31/02]

#### **20.2.63.7 DEFINITIONS:**

In additions to the terms defined in 20.2.2 NMAC (Definitions), as used in this Part:

**A. "Anatomical/pathological waste"** means human or animal remains consisting of carcasses, tissues, organs or body parts that may or may not be infectious.

**B. "Biomedical waste"** means waste that includes anatomical/pathological wastes, infectious wastes, and chemotherapeutic wastes. Incorporated in this definition are wastes generated in health care facilities, medical laboratories, and veterinary clinics that require special handling.

**C. "Biomedical waste combustion unit"** means any incinerator which is used to dispose of biomedical waste by combustion.

**D. "Charging capacity"** means the combustion unit manufacturer's or designer's rated capacity expressed in terms of pounds per hour (lb/hr).

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

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

**G. "Continuous emission monitor"** means the total equipment required to sample and analyze emissions or process parameters on a continuous basis.

**H. "Crematory incinerator"** means any combustion unit designed and used solely for the combustion of anatomical/pathological waste including incidental items normally cremated as part of the funeral process.

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

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

**K. "Facility"** means one or more biomedical waste combustion units at the same location.

**L. "gr"** means grains.

**M. "Hazardous waste"** means hazardous waste as defined in 40 CFR Part 261.3.

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

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

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

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

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

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

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

**O. "mg"** means milligrams.

**P. "ng"** means nanograms.

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

**R. "Operation"** means the acts of ash removal, preheating of combustion unit, waste loading, combustion, burndown and cooldown.

**S. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

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

**U. "Same location"** means the same or contiguous property that is under common ownership or control, including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof, including any municipality or other governmental unit, or any quasi-governmental authority.

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

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

**X. "Total charging capacity"** means the aggregate of all charging capacities of biomedical combustion units located at a facility.

[11/30/95; 20.2.63.7 NMAC - Rn, 20 NMAC 2.63.107 10/31/02]

#### **20.2.63.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 2020 -- Biomedical Waste Combustion filed March 8, 1991.

**A.** All references to AQCR 2020 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 2020 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 2020.

[11/30/95; 20.2.63.8 NMAC - Rn, 20 NMAC 2.63.106 10/31/02]

#### **20.2.63.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.63.9 NMAC - Rn, 20 NMAC 2.63.108 10/31/02]

#### **20.2.63.10-20.2.63.199 [RESERVED]**

#### **20.2.63.200 APPLICABILITY:**

**A.** The requirements of this regulation apply to the owner or operator of any biomedical waste combustion unit located at a facility with a total charging capacity of less than 50 tons per day. The requirements of this regulation do not apply to crematory incinerators.

**B.** In addition to the requirements of this regulation, any applicable federal regulation in 40 CFR Part 60 -- Standards of Performance for New Stationary Sources shall apply in full. Whenever there is a conflict between this regulation and a federal counterpart, the more stringent requirement shall apply.

[11/30/95; 20.2.63.200 NMAC - Rn, 20 NMAC 2.63.200 10/31/02]

#### **20.2.63.201 GENERAL REQUIREMENTS:**

**A.** No one shall combust biomedical waste in a single chamber combustion unit. All single chamber combustion units shall be taken out of service and removed from the facility.

**B.** No one shall combust material marked with radiation symbols as required by 20.3.1 NMAC - 20.3.20 NMAC (Radiation Protection Regulations), or material having a radioactivity level greater than background, in a combustion unit subject to this Part.

**C.** Hazardous waste may not be combusted in a combustion unit subject to this regulation unless a permit to do so pursuant to the Resource Conservation and Recovery Act has been obtained from the Hazardous Waste Bureau of the Department.

**D.** Infectious wastes are defined as "special wastes" and as such are subject to 20.9.1 NMAC (New Mexico Solid Waste Management Regulation).

**E.** Any biomedical waste combustion unit located at a facility with a total charging capacity of 50 tons per day or more or which accepts off-site municipal solid waste from a non-generator of biomedical waste must also meet the requirements of 20.2.62 NMAC (Municipal Waste Combustion).

[11/30/95; 20.2.63.201 NMAC - Rn, 20 NMAC 2.63.300 10/31/02]

#### **20.2.63.202 EMISSION LIMITS:**

**A.** Emission Limits: The owner or operator shall not cause or allow any emission limit in subsection A of 20.2.63.210 NMAC to be exceeded.

**B.** Compliance:

**(1)** Compliance with the emission limit for carbon monoxide (CO), for units required to have continuous CO monitoring, shall be determined by continuous emission monitor measurements as calculated in the form of 4-hour block averages. For

units not equipped with continuous CO monitoring equipment compliance shall be determined by manual tests conducted in accordance with 20.2.63.205 NMAC.

(2) Compliance with the emission limits for particulate matter, sulfur dioxide, nitrogen dioxide, hydrogen chloride, PCDD/PCDF, and metals shall be determined by manual tests conducted in accordance with 20.2.63.205 NMAC. For metals, the percent removal shall be calculated as the percent difference between the measured concentrations at the inlet and outlet of the air pollution control system.

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

(4) Compliance with the opacity limit in subsection A of 20.2.63.210 NMAC shall be determined by continuous emission monitor measurements and 40 CFR Part 60, Appendix A, Method 9 as calculated in the form of 6-minute averages.

(5) The owner or operator of a biomedical waste combustion unit located at a facility with a total charging capacity of up to four hundred (400) pounds per hour may obtain a written exemption from the Air Quality Bureau from the applicable emission limits set forth in subsection A of 20.2.63.210 NMAC and may obtain a written exemption from the Air Quality Bureau from emission monitoring requirements as stated in subparagraph (c) of paragraph (1) of subsection A of 20.2.63.204 NMAC provided that:

(a) The owner or operator complies with the emission limits set forth in subsection A of 20.2.63.210 NMAC for biomedical waste combustion units located at a facility with a total charging capacity of less than two hundred (200) pounds per hour; and

(b) The owner or operator obtains a written exemption from the Air Quality Bureau that contains a condition limiting the operation of such biomedical waste combustion unit to six hours in any one day. The violation of such an exemption condition shall be a violation of this regulation.

11/30/95; 20.2.63.202 NMAC - Rn, 20 NMAC 2.63.400 - 401 10/31/02]

### **20.2.63.203 DESIGN AND OPERATING REQUIREMENTS:**

#### **A. Design Requirements:**

(1) All combustion units shall be equipped with a secondary combustion chamber which provides for turbulent mixing by ensuring that the air being supplied to the combustion zone has sufficient momentum to penetrate the combustion gases. The secondary combustion chamber shall also provide one second of residence time, as

measured from the location where the maximum temperature has been fully developed and is calculated with consideration of design-specific furnace parameters including chamber volume, volumetric air flow rate, and excess air rate.

**(2)** Primary combustion chamber temperature must be maintained at not less than fourteen hundred (1400) degrees Fahrenheit.

**(3)** Secondary combustion chamber temperature must be maintained at not less than eighteen hundred (1800) degrees Fahrenheit.

**(4)** Auxiliary burners must be designed to provide the combustion chamber temperatures as described in paragraphs (2) and (3) of subsection A of 20.2.63.203 NMAC without the assistance of the heat content of the waste. The auxiliary burner fuel and the combustion air shall be modulated automatically to maintain a secondary chamber exit temperature of at least eighteen hundred (1800) degrees Fahrenheit and a primary chamber temperature of at least fourteen hundred (1400) degrees Fahrenheit.

**(5)** The waste charging system of any combustion unit must be designed to prevent disruption of the combustion process as waste is charged. Batch charged units must be equipped with a lockout mechanism to prevent charging after start-up. Units with automatic charging systems shall be equipped with a sealed feeding device capable of preventing combustion upsets during charging. The volume of the loading system shall be designed to prevent overcharging.

**(6)** For batch charged units, waste shall not be ignited until the secondary chamber exit temperature is established and holding at eighteen hundred (1800) degrees Fahrenheit for at least fifteen (15) minutes. Interlocks shall be provided which prevent opening the charging door after ignition and until the burn-down and cool-down periods are complete.

**(7)** For continually charged combustion units, the charging of waste shall automatically cease through the use of an interlock system if:

**(a)** The combustion unit's secondary chamber temperature drops below 1800 degrees Fahrenheit for any continuous fifteen-minute period; or

**(b)** The carbon monoxide emissions are equal to or greater than 50 ppm by volume, corrected to seven percent (7%) O<sub>2</sub> on a dry basis for any continuous 15-minute period.

**B. Stack Height Requirements:** Exhaust stack height for all biomedical waste combustion units shall be in accord with "good engineering practice" (GEP).

**(1)** For purposes of this Part, GEP is defined as the greater of:

(a)  $H_g = H + 1.5L$  where:  $H_g$  = Good engineering practice stack height measured from the ground-level elevation at the base of the stack,  $H$  = Height of nearby structure(s) measured from the ground-level elevation at the base of the stack,  $L$  = Lesser dimension, height or projected width, of nearby structure(s), provided that the Department may require the use of a field study or fluid model to verify GEP stack height for the source; or

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

(2) For purposes of this Part, the definitions in 40 CFR Sections 51.100(Z), (ff), and (hh)-(kk) (1987) are hereby incorporated as state regulations.

### C. Operating Requirements:

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

(2) Each combustion unit shall operate so that during shutdown the combustion unit continues to meet applicable emission limitations and the secondary combustion chamber temperature is maintained at 1800 degrees Fahrenheit or above until the waste is completely combusted.

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

[11/30/95; 20.2.63.203 NMAC - Rn 20 NMAC 2.63.500 - 502 10/31/02]

### 20.2.63.204 MONITORING:

#### A. Emission Monitoring:

(1) Continuous emission monitors shall be installed, calibrated, maintained, and operated, and shall continuously record data for the following:

(a) For biomedical waste combustion units located at a facility with a total charging rate of 1000 pounds per hour or greater;

(i) carbon monoxide (CO);

- (ii) oxygen (O<sub>2</sub>); and
- (iii) opacity.

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

**(c)** For biomedical waste combustion units located at a facility with a total charging capacity of less than one thousand (1000) pounds per hour;

- (i) oxygen (O<sub>2</sub>); and
- (ii) carbon monoxide (CO).

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

**(3)** At least ninety (90) days prior to initial startup, the owner or operator shall submit a report to the Department which describes, for each monitor, the location, specifications, procedures for calibration, operation, maintenance, data evaluation, and reporting. Monitoring equipment shall not be installed prior to Department approval of the report.

**(4)** The continuous emission monitors which measure oxygen (O<sub>2</sub>) and carbon monoxide (CO) shall complete a minimum of one cycle of operation for each successive fifteen-minute period. One-hour averages shall be calculated from four (4) or more data points equally spaced over each one-hour period.

**(5)** The continuous emission monitor which measures opacity shall complete a minimum of one cycle of operation for each successive ten-second period. Six-minute averages shall be calculated from thirty-six (36) or more data points equally spaced over each six-minute period.

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

**(7)** Emission data shall be obtained from each continuous emission monitor which represents a minimum of seventy-five (75) percent of all operational hours for each twenty-four (24) hour period beginning at twelve (12) midnight. Failure to meet the

seventy-five (75) percent data capture requirement of this section shall cause the combustion unit to be shutdown as required by subsection B of 20.2.63.204 NMAC.

**(8)** The owner or operator shall ensure each continuous emission monitor meets the requirements of 40 CFR Part 60, Appendix F -- Quality Assurance Procedures and shall submit to the Department all reports specified by subject requirements. The required reports shall be submitted quarterly.

**B. Continuous Emission Monitor Malfunction:** Whenever any required continuous emission monitor cannot meet the data capture requirement of paragraph (7) of subsection A of 20.2.63.204 NMAC and the owner or operator does not obtain the required data from an alternate monitor or test method, the combustion unit shall cease operation for the time necessary to comply with paragraph (7) of subsection A of 20.2.63.204 NMAC.

**C. Performance Evaluation:**

**(1)** During or within thirty (30) days of the emission tests required by 20.2.63.205 NMAC, the owner or operator shall conduct a performance evaluation of each continuous emissions monitor in accordance with the procedures of 40 CFR Part 60, Appendix B -- Performance Specifications.

**(2)** The performance evaluation required by paragraph (1) of subsection C of 20.2.63.204 NMAC shall be repeated on an annual basis or after any major equipment malfunction which requires component replacement, or at additional times when the Department has reason to believe the monitor performance is inadequate.

**(3)** The owner or operator shall provide at least thirty (30) days prior notice to the Department before conducting any performance evaluation.

**(4)** A written report of each performance evaluation shall be furnished to the Department within thirty (30) days from the end of the test period.

[11/30/95; 20.2.63.204 NMAC - Rn, 20 NMAC 2.63.600 - 602 10/31/02]

**20.2.63.205 EMISSION TESTING:**

**A. Emission Testing:**

**(1)** Within sixty (60) days of first achieving the maximum charging rate, but not more than one hundred eighty (180) days from the date of initial startup, the first annual performance test shall be conducted.

**(2)** Units with charging capacity less than two hundred (200) pounds per hour:

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

**(b)** The initial performance test for combustion units subject to this paragraph shall include PCDD/PCDF and the following metals:

- (i)** arsenic and compounds (expressed as arsenic)
- (ii)** beryllium and compounds (expressed as beryllium)
- (iii)** cadmium and compounds (expressed as cadmium)
- (iv)** chromium and compounds (expressed as chromium)
- (v)** lead and compounds (expressed as lead)
- (vi)** mercury and compounds (expressed as mercury).

**(c)** The required performance test for PCDD/PCDF and metals shall be conducted once, provided that PCDD/PCDF emission test results indicate compliance with the standard set forth in subsection A of 20.2.63.202 NMAC (i.e. the table in subsection A of 20.2.63.210 NMAC).

**(3)** Units with charging capacity of two hundred (200) pounds per hour or greater:

**(a)** The owner or operator of any biomedical waste combustion unit located at a facility with a total charging capacity of two hundred (200) pounds per hour or greater shall conduct a performance test to demonstrate compliance with the standards for particulate matter (PM), carbon monoxide (CO), hydrogen chloride (HCl), sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), total tetra-through octa-chlorinated dibenzo-para-dioxins and dibenzofurans (PCDD/PCDF), and the following metals:

- (i)** arsenic and compounds (expressed as arsenic)
- (ii)** beryllium and compounds (expressed as beryllium)
- (iii)** cadmium and compounds (expressed as cadmium)
- (iv)** chromium and compounds (expressed as chromium)
- (v)** lead and compounds (expressed as lead)
- (vi)** mercury and compounds (expressed as mercury).

**(b)** The required test for metals may be met by surrogate testing for cadmium as stated in paragraph (3) of subsection B of 20.2.63.202 NMAC.

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

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

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

**(5)** The Department may require additional testing if there is a reasonable basis to believe the facility is not in compliance with provision of this Part or any applicable permit condition.

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

**B. Emission Testing Procedures:**

**(1)** Notice of the test date and a copy of the test protocol shall be submitted to the Department at least thirty (30) days prior to the actual test date.

**(2)** A representative of the Department shall be given the opportunity to be present during all emission tests required by this Part.

**(3)** A written copy of all test results shall be furnished to the Department within sixty (60) days from the test date.

**(4)** Emission tests shall be conducted utilizing the following methods:

**(a)** For total particulate matter -- 40 CFR Part 60, Appendix A, Methods 1-5;

**(b)** For PCDD/PCDF 40 CFR Part 60, Appendix A, Method 23;

**(c)** For cadmium, chromium, and lead 40 CFR Part 60, Appendix A, Methods 1-4 and 12;

**(d)** For arsenic 40 CFR Part 61, Appendix B, Method 108;

**(e)** For beryllium 40 CFR Part 61, Appendix B, Method 104;

- (f) For mercury 40 CFR Part 61, Appendix B, Method 101A;
- (g) For opacity 40 CFR Part 60, Appendix A, Method 9;
- (h) For hydrogen chloride 40 CFR Part 60, Appendix A, Method 26;
- (i) For cadmium (as surrogate), California Air Resources Board (CARB) ARB Method 424;
- (j) For carbon monoxide 40 CFR Part 60, Appendix A, Method 10;
- (k) For sulfur dioxide 40 CFR Part 60, Appendix A, Method 6; and
- (l) For nitrogen oxide 40 CFR Part 60, Appendix A, Method 7.

(5) The owner or operator may use test methods other than those in paragraph (4) of subsection B of 20.2.63.205 NMAC if the Department has approved the alternate test method prior to the test date. The Department shall rule on proposed alternate test method acceptability within thirty (30) days of receipt of proposal.

[11/30/95; 20.2.63.205 NMAC - Rn, 20 NMAC 2.63.700 - 701 10/31/02]

#### **20.2.63.206 RECORDKEEPING AND REPORTING:**

**A. Quarterly Report:** The owner or operator shall submit a report containing the following information to the Department within thirty (30) days from the end of each calendar quarter:

- (1) The hourly average charging rate to each combustion unit;
- (2) The thirty (30) minute average temperature of the primary chamber, the secondary chamber, and the outlet from the final air pollution control device;
- (3) The hourly and four-hour average concentration in mg/dscm corrected to seven percent O<sub>2</sub> of carbon monoxide (CO) as measured by continuous emission monitors;
- (4) The hourly average percent oxygen (O<sub>2</sub>) and six-minute average opacity as measured by continuous emission monitors;
- (5) The percent data capture for each twenty-four hour period for each continuous emission monitor;
- (6) The identification of all periods of startup, shutdown, and excess emissions; and

(7) The reason for any excess emissions and the corrective action taken.

**B. Records:**

(1) Records shall be maintained for a period of three years from the date created by the owner or operator for all parameters in subsection A of 20.2.63.206 NMAC and made available upon request for inspection and copying by the Department during operating hours.

(2) All information submitted to the Department in quarterly reports or emission test reports, or any other information created or obtained by the Department regarding the biomedical waste combustion unit shall be available at the Department's central offices for public inspection and copying during business hours. Section B of 20.2.63.210 NMAC summarizes reporting requirements and their respective due dates.

**C. Upset Condition:**

(1) The provisions of 20.2.7 NMAC (Excess Emissions During Malfunction, Startup, Shutdown, or Scheduled Maintenance) shall not apply to any biomedical waste combustion unit.

(2) Whenever the temperature requirements of 20.2.63.203 NMAC or any emission limit in subsection A of 20.2.63.202 NMAC for which compliance is based on continuous emissions monitoring is exceeded, the operator shall take the following actions:

(a) Cut off waste charging to the combustion unit;

(b) Notify the Department verbally of the exceedance within four hours of its occurrence or prior to twelve noon of the next business day should the exceedance occur during non-business hours;

(c) Note in the operating record the time and date of the exceedance, when shutdown began, and when shutdown was complete;

(d) Identify and correct the cause of the upset condition before resuming operation of the unit; and

(e) Note in the operating record the corrective action taken and the time and date of startup.

[11/30/95; 20.2.63.206 NMAC - Rn, 20 NMAC 2.63.800 - 802 10/31/02]

**20.2.63.207 MANAGEMENT OF ASH:**

**A. Handling, Storage, and Transportation:**

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

(2) Transporters of Biomedical Waste Combustion Ash (BWC ash):

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

(b) Shall cover vehicles to prevent fugitive dust loss during transport; and

(c) Shall line or seal vehicles in such a manner to prevent any leakage of liquids or fugitive dust during transport.

**B. Opacity:** Handling, storage, and transportation of fly ash and bottom ash shall not result in a release to the atmosphere exceeding zero percent opacity. Compliance with this requirement shall be determined by visual observation as specified in 40 CFR Part 60, Appendix A, Method 9.

**C. Disposal:** Disposal of fly ash and bottom ash shall be in compliance with the applicable requirements of 20.9.1 NMAC (New Mexico Solid Waste Management Regulation).

[11/30/95; 20.2.63.207 NMAC - Rn, 20 NMAC 2.63.900 - 902 10/31/02]

#### **20.2.63.208 OPERATOR TRAINING:**

**A.** A trained combustion unit operator shall be present at the facility in which a combustion unit is located whenever waste is being combusted. The facility employed operator will control the operation of the combustion unit during performance testing.

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

(1) Proper waste handling;

(2) Identification of waste types acceptable for combustion;

(3) Combustion unit design and waste combustion theory;

(4) Proper combustion unit startup, operation, shutdown, and maintenance procedures;

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

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

(7) Air pollution control equipment operation and maintenance; and

(8) A minimum of two (2) burn cycles of hands-on combustion unit operation under the supervision of another trained operator or the combustion unit manufacturer's representative.

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

**D.** Every operator shall have visible proof of completion of the required initial training and annual review posted or filed in the work area at the facility.

**E.** Upon completion of the development of a training course by the American Society of Mechanical Engineers (ASME) which is specific to biomedical waste combustion units, subsection B of 20.2.63.208 NMAC shall be superseded and the ASME training course shall be required.

[11/30/95; 20.2.63.208 NMAC - Rn, 20 NMAC 2.63.1000 10/31/02]

#### **20.2.63.209 COMPLIANCE SCHEDULE FOR EXISTING BIOMEDICAL WASTE COMBUSTION UNITS:**

**A.** Biomedical waste combustion units in existence before April 8, 1991 shall achieve compliance with the standards and requirements of this Part by April 8, 1992. Each owner or operator of an existing biomedical waste combustion unit who intends to permanently cease operating the unit shall remove the unit from the facility by October 5, 1991. The Department shall be notified of the intent to cease operating by July 7, 1991. Each owner or operator of an existing biomedical waste combustion unit shall either demonstrate compliance with the requirements of this Part or submit a schedule of compliance to the Department by July 7, 1991.

**B.** Proposed schedules of compliance shall contain the following:

(1) Owner or operator's name and address;

(2) Date of submittal;

(3) Description of facility;

(4) Description of the property upon which the facility is located;

(5) The following increments of progress;

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

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

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

(d) Date or dates by which final compliance is to be achieved.

(6) A detailed description of the methods or devices to be used to achieve compliance.

[11/30/95; 20.2.63.209 NMAC - Rn, 20 NMAC 2.63.1100 10/31/02]

**20.2.63.210 BIOMEDICAL WASTE COMBUSTION TABLES:**

**A. Emission Limits:**

Total Charging Capacity(1)	Pollutants						
	PM(2)	HCl	CO	NOx	SO2	PCDF	Metals(3)
<200 lb/hr	0.08 gr/dscf	<4 lb/hr or 99%	60 mg/dscm			500 ng/dscm	
200 lb/hr to 999 lb/hr	0.03 gr/dscf	40 mg/dscm	60 mg/dscm	235 mg/dscm	80 mg/dscm	5 ng/dscm	99% removal or Cd surrogate at 50 ug/kg of waste burned
>1000 lb/hr	0.015 gr/dscf	40 mg/dscm	60 mg/dscm	235 mg/dscm	80 mg/dscm	5 ng/dscm	99% removal or Cd surrogate at 50 ug/kg of waste burned

(1) The emission limit for opacity is ten percent (10%) for all charging capacities.

(2) The particulate matter emission limit is set at twelve percent (12%) CO<sub>2</sub>. All other emission limits are set at seven percent (7%) O<sub>2</sub>.

(3) The ninety-nine percent (99%) removal efficiency requirement applies to the following metals except for mercury which requires a ninety percent (90%) removal efficiency: arsenic, beryllium, cadmium, chromium, and lead.

**B. Summary Table of Reporting Requirements:**

REPORT DESCRIPTION	REFERENCE	DATE DUE TO DEPARTMENT
Notice of CEM performance evaluation	paragraph (3) of subsection C of 20.2.63.204 NMAC	At least 30 days prior to performance evaluation
CEM Performance	paragraph (4) of subsection C of 20.2.63.204 NMAC	Within 30 days from the end of the test period
Notice of emission testing and test protocols	paragraph (1) of subsection B of 20.2.63.205 NMAC	At least 30 days prior to the actual test date
Copy of emission test results	paragraph (3) of subsection B of 20.2.63.205 NMAC	Within 60 days from test date
Quarterly report of CEM and temperature monitoring results	subsection A of 20.2.63.206 NMAC	Within 30 days of the end of each calendar quarter
Intent to cease unit operations	subsection A of 20.2.63.209 NMAC	Within 90 days of July 7, 1991 (1)
Schedule of compliance	subsection A of 20.2.63.209 NMAC	Within 90 days of July 7, 1991 (1)
(1) Date applies to units in existence before April 8, 1991.		

[11/30/95; 20.2.63.210 NMAC - Rn, 20 NMAC 2.63.1200 10/31/02]

**PART 64: MUNICIPAL SOLID WASTE LANDFILLS**

**20.2.64.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.64.1 NMAC - Rp, 20.2.64.1 NMAC, 05/31/17]

**20.2.64.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[20.2.64.2 NMAC - Rp, 20.2.64.2 NMAC, 05/31/17]

### **20.2.64.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, Paragraphs (4) and (7) of Subsection (A) of Section 74-1-8 NMSA 1978 and Air Quality Control Act, Section 74-2-1 et seq. NMSA 1978, including specifically, Subsections (A), (B) and (C) of Section 74-2-5 NMSA 1978.

[20.2.64.3 NMAC - Rp, 20.2.64.3 NMAC, 05/31/17]

### **20.2.64.4 DURATION:**

Permanent.

[20.2.64.4 NMAC - Rp, 20.2.64.4 NMAC, 05/31/17]

### **20.2.64.5 EFFECTIVE DATE:**

May 31, 2017, unless a later date is cited at the end of a section.

[20.2.64.5 NMAC - Rp, 20.2.64.5 NMAC, 05/31/17]

[The latest effective date of any section in this part is 05/31/17.]

### **20.2.64.6 OBJECTIVE:**

The objective of this part is to establish requirements for municipal solid waste landfills in order to control emissions of nonmethane organic compounds (NMOC).

[20.2.64.6 NMAC - Rp, 20.2.64.6 NMAC, 05/31/17]

### **20.2.64.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), and those defined in 40 CFR 60 Subpart A, all definitions found in 40 CFR Part 60 Subpart XXX apply to new municipal solid waste landfills (MSWLs) and all definitions found in 40 CFR Part 60 Subpart Cf apply to existing MSWLs. As used in this part:

**A. "Active municipal solid waste landfill" or "active MSWL"** means an MSWL in which solid waste is being placed or an MSWL that is planned to accept waste in the future.

**B. "Closed municipal solid waste landfill" or "closed MSWL"** means an MSWL in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed in 40 CFR 60.7(a)(4). Once a notification of modification has been filed and additional solid waste is placed in the MSWL, the MSWL is no longer closed.

**C. "Existing municipal solid waste landfill" or "existing MSWL"** means an active or closed MSWL meeting the following conditions:

(1) Construction, reconstruction, or modification was commenced on or before July 17, 2014; and

(2) The MSWL has accepted waste at any time since November 8, 1987, or has additional design capacity available for future waste deposition.

**D. "Modification"** means an increase in the permitted volume design capacity of an MSWL by either lateral or vertical expansion based on its permitted design capacity as of July 17, 2014. Modification does not occur until the owner or operator commences construction on the lateral or vertical expansion.

**E. "Municipal solid waste landfill" or "MSWL"** means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSWL may also receive other types of Resource Conservation and Recovery Act (RCRA) Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSWL may be separated by access roads. An MSWL may be publicly or privately owned. An MSWL may be new, existing, or a lateral expansion.

**F. "New municipal solid waste landfill" or "new MSWL"** means an MSWL that commenced construction, reconstruction, or modification after July 17, 2014.

**G. "NMOC"** means nonmethane organic compounds as measured according to the provisions of either 40 CFR 60 Subpart Cf or 40 CFR 60 Subpart XXX. NMOC may include many compounds commonly referred to as VOC (volatile organic compounds) and HAP (hazardous air pollutants).

[20.2.64.7 NMAC - Rp, 20.2.64.7 NMAC, 05/31/17]

**20.2.64.8 [RESERVED]**

**20.2.64.9 DOCUMENTS:**

Documents cited in this part may be viewed at the New Mexico environment department, air quality bureau.

[20.2.64.9 NMAC - Rp, 20.2.64.9 NMAC, 05/31/17]

[As of April 2013, the air quality bureau is located at 525 Camino de los Marquez, Suite 1, Santa Fe, NM 87505.]

**20.2.64.10-20.2.64.108 [RESERVED]**

#### **20.2.64.109 APPLICABILITY:**

**A. Existing municipal solid waste landfills:** An owner or operator of an existing (active or closed) MSWL is subject to all provisions specified in 40 CFR 60 Subpart Cf as promulgated by the United States environmental protection agency on August 29, 2016, except as provided for in Section 111 of this part. Physical or operational changes made to an existing MSWL solely to comply with an emission guideline are not considered a modification or a reconstruction and would not subject an existing MSWL to the requirements of a standard of performance for new MSWLs.

**B. New municipal solid waste landfills:** In addition to being subject to 20.2.64.110 NMAC new MSWLs are subject to 40 CFR Part 60, Subpart XXX as incorporated by reference in 20.2.77 NMAC (New Source Performance Standards).

[20.2.64.109 NMAC - Rp, 20.2.64.109 NMAC, 05/31/17]

#### **20.2.64.110 PERMITTING REQUIREMENTS:**

**A. Operating permits:** New and existing active MSWLs with design capacities greater than or equal to 2.5 million megagrams and 2.5 million cubic meters are subject to permitting requirements under 20.2.70 NMAC (Operating Permits). Closed MSWLs and new and existing MSWLs with design capacities less than 2.5 million megagrams or 2.5 million cubic meters are not subject to permitting requirements under 20.2.70 NMAC unless they are major sources as defined in 20.2.70 NMAC.

**B. Construction permits:** Emissions of NMOC from MSWLs subject to 20.2.64 NMAC shall not be included in applicability determinations under 20.2.72 NMAC or be subject to permit requirements under that part solely on the basis of NMOC emissions.

[20.2.64.110 NMAC - Rp, 20.2.64.110 NMAC, 05/31/17]

#### **20.2.64.111 REQUIREMENTS FOR EXISTING MUNICIPAL SOLID WASTE LANDFILLS:**

**A.** Requirements for existing (active and closed) MSWLs shall be in accordance with 40 CFR 60 Subpart Cf, except as provided in Subsections B and C below.

**B.** All reports required in 40 CFR 60 Subpart Cf shall be submitted to the department according to the schedules outlined in that subpart. Additional notifications regarding progress toward meeting the final compliance schedule for control system installation and startup shall be submitted to the department as follows:

**(1)** Contracts for construction of collection and control systems shall be awarded or orders for purchase of components shall be completed no later than six months following submission of the final control plan;

(2) On-site construction or installation of the collection and control system shall be initiated no later than nine months following submission of the final control plan;

(3) On-site construction or installation of the collection and control system shall be completed no later than 29 months following the submission of an annual NMOC emission rate report showing NMOC emissions equal to or exceeding the emissions threshold in Subpart Cf; and

(4) Initial performance testing shall be scheduled for no later than 150 days following the final compliance date in Subpart Cf.

**C. Exceptions:** On a case by case basis, an existing active or closed MSWL may apply for a less stringent emission standard or longer compliance schedule than those otherwise required by this part, provided that the owner or operator demonstrates to the department:

(1) unreasonable cost of control including, but not limited to MSWL age, location, or basic design;

(2) physical impossibility or impracticability of installing necessary control equipment; or

(3) other environmental factors specific to the MSWL that make application of a less stringent standard or final compliance time significantly more reasonable.

[20.2.64.111 NMAC - Rp, 20.2.64.111 NMAC, 05/31/17]

## **PART 65: SMOKE MANAGEMENT**

### **20.2.65.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.65.1 NMAC - N, 12/31/03]

### **20.2.65.2 SCOPE:**

All geographic areas within the jurisdiction of the environmental improvement board.

[20.2.65.2 NMAC - N, 12/31/03]

### **20.2.65.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, Subsection 74-1-8(A) (4) and Air Quality Control Act, NMSA 1978, Sections 74-2-1 to -22, including specifically, Subsections 74-2-5(A), (B) and (C).

[20.2.65.3 NMAC - N, 12/31/03]

**20.2.65.4 DURATION:**

Permanent.

[20.2.65.4 NMAC - N, 12/31/03]

**20.2.65.5 EFFECTIVE DATE:**

December 31, 2003, except where a later date is cited at the end of a section.

[20.2.65.5 NMAC - N, 12/31/03]

[The latest effective date of any section in this part is December 31, 2003.]

**20.2.65.6 OBJECTIVE:**

The objective of this part is to manage the air quality impacts of smoke from all sources of fire. This part does not preempt any more stringent controls on burning provided in:

**A.** any other New Mexico statute or regulation or any local law, ordinance or regulation; or

**B.** any lawfully issued restriction on burning such as may be issued for wildfire prevention.

[20.2.65.6 NMAC - N, 12/31/03]

**20.2.65.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part:

**A. "alternatives to burning"** means treatments employing manual, mechanical, chemical, or biological methods to manage vegetation or fuel loads or land management practices that treat vegetation (fuel) without using fire; a treatment or practice may only be considered an alternative if it has successfully been used to take the place of fire for at least three years;

**B. "burn project"** means, in prescribed burning or in wildland fire use, a burn on an area that is contiguous and is being treated or managed for the same land management objectives;

**C. "burner"** means that person who is responsible for a prescribed fire project that is regulated under this part;

**D. "class I area"** means all international parks, national wilderness areas that exceed 5,000 acres in area, national memorial parks that exceed 5,000 acres in area, and national park areas that exceed 6,000 acres in area and that existed on the date of enactment of the Clean Air Act amendments of 1977; the extent of the areas designated as class I shall conform to any changes in the boundaries of such areas that occurred subsequent to the date of the enactment of the Clean Air Act amendments of 1977 or 1990;

**E. "emission reduction technique"** means a strategy for controlling smoke from prescribed fires that minimizes the amount of smoke output per unit of area treated or other objective unit of accomplishment; such strategy shall be used in conjunction with fire and shall not be a replacement for fire; for the purposes of this regulation, a technique used within three years of a burning operation is an emission reduction technique; if that same technique replaces fire for three years or more, the technique is considered an alternative to burning;

**F. "non-attainment area"** means an area which has been designated under section 107 of the federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by the federal environmental protection agency;

**G. "part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico administrative code, unless otherwise noted, as adopted or amended by the board;

**H. "pile"** means vegetative materials that have been relocated either by hand or machinery and heaped together;

**I. "pile volume"** means a pile's gross volume, including the air space between solid constituents, as calculated from the pile's overall dimensions and shape;

**J. "population"** means the total of individuals occupying an area; locations for individuals within an area include, but are not limited to, open campgrounds, single family dwellings, hospitals, schools in use, villages, and open places of employment;

**K. "prescribed fire"** means any fire ignited by any person to meet specific land management objectives; for the purposes of this part, wildland fire use is considered prescribed fire; any fire ignited in an air curtain incinerator is not "prescribed fire" for purposes of this part;

**L. "public notification"** means any method that communicates burn information to the burners, air regulators, the local fire authority, and to the general public;

**M. "SMP I"** means burn projects that emit less than one ton per day of PM-10 emissions or burn less than 5,000 cubic feet pile volume of vegetative material per day;

**N. "SMP II"** means burn projects that emit greater than or equal to one ton of PM-10 emissions per day or greater than or equal to 5,000 cubic feet pile volume of vegetative material per day;

**O. "vegetative material"** means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, shavings, grass, grass clippings, leaves, conifer needles, bushes, shrubs, clippings from bushes and shrubs, and agricultural plant residue;

**P. "ventilation category"** means that adjective describing the ventilation index conditions in terms of excellent, very good, good, fair, and poor;

**Q. "ventilation index"** means an index that describes the potential for smoke or other pollutants to ventilate away from their source;

**R. "wildfire"** means any unplanned, non-structural fire that occurs on wildland;

**S. "wildland"** means an area in which development is essentially non-existent, except for roads, railroads, power lines, and similar transportation facilities; structures if any are widely scattered;

**T. "wildland fire use"** means the management of wildfire, which is naturally ignited (such as by lightning or volcanic eruption) fire, to accomplish specific pre-stated resource objectives in predefined geographic areas, also known as fire use, wildfire use, prescribed natural fire, and fire for resource benefit.

[20.2.65.7 NMAC - N, 12/31/03]

**20.2.65.8-20.2.65.99 [RESERVED]**

**20.2.65.100 APPLICABILITY:**

**A.** This part applies to all users of prescribed fire that:

**(1)** exceeds ten acres in area or 1,000 cubic feet of pile volume per day of vegetative material; or

**(2)** exceeds the daily burn area or pile volume thresholds specified in Subsection A of 20.2.60.111 NMAC (open burning).

**B.** This part also applies to burn projects otherwise subject to 20.2.60 NMAC (open burning) that users of prescribed fire voluntarily choose to register with the department under Subsection C of 20.2.65.102 NMAC or Subsection G of 20.2.65.103 NMAC.

C. In addition, portions of this part also apply to the land manager or owner of property on which a wildfire occurs.

[20.2.65.100 NMAC - N, 12/31/03]

#### **20.2.65.101 MATERIALS ALLOWED TO BE BURNED:**

Only vegetative material shall be burned, with the following exceptions.

A. Auxiliary fuel or incendiary devices may be used to ignite the burning authorized by this section, provided that:

(1) no oil heavier than no. 2 diesel shall be used; and

(2) no more than the minimum amount of auxiliary fuel necessary to complete the burn shall be used.

B. Polyethylene sheeting may be burned with the vegetative materials, provided that:

(1) the sheeting has been covering piled vegetative material for at least one month prior to burning;

(2) the amount of sheeting burned is no more than the minimum necessary to cover the pile;

(3) removal of the sheeting before burning is impractical; and

(4) the burner is able to provide evidence, such as purchase records or package labeling, that the sheeting is polyethylene and not some other form of plastic.

[20.2.65.101 NMAC - N, 12/31/03]

#### **20.2.65.102 REQUIREMENTS FOR SMP I:**

For any burn project of less than one ton of PM-10 emissions per day or less than 5,000 cubic feet pile volume per day, all of the following requirements shall apply.

A. The burner shall burn only under appropriate dispersion conditions. In order to accomplish this objective, the burner shall follow one of the two options below.

(1) The burner shall:

(a) ignite burns only during the hours from one hour after sunrise until one hour before sunset; the burner may apply for a waiver of this requirement in writing from the department no later than two weeks prior to the planned burn project; the burner

shall document the reasons for waiver application on the appropriate form provided by the department; the department shall notify the burner no later than one week prior to the planned burn project of whether the waiver is granted or denied; the department shall consider such waiver requests on a case-by-case basis; and

**(b)** conduct burn projects at least 300 feet from any occupied dwelling, workplace, or place where people congregate, which is on property owned by, or under possessory control of, another person; the burner may apply for a waiver of this requirement in writing from the department no later than two weeks prior to the planned burn project; the burner shall document the reasons for waiver application on the appropriate form provided by the department; the department shall notify the burner no later than one week prior to the planned burn project of whether the waiver is granted or denied; the department shall consider such waiver requests on a case-by-case basis; or

**(2)** the burner shall:

**(a)** only burn during times when the ventilation category is good or better; the burner may apply for a waiver of this requirement in writing from the department no later than 10:00 a.m. one business day prior to the planned burn project; the burner shall document the reasons for waiver application on the appropriate form provided by the department; the department shall notify the burner no later than 3:00 p.m. one business day prior to the planned burn project of whether the waiver is granted or denied; the department shall consider such waiver requests on a case-by-case basis; and

**(b)** conduct visual monitoring and shall document the results; the burner shall maintain records of those results for a period of one year; for any burn project planned to be conducted within a one mile radius of a population, the department may require that the burner notify the department no later than two business days prior to the planned burn project so that the department may determine whether to conduct instrument monitoring in addition to visual monitoring conducted by the burner; the need for instrument monitoring shall be determined by the department on a case-by-case basis.

**B.** The burner shall notify the local fire authority prior to igniting a burn.

**C.** The burner shall register the burn project with the department on a registration form provided by the department no later than 10:00 a.m. one business day prior to the planned ignition of the burn project. The department shall provide the burner with a registration number for the burn project. Prior to igniting the burn project, if the burner has not received the registration number, the burner shall make a good faith effort to contact the department to obtain the registration number. For burn projects longer than seven days, the burner shall notify the department separately for each seven days of burning to be conducted under that burn project registration. The burner shall not burn more area or volume than the burner has included in the notification or registration.

**D.** The burner shall submit a completed burn project tracking form to the department on a tracking form provided by the department no later than two weeks following completion of the burn project.

**E.** For burn projects conducted within a one-mile radius of a population, the following requirements shall apply in addition to all other requirements in this section (20.2.65.102 NMAC):

(1) the burner shall conduct visual monitoring and document the results; and

(2) the burner shall conduct public notification of populations within a one-mile radius of the burn project no later than two days prior to, and no earlier than thirty days in advance of, igniting a burn project.

**F.** The burner shall maintain all records of actions performed pursuant to the requirements of this section for a period of at least one year.

[20.2.65.102 NMAC - N, 12/31/03]

### **20.2.65.103 REQUIREMENTS FOR SMP II:**

For any burn project with emissions greater than or equal to one ton of PM-10 emissions per day or greater than or equal to 5,000 cubic feet pile volume per day, all of the following requirements shall apply.

**A.** The burner shall review smoke management educational material supplied by the department or complete an approved smoke management training program prior to initiating burning.

**B.** The burner shall consider alternatives to burning and shall document this consideration and rationale for not using alternatives on the form provided by the department.

**C.** The burner shall implement at least one emission reduction technique and shall document this implementation on the forms provided by the department. The burner may apply for a waiver of this requirement in writing from the department no later than two weeks prior to the planned burn project. The burner shall document the reasons for waiver application on the appropriate form provided by the department. The department shall notify the burner no later than 10:00 a.m. one week prior to the planned burn project of whether the waiver is granted or denied. The department shall consider such waiver requests on a case-by-case basis, taking into consideration the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impact.

**D.** The burner shall only burn during times when the ventilation category is "good" or better. The burner may apply for a waiver of this requirement in writing from the

department no later than 10:00 a.m. one business day prior to the planned burn. The burner shall document the reasons for waiver application on the appropriate form provided by the department. The department shall notify the burner no later than 3:00 p.m. one business day prior to the planned burn of whether the waiver is granted or denied. The department shall consider such waiver requests on a case-by-case basis.

**E.** The burner shall conduct visual monitoring and shall document the results.

**F.** The burner shall notify the local fire authority prior to igniting a burn.

**G.** The burner shall register a burn project with the department on forms provided by the department no later than two weeks prior to planned ignition of the burn.

**H.** The burner shall notify the department of the intent to burn on a specific date no later than 10:00 a.m. one business day prior to the planned burn project. The notification may be made for up to a seven-day advance period. The department shall notify the burner of the receipt of the notification by 11:00 a.m. If the department has not notified the burner by 11:00 a.m., the burner shall make a good faith effort to contact the department to verify that the department received the notification prior to igniting the burn. The burner shall not burn more area or volume than the burner has included in the notification. The department shall notify the burner no later than 3:00 p.m. one business day prior to the burn project if a modification of the burn is required.

**I.** The burner shall complete and submit to the department on a form provided by the department a fire activity tracking form no later than two weeks following the end of the burn project.

**J.** For burns planned to be conducted with the wind blowing toward a population, or within a fifteen mile radius of a population if wind direction is not considered, the following requirements shall apply in addition to all other requirements in this section (20.2.65.103 NMAC).

**(1)** The department may require that the burner notify the department no later than two business days prior to the planned burn so that the department may determine whether to conduct instrument monitoring in addition to visual monitoring conducted by the burner. The need for instrument monitoring shall be determined by the department on a case-by-case basis; and

**(2)** The burner shall conduct public notification no later than two days prior to, and no sooner than thirty days in advance of, igniting a burn.

**K.** The burner shall maintain all records of actions performed pursuant to the requirements of this section for a period of at least one year.

[20.2.65.103 NMAC - N, 12/31/03]

#### **20.2.65.104 WILDLAND FIRE USE:**

For wildland fire use exceeding ten acres in area, the following requirements shall apply.

**A.** The burner shall register a burn project with the department on forms provided by the department no later than one business day following the decision to manage a wildland fire use burn. The burner shall notify the department daily by 10:00 a.m. of the status of the burn.

**B.** The burner shall notify the appropriate authorities of the decision to manage a wildland fire use burn. For burns within a fifteen mile radius of a population, the burner shall conduct public notification no later than one calendar day of the decision to manage the burn as a wildland fire use.

**C.** The burner shall conduct visual monitoring and shall document the results.

**D.** The burner shall complete and submit to the department a fire activity tracking form no later than two weeks following the end of the burn project.

**E.** The burner shall maintain all records of actions performed pursuant to the requirements of this section for a period of at least one year.

[20.2.65.104 NMAC - N, 12/31/03]

#### **20.2.65.105 WILDFIRE UNDER SUPPRESSION:**

The land manager or owner of property on which a wildfire exceeding 100 acres in area occurs shall complete and submit to the department a fire activity tracking form no later than six weeks or by November 1 of that year, whichever is earlier, following the cessation of fire fighting activities on the wildfire.

[20.2.65.105 NMAC - N, 12/31/03]

### **PART 66: COTTON GINS**

#### **20.2.66.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.66.1 NMAC - N, 04/07/05]

#### **20.2.66.2 SCOPE:**

All persons who intend to construct or modify a cotton ginning facility as defined in this part, except as otherwise provided by this part.

[20.2.66.2 NMAC - N, 04/07/05]

**20.2.66.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4) and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section 74-2-5(A) and (B), and Section 74-2-7(A)(1), (B), (C), (D) and (O).

[20.2.66.3 NMAC - N, 04/07/05]

**20.2.66.4 DURATION:**

Permanent.

[20.2.66.4 NMAC - N, 04/07/05]

**20.2.66.5 EFFECTIVE DATE:**

April 7, 2005 except where a later date is cited at the end of a section.

[20.2.66.5 NMAC - N, 04/07/05]

**20.2.66.6 OBJECTIVE:**

The objective of this part is to specify the best system of emissions reduction for cotton ginning facilities under the provisions of Air Quality Control Act, NMSA 1978 ("the act"), Section 74-2-7(O), and to assure that permits issued under this part assure the maintenance of national ambient air quality standards, in accordance with Section 74-2-5 (A) and (B)(1) of the act and the federal Clean Air Act, Section 110(a).

[20.2.66.6 NMAC - N, 04/07/05]

**20.2.66.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part.

**A. "Bale"** means a unit of measurement to denote an amount of lint cotton with a nominal weight of 500 pounds.

**B. "Class I area"** means any federal land area that is classified or reclassified as class I as described in 20.2.74.108 NMAC.

**C. "Cotton ginning facility" or "facility"** means any facility that separates seed, lint, and trash from raw cotton, and bales lint cotton for further processing, that will emit no more than fifty (50) tons per year of any regulated air contaminant for which there is a national ambient air quality standard, and that has the standard industrial

classification code 0724 (cotton ginning) and the North American industrial standard classification code 115111 (cotton ginning).

**D. "Department"** is the state of New Mexico environment department.

**E. "Fugitive emissions"** means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**F. "High efficiency cyclone dust collector"** means any cyclone type collector of the 2D-2D or 1D-3D configuration. These designations refer to the ratio of cylinder to cone length, where D is the diameter of the cylinder portion. A 2D-2D cyclone would exhibit a cylinder length of 2 x D and a cone length of 2 x D, with a ninety percent (90%) efficiency for total suspended particulates. A 1D-3D cyclone would exhibit a cylinder length of 1 x D and a cone length of 3 x D, with a ninety-five percent (95%) efficiency for total suspended particulates.

**G. "High pressure exhausts"** means the exhaust from all air handling systems located at a cotton gin that are not defined as 'low pressure exhausts'.

**H. "Low pressure exhausts"** means the exhaust from systems at a cotton gin that handle air from the cotton lint handling system and battery condenser.

**I. "Non-attainment"** means designated by the United States environmental protection agency as not meeting one or more of the national ambient air quality standards.

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

**K. "Owner or operator"** is any person who owns or operates a process or process equipment at the source for which coverage under the permit has been granted.

**L. "20.2.72 NMAC"** means the air quality control regulation 20.2.72 NMAC (Construction Permits); that is, Part 72 of Title 20, Chapter 2 of the New Mexico administrative code.

[20.2.66.7 NMAC - N, 04/07/05]

**20.2.66.8 [RESERVED]**

**20.2.66.9 DOCUMENTS:**

Documents incorporated and cited in this part may be viewed at the New Mexico environment department, air quality bureau, 2048 Galisteo Street, Santa Fe, NM 87505.

[20.2.66.9 NMAC - N, 04/07/05]

**20.2.66.10-20.2.66.199 [RESERVED]**

**20.2.66.200 ISSUANCE OF PERMIT UNDER 20.2.72 NMAC:**

The department shall not deny issuance or revision of an air quality construction permit under 20.2.72 NMAC to any cotton ginning facility, as defined in Subsection C of 20.2.66.7 NMAC, if the permit application and the permit conditions meet the requirements of this part.

[20.2.66.200 NMAC - N, 04/07/05]

**20.2.66.201 PERMIT APPLICATION REQUIREMENTS:**

Permit applications for each permit issued in accordance with 20.2.66.200 NMAC shall:

- A.** meet all requirements for the contents of permit applications under Paragraphs (1) through (3), (5) through (15) of Subsection A of 20.2.72.203 NMAC and Subsections B through E of 20.2.72.203 NMAC;
- B.** state that this part is applicable to the cotton ginning facility;
- C.** propose maximum allowable annual and hourly emissions from the facility, and include proposed limitations to hours of operations and other limitations that will result in allowable emissions of no more than fifty (50) tons per year of any regulated air contaminant for which there is a national ambient air quality standard; and
- D.** include the proposed best system of emissions reduction for the facility, which for purposes of this part shall include at a minimum the controls, limitations, plans and practices set out in 20.2.66.202 NMAC.

[20.2.66.201 NMAC - N, 04/07/05]

**20.2.66.202 PERMIT REQUIREMENTS:**

Permits issued in accordance with 20.2.66.200 NMAC shall include the following best system of emissions reduction, as well as other conditions, including but not limited to recordkeeping, monitoring, reporting requirements, and test methods, as required to ensure the enforceability of permit conditions.

- A.** Limitations from application: except as modified by the department, the proposed emission reduction system and limitations specified in the application.
- B.** Emissions control on high pressure exhausts.

**(1)** All emissions from high pressure exhausts shall be controlled by the use of a high efficiency cyclone dust collectors (the terms high pressure exhaust and high efficiency cyclone dust collectors are defined in 20.2.66.7 NMAC ).

**(2)** The opacity of visible emissions from cyclones shall not exceed twenty percent (20%).

**C. Emissions control on low pressure exhausts.**

**(1)** All emissions from low pressure exhausts (as defined in Subsection H of 20.2.66.7 NMAC ) shall be controlled by the use of screens with a mesh size of 70 by 70 or finer (United States sieve), or the use of perforated condenser drums with holes not exceeding 0.045 inches in diameter, or with equipment of equivalent or higher design efficiency, as determined by the department.

**(2)** The opacity of visible emissions from low pressure exhausts shall not exceed twenty percent (20%).

**D. A fugitive dust management plan that includes the following, or methods at least as effective in controlling fugitive dust.**

**(1)** Complete enclosure of all burr hoppers.

**(2)** Measures to be taken to control fugitive dust emissions from any source, process or operation occurring within the cotton gin building to assure that no fugitive dust emissions to the outside atmosphere from any door, vent, or window are visible.

**(3)** Measures to be taken to minimize fugitive emissions from the handling, transportation or disposition of any substance or material that is likely to be scattered by the air or wind at the facility, including but not limited to materials in the gin yard and haul roads, including all open areas, right-of ways, storage piles, and vehicles at the facility. Such measures shall be sufficient to assure that no visible fugitive dust emissions generated from the property leave the property. Emissions may be controlled by watering, paving and cleaning, surfactants, or other equivalent means.

**(4)** The posted speed limit for all vehicles on unpaved haul roads and in unpaved yard areas shall be no more than 10 miles per hour.

**E. Requirements for fuel burning equipment. This subsection applies to fuel burning equipment such as driers and humidifiers, but does not apply to mobile sources (such as loaders, haul trucks, and other vehicles).**

**(1)** Any emissions from fuel burning equipment shall not exhibit greater than 20 percent opacity.

(2) The owner or operator shall use only the following fuels: natural gas, liquefied petroleum gas (LPG), propane, or No. 2 diesel fuel with a sulfur content equal to or less than 0.05 percent by weight.

(3) The owner or operator shall operate and maintain the equipment such that emissions and opacity limitations in the permit are met.

**F. Location restrictions.**

(1) The distance from the cotton gin to the property boundary shall be at least ten (10) feet in all directions, or the distance established in Paragraph (2) of Subsection F of 20.2.66.202 NMAC, whichever is greater.

(2) The minimum distance (in feet) in all directions from the cotton gin to the property boundary shall be calculated as the multiple of the square of the maximum emission rate (in pounds of PM10 per hour) and 0.2385, plus the multiple of the maximum emission rate (in pounds of PM10 per hour) and 54.0718, minus the value 816.0886.

(3) The distance from the cotton gin to the nearest existing state park, recreation area, or school shall be at least 0.25 miles. The distance from the cotton gin to the nearest class I area shall be at least three miles.

**G. Maintenance of equipment.**

(1) All materials handling systems and control equipment shall be installed and operated as required to assure that permit conditions will be met.

(2) The owner or operator shall conduct daily visual inspection of the material handling systems for leaks, breaks or other visible signs of equipment malfunctions, and repair such leaks, breaks or malfunctions in a timely manner.

(3) The owner or operator shall maintain a record of the daily inspections, including any equipment malfunctions discovered and corrective action taken to repair the malfunction.

[20.2.66.202 NMAC - N, 04/07/05]

**PART 67-69: [RESERVED]**

**PART 70: OPERATING PERMITS**

**20.2.70.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.70.1 NMAC - Rn, 20 NMAC 20.2.70.100, 06/14/02]

**20.2.70.2 SCOPE:**

All persons who own or operate a major source or any other source required to obtain a permit under this Part.

[11/30/95; 20.2.70.2 NMAC - Rn, 20 NMAC 20.2.70.101, 06/14/02]

**20.2.70.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B), and (C) and (D).

[11/30/95; 20.2.70.3 NMAC - Rn, 20 NMAC 20.2.70.102, 06/14/02]

**20.2.70.4 DURATION:**

Permanent.

[11/30/95; 20.2.70.4 NMAC - Rn, 20 NMAC 20.2.70.103, 06/14/02]

**20.2.70.5 EFFECTIVE DATE:**

11/30/95, except where a later date is cited at the end of a section.

[11/30/95; 20.2.70.5 NMAC - Rn, 20 NMAC 20.2.70.I.104, 06/14/02; A, 9/6/06]

[The latest effective date of any section in this part is 02/06/2013.]

**20.2.70.6 OBJECTIVE:**

The objective of this Part is to establish the requirements for obtaining an operating permit.

[11/30/95; 20.2.70.6 NMAC - Rn, 20 NMAC 20.2.70.105, 06/14/02]

**20.2.70.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part the following definitions shall apply.

**A. "Acid rain source"** has the meaning given to "affected source" in the regulations promulgated under Title IV of the federal act, and includes all sources subject to Title IV of the federal act.

**B. "Affected programs"** means all states, local air pollution control programs, and Indian tribes and pueblos, that are within 50 miles of the source.

**C. "Air pollutant"** means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N<sub>2</sub>), oxygen (O<sub>2</sub>), and ethane.

**D. "Air pollution control equipment"** means any device, equipment, process or combination thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

**E. "Applicable requirement"** means all of the following, as they apply to a Part 70 source or to an emissions unit at a Part 70 source (including requirements that have been promulgated or approved by the board or US EPA through rulemaking at the time of permit issuance but have future-effective compliance dates).

(1) Any standard or other requirement provided for in the New Mexico state implementation plan approved by US EPA, or promulgated by US EPA through rulemaking, under Title I of the federal act to implement the relevant requirements of the federal act, including any revisions to that plan promulgated in 40 CFR, Part 52.

(2) Any term or condition of any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the federal act, unless that term or condition is determined by the department to be no longer pertinent.

(3) Any standard or other requirement under Section 111 of the federal act, including Section 111(d).

(4) Any standard or other requirement under Section 112 of the federal act, including any requirement concerning accident prevention under Section 112(r)(7) of the federal act.

(5) Any standard or other requirement of the acid rain program under Title IV of the federal act or the regulations promulgated thereunder.

(6) Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the federal act.

(7) Any standard or other requirement governing solid waste incineration under Section 129 of the federal act.

(8) Any standard or other requirement for consumer and commercial products under Section 183(e) of the federal act.

(9) Any standard or other requirement for tank vessels under Section 183(f) of the federal act.

(10) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act, unless the administrator has determined that such requirements need not be contained in a Title V permit.

(11) Any national ambient air quality standard.

(12) Any increment or visibility requirement under Part C of Title I of the federal act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal act.

(13) Any regulation adopted by the board pursuant to the New Mexico Air Quality Control Act, Section 74-2-5(B) NMSA 1978.

**F. "CFR"** means the Code of Federal Regulations.

**G. "Draft permit"** means a version of a permit which the department offers for public participation or affected program review.

**H. "Emission limitation"** means a requirement established by US EPA, the board, or the department, that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

**I. "Emissions allowable under the permit"** means:

(1) any state or federally enforceable permit term or condition that establishes an emission limit (including a work practice standard) requested by the applicant and approved by the department or determined at issuance or renewal to be required by an applicable requirement; or

(2) any federally enforceable emissions cap that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject.

**J. "Emissions unit"** means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any air pollutant listed pursuant to

Section 112(b) of the federal act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the federal act.

**K. Federally enforceable**" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the New Mexico state implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR 51.165 and 40 CFR 51.166.

**L. "Final permit"** means the version of an operating permit issued by the department that has met all review requirements of 20.2.70.400 NMAC - 20.2.70.499 NMAC.

**M. "Fugitive emissions"** are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

**N. "General permit"** means an operating permit that meets the requirements of 20.2.70.303 NMAC.

**O. "Greenhouse gas"** for the purpose of this part is defined as the aggregate group of the following six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

**P. "Hazardous air pollutant"** means an air contaminant that has been classified as a hazardous air pollutant pursuant to the federal act.

**Q. "Insignificant activities"** means those activities which have been listed by the department and approved by the administrator as insignificant on the basis of size, emissions or production rate.

**R. "Major source"** means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all of the pollutant emitting activities at such source belong to the same major group (i.e., all have the same two-digit code), as described in the standard industrial classification manual, 1987, and that is described in Paragraphs (1), (2) or (3) below.

**(1)** A major source under Section 112 of the federal act, which is defined as the following.

**(a)** For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons or more per year of any hazardous air pollutant which has been listed pursuant to Section 112 (b) of the federal act, 25 or more tons per year of any combination of such hazardous air pollutants

(including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator), or such lesser quantity as the administrator may establish by rule. Notwithstanding the preceding sentence, hazardous emissions from any oil or gas exploration or production well (with its associated equipment) and hazardous emissions from any pipeline compressor or pump station shall not be aggregated with hazardous emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

**(b)** For radionuclides, "major source" shall have the meaning specified by the administrator by rule.

**(2)** A major stationary source of air pollutants that directly emits or has the potential to emit, 100 or more tons per year of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this paragraph, unless the source belongs to one of the following categories of stationary sources:

- (a)** coal cleaning plants (with thermal dryers);
- (b)** kraft pulp mills;
- (c)** portland cement plants;
- (d)** primary zinc smelters;
- (e)** iron and steel mills;
- (f)** primary aluminum ore reduction plants;
- (g)** primary copper smelters;
- (h)** municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i)** hydrofluoric, sulfuric, or nitric acid plants;
- (j)** petroleum refineries;
- (k)** lime plants;
- (l)** phosphate rock processing plants;
- (m)** coke oven batteries;

**(n)** sulfur recovery plants;

**(o)** carbon black plants (furnace process);

**(p)** primary lead smelters;

**(q)** fuel conversion plant;

**(r)** sintering plants;

**(s)** secondary metal production plants;

**(t)** chemical process plants;

**(u)** fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

**(v)** petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

**(w)** taconite ore processing plants;

**(x)** glass fiber processing plants;

**(y)** charcoal production plants;

**(z)** fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

**(aa)** any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the federal act.

**(3)** A major stationary source as defined in Part D of Title I of the federal act, including:

**(a)** for ozone non-attainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons or more per year in areas classified as "serious," 25 tons or more per year in areas classified as "severe," and 10 tons or more per year in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the federal act, that requirements under Section 182(f) of the federal act do not apply;

(b) for ozone transport regions established pursuant to Section 184 of the federal act, sources with the potential to emit 50 tons or more per year of volatile organic compounds;

(c) for carbon monoxide non-attainment areas (1) that are classified as "serious," and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the administrator, sources with the potential to emit 50 tons or more per year of carbon monoxide; and

(d) for particulate matter (PM10) non-attainment areas classified as "serious," sources with the potential to emit 70 tons or more per year of PM10.

**S. "Operating permit" or "permit"** (unless the context suggests otherwise) means any permit or group of permits covering a source that is issued, renewed, modified or revised pursuant to this part.

**T. "Operator"** means the person or persons responsible for the overall operation of a facility.

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

**V. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

**W. "Part 70 source"** means any source subject to the permitting requirements of this part, as provided in 20.2.70.200 NMAC - 20.2.70.299 NMAC.

**X. "Permit modification"** means a revision to an operating permit that meets the requirements of significant permit modifications, minor permit modifications, or administrative permit amendments, as defined in 20.2.70.404 NMAC.

**Y. "Permittee"** means the owner, operator or responsible official at a permitted Part 70 source, as identified in any permit application or modification.

**Z. "Portable source"** means any plant that is mounted on any chassis or skids and which can be moved by the application of a lifting or pulling force. In addition, there shall be no cable, chain, turnbuckle, bolt or other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor, slab, or structure, including bedrock, that must be removed prior to the application of a lifting or pulling force for the purpose of transporting the unit. Portable sources may include sand and gravel plants, rock crushers, asphalt plants and concrete batch plants which meet this criteria.

**AA. "Potential to emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or

operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

**AB. "Proposed permit"** means the version of a permit that the department proposes to issue and forwards to the administrator for review in compliance with 20.2.70.402 NMAC.

**AC. "Regulated air pollutant"** means the following:

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

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

(3) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;

(4) any class I or II substance subject to any standard promulgated under or established by Title VI of the federal act;

(5) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act, including Sections 112(g), (j), and (r), including the following;

(a) any pollutant subject to requirements under Section 112(j) of the federal act; if the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the federal act, any pollutant for which a subject source would be a major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the federal act; and

(b) any pollutant for which the requirements of Section 112(g)(2) of the federal act have been met, but only with respect to the individual source subject to a Section 112(g)(2) requirement; or

(6) any other pollutant subject to regulation as defined in Subsection AL of this section.

**AD. "Renewal"** means the process by which a permit is reissued at the end of its term.

**AE. "Responsible official"** means one of the following.

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or b) the delegation of authority to such representative is approved in advance by the department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, state, federal or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of US EPA).

(4) For an acid rain source: the designated representative (as defined in Section 402(26) of the federal act) in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated thereunder are concerned, and for any other purposes under 40 CFR, Part 70.

**AF. "Section 502(b)(10) changes"** are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

**AG. "Shutdown"** means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose.

**AH. "Solid waste incineration unit"** means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). The term "solid waste incineration unit" does not include:

(1) incinerators or other units required to have a permit under Section 3005 of the federal Solid Waste Disposal Act;

(2) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(3) qualifying small power production facilities, as defined in Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), or qualifying cogeneration facilities, as defined in Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn

homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes; or

(4) air curtain incinerators, provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations established by the administrator by rule.

**AI. "Startup"** means the setting into operation of any air pollution control equipment, process equipment or process for any purpose.

**AJ. "Stationary source" or "source"** means any building, structure, facility, or installation, or any combination thereof that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the federal act.

**AK. "Subsidiary"** means a business concern which is owned or controlled by, or is a partner of, the applicant or permittee.

**AL. "Subject to regulation"** means, for any air pollutant, that the pollutant is subject to either a provision in the act, or a nationally-applicable regulation codified by the administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "greenhouse gases" (GHGs) shall not be subject to regulation, unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year CO<sub>2</sub>e equivalent emissions;

(2) the term "tons per year CO<sub>2</sub>e equivalent emissions" (CO<sub>2</sub>e) shall represent the aggregate amount of GHGs emitted by the regulated activity, and shall be computed by multiplying the mass amount of emissions (tons per year), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials, and summing the resultant value for each gas; for purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material);

**(3)** if a federal court stays, invalidates or otherwise renders unenforceable by the US EPA, in whole or in part, the prevention of significant deterioration and Title V greenhouse gas tailoring rule (75 FR 31514, June 3, 2010), the definition "subject to regulation" shall be enforceable by the department only to the extent that it is enforceable by US EPA.

**AM.** **"Temporary source"** means any plant that is situated in one location for a period of less than one year, after which it will be dismantled and removed from its current site or relocated to a new site. A temporary source may be semi-permanent, which means that it does not have to meet the requirements of a portable source. Temporary sources may include well head compressors which meet this criteria.

**AN.** **"Title I modification"** means any modification under Sections 111 or 112 of the federal act and any physical change or change in method of operations that is subject to the preconstruction regulations promulgated under Parts C and D of the federal act.

[11/30/95; 20.2.70.7 NMAC - Rn, 20 NMAC 2.70.I.107, 06/14/02; A, 11/07/02; A, 09/06/06; A, 01/01/11; A, 02/06/13]

#### **20.2.70.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 770, - Operating Permits, filed November 15, 1993, as amended ("AQCR 770"). The original effective date of AQCR 770 was December 19, 1994, which was the effective date of approval, by the Administrator, of the New Mexico operating permit program. (See 59 FR 59656, November 18, 1994).

**A.** All references to AQCR 770 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 770 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 770.

[11/30/95; 20.2.70.8 NMAC - Rn, 20 NMAC 2.70.106, 06/14/02]

#### **20.2.70.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [1301 Siler Rd., Bldg. B, Santa Fe, NM 87507].

[11/30/95; 20.2.70.9 NMAC - Rn, 20 NMAC 2.70.108, 06/14/02; A, 01/01/11]

#### **20.2.70.10-20.2.70.199 [RESERVED]**

## **20.2.70.200 PART 70 SOURCES:**

Operating permits must be obtained from the Department for the following sources:

**A.** Any major source;

**B.** Any source, including an area source, subject to a standard or other requirement promulgated under section 111 -- Standards of Performance for New Stationary Sources, or section 112 -- Hazardous Air Pollutants, of the Federal Act, but not including any source which:

**(1)** is exempted under Subsection B of 20.2.70.202 NMAC; or

**(2)** would be required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Federal Act;

**C.** Any acid rain source; and

**D.** Any source in a source category so designated by the Administrator, in whole or in part, by regulation, after notice and comment.

[11/30/95; 20.2.70.200 NMAC - Rn, 20 NMAC 2.70.200, 06/14/02]

## **20.2.70.201 REQUIREMENT FOR A PERMIT:**

**A.** A Part 70 source may operate after the time that it is required to submit a timely and complete application under this part only if:

**(1)** the source is in compliance with an operating permit issued by the department or EPA; or

**(2)** a timely permit (including permit renewal) application has been submitted consistent with 20.2.70.300 NMAC; the ability to operate under these circumstances shall cease if the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application.

**B.** Revocation or termination of a permit by the department terminates the permittee's right to operate.

**C.** The submittal of a complete operating permit application shall not protect any source from any applicable requirement, including any requirement that the source have a preconstruction permit under Title I of the federal act or state regulations.

**D,** Requirement for permit under 20.2.72 NMAC.

(1) Part 70 sources that have an operating permit and do not have a permit issued under 20.2.72 NMAC or 20.2.74 NMAC shall submit a complete application for a permit under 20.2.72 NMAC within 180 days of September 6, 2006. The department shall consider and may grant reasonable requests for extension of this deadline on a case-by-case basis.

(2) Part 70 sources that do not have an operating permit or a permit under 20.2.72 NMAC upon the effective date of this subsection shall submit an application for a permit under 20.2.72 NMAC within 60 days after submittal of an application for an operating permit.

(3) Paragraphs 1 and 2 of this subsection shall not apply to sources that have demonstrated compliance with both the national and state ambient air quality standards through dispersion modeling or other method approved by the department and that have requested incorporation of conditions in their operating permit to ensure compliance with these standards.

[11/30/95; 20.2.70.201 NMAC - Rn, 20 NMAC 2.70.II.201, 06/14/02; A, 9/6/06]

#### **20.2.70.202 SOURCE CATEGORY EXEMPTIONS:**

**A.** The following source categories are exempted from the obligation to obtain an operating permit:

(1) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA -- Standards of Performance for New Residential Wood Heaters;

(2) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M -- National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation;

(3) Except as required under sections 20.2.70.500 NMAC - 20.2.70.599 NMAC, any source that would be required to obtain a permit solely because of emissions of radionuclides; and

(4) Any source in a source category exempted by the Administrator, by regulation, after notice and comment.

**B.** Non-major sources, including those subject to sections 111 or 112 of the Federal Act, are exempt from the obligation to obtain a Part 70 (20.2.70 NMAC) permit until such time that the Administrator completes a rulemaking that requires such sources to obtain operating permits.

**C.** Any source exempted from the requirement to obtain an operating permit may opt to apply for a permit under this Part.

**D.** No permit for a solid waste incineration unit shall be issued by the Department if a New Mexico state agency is responsible, in whole or in part, for the design and construction or operation of the unit. In such cases, applications shall be made to the Administrator. Department review or approval of solid waste incineration units shall not constitute responsibility for the design, construction, or operation of the unit.

[11/30/95; 20.2.70.202 NMAC - Rn, 20 NMAC 2.70.202, 06/14/02]

**20.2.70.203 EXISTING MAJOR SOURCES WHICH ARE NOT REQUIRED TO HAVE A PERMIT UNDER 20.2.72 NMAC (CONSTRUCTION PERMITS):**

**A.** The owner or operator of any major source may reverse or avoid designation as a major source under this Part by obtaining a permit under 20.2.72 NMAC (Construction Permits) which includes federally enforceable conditions which restrict the potential to emit of the source to non-major emission rates. Such conditions may include emissions limitations, process restrictions and/or limitations, restrictions on annual hours of operation, or other conditions which reduce the facility's potential to emit.

**B. [REPEALED]**

[11/30/95; A, 11/19/97; 20.2.70.203 NMAC - Rn, 20 NMAC 2.70.203, 06/14/02]

**20.2.70.204 BERNALILLO COUNTY:**

For the operation of sources within Bernalillo County, the applicant shall make such applications to the Air Pollution Control Division of the Albuquerque Environmental Health Department or its successor agency or authority.

[11/30/95; 20.2.70.204 NMAC - Rn, 20 NMAC 2.70.204, 06/14/02]

**20.2.70.205 INDIAN TRIBAL JURISDICTION:**

The requirements of this Part do not apply to sources within Indian Tribal jurisdiction. For the operation of sources in that jurisdiction, the applicant should make such applications to the Tribal Authority or to the Administrator, as appropriate.

[11/30/95; 20.2.70.205 NMAC - Rn, 20 NMAC 2.70.205, 06/14/02]

**20.2.70.206-20.2.70.299 [RESERVED]**

**20.2.70.300 PERMIT APPLICATIONS:**

**A. Duty to apply.** For each Part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this part.

**B. Timely application.** A timely application for a source applying for a permit under this part is:

(1) for first time applications, one that is submitted within twelve (12) months after the source commences operation as a Part 70 source;

(2) for purposes of permit renewal, one that is submitted at least twelve (12) months prior to the date of permit expiration;

(3) for the acid rain portion of permit applications for initial phase II acid rain sources under Title IV of the federal act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides;

**C. Completeness of application.**

(1) To be deemed complete, an application must provide all information required pursuant to Subsection D of 20.2.70.300 NMAC, except that applications for permit modifications need supply such information only if it is related to the proposed change.

(2) If, while processing an application, regardless of whether it has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

(3) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application or in a supplemental submittal shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide further information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(4) The applicant's ability to operate without a permit, as set forth in Paragraph (2) of Subsection A of 20.2.70.201 NMAC, shall be in effect from the date a timely application is submitted until the final permit is issued or disapproved, provided that the applicant adequately submits any requested additional information by the deadline specified by the department.

**D. Content of application.** Any person seeking a permit under this part shall do so by filing a written application with the department. The applicant shall submit three (3) copies of the permit application, or more, as requested by the department. An applicant may not omit information needed to determine the applicability of, or to impose, any

applicable requirement, or to evaluate the fee amount required under 20.2.71 NMAC (operating permit emission fees). Fugitive emissions shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. All applications shall meet the following requirements.

**(1)** Be made on forms furnished by the department, which for the acid rain portions of permit applications and compliance plans shall be on nationally-standardized forms to the extent required by regulations promulgated under Title IV of the federal act.

**(2)** State the company's name and address (and, if different, plant name and address), together with the names and addresses of the owner(s), responsible official and the operator of the source, any subsidiaries or parent companies, the company's state of incorporation or principal registration to do business and corporate or partnership relationship to other permittees subject to this part, and the telephone numbers and names of the owners' agent(s) and the site contact(s) familiar with plant operations.

**(3)** State the date of the application.

**(4)** Include a description of the source's processes and products (by standard industrial classification code) including any associated with alternative scenarios identified by the applicant, and a map, such as the 7.5 minute topographic quadrangle map published by the United States geological survey or the most detailed map available showing the exact location of the source. The location shall be identified by latitude and longitude or by UTM coordinates.

**(5)** For all emissions of all air pollutants for which the source is major and all emissions of regulated air pollutants, provide all emissions information, calculations and computations for the source and for each emissions unit, except for insignificant activities (as defined in 20.2.70.7 NMAC). This shall include:

**(a)** a process flow sheet of all components of the facility which would be involved in routine operations and emissions;

**(b)** identification and description of all emissions points in sufficient detail to establish the basis for fees and applicability of requirements of the state and federal acts;

**(c)** emissions rates in tons per year, pounds per hour and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

**(d)** specific information such as that regarding fuels, fuel use, raw materials, or production rates, to the extent it is needed to determine or regulate emissions;

**(e)** identification and full description, including all calculations and the basis for all control efficiencies presented, of air pollution control equipment and compliance monitoring devices or activities;

**(f)** the maximum and standard operating schedules of the source, as well as any work practice standards or limitations on source operation which affect emissions of regulated pollutants;

**(g)** if requested by the department, an operational plan defining the measures to be taken to mitigate source emissions during startups, shutdowns and emergencies;

**(h)** other relevant information as the department may reasonably require or which are required by any applicable requirements (including information related to stack height limitations developed pursuant to Section 123 of the federal act); and

**(i)** for each alternative operating scenario identified by the applicant, all of the information required in Subparagraphs (a) through (h) above, as well as additional information determined to be necessary by the department to define such alternative operating scenarios.

**(6)** Provide a list of insignificant activities (as defined in 20.2.70.7 NMAC) at the source, their emissions, to the extent required by the department, and any information necessary to determine applicable requirements.

**(7)** Provide a citation and description of all applicable air pollution control requirements, including:

**(a)** sufficient information related to the emissions of regulated air pollutants to verify the requirements that are applicable to the source; and

**(b)** a description of or reference to any applicable test method for determining compliance with each applicable requirement.

**(8)** Provide an explanation of any proposed exemptions from otherwise applicable requirements.

**(9)** Provide other specific information that may be necessary to implement and enforce other requirements of the state or federal acts or to determine the applicability of such requirements, including information necessary to collect any permit fees owed under 20.2.71 NMAC (operating permit emission fees).

**(10)** Provide certification of compliance, including all of the following.

**(a)** A certification, by a responsible official consistent with Subsection E of 20.2.70.300 NMAC, of the source's compliance status for each applicable requirement. For national ambient air quality standards, certifications shall be based on the following.

**(i)** For first time applications, this certification shall be based on modeling submitted with the application for a permit under 20.2.72 NMAC.

**(ii)** For permit renewal applications, this certification shall be based on compliance with the relevant terms and conditions of the current operating permit.

**(b)** A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

**(c)** A statement that the source will continue to be in compliance with applicable requirements for which it is in compliance, and will, in a timely manner or at such schedule expressly required by the applicable requirement, meet additional applicable requirements that become effective during the permit term.

**(d)** A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department.

**(e)** A statement indicating the source's compliance status with any enhanced monitoring and compliance certification requirements of the federal act.

**(11)** For sources that are not in compliance with all applicable requirements at the time of permit application, provide a compliance plan that contains all of the following.

**(a)** A description of the compliance status of the source with respect to all applicable requirements.

**(b)** A narrative description of how the source will achieve compliance with such requirements for which it is not in compliance.

**(c)** A schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with such applicable requirements. The schedule of compliance shall be at least as stringent as that contained in any consent decree or administrative order to which the source is subject, and the obligations of any consent decree or administrative order shall not be in any way diminished by the schedule of compliance. Any such schedule of compliance shall be supplemental to, and shall not prohibit the department from taking any enforcement action for noncompliance with, the applicable requirements on which it is based.

**(d)** A schedule for submission of certified progress reports no less frequently than every six (6) months.

**(e)** For the portion of each acid rain source subject to the acid rain provisions of Title IV of the federal act, the compliance plan content requirements specified in this paragraph, except as specifically superseded by regulations promulgated under Title IV

of the federal act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

**E. Certification.** Any document, including any application form, report, or compliance certification, submitted pursuant to this part shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

[11/30/95; A, 11/14/98; 20.2.70.300 NMAC - Rn, 20 NMAC 2.70.III.300, 06/14/02; A, 9/6/06; A, 01/01/11]

#### **20.2.70.301 CONFIDENTIAL INFORMATION PROTECTION:**

**A.** All confidentiality claims made regarding material submitted to the Department under this Part shall be reviewed under the provisions of the New Mexico Air Quality Control Act section 74-2-11 NMSA 1978 and the New Mexico Inspection of Public Records Act, sections 14-2-1 et seq. NMSA 1978.

**B.** In the case where an applicant or permittee has submitted information to the Department under a claim of confidentiality, the Department may also require the applicant or permittee to submit a copy of such information directly to the Administrator.

**C.** An operating permit is a public record, and not entitled to protection under section 114(c) of the Federal Act.

[11/30/95; 20.2.70.301 NMAC - Rn, 20 NMAC 2.70.301, 06/14/02]

#### **20.2.70.302 PERMIT CONTENT:**

**A.** Permit conditions.

**(1)** The department shall specify conditions upon a permit, including emission limitations and sufficient operational requirements and limitations, to assure compliance with all applicable requirements at the time of permit issuance or as specified in the approved schedule of compliance. The permit shall:

**(a)** for major sources, include all applicable requirements for all relevant emissions units in the major source;

**(b)** for any non-major source subject to 20.2.70.200 NMAC - 20.2.70.299 NMAC, include all applicable requirements which apply to emissions units that cause the source to be subject to this part;

**(c)** specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

**(d)** include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit;

**(e)** include a provision to ensure that the permittee pays fees to the department consistent with the fee schedule in 20.2.71 NMAC (Operating Permit Emission Fees); and

**(f)** for purposes of the permit shield, identify any requirement specifically identified in the permit application or significant permit modification that the department has determined is not applicable to the source, and state the basis for any such determination.

**(2)** Each permit issued shall, additionally, include provisions stating the following.

**(a)** The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance is grounds for enforcement action. In addition, noncompliance with federally enforceable permit conditions constitutes a violation of the federal act.

**(b)** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

**(c)** The permit may be modified, reopened and revised, revoked and reissued, or terminated for cause in accordance with 20.2.70.405 NMAC.

**(d)** The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition.

**(e)** The permit does not convey any property rights of any sort, or any exclusive privilege.

**(f)** Within the period specified by the department, the permittee shall furnish any information that the department may request in writing to determine whether cause exists for reopening and revising, revoking and reissuing, or termination of the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required by the permit to be maintained.

**(3)** The terms and conditions for all alternative operating scenarios identified in the application and approved by the department:

**(a)** shall require that the permittee maintain a log at the permitted facility which documents, contemporaneously with any change from one operating scenario to another, the scenario under which the facility is operating; and

**(b)** shall, for each such alternative scenario, meet all applicable requirements and the requirements of this part.

**(4)** The department may impose conditions regulating emissions during startup and shutdown.

**(5)** All permit terms and conditions which are required under the federal act or under any of its applicable requirements, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal act. The permit shall specifically designate as not being federally enforceable under the federal act any terms or conditions included in the permit that are not required under the federal act or under any of its applicable requirements.

**(6)** The issuance of a permit, or the filing or approval of a compliance plan, does not relieve any person from civil or criminal liability for failure to comply with the provisions of the Air Quality Control Act, the federal act, federal regulations thereunder, any applicable regulations of the board, and any other applicable law or regulation.

**(7)** The department may include part or all of the contents of the application as terms and conditions of the permit or permit modification. The department shall not apply permit terms and conditions upon emissions of regulated pollutants for which there are no applicable requirements, unless the source is major for that pollutant.

**(8)** Fugitive emissions from a source shall be included in the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

**(9)** The acid rain portion of operating permits for acid rain sources shall additionally:

**(a)** state that, where an applicable requirement of the federal act is more stringent than an applicable requirement of regulations promulgated under Title IV of the federal act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator; and

**(b)** contain a permit condition prohibiting emissions exceeding any allowances that the acid rain source lawfully holds under Title IV of the federal act or the regulations promulgated thereunder; no permit modification under this part shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit modification under any other applicable requirement; no limit shall be placed on the number of allowances held by the acid rain source; the permittee may not use allowances as a defense to

noncompliance with any other applicable requirement; any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the federal act.

**B. Permit duration.** The department shall issue operating permits for a fixed term of five (5) years.

**C. Monitoring.**

**(1)** Each permit shall contain all emissions monitoring requirements, and analysis procedures or test methods, required to assure and verify compliance with the terms and conditions of the permit and applicable requirements, including any procedures and methods promulgated by the administrator.

**(2)** Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit shall require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to Subsection E of 20.2.70.302 NMAC. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

**(3)** The permit shall also contain specific requirements concerning the use, maintenance, and, when appropriate, installation of monitoring equipment or methods.

**D. Recordkeeping.**

**(1)** The permit shall require recordkeeping sufficient to assure and verify compliance with the terms and conditions of the permit, including recordkeeping of:

**(a)** the date, place as defined in the permit, and time of sampling or measurements;

**(b)** the date(s) analyses were performed;

**(c)** the company or entity that performed the analyses;

**(d)** the analytical techniques or methods used;

**(e)** the results of such analyses; and

**(f)** the operating conditions existing at the time of sampling or measurement.

**(2)** Records of all monitoring data and support information shall be retained for a period of at least five (5) years from the date of the monitoring sample,

measurement, report, or application. Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

**E. Reporting.** The permit shall require reporting sufficient to assure and verify compliance with the terms and conditions of the permit and all applicable requirements, including all of the following.

**(1)** Submittal of reports of any required monitoring at least every six (6) months. The reports shall be due to the department within forty-five (45) days of the end of the permittee's reporting period. All instances of deviations from permit requirements, including emergencies, must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with Subsection E of 20.2.70.300 NMAC.

**(2)** Prompt reporting of all deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The report shall be contained in the report submitted in accordance with the timeframe given in Paragraph (1) of this section.

**(3)** Submittal of compliance certification reports at least every twelve (12) months (or more frequently if so specified by an applicable requirement) certifying the source's compliance status with terms and conditions contained in the permit, including emission limitations, standards, or work practices. The reports shall be due to the department within thirty (30) days of the end of the permittee's reporting period. Such compliance certifications shall be submitted to the administrator as well as to the department and shall include:

**(a)** the identification of each term or condition of the permit that is the basis of the certification;

**(b)** the compliance status of the source;

**(c)** whether compliance was continuous or intermittent;

**(d)** the method(s) used for determining the compliance status of the source, currently and during the reporting period identified in the permit; and

**(e)** such other facts as the department may require to determine the compliance status of the source.

**(4)** Such additional provisions as may be specified by the administrator to determine the compliance status of the source.

**F. Portable and temporary sources.** The department may issue permits for portable and temporary sources which allow such sources to relocate without undergoing a permit modification. Such permits shall not apply to acid rain sources and shall include conditions to assure that:

(1) the source is installed at all locations in a manner conforming with the permit;

(2) the source shall comply with all applicable requirements and all other provisions of this part at all authorized locations;

(3) the owner or operator shall notify the department in writing at least fifteen (15) calendar days in advance of each change in location;

(4) notification shall include a legal description of where the source is to be relocated and how long it will be located there; and

(5) emissions from the source shall not, at any location, result in or contribute to an exceedance of a national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal act; the department may require dispersion modeling to assure compliance at any location.

**G. Compliance.** To assure and verify compliance with the terms and conditions of the permit and with this part, permits shall also include all the following.

(1) Require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives of the department to perform the following:

(a) enter upon the permittee's premises where a source is located or emission related activity is conducted, or where records must be kept under the conditions of the permit;

(b) have access to and copy any records that must be kept under the conditions of the permit;

(c) inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) sample or monitor any substances or parameters for the purpose of assuring compliance with the permit or applicable requirements or as otherwise authorized by the federal act.

(2) Require that sources required under Paragraph (11) of Subsection D of 20.2.70.300 NMAC to have a schedule of compliance submit progress reports to the department at least semiannually, or more frequently if specified in the applicable

requirement or by the department. Such progress reports shall be consistent with the schedule of compliance and requirements of Paragraph (11) of Subsection D of 20.2.70.300 NMAC and shall contain:

(a) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(b) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(3) Include such other provisions as the department may require.

#### H. Operational flexibility.

(1) Section 502(b)(10) changes.

(a) The permittee may make Section 502(b)(10) changes, as defined in 20.2.70.7 NMAC, without applying for a permit modification, if those changes are not title I modifications and the changes do not cause the facility to exceed the emissions allowable under the permit (whether expressed as a rate of emissions or in terms of total emissions).

(b) For each such change, the permittee shall provide written notification to the department and the administrator at least seven (7) days in advance of the proposed changes. Such notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(c) The permittee and department shall attach each such notice to their copy of the relevant permit.

(d) If the written notification and the change qualify under this provision, the permittee is not required to comply with the permit terms and conditions it has identified that restrict the change. If the change does not qualify under this provision, the original terms of the permit remain fully enforceable.

(2) Emissions trading within a facility.

(a) The department shall, if an applicant requests it, issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit in addition to any applicable requirements. Such terms and conditions shall include all terms and conditions required under 20.2.70.302 NMAC to determine compliance. If applicable requirements apply to

the requested emissions trading, permit conditions shall be issued only to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval.

**(b)** The applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall require compliance with all applicable requirements.

**(c)** For each such change, the permittee shall provide written notification to the department and the administrator at least seven (7) days in advance of the proposed changes. Such notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

**(d)** The permittee and department shall attach each such notice to their copy of the relevant permit.

**I.** Off-permit changes.

**(1)** Permittees are allowed to make, without a permit modification, changes that are not addressed or prohibited by the operating permit, if:

**(a)** each such change meets all applicable requirements and shall not violate any existing permit term or condition;

**(b)** such changes are not subject to any requirements under Title IV of the federal act and are not Title I modifications;

**(c)** such changes are not subject to permit modification procedures under 20.2.70.404 NMAC; and

**(d)** the permittee provides contemporaneous written notice to the department and US EPA of each such change, except for changes that qualify as insignificant activities. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted and any applicable requirement that would apply as a result of the change.

**(2)** The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

**J.** Permit shield.

**(1)** Except as provided in this part, the department shall expressly include in a Part 70 (20.2.70 NMAC) permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

**(a)** such applicable requirements are included and are specifically identified in the permit; or

**(b)** the department, in acting on the permit application or significant permit modification, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

**(2)** A Part 70 (20.2.70 NMAC) permit that does not expressly state that a permit shield exists for a specific provision shall be presumed not to provide such a shield for that provision.

**(3)** Nothing in this section or in any Part 70 (20.2.70 NMAC) permit shall alter or affect the following:

**(a)** the provisions of Section 303 of the federal act -- Emergency Powers, including the authority of the administrator under that section, or the provisions of the New Mexico Air Quality Control Act, Section 74-2-10 NMSA 1978;

**(b)** the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

**(c)** the applicable requirements of the acid rain program, consistent with Section 408(a) of the federal act; or

**(d)** the ability of US EPA to obtain information from a source pursuant to Section 114 of the federal act, or the department to obtain information subject to the New Mexico Air Quality Control Act, Section 74-2-13 NMSA 1978.

**(4)** The permit shield shall remain in effect if the permit terms and conditions are extended past the expiration date of the permit pursuant to Subsection D of 20.2.70.400 NMAC.

**(5)** The permit shield shall extend to terms and conditions that allow emission increases and decreases as part of emissions trading within a facility pursuant to Paragraph (2) of Subsection H of 20.2.70.302 NMAC, and to all terms and conditions under each operating scenario included pursuant to Paragraph (3) of Subsection A of 20.2.70.302 NMAC.

**(6)** The permit shield shall not extend to administrative amendments under Subsection A of 20.2.70.404 NMAC, to minor permit modifications under Subsection B

of 20.2.70.404 NMAC, to Section 502(b)(10) changes under Paragraph (1) of Subsection H of 20.2.70.302 NMAC, or to permit terms or conditions for which notice has been given to reopen or revoke all or part under 20.2.70.405 NMAC.

[11/30/95; A, 11/14/98; 20.2.70.302 NMAC - Rn, 20 NMAC 2.70.III.302, 06/14/02; A, 9/6/06; A, 08/01/08]

### **20.2.70.303 GENERAL PERMITS:**

#### **A. Issuance of General Permits:**

(1) The Department may, after notice and opportunity for public participation and US EPA and affected program review, issue a general permit covering numerous similar sources. Such sources shall be generally homogenous in terms of operations, processes and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements.

(2) Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit.

#### **B. Authorization to Operate under a General Permit:**

(1) The owner or operator of a Part 70 source which qualifies for a general permit must:

(a) Apply to the Department for coverage under the terms of the general permit; or

(b) Apply for an operating permit consistent with 20.2.70.300 NMAC.

(2) The Department may, in the general permit, provide for applications which deviate from the requirements of subsection D of 20.2.70.300 NMAC, provided that such applications meet the requirements of the Federal Act and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The Department shall review the application for authorization to operate under a general permit for completeness within thirty (30) days after its receipt of the application.

(3) The Department shall authorize qualifying sources which apply for coverage under the general permit to operate under the terms and conditions of the general permit. The Department shall take final action on a general permit authorization request within ninety (90) days of deeming the application complete.

(4) The Department may grant a request for authorization to operate under a general permit without repeating the public participation procedures required under 20.2.70.401 NMAC. Such an authorization shall not be a permitting action for purposes

of administrative review under New Mexico Air Quality Control Act section 74-2-7.H NMSA 1978. Permitting action for the purposes of section 74-2-7 NMSA 1978 shall be the issuance of the general permit.

**(5)** Authorization to operate under a general permit shall not be granted for acid rain sources unless otherwise provided in regulations promulgated under title IV of the Federal Act.

**(6)** The permittee shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit.

[11/30/95; 20.2.70.303 NMAC - Rn, 20 NMAC 2.70.303, 06/14/02]

#### **20.2.70.304 EMERGENCY PROVISION:**

**A.** An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.

**B.** An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the permittee has demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

**(1)** an emergency occurred and that the permittee can identify the cause(s) of the emergency;

**(2)** the permitted facility was at the time being properly operated;

**(3)** during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

**(4)** the permittee submitted notice of the emergency to the department within 2 working days of the time when emission limitations were exceeded due to the emergency; this notice fulfills the requirement of Paragraph (2) of Subsection E of 20.2.70.302 NMAC; this notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

**C.** In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

**D.** This provision is in addition to any emergency or upset provision contained in any applicable requirement.

[11/30/95; 20.2.70.304 NMAC - Rn, 20 NMAC 2.70.III.304, 06/14/02; A, 9/6/06; A, 08/01/08]

**20.2.70.305-20.2.70.399 [RESERVED]**

**20.2.70.400 ACTION ON PERMIT APPLICATIONS:**

**A.** A permit (including permit renewal) or permit modification shall only be issued if all of the following conditions have been met:

**(1)** The Department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under 20.2.70.303 NMAC;

**(2)** Except for administrative and minor permit modifications, the Department has complied with the requirements for public participation procedures under 20.2.70.401 NMAC;

**(3)** Except for administrative amendments, the Department has complied with the requirements for notifying and responding to affected programs under 20.2.70.402 NMAC;

**(4)** The conditions of the permit provide for compliance with all applicable requirements and the requirements of this Part; and

**(5)** The Administrator has received a copy of the proposed permit and any notices required under 20.2.70.402 NMAC, and has not objected to issuance of the permit within the time period specified within that section.

**B.** The Department shall, within sixty (60) days after its receipt of an application for a permit or significant permit modification, review such application for completeness. Unless the Department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within sixty (60) days of receipt of an application, the application shall be deemed complete. When additional information is requested by the Department prior to ruling an application complete, receipt of such information shall be processed as a new application for purposes of this section. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

**C.** The Department shall take final action on each permit application (including a request for permit renewal) within eighteen (18) months after an application is ruled complete by the Department, except that:

**(1)** For sources in operation on or before December 19, 1994 and which submit to the Department timely and complete applications in accordance with 20.2.70.300 NMAC, the Department shall take final action on one third of such applications annually over a period not to exceed three (3) years after such effective date;

**(2)** Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Federal Act shall be acted on within nine (9) months of deeming the application complete; and

**(3)** The acid rain portion of permits for acid rain sources shall be acted upon in accordance with the deadlines in title IV of the Federal Act and the regulations promulgated thereunder.

**D.** If a timely and complete application for a permit renewal is submitted, consistent with 20.2.70.300 NMAC, but the Department has failed to issue or disapprove the renewal permit before the end of the term of the previous permit, then the permit shall not expire and all the terms and conditions of the permit shall remain in effect until the renewal permit has been issued or disapproved.

**E.** Permits being renewed are subject to the same procedural requirements, including those for public participation, affected program and US EPA review, that apply to initial permit issuance.

**F.** The Department shall state within the draft permit the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions).

**G.** The Department shall grant or disapprove the permit based on information contained in the Department's administrative record. The administrative record shall consist of the application, any additional information submitted by the applicant, any evidence or written comments submitted by interested persons, any other evidence considered by the Department, and, if a public hearing is held, the evidence submitted at the hearing.

**H.** If the Department grants or disapproves a permit or permit modification, the Department shall notify the applicant by certified mail of the action taken and the reasons therefor. If the Department grants a permit or modification, the Department shall mail the permit or modification, including all terms and conditions, to the applicant by certified mail.

**I. Voluntary Discontinuation.** Upon request by the permittee, the Department shall permanently discontinue a Part 70 (20.2.70 NMAC) permit. Permit discontinuance terminates the permittee's right to operate the source under the permit. The Department shall confirm the permit discontinuance by certified letter to the permittee.

**J.** No permit shall be issued by failure of the Department to act on an application or renewal.

[11/30/95; 20.2.70.400 NMAC - Rn, 20 NMAC 2.70.400, 06/14/02]

#### **20.2.70.401 PUBLIC PARTICIPATION:**

**A.** Proceedings for all permit issuances (including renewals), significant permit modifications, reopenings, revocations and terminations, and all modifications to the Department's list of insignificant activities, shall include public notice and provide an opportunity for public comment. The Department shall provide thirty (30) days for public and affected program comment. The Department may hold a public hearing on the draft permit, a proposal to suspend, reopen, revoke or terminate a permit, or for any reason it deems appropriate, and shall hold such a hearing in the event of significant public interest. The Department shall give notice of any public hearing at least thirty (30) days in advance of the hearing.

**B.** Public notice and notice of public hearing shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice, to persons on a mailing list developed by the Department, including those who request in writing to be on the list, and by other means if necessary to assure adequate notice to the affected public.

**C.** The public notice shall identify:

- (1) The affected facility;
- (2) The names and addresses of the applicant or permittee and its owners;
- (3) The name and address of the Department;
- (4) The activity or activities involved in the permit action;
- (5) The emissions change(s) involved in any permit modification;
- (6) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, and relevant supporting materials;
- (7) A brief description of the comment procedures required by the Department; and

(8) As appropriate, a statement of procedures to request a hearing, or the time and place of any scheduled hearing.

D. Notice of public hearing shall identify:

- (1) The affected facility;
- (2) The names and addresses of the applicant or permittee and its owners;
- (3) The name and address of the Department;
- (4) The activity or activities involved in the permit action;
- (5) The name, address and telephone number of a person from whom interested persons may obtain additional information;
- (6) A brief description of hearing procedures; and
- (7) The time and place of the scheduled hearing.

E. Public hearings shall be held in the geographic area likely to be impacted by the source. The time, date, and place of the hearing shall be determined by the Department. The Department shall appoint a hearing officer. A transcript of the hearing shall be made at the request of either the Department or the applicant and at the expense of the person requesting the transcript. At the hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

F. The Department shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his or her obligation under section 505(b)(2) of the Federal Act to determine whether a citizen petition may be granted. Such records shall be available to the public upon request.

G. The Department shall provide such notice and opportunity for participation by affected programs as is provided for by 20.2.70.402 NMAC.

[11/30/95; 20.2.70.401 NMAC - Rn, 20 NMAC 2.70.401, 06/14/02]

#### **20.2.70.402 REVIEW BY THE ADMINISTRATOR AND AFFECTED PROGRAMS:**

A. Notification: The Department shall not issue an operating permit (including permit renewal or reissuance), minor permit modification or significant permit modification, until affected programs and the Administrator have had an opportunity to review the proposed permit as required under this section. Permits for source categories waived by the Administrator from this requirement and any permit terms or conditions which are

not required under the Federal Act or under any of its requirements are not subject to Administrator review or approval.

**(1)** Within five (5) days of notification by the Department that the application has been determined complete, the applicant shall provide a copy of the complete permit application (including the compliance plan and all additional materials submitted to the Department) directly to the Administrator. The permit or permit modification shall not be issued without certification to the Department of such notification. The Department shall provide to the Administrator a copy of each draft permit, each proposed permit, each final operating permit, and any other relevant information requested by the Administrator.

**(2)** The Department shall provide notice of each draft permit to any affected program on or before the time that the Department provides this notice to the public under 20.2.70.401 NMAC, except to the extent that minor permit modification procedures require the timing of the notice to be different.

**(3)** The Department shall keep for five (5) years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the state program complies with the requirements of the Federal Act or related applicable requirements.

**B. Responses to Objections:**

**(1)** No permit for which an application must be transmitted to the Administrator under this Part shall be issued by the Department if the Administrator, after determining that issuance of the proposed permit would not be in compliance with applicable requirements, objects to such issuance in writing within forty-five (45) days of receipt of the proposed permit and all necessary supporting information.

**(2)** If the Administrator does not object in writing under paragraph (1) of subsection B of 20.2.70.402 NMAC, any person may, within sixty (60) days after the expiration of the Administrator's 45-day review period, petition the Administrator to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in 20.2.70.401 NMAC, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the Department shall not issue the permit until the Administrator's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to the Administrator's objection.

**(3)** The Department, as part of the submittal of the proposed permit to the Administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under subsection B of 20.2.70.404 NMAC), shall notify the

Administrator and any affected program in writing of any refusal by the Department to accept all recommendations for the proposed permit that the affected program submitted during the public or affected program review period. The notice shall include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on federally enforceable applicable requirements.

[11/30/95; 20.2.70.402 NMAC - Rn, 20 NMAC 2.70.402, 06/14/02]

### **20.2.70.403 PETITIONS FOR REVIEW OF FINAL ACTION:**

#### **A. Hearing before the board:**

(1) Any person who participated in a permitting action before the department and who is adversely affected by such permitting action may file a petition for hearing before the board. For the purposes of this section, permitting action shall include the failure of the department to take final action on an application for a permit (including renewal) or permit modification within the time specified in this part.

(2) The petition shall be made in writing to the board within thirty (30) days from the date notice is given of the department's action and shall specify the portions of the permitting action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered as required by this paragraph, and attach a copy of the permitting action for which review is sought. Unless a timely request for hearing is made, the decision of the department shall be final. The petition shall be copied simultaneously to the department upon receipt of the appeal notice. If the petitioner is not the applicant or permittee, the petitioner shall mail or hand-deliver a copy of the petition to the applicant or permittee. The department shall certify the administrative record to the board.

(3) If a timely request for hearing is made, the board shall hold a hearing within sixty (60) days of receipt of the petition in accordance with New Mexico Air Quality Control Act section 74-2-7 NMSA 1978.

#### **B. Judicial review:**

(1) Any person who is adversely affected by an administrative action taken by the board pursuant to subsection A of 20.2.70.403 NMAC may appeal to the Court of Appeals in accordance with New Mexico Air Quality Control Act section 74-2-9 NMSA 1978. Petitions for judicial review must be filed no later than thirty (30) days after the administrative action.

(2) The judicial review provided for by 20.2.70.403 NMAC shall be the exclusive means for obtaining judicial review of the terms and conditions of the permit.

[11/30/95; 20.2.70.403 NMAC Rn, 20 NMAC 2.70.403, 06/14/02; A, 08/01/08]

## **20.2.70.404 PERMIT MODIFICATIONS:**

### **A. Administrative Permit Amendments:**

- (1)** An administrative permit amendment is one that:
  - (a)** Corrects typographical errors;
  - (b)** Provides for a minor administrative change at the source, such as a change in the address or phone number of any person identified in the permit;
  - (c)** Incorporates a change in the permit solely involving the retiring of an emissions unit;
  - (d)** Requires more frequent monitoring or reporting by the permittee; or
  - (e)** Any other type of change which has been determined by the Department and the Administrator to be similar to those in this paragraph.
- (2)** Changes in ownership or operational control of a source may be made as administrative amendments provided that:
  - (a)** A written agreement, containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee, has been submitted to the Department, and either the Department has determined that no other change in the permit is necessary, or changes deemed necessary by the Department have been made;
  - (b)** The new owners have submitted the application information required in paragraph (2) of subsection D of 20.2.70.300 NMAC;
  - (c)** No grounds exist for permit termination, as set out in subparagraphs (b) and (c) of paragraph (3) of subsection A of 20.2.70.405 NMAC; and
  - (d)** The permittee has published a public notice of the change in ownership of the source in a newspaper of general circulation in the area where the source is located.
- (3)** The Department may incorporate administrative permit amendments without providing notice to the public or affected programs, provided that it designates any such permit modifications as administrative permit amendments and submits a copy of the revised permit to the Administrator.
- (4)** The Department shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on such request. The permittee may implement the changes outlined in subparagraphs (a) through (d) of paragraph (1) of subsection A of 20.2.70.404 NMAC immediately upon submittal of the

request for the administrative amendment. The permittee may implement the changes outlined in subparagraph (e) of paragraph (1) of subsection A of 20.2.70.404 NMAC or paragraph (2) of subsection A of 20.2.70.404 NMAC upon approval of the administrative amendment by the Department.

**B. Minor Permit Modifications:**

**(1)** Minor permit modification procedures may be used only for those permit modifications that:

- (a)** Do not violate any applicable requirement;
- (b)** Do not involve relaxation of existing monitoring, reporting, or recordkeeping requirements in the permit;
- (c)** Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (d)** Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include any federally enforceable emissions cap assumed to avoid classification as a title I modification and any alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Federal Act;
- (e)** Are not title I modifications; and
- (f)** Are not required by the Department to be processed as a significant modification pursuant to subsection C of 20.2.70.404 NMAC.

**(2)** A permittee shall not submit multiple minor permit modification applications that may conceal a larger modification that would not be eligible for minor permit modification procedures. The Department may, at its discretion, require that multiple related minor permit modification applications be submitted as a significant permit modification.

**(3)** An application requesting the use of minor permit modification procedures shall meet the requirements of subsections C and D of 20.2.70.300 NMAC and shall include:

- (a)** A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- (b)** The applicant's suggested draft permit;

**(c)** Certification by a responsible official, consistent with subsection E of 20.2.70.300 NMAC, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

**(d)** If the requested permit modification would affect existing compliance plans or schedules, related progress reports, or certification of compliance requirements, an outline of such effects.

**(4)** The Department shall, within thirty (30) days after its receipt of an application for a minor permit modification, review such application for completeness. Unless the Department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within thirty (30) days of receipt of an application, the application shall be deemed complete. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

**(5)** Within five (5) working days of notification by the Department that the minor permit modification application has been determined complete, the applicant shall meet its obligation under subsection A of 20.2.70.402 NMAC to notify the Administrator of the requested permit modification. The Department promptly shall send any notice required under paragraph (2) of subsection A of 20.2.70.402 NMAC and subsection B of 20.2.70.402 NMAC to the Administrator and affected programs.

**(6)** The permittee may make the change proposed in its minor permit modification application immediately after such application is deemed complete. After the permittee makes the change allowed by the preceding sentence, and until the Department takes any of the actions specified in paragraph (7) of subsection B of 20.2.70.404 NMAC below, the permittee must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the permittee need not comply with the existing permit terms and conditions it seeks to modify. If the permittee fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

**(7)** The Department may not issue a final minor permit modification until after the Administrator's 45-day review period of the proposed permit modification or until US EPA has notified the Department that the Administrator will not object to issuance of the permit modification, although the Department may approve the permit modification prior to that time. Within ninety (90) days of ruling the application complete under minor permit modification procedures or within fifteen (15) days after the end of the Administrator's 45-day review period, whichever is later, the Department shall:

**(a)** Issue the permit modification as it was proposed;

**(b)** Disapprove the permit modification application;

**(c)** Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

**(d)** Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by subsection A of 20.2.70.402 NMAC.

**C. Significant Permit Modifications:**

**(1)** A significant permit modification is:

**(a)** Any revision to an operating permit that does not meet the criteria under the provisions for administrative permit amendments under subsection A of 20.2.70.404 NMAC or for minor permit modifications under subsection B of 20.2.70.404 NMAC above;

**(b)** Any modification that would result in any relaxation in existing monitoring, reporting or recordkeeping permit terms or conditions;

**(c)** Any modification for which action on the application would, in the judgment of the Department, require decisions to be made on significant or complex issues; and

**(d)** Changes in ownership which do not meet the criteria of paragraph (2) of subsection A of 20.2.70.404 NMAC.

**(2)** For significant modifications which are not required to undergo preconstruction permit review and approval, changes to the source which qualify as significant permit modifications shall not be made until the Department has issued the operating permit modification.

**(3)** For significant modifications which have undergone preconstruction permit review and approval, the permittee shall:

**(a)** Before commencing operation, notify the Department in writing of any applicable requirements and operating permit terms and conditions contravened by the modification, emissions units affected by the change, and allowable emissions increases resulting from the modification; and

**(b)** Within twelve (12) months after commencing operation, file a complete operating permit modification application.

**(4)** Where an existing operating permit would specifically prohibit such change, the permittee must obtain an operating permit modification before commencing operation or implementing the change.

**(5)** Significant permit modifications shall meet all requirements of this Part for permit issuance, including those for applications, public participation, review by affected programs and review by the Administrator.

**(6)** The Department shall complete review on the majority of significant permit modification applications within nine (9) months after the Department rules the applications complete.

**D. Modifications to Acid Rain Sources:** Administrative permit amendments and permit modifications for purposes of the acid rain portion of the permit shall be governed by regulations promulgated by the Administrator under title IV of the Federal Act.

[11/30/95; 20.2.70.404 NMAC - Rn, 20 NMAC 2.70.404, 06/14/02]

#### **20.2.70.405 PERMIT REOPENING, REVOCATION OR TERMINATION:**

**A. Action by the Department:**

**(1)** Each permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised for any of the following, and may be revoked and reissued for subparagraphs (c) or (d) of the following:

**(a)** Additional applicable requirements under the Federal Act become applicable to a major source with a remaining permit term of three (3) or more years. Such a reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms or conditions have been extended past the expiration date of the permit pursuant to subsection D of 20.2.70.400 NMAC;

**(b)** Additional requirements (including excess emissions requirements) become applicable to a source under the acid rain program promulgated under title IV of the Federal Act. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;

**(c)** The Department or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit; or

**(d)** The Department or the Administrator determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.

**(2)** Proceedings to reopen and revise, or revoke and reissue, a permit shall affect only those parts of the permit for which cause to reopen or revoke exists. Units for

which permit conditions have been revoked shall not be operated until permit reissuance. Reopenings shall be made as expeditiously as practicable.

**(3)** A permit, or an authorization to operate under a general permit, may be terminated when:

**(a)** The permittee fails to meet the requirements of an approved compliance plan;

**(b)** The permittee has been in significant or repetitious non-compliance with the operating permit terms or conditions;

**(c)** The applicant or permittee has exhibited a history of willful disregard for environmental laws of any state or Tribal authority, or of the United States;

**(d)** The applicant or permittee has knowingly misrepresented a material fact in any application, record, report, plan, or other document filed or required to be maintained under the permit;

**(e)** The permittee falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the permit;

**(f)** The permittee fails to pay fees required under the fee schedule in 20.2.71 NMAC (Operating Permit Emission Fees); or

**(g)** The Administrator has found that cause exists to terminate the permit.

**(4)** The Department shall, by certified mail, provide a notice of intent to the permittee at least thirty (30) days in advance of the date on which a permit is to be reopened or revoked, or terminated, except that the Department may provide a shorter time period in the case of an emergency. The notice shall state that the permittee may, within 30 (thirty) days of receipt, submit comments or request a hearing on the proposed permit action.

**B.** Action by the Administrator: Within ninety (90) days, or longer if the Administrator extends this period, after receipt of written notification that the Administrator has found that cause exists to terminate, modify or revoke and reissue a permit, the Department shall forward to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. Within ninety (90) days from receipt of an Administrator objection to a proposed determination, the Department shall address and act upon the Administrator's objection.

**C.** Compliance Orders: Notwithstanding any action which may be taken by the Department or the Administrator under subsections A and B of 20.2.70.405 NMAC, a compliance order issued pursuant to New Mexico Air Quality Control Act section 74-2-12 NMSA 1978 may include a suspension or revocation of any permit or portion thereof.

[11/30/95; 20.2.70.405 NMAC - Rn, 20 NMAC 2.70.405, 06/14/02]

**20.2.70.406 CITIZEN SUITS:**

Pursuant to section 304 of the Federal Act, 42 USC 7604, any person may commence certain civil actions under the Federal Act.

[11/30/95; 20.2.70.406 NMAC - Rn, 20 NMAC 2.70.406, 06/14/02]

**20.2.70.407 VARIANCES:**

Pursuant to New Mexico Air Quality Control Act section 74-2-8 NMSA 1978, applicants and permittees may seek a variance from the non-federally enforceable provisions of this Part.

[11/30/95; 20.2.70.407 NMAC - Rn, 20 NMAC 2.70.407, 06/14/02]

**20.2.70.408 ENFORCEMENT:**

Notwithstanding any other provision in the New Mexico State Implementation Plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of the terms or conditions of a permit issued pursuant to this Part.

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

**(1)** A monitoring or information gathering method approved for the source pursuant to this Part and incorporated in an operating permit; or

**(2)** Compliance methods specified in the New Mexico State Implementation Plan.

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

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

**(2)** Other testing, monitoring or information gathering methods that produce information comparable to that produced by any method under subsection A of 20.2.70.408 NMAC or paragraph (1) of subsection B of 20.2.70.408 NMAC.

[11/30/95; 20.2.70.408 NMAC - Rn, 20 NMAC 2.70.408, 06/14/02]

**20.2.70.409-20.2.70.499 [RESERVED]**

**20.2.70.500-20.2.70.599 [RESERVED]**

**PART 71: OPERATING PERMIT EMISSIONS FEES**

**20.2.71.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.71.1 NMAC - Rn, 20 NMAC 2.71.100 10/31/02]

**20.2.71.2 SCOPE:**

All persons required to obtain a permit under 20.2.70 NMAC (Operating Permits).

[11/30/95; 0.2.71.2 NMAC - Rn, 20 NMAC 2.71.101 10/31/02]

**20.2.71.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8 (A)(4) and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-7(B)(5).

[11/30/95; 20.2.71.3 NMAC - Rn, 20 NMAC 2.71.102 10/31/02]

**20.2.71.4 DURATION:**

Permanent.

[11/30/95; 20.2.71.4 NMAC - Rn, 20 NMAC 2.71.103 10/31/02]

**20.2.71.5 EFFECTIVE DATE:**

November 30, 1995, unless a later date is cited at the end of a section.

[11/30/95; 20.2.71.5 NMAC - Rn, 20 NMAC 2.71.104 10/31/02; A, 12/15/04]

[The latest effective date of any section in this part is 01/09/09.]

**20.2.71.6 OBJECTIVE:**

The objective of this Part is to establish a schedule of operating permit emission fees.

[11/30/95; 20.2.71.6 NMAC - Rn, 20 NMAC 2.71.105 10/31/02]

**20.2.71.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part, the following definitions apply.

**A. "Allowable emission rate"** means the maximum emission allowed by the more stringent emission limitation applicable to the source contained in:

- (1) any New Mexico air quality control regulation;
- (2) any federal standard of performance, emission limitation, or emission standard adopted pursuant to 42 U.S.C. Section 7411 or 7412; or
- (3) any condition within a construction or operating permit issued by the department.

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

**C. "Fee pollutant"** means:

- (1) sulfur dioxide, nitrogen dioxide, carbon monoxide, total suspended particulate matter, volatile organic compounds, and mercury; and
- (2) any hazardous air pollutant that is subject to any standard promulgated pursuant to section 112 of the federal act.

**D. "Fugitive emissions"** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

**E. "Hazardous air pollutant"** means an air contaminant that has been classified as a hazardous air pollutant pursuant to section 112 of the federal act.

**F. "Operator"** means the person or persons responsible for the overall operation of a facility.

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

**H. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

**I. "Stationary source"** means any building, structure, facility, or installation that emits or may emit any air pollutant.

[11/30/95; 20.2.71.7 NMAC - Rn, 20 NMAC 2.71.107 10/31/02; A, 12/15/04; A, 06/15/07]

### **20.2.71.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation (AQCR) 771 -- Operating Permit Emission Fees, filed November 15, 1993, as amended.

**A.** All references to AQCR 771 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 771 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 771.

[11/30/95; 20.2.71.8 NMAC - Rn, 20 NMAC 2.71.106 10/31/02]

### **20.2.71.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.71.9 NMAC - Rn, 20 NMAC 2.71.108 10/31/02]

### **20.2.71.10-20.2.71.108 [RESERVED]**

### **20.2.71.109 APPLICABILITY:**

Each owner or operator required to obtain an operating permit under 20.2.70 NMAC (Operating Permits) shall be subject to the requirements of this Part.

[11/30/95; 20.2.71.109 NMAC - Rn, 20 NMAC 2.71.109 10/31/02]

### **20.2.71.110 FEE REQUIREMENT:**

**A.** An annual operating permit emission fee shall be paid to the department by each owner or operator subject to this part.

**B.** The fee shall be assessed:

**(1)** for a major source as defined in 20.2.70 NMAC (Operating Permits), for all emissions units;

**(2)** for all other stationary sources, for emissions units which cause the source to be subject to 20.2.70 NMAC; and

**(3)** for emissions above annual allowable emission limits for the source categories in Paragraphs (1) and (2) of Subsection B of Section 20.2.71.110 NMAC.

**C.** The fee shall be calculated in conformance with 20.2.71.111 NMAC.

[11/30/95; 20.2.71.110 NMAC - Rn, 20 NMAC 2.71.110 10/31/02; A, 12/15/04]

**20.2.71.111 FEE DETERMINATION:**

**A.** Fee calculation.

(1) The annual fee shall be calculated by taking the product of the allowable emission rate for each fee pollutant expressed in tons per year and the appropriate fee per ton of pollutant listed in 20.2.71.112 NMAC.

(2) The allowable emission rate which shall be used in the fee calculation is:

(a) the allowable emission rate which exists on December 31 for each year;  
and

(b) the failure of an owner or operator to include the correct information in a permit application, resulting in incorrect allowable emissions in a permit issued under 20.2.70 NMAC, 20.2.72 NMAC, or 20.2.74 NMAC, shall not preclude the department from requiring payment for the correct emissions from the time payment would have been first due.

(3) Allowable emission rates shall be calculated to the tenth of a ton for each emission unit and then summed to determine the tons per year for the facility. Total facility tons per year quantities shall be determined by rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five tenths of a ton downward.

(4) Emissions from those operations determined to be insignificant activities by the department under 20.2.70 NMAC shall not be included in the fee calculation.

(5) Fugitive emissions which have an allowable emission rate shall be included in the fee calculation.

(6) Any quantity of a pollutant which is assessed a fee because it is a hazardous air pollutant shall not be assessed additional fees.

(7) A maximum of six thousand tons per year of any one fee pollutant shall be used in the fee calculation.

**B.** Source shutdown.

(1) The annual fee shall not be reduced due to lack of operation of any emissions unit, except when:

(a) the discontinued operation is accounted for in an allowable emission rate contained within a construction or operating permit issued by the department;

(b) a construction or operating permit issued by the department has been discontinued or terminated and the source ceased operation; or

(c) the emissions unit is located at a stationary source which meets the criteria of Paragraph (2) of Subsection B of 20.2.71.111 NMAC.

(2) The annual fee shall be reduced when all operations at a stationary source have been shutdown for a period greater than 60 consecutive days within a calendar year. In this case, the fee calculation shall be adjusted by reducing the annualized allowable emission rate, or potential to emit if applicable, for each day the stationary source was shutdown.

**C. Fee for emissions above annual allowable emission limits.**

(1) The fee for emissions above annual allowable emission limits shall be based on all emissions above annual allowable emission limits of fee pollutants reported or required to be reported by a stationary source through December 31 in accordance with Subsection E of 20.2.70.302 NMAC. The fee shall be calculated by taking the product of the emissions above annual allowable emission limits for each fee pollutant above and beyond the allowable annual emissions limit per unit expressed in tons per year and the appropriate fee per ton of pollutant listed in 20.2.71.112 NMAC.

(2) Total facility tons per year quantities of emissions above annual allowable emission limits shall be determined by rounding amounts equal to or greater than five tenths of a ton upward and amounts lower than five tenths of a ton downward.

(3) Any quantity of a pollutant which is assessed a fee pursuant to this section because it is a hazardous air pollutant shall not be assessed additional fees pursuant to this section.

(4) A maximum of six thousand tons per year of any one fee pollutant shall be used in the fee calculation for this section.

[11/30/95; 20.2.71.111 NMAC - Rn, 20 NMAC 2.71.111 10/31/02; A, 12/15/04]

**20.2.71.112 EMISSION FEE:**

**A.** The fee for each fee pollutant shall be \$20.00 per ton on an annual basis, except as provided for in Subsection B of 20.2.70.112 NMAC. This fee shall increase by \$2.00 per ton on an annual basis beginning on January 1, 2010 through the fees due on June 1, 2012.

**B.** The fee for each hazardous air pollutant shall be \$165.00 per ton on an annual basis for any stationary source which is only major as defined in 20.2.70 NMAC for any hazardous air pollutant.

**C.** Fees for mercury emissions.

**(1)** For the calendar years 2010 through 2017, the fee for mercury emissions from stationary sources subject to 20.2.85 NMAC shall be \$8.88 per ounce annually.

**(2)** For the calendar years 2018 and thereafter, the fee for mercury emissions from stationary sources subject to 20.2.85 NMAC shall be \$22.51 per ounce annually.

**D.** The fee per ton of emissions above annual allowable emission limits shall be identical to the fee per ton of allowable emissions.

**E.** Beginning on January 1, 2009, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act.

[11/30/95; 20.2.71.112 NMAC - Rn, 20 NMAC 2.71.112 10/31/02; A, 12/15/04; A, 06/15/07; A, 01/09/09]

### **20.2.71.113 FEE PAYMENT:**

**A.** Schedule.

**(1)** The department shall by April 1 of each year provide to each owner or operator subject to this part notification, which shall contain:

**(a)** the emissions fee based on the requirements of this part which is currently due; and

**(b)** a summary of the basis for the required fee.

**(2)** Upon discovery of an error in any past notification of emissions fees due, the department shall promptly notify the owner or operator and provide credit for overcharges or require payment for undercharges.

**(3)** Each owner or operator shall pay by June 1 the emissions fee contained in the department's notification required under Paragraph (1) of Subsection A of Section 20.2.71.113 NMAC.

**(4)** Each owner or operator shall pay invoices based on notices of errors in past notifications within 60 days of the invoice date.

(5) The department shall commence invoicing for fees for emissions above annual allowable emission limits reported by the method specified by the department in calendar year 2007.

**B. Payment.**

(1) Fees shall be remitted in the form of a certified check or money order made payable to the environment department and submitted to the air quality bureau at the address specified in the notice.

(2) Upon receipt of the check or money order, it shall be deposited in the state air quality permit fund.

**C. Nonpayment.** Failure to remit the full fee required by the due date specified in this section is a violation of this part and may subject the owner or operator to:

(1) civil penalties for each day of noncompliance as provided for in the New Mexico Air Quality Control Act, section 74-2-12.1, NMSA 1978;

(2) the enforcement provisions of the New Mexico Air Quality Control Act, section 74-2-12, NMSA 1978, which includes suspension or revocation of any permit.

[11/30/95; 20.2.71.113 NMAC - Rn, 20 NMAC 2.71.113 10/31/02; A, 12/15/04]

## **PART 72: CONSTRUCTION PERMITS**

### **20.2.72.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.72.1 NMAC - Rn, 20 NMAC 2.72.100, 2/2/01]

### **20.2.72.2 SCOPE:**

All persons who intend to construct or modify a source, except as otherwise provided by this Part.

[20.2.72.2 NMAC - Rn, 20 NMAC 2.72.101, 2/2/01]

### **20.2.72.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4) and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section 74-2-7(A)(1), (B), (C) and (D).

[20.2.72.3 NMAC - Rn, 20 NMAC 2.72.102, 2/2/01]

#### **20.2.72.4 DURATION:**

Permanent. Notwithstanding the applicability provisions of 20.2.72.402 NMAC, the Department is stayed from enforcing requirements relating to asphalt fumes as a toxic air pollutant for new or modified sources until September 1, 1997.

[20.2.72.4 NMAC - Rn, 20 NMAC 2.72.103, 2/2/01]

#### **20.2.72.5 EFFECTIVE DATE:**

November 30, 1995 except where a later date is cited at the end of a section or paragraph.

[The latest effective date of any section in this Part is 9/6/06.]

[20.2.72.5 NMAC - Rn, 20 NMAC 2.72.104, 2/2/01]

#### **20.2.72.6 OBJECTIVE:**

The objective of this part is to establish the requirements for obtaining a construction permit.

[20.2.72.6 NMAC - Rn, 20 NMAC 2.72.105, 2/2/01]

#### **20.2.72.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions) as used in this part:

**A. "Accelerated review"** means an optional process of permit application review that allows the department to utilize a qualified outside firm to assist in review of a construction permit application.

**B. "Affiliate,"** for the purposes of accelerated review, means a person that directly or indirectly, through one or more intermediaries, controls or is under common control with another person. Control includes the possession of the power to direct or cause the direction of management and policies of a person, whether directly or indirectly through the ownership, control or holding with the power to vote ten percent or more of the person's voting securities.

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

**D. "Ambient air"** means the outdoor atmosphere, but does not include the area entirely within the boundaries of the industrial or manufacturing property within which

the air contaminants are or may be emitted and public access is restricted within such boundaries.

**E. "Coal mining operation"** means the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur. This definition does not include coal preparation plants.

**F. "Coal preparation plant"** means any facility which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

**G. "Commencement"** means that an owner or operator has undertaken a continuous program of construction or modification.

**H. "Conflict of interest,"** for the purposes of accelerated review, means any direct or indirect relationship between the qualified outside firm and the applicant or other interested person that would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of the qualified outside firm in review of the application. A conflict of interest does not include any gifts, gratuities, financial or contractual relationship of less than one hundred dollars (\$100) in value for the twelve month period preceding Department receipt of the application. A conflict of interest includes but is not limited to the following examples:

(1) Gifts or gratuities of value have been exchanged between the qualified outside firm and the applicant.

(2) The qualified outside firm has provided goods or services to the applicant within one year prior to the start, or during the term, of the accelerated review process.

(3) An express or implied contractual relationship exists between the qualified outside firm and the applicant and the qualified outside firm has provided goods or services to the applicant through that relationship within five years prior to the start of the accelerated review process.

(4) There is a current financial relationship between the qualified outside firm and the applicant. Current financial relationships include, but are not limited to:

(a) The qualified outside firm owes anything of value to, or is owed anything of value by the applicant.

(b) The qualified outside firm has provided goods or services to the applicant and has issued a warranty or guarantee for the work that is still in effect during the time the contracted work for accelerated review is being performed.

(5) A director, officer, or employee of the qualified outside firm, who will perform services under a contract pursuant to this section (20.2.72.221 NMAC), has one or more personal, business, or financial interests or relationships with the applicant or any director, officer or employee of the applicant which would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a contract.

(6) A director, officer or employee of the qualified outside firm was a director, officer or employee of the applicant within one year prior to the start of the accelerated review process.

(7) Except where allowed by the department, communication has been made between the qualified outside firm and the applicant regarding the substance of the application before a qualified outside firm has been selected to perform accelerated review of an application. Direct communication between the qualified outside firm and the applicant may take place once the qualified outside firm has been selected by the department.

(8) Any affiliate of the applicant has any of the above identified relationships with the qualified outside firm.

(9) Any affiliate of the qualified outside firm has any of the above identified relationships with the applicant.

(10) Any affiliate of the applicant has any of the above identified relationships with any affiliate of the qualified outside firm.

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

J. "**Emergency**" means unforeseen circumstances resulting in an imminent and substantial endangerment to health, safety, or welfare which requires immediate action.

K. "**Federally enforceable**" means all limitations and conditions which are enforceable by the administrator of the US EPA, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable State Implementation Plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

L. "**Fugitive emissions**" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**M. "Hazardous air pollutant"** means an air contaminant which has been classified as a "hazardous air pollutant" by the administrator of the US EPA and is subject to a NESHAP.

**N. "Interested person,"** as used in the definition of conflict of interest, means any person, other than the department, that is reasonably expected to provide or has provided substantive comment or technical evidence on the permit application.

**O. "Malfunction"** means any sudden and unavoidable failure of air pollution control equipment, process equipment, or process to operate in an expected manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable equipment breakdown shall not be considered a malfunction.

**P. "Modification"** means any physical change in, or change in the method of operation of, a stationary source which results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or which results in the emission of any regulated air contaminant not previously emitted, but does not include:

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

**Q. "National Ambient Air Quality Standard"** means, unless otherwise modified, the primary (health-related) and secondary (welfare-based) federal ambient air quality standards promulgated by the US EPA pursuant to Section 109 of the federal act.

**R. "National Emission Standards for Hazardous Air Pollutants" or "NESHAP"** mean the regulatory requirements, guidelines and emission limitations promulgated by the US EPA pursuant to Section 112 of the federal act.

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

**T. "Nonattainment area"** means for any air contaminant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the administrator to be reliable) to exceed any national or New Mexico ambient air quality standard for such contaminant. Such term includes any areas identified under Sub-paragraphs (A) through (C) of Section 107 (d)(1) of the federal act.

**U. "Operator"** means the person or persons responsible for the overall operation of a facility.

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

**W. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

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

**Y. "Potential emission rate"** means the emission rate of a source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the department pursuant to the Air Quality Control Act or the federal Act.

**Z. "Qualified outside firm"** means any person who has entered into a contract with the department to provide assistance in the accelerated review of construction permit applications.

**AA. "Regulated air contaminant"** means, any air contaminant, the emission or ambient concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the federal act.

**BB. "Shutdown"** means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units.

**CC. "Standard Industrial Classification" or "SIC"** means the code from the classification manual created by the Executive Office of the President-Office of

Management and Budget, which categorizes industrial, manufacturing and commercial facilities, as listed in the Standard Industrial Code Manual published by the U.S. Government Printing Office, Washington D.C. 1972.

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

**EE.** "Stationary source" or "source" means any building, structure, equipment, facility, installation (including temporary installations), operation or portable stationary source which emits or may emit any air contaminant. Any research facility may group its sources for the purpose of this part at the discretion of the secretary.

[20.2.72.7 NMAC - Rn, 20 NMAC 2.72.107, 2/2/01; A, 3/30/01; A, 2/18/02]

#### **20.2.72.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This part amends and supersedes Air Quality Control Regulation ("AQCR") 702 - Permits, filed May 29, 1990, as amended ("AQCR 702").

**A.** All references to AQCR 702 in any other rule shall be construed as a reference to this part.

**B.** The amendment and supersession of AQCR 702 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 702.

[20.2.72.8 NMAC - Rn, 20 NMAC 2.72.106, 2/2/01]

#### **20.2.72.9 DOCUMENTS:**

Documents incorporated and cited in this part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87505.

[20.2.72.9 NMAC - Rn, 20 NMAC 2.72.108, 2/2/01]

#### **20.2.72.10-20.2.72.199 [RESERVED]**

#### **20.2.72.200 APPLICATION FOR CONSTRUCTION, MODIFICATION, NSPS, AND NESHAP - PERMITS AND REVISIONS:**

**A.** Permits must be obtained from the department by:

**(1)** Any person constructing a stationary source which has a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air

contaminant for which there is a National or New Mexico Ambient Air Quality Standard. If the specified threshold in this subsection is exceeded for any one regulated air contaminant, all regulated air contaminants with National or New Mexico Ambient Air Quality Standards emitted are subject to permit review. Within this subsection, the potential emission rate for nitrogen dioxide shall be based on total oxides of nitrogen;

**(2)** Any person modifying a stationary source when all of the pollutant emitting activities at the entire facility, either prior to or following the modification, emit a regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard with a potential emission rate greater than 10 pounds per hour or 25 tons per year and the regulated air contaminant is emitted as a result of the modification. If the specified threshold in this subsection is exceeded for any one regulated air contaminant, all regulated air contaminants with National or New Mexico Ambient Air Quality Standards emitted by the modification are subject to permit review. Within this subsection, the potential emission rate for nitrogen dioxide shall be based on total oxides of nitrogen;

**(3)** Any person constructing or modifying any source or installing any equipment which is subject to 20.2.77 NMAC (New Source Performance Standards), 20.2.78 NMAC (Emission Standards for Hazardous Air Pollutants), or any other New Mexico Air Quality Control Regulation which contains emission limitations for any regulated air contaminant;

**(4)** For toxic air pollutants, see 20.2.72.400 NMAC - 20.2.72.499 NMAC;

**(5)** Any person constructing a stationary source which has a potential emission rate for lead greater than 5 tons per year or modifying a stationary source which either prior to or following the modification has a potential emission rate for lead greater than 5 tons per year; or

**(6)** Sources which are major sources of hazardous air pollutants by the definitions in 20.2.83 NMAC (Construction or Modification of Major Sources of Hazardous Air Pollutants).

**B.** Fugitive dust emissions from a coal mining operation shall not be subject to the requirements of Paragraph 1 of Subsection A of 20.2.72.200 NMAC. Note: New coal mining operations are required to have an approved air pollution control plan for fugitive dust emissions by the New Mexico surface coal mining commission.

**C.** Any source or modification meeting the applicability requirements of this part, but which is a major stationary source or a major modification as defined in 20.2.74 NMAC, shall in addition be subject to 20.2.74 NMAC (Prevention of Significant Deterioration).

**D.** Any source or modification meeting the applicability requirements of this part but which is a major stationary source or a major modification as defined in 20.2.79 NMAC, shall in addition be subject to 20.2.79 NMAC (Permits - Nonattainment Areas).

**E.** For all sources subject to this part, applications for permits shall be filed prior to the commencement of the construction, modification or installation. Regardless of the anticipated commencement date, no construction, modification or installation shall begin prior to issuance of the permit.

**F.** Temporary installations and portable stationary sources are subject to this part.

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

**H.** Any source which previously did not require a permit because it was in existence before August 31, 1972 shall be subject to the requirements of this Part if operations cease for a period of five years or more and the source has a potential emission rate greater than 10 pounds per hour or 25 tons per year of any regulated air contaminant for which there is a National or New Mexico Ambient Air Quality Standard.

**I.** Any source meeting the applicability requirements of this part, but which is a major source of hazardous air pollutants, shall in addition be subject to 20.2.83 NMAC (Construction or Modification of Major Sources of Hazardous Air Pollutants).

[20.2.72.200 NMAC - Rn, 20 NMAC 2.72.II.200, 2/2/01]

#### **20.2.72.201 NEW SOURCE REVIEW COORDINATION:**

In cases where the new source review requirements of either 20.2.74 NMAC, 20.2.77 NMAC, 20.2.78 NMAC, 20.2.79 NMAC, or 20.2.83 NMAC (Construction or Modifications of Major Sources of Hazardous Air Pollutants) apply to a new stationary source or modification in addition to this Part, the following provisions apply:

**A.** Only one permit application shall be submitted. The applicant shall submit a sufficient number of copies to meet the requirement of the applicable Part which requires the most copies;

**B.** The application shall be ruled administratively complete when information required by all applicable Parts has been submitted;

**C.** Definitions and requirements of each applicable Part are applied separately and do not supersede each other; and

**D.** After the requirements of all applicable Parts are met, only one permit shall be issued.

[20.2.72.201 NMAC - Rn, 20 NMAC 2.72.II.201, 2/2/01]

## **20.2.72.202 EXEMPTIONS:**

The following exemptions are made to the following requirements of 20.2.72.200 NMAC - 20.2.72.299 NMAC. The exemptions in this section do not apply to emissions of toxic air pollutants listed under 20.2.72.502 NMAC, do not alter the calculation of the potential emissions of toxic air pollutants for applicability under 20.2.72.402 NMAC, and do not exempt the department or the owner or operator of any source from any requirement under 20.2.72.403 NMAC, 20.2.72.404 NMAC, or 20.2.72.405 NMAC.

**A.** The following sources and activities shall not be reported in the permit application. Emissions from such activities shall not be included in the calculation of facility-wide potential emission rate under Paragraphs 1 or 2 of Subsection A of 20.2.72.200 NMAC. Such activities may be commenced or changed without a permit or permit revision under 20.2.72.200 NMAC - 20.2.72.299 NMAC:

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

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

**(3)** Exhaust emissions from forklifts, courier vehicles, front end loaders, graders, carts, maintenance trucks, and fugitive emissions from fleet vehicle refueling operations, provided such emissions are not subject to any requirements under this Chapter (Air Quality), NSPS or NESHAP;

**(4)** Use of fire fighting equipment and fire fighting training;

**(5)** Government military activities such as field exercises, explosions, weapons testing and demolition to the extent that such activities:

**(a)** Do not result in visible emissions entering publicly accessible areas; and

**(b)** Are not subject to a NSPS or NESHAP;

**(6)** Office activities, such as photocopying;

**(7)** Test drilling for characterization of underground storage tank and waste disposal sites;

**(8)** Non-anthropogenic wind blown dust;

**(9)** Residential activities such as use of fireplaces, woodstoves, and barbecue cookers;

**(10)** Gases used to calibrate plant instrumentation, including continuous emission monitoring (CEM) systems;

**(11)** Food service, such as cafeteria activities;

**(12)** Automotive repair shop activities, except painting and use of solvents;

**(13)** Use of portable aerospace ground equipment (such as power generators, compressors, heaters, air conditioners, lighting units) in direct support of aircraft operations and on or in the immediate vicinity of an airfield;

**(14)** Activities which occur strictly for preventive maintenance of highway bridges, displays and water towers, including: grinding, cutting, welding, painting, and general repairs;

**(15)** The act of repositioning or relocating equipment, pipes, ductwork, or conveyors within the plant site, but only when such change in physical configuration does not:

**(a)** Reposition or relocate any source of air emissions or the emission points from any such source; or

**(b)** Increase the amount of air emissions or the ambient impacts of such emissions.

**B.** The presence of the following new or modified sources and activities at the facility shall be reported as provided for in the permit application forms supplied by the department. Emissions from such sources and activities shall not be included in the calculation of facility-wide potential emission rate under Paragraphs 1 or 2 of Subsection A of 20.2.72.200 NMAC. Construction of such sources or commencement of such activities after issuance of the permit shall be subject to the administrative permit revision procedures in 20.2.219 NMAC.

**(1)** Fuel burning equipment which is used solely for heating buildings for personal comfort or for producing hot water for personal use and which:

**(a)** Uses gaseous fuel and has a design rate less than or equal to five (5) million BTU per hour; or

**(b)** Uses distillate oil (not including waste oil) and has a design rate less than or equal to one (1) million BTU per hour;

**(2)** VOC emissions resulting from the handling or storing of any VOC if:

**(a)** Such VOC has a vapor pressure of less than two tenths (0.2) PSI at temperatures at which the compound is stored and handled; and

**(b)** The owner or operator maintains sufficient record keeping to verify that the requirements of Sub-paragraph (a) of this paragraph are met;

**(3)** Standby generators which are:

**(a)** Operated only during the unavoidable loss of commercial utility power;

**(b)** Operated less than 500 hours per year; and

**(c)** Either are:

**(i)** The only source of air emissions at the site; or

**(ii)** Accompanied by sufficient record keeping to verify that the standby generator is operated less than 500 hours per year;

**(4)** The act of repositioning or relocating sources of air emissions or emissions points within the plant site, but only when such change in physical configuration does not increase air emissions or the ambient impacts of such emissions;

**(5)** Any emissions unit, operation, or activity that has a potential emission rate of no more than one-half (1/2) ton per year of any pollutant for which a national or New Mexico ambient air quality standard has been set or one-half (1/2) ton per year of any VOC. Multiple emissions units, operations, and activities that perform identical or similar functions shall be combined in determining the applicability of this exemption;

**(6)** Surface coating of equipment, including spray painting, roll coating, and painting with aerosol spray cans, if:

**(a)** The potential emission rate of VOCs do not exceed ten (10) pounds per hour;

**(b)** The facility-wide total VOC content of all coating and clean-up solvent use is less than two (2) tons per year; and

**(c)** The owner or operator maintains sufficient record keeping to verify that the requirements in Sub-paragraphs (a) and (b) of this paragraph are met;

**(7)** Particulate emissions resulting from abrasive blasting operations, if:

**(a)** Blasting operations are entirely enclosed in a building; and

**(b)** No visible particulate emissions are released from the building.

**C.** For sources and units subject to 40 CFR Part 60 (NSPS), 40 CFR Part 61 (NESHAP) or other Parts of this Chapter (Air Quality), except 40 CFR Part 60 Subparts

I (asphalt plants) and OOO (rock crushers), 40 CFR Part 61 Subpart C (Beryllium), and 40 CFR Part 61 Subpart D (Beryllium Rocket Motor Firing):

**(1)** Such sources and units shall be exempt from the applicability requirements in Paragraph 3 of Subsection A of 20.2.72.200 NMAC if such sources or units:

**(a)** Are included in a notice of intent filed under 20.2.73 NMAC (Notice of Intent and Emissions Inventory); or

**(b)** Have met the notification requirements to which they are subject under NSPS or NESHAP; and

**(2)** Applicability determinations under Paragraphs 1 and 2 of Subsection A of 20.2.72.200 NMAC shall take into account all federally enforceable emission limits established for such sources or units under NSPS, NESHAP and other parts of this chapter.

**D.** Portable source relocation. For a portable source which has been issued a permit under this part:

**(1)** Such source may relocate without undergoing a permit revision if:

**(a)** The source is installed in a manner conforming with the initial permit;

**(b)** The source continues to meet all applicable emission limitations and permit conditions; and

**(c)** The source meets the applicable requirements in Paragraphs 2 and 3 of Subsection D of 20.2.72.202 NMAC below;

**(2)** For each portable compressor engine which has been issued a streamlined permit in accordance with Paragraph 1 of Subsection D of 20.2.72.301 NMAC, the owner or operator shall complete the appropriate forms provided by the department and maintain such records on file for at least two (2) years;

**(3)** For all other portable sources, including but not limited to rock crushers and asphalt plants:

**(a)** The owner or operator shall notify the department, on the form provided by the department, at least fifteen (15) days prior to beginning installation at the new location;

**(b)** Operation at a new location of such source shall not commence until the department has approved the relocation in writing;

(c) The department shall not approve the relocation if it would result in exceedances of any national or New Mexico ambient air quality standard at the new location; and

(d) The department shall approve, deny, or approve with conditions, the relocation request within fifteen (15) days of receipt of the notice form.

[20.2.72.202 NMAC - Rn, 20 NMAC 2.72.II.202, 2/2/01]

### **20.2.72.203 CONTENTS OF APPLICATIONS:**

**A.** Any person seeking a permit under Subsection A of 20.2.72.200 NMAC shall do so by filing a written application with the department. The applicant shall submit the number of copies of the permit application specified in the applicable application form. The items of this section, if requested on the applicable application form, are required before the department may deem an application administratively complete. The items may be modified by the department, as appropriate, for emergency permits processed under 20.2.72.215 NMAC. All applications shall, as required by the department:

- (1) Be filled out on the form(s) furnished by the department;
- (2) State the applicant's name and address, together with the names and addresses of all owners or operators of the source, and the applicant's state of incorporation or principal registration to do business;
- (3) Provide all information, including all calculations and computations, to describe the specific chemical and physical nature and to estimate the maximum quantities of any regulated air contaminants the source will emit through routine operations after construction, modification or installation is completed, and estimate maximum potential emissions during malfunction, startup, shutdown. With respect to a toxic air pollutant as defined by Subsection H of 20.2.72.401 NMAC this requirement only applies when the toxic air pollutant is emitted in such a manner that a permit is required under the provisions of 20.2.72.400 NMAC - 20.2.72.499 NMAC;
- (4) Contain a regulatory compliance discussion demonstrating compliance with each applicable air quality regulation, ambient air quality standard, prevention of significant deterioration increment, and provision of 20.2.72.400 NMAC - 20.2.72.499 NMAC. The discussion must include an analysis, which may require use of US EPA-approved air dispersion model(s), to (1) demonstrate that emissions from routine operations will not violate any New Mexico or National Ambient Air Quality Standard or prevention of significant deterioration increment, and (2) if required by 20.2.72.400 NMAC - 20.2.72.499 NMAC, estimate ambient concentrations of toxic air pollutants.
- (5) Provide a preliminary operational plan defining the measures to be taken to mitigate source emissions during malfunction, startup or shutdown;

**(6)** Include a topographical map, at least as detailed as the 7.5 minute Topographic Quadrangle map published by the United States Geological Survey, showing the exact location and geographical coordinates of the proposed construction, modification or installation of the source;

**(7)** Include a process flow sheet, including a material balance, and a site diagram of all components and locations of emissions to the atmosphere of the facility which would be involved in routine operations and emissions;

**(8)** Include a full description, including all calculations of controlled and uncontrolled emissions and the basis for all control efficiencies presented, of the equipment to be used for air pollution control, including a process flow sheet, or, if the department so requires, layout and assembly drawings;

**(9)** Include a description of the equipment or methods proposed by the applicant to be used for emission measurement;

**(10)** State the maximum and standard operating schedules of the source after completion of construction, modification or installation or after permit revision in terms of which and how many hours per day, days per week, days per month and days per year;

**(11)** Contain such other specifically identified relevant information as the department may reasonably require;

**(12)** Be notarized and signed under oath or affirmation by the operator, the owner or an authorized representative, certifying, to the best of his or her knowledge, the truth of all information in the application and addenda, if any;

**(13)** Contain payment of any fees which are specified in 20.2.75 NMAC (Construction Permit Fees) as payable at the time the application is submitted;

**(14)** Contain documentary proof of applicant's public notice, if applicable, as specified in Subsection B of 20.2.72.203 NMAC; and

**(15)** At the sole discretion of the applicant, contain a request for accelerated review of the application.

**B.** The applicant's public notice for technical permit revisions shall be as specified in Paragraph 6 of Subsection B of 20.2.72.219 NMAC. The applicant's public notice for a permit or significant permit revision shall be:

**(1)** Provided by certified mail, to the owners of record, as shown in the most recent property tax schedule, of all properties:

**(a)** Within one hundred (100) feet of the property on which the facility is located or proposed to be located, if the facility is or is proposed to be located in a Class

A or Class H county or a municipality with a population of more than two thousand five hundred (2500) persons; or

**(b)** Within one-half (1/2) mile of the property on which the facility is located or is proposed to be located if the facility is or will be in a county or municipality other than those specified in Sub-paragraph (a) of Paragraph 1 of Subsection B of 20.2.72.203 NMAC;

**(2)** Provided by certified mail to all municipalities and counties in which the facility is or will be located and to all municipalities, Indian tribes, and counties within a ten (10) mile radius of the property on which the facility is proposed to be constructed or operated;

**(3)** Published once in a newspaper of general circulation in each county in which the property on which the facility is proposed to be constructed or operated is located. This notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish;

**(4)** Posted in at least four (4) publicly accessible and conspicuous places, including:

**(a)** The proposed or existing facility entrance on the property on which the facility is, or is proposed to be, located, until the permit or significant permit revision is issued or denied; and

**(b)** Three (3) locations commonly frequented by the general public, such as a nearby post office, public library, or city hall; and

**(5)** Submitted as a public service announcement to at least one radio or television station which serves the municipality or county in which the source is or is proposed to be located.

**C.** The notice specified in Paragraphs 1 through 4 of Subsection B of 20.2.72.203 NMAC shall contain the following:

**(1)** The applicant's name and address, together with the names and addresses of all owners or operators of the facility or proposed facility;

**(2)** The actual or estimated date that the application was or will be submitted to the department;

**(3)** The exact location of the facility or proposed facility;

(4) A description of the process or change for which a permit is sought, including an estimate of the maximum quantities of any regulated air contaminant the source will emit after proposed construction is complete or permit is issued;

(5) The maximum and standard operating schedules of the facility after completion of proposed construction or permit issuance; and

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

**D.** The public service announcement request specified in Paragraph 5 of Subsection B of 20.2.72.203 NMAC shall contain the following information about the facility or proposed facility:

(1) The name, location, and type of business;

(2) The name of the principal owner or operator;

(3) The type of process or change for which a permit is sought;

(4) Locations where the notices required under Paragraph 4 of Subsection B of 20.2.72.203 NMAC have been posted; and

(5) The address or telephone number at which comments and inquires may be directed to the department.

**E. Changing, Supplementing or Correcting Applications:**

(1) Prior to a final decision on an application, the applicant shall have a duty to promptly supplement and correct information submitted in the application. The duty to supplement shall include relevant information thereafter acquired or otherwise determined to be relevant.

(2) If, while processing an application, regardless of whether it has been determined to be administratively complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information. The request shall be in writing, identify the additional information requested and the need for the additional information, and set a reasonable deadline for a response. The applicant shall submit the requested information in writing on or before the deadline set by the department.

[20.2.72.203 NMAC - Rn, 20 NMAC 2.72.II.203, 2/2/01; A, 3/30/01]

**20.2.72.204 CONFIDENTIAL INFORMATION PROTECTION:**

All confidentiality claims made regarding material submitted to the department under this part shall be reviewed under the provisions of 20.2.1 NMAC (General Provisions).

[20.2.72.204 NMAC - Rn, 20 NMAC 2.72.II.204, 2/2/01]

### **20.2.72.205 CONSTRUCTION, MODIFICATION AND PERMIT REVISION IN BERNALILLO COUNTY:**

For the construction or modifications of sources within Bernalillo county, the applicant shall make such applications to the air quality control staff of the joint Albuquerque-Bernalillo county air quality control board, unless that board loses, rejects or fails to exercise authority for the administration and enforcement of the Air Quality Control Act, at which time this part shall apply in full in Bernalillo county.

[20.2.72.205 NMAC - Rn, 20 NMAC 2.72.II.205, 2/2/01]

### **20.2.72.206 PUBLIC NOTICE AND PARTICIPATION:**

**A.** The department shall:

(1) Make available for public inspection a list of all pending applications for permits or permit revisions;

(2) Make available for public inspection the permit application and the department's preliminary determination. This material shall be available both at the department's central office and the district or field office nearest to the proposed source. Copies of any permit application, except those portions of which may be determined as confidential in accordance with 20.2.1 NMAC (General Provisions), will be supplied upon written request and payment of reasonable costs;

(3) Subsequent to an affirmative administrative completeness determination, publish a public notice in a newspaper of general circulation in the area closest to the location of the source. The notice shall include: the applicant's name and address, the location and brief description of the source, a summary of estimated emissions and ambient impact, and the department's preliminary intent to issue the permit if the construction or modification requested in the application will comply with air quality requirements, including ambient standards. The notice shall identify the location of the permit application and department's analysis (when available) for public review and describe the manner in which comments or evidence may be submitted to the department, including that persons must inform the department in writing of their interest in the permit application in order to have a 30 day period to review and comment on the analysis under Subsection B of 20.2.72.206 NMAC below. The notice shall clearly state that any person who does not express such interest in writing prior to the end of the initial 30 day comment period will not receive notification of the availability of the analysis and thus forewarn such person of the need to express interest in writing if they desire to review and comment on the analysis;

(4) Provide the notice under Paragraph 3 of Subsection A of 20.2.72.206 NMAC above by mail, which may include electronic mail, to all individuals and organizations identified on a list maintained by the department of those who have indicated in writing a desire to receive notices of all applications under this part;

(5) Allow all interested persons thirty (30) days from the date the public notice is published to express an interest in writing in the permit application;

(6) Mail written notice of the action taken on a permit application to any person who expresses an interest in writing in the application; and

(7) Mail a copy of the public notice at the same time it is sent for publication to the appropriate agency in the following locations if the source will locate within fifty kilometers of the boundary of other states, Bernalillo county, or a Class I area. Copies of all public notices shall be sent to US EPA Region VI, if requested by US EPA.

**B.** In the event that any person expresses an interest in writing in the permit application, the department shall also:

(1) Notify each person who expressed an interest in writing in the permit application of the date and the location that the department's analysis was or will be available for review; and

(2) Not issue the permit until at least thirty (30) days after the department's analysis is available for review. During this thirty (30) day period, any person may submit written public comments or request a public hearing.

**C.** The department shall hold a public hearing if the secretary determines that there is a significant public interest. Public hearings shall be held in the geographic area likely to be impacted by the source. The time, date, and place of the hearing shall be determined by the department. The department shall give notice of the hearing to the applicant and the public. The secretary may appoint a hearing officer. A transcript of the hearing shall be made at the request of either the department or the applicant and at the expense of the person requesting the transcript. At the hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

[20.2.72.206 NMAC - Rn & A, 20 NMAC 2.72.II.206, 2/2/01]

#### **20.2.72.207 PERMIT DECISIONS AND APPEALS:**

**A.** The department shall, within thirty (30) days after its receipt of an application for a permit or significant permit revision, review such application and determine whether it is administratively complete. If the application is deemed:

(1) administratively complete, a letter to that effect shall be sent by certified mail to the applicant;

(2) administratively incomplete, a letter shall be sent by certified mail to the applicant stating what additional information or points of clarification are necessary to deem the application administratively complete; upon receipt of the additional information or clarification, the department shall promptly review such information and determine whether the application is administratively complete;

(3) administratively complete but no permit is required, a letter shall be sent by certified mail to the applicant informing the applicant of the determination.

**B.** The department shall either grant, grant subject to conditions or deny the permit or significant permit revision:

(1) within ninety (90) days after the department deems the application administratively complete, if the application is not subject to the requirements of 20.2.74 NMAC (Prevention of Significant Deterioration); or

(2) within one hundred eighty (180) days after the department deems the application administratively complete, if the application is subject to the requirements of 20.2.74 NMAC (Prevention of Significant Deterioration).

**C.** If the department fails to take action on the application within the deadlines specified in Subsection B of 20.2.72.207 NMAC, the department shall notify the applicant by certified mail that an extension of time is necessary to process the application and shall specify, in detail, the grounds for the extension. The secretary may grant an extension, not to exceed ninety (90) days, to the deadlines specified in Subsection B of 20.2.72.207 NMAC, if the secretary determines that good cause exists for the extension. The secretary shall notify the applicant by certified mail of the decision on the extension. If the secretary grants the extension, the notification shall include the length of the extension and the reasons therefore. The authority under this paragraph may be delegated by the secretary only to the deputy secretary or a division director. Examples of good cause for extension include, but are not limited to:

(1) the need to have public hearings;

(2) a health assessment is required under 20.2.72.400 NMAC - 20.2.72.499 NMAC;

(3) the permit application is subject to the requirements of 20.2.79 NMAC (Permits - Nonattainment Areas);

(4) additional time is needed to complete the requirements for federal review specified in 20.2.74.403 NMAC;

(5) the permit application requires review of unusually complex technical and regulatory issues; or

(6) the department is unable to complete review of information submitted, because of the timing and scope of the submittal.

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

E. Any person who participated in a permitting action before the department shall be notified by the department of the action taken and the reasons for the action. Notification of the applicant shall be by certified mail.

F. Any person who participated in a permitting action before the department and who is adversely affected by such permitting action may file a petition for hearing before the board. The petition shall be made in writing to the board within thirty (30) days from the date notice is given of the department's action and shall specify the portions of the permitting action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered as required by this paragraph, and attach a copy of the permitting action for which review is sought. Unless a timely request for hearing is made, the decision of the department shall be final. The petition shall be copied simultaneously to the department upon receipt of the appeal notice. If the petitioner is not the applicant or permittee, the petitioner shall mail or hand-deliver a copy of the petition to the applicant or permittee. The department shall certify the administrative record to the board.

G. If a timely request for a hearing is made, the board shall hold a hearing within sixty (60) days of receipt of the petition in accordance with Section 74-2-7 of the New Mexico Air Quality Control Act, NMSA 1978.

H. Any person adversely affected by an administrative action taken by the board may appeal in accordance with Section 74-2-9 of the New Mexico Air Quality Control Act, NMSA 1978.

[20.2.72.207 NMAC - Rn, 20 NMAC 2.72.II.207, 2/2/01]

#### **20.2.72.208 BASIS FOR DENIAL OF PERMIT:**

The department shall deny any application for a permit or permit revision if considering emissions after controls:

**A.** It appears that the construction, modification or permit revision will not meet applicable regulations adopted pursuant to the Air Quality Control Act;

**B.** The source will emit a hazardous air pollutant or an air contaminant in excess of any applicable New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants or a regulation of the board;

**C.** For toxic air pollutants, see 20.2.72.400 NMAC - 20.2.72.499 NMAC;

**D.** The construction, modification, or permit revision will cause or contribute to air contaminant levels in excess of any National Ambient Air Quality Standard or New Mexico ambient air quality standard unless the ambient air impact is offset by meeting the requirements of either 20.2.79 NMAC or 20.2.72.216 NMAC, whichever is applicable;

**E.** The construction, modification, or permit revision would cause or contribute to ambient concentrations in excess of a prevention of significant deterioration (PSD) increment;

**F.** Any provision of the Air Quality Control Act will be violated;

**G.** It appears that the construction of the new source will not be completed within a reasonable time; or

**H.** The department chooses to deny the application due to a conflict of interest in accelerated review as provided for under Subsection C of 20.2.72.221 NMAC.

[20.2.72.208 NMAC - Rn, 20 NMAC 2.72.II.208, 2/2/01; A, 3/30/01]

#### **20.2.72.209 ADDITIONAL LEGAL RESPONSIBILITIES ON APPLICANTS:**

The issuance of a permit does not relieve any person from civil or criminal liability for failure to comply with the provisions of the Air Quality Control Act, the federal act, federal regulations thereunder, any applicable regulations of the board, and any other applicable law or regulation.

[20.2.72.209 NMAC - Rn, 20 NMAC 2.72.II.209, 2/2/01]

#### **20.2.72.210 PERMIT CONDITIONS:**

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

**B.** The department shall, as appropriate, specify conditions upon a permit, including:

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

**(a)** the extent necessary to meet the requirements of the Air Quality Control Act and the federal act; or

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

**(2)** A requirement that such source install and operate control technology, determined on a case-by-case basis, sufficient to meet the requirements of the Air Quality Control Act and the federal act and regulations promulgated under either;

**(3)** Compliance with applicable NSPS and NESHAP;

**(4)** Imposition of reasonable restrictions and limitations other than restrictions and limitations relating to emission limits or emission rates; or

**(5)** Any combination of the above;

**(6)** In the case of a modification, the requirements of Subsection B of 20.2.72.210 NMAC apply only to the facility or facilities involved in such modification.

**C.** The department may impose such other reasonable conditions upon a permit, including a schedule of construction, a condition requiring timely revision of permit terms or conditions in order to meet new requirements, if any, under any federally required and approved State Implementation Plan revision, and conditions requiring the source to be provided with or to undertake:

**(1)** Sampling ports of a size, number and location as the department may require;

**(2)** Safe access to each port;

**(3)** Instrumentation to monitor and record emission data including continuous emission monitoring, if appropriate;

**(4)** Any other reasonable sampling, testing and ambient monitoring and meteorological facilities and protocols; and

**(5)** Periodic testing pursuant to 20.2.72.213 NMAC.

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

E. The department will as a condition of each permit require the permittee to establish and maintain such records of the nature and amount of emissions and to make such periodic reports to the department regarding the nature and amounts of emissions and the performance of air pollution control equipment, as are necessary to carry out the purpose of the Air Quality Control Act.

**F. [RESERVED]**

[20.2.72.210 NMAC - Rn, 20 NMAC 2.72.II.210, 2/2/01]

**20.2.72.211 PERMIT CANCELLATIONS:**

A. The department shall automatically cancel any permit for any source which ceases operation for five years or more, or permanently. Reactivation of any source after the five year period shall require a new permit.

B. The department may cancel a permit if the construction or modification is not commenced within two years from the date of issuance or, if during the construction or modification, work is suspended for a total of one year, such cancellation shall be subject to the following procedures:

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

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

[20.2.72.211 NMAC - Rn, 20 NMAC 2.72.II.211, 2/2/01]

**20.2.72.212 PERMITTEE'S NOTIFICATION REQUIREMENTS TO DEPARTMENT:**

Any owner or operator subject to this part shall notify the department in writing of or provide the department with:

A. Anticipated date of initial startup of a source not less than thirty (30) days prior to the date;

B. Actual date of initial startup of a source within fifteen (15) days after the startup date;

C. Any change of operators within fifteen (15) days of such change;

D. Any necessary update or correction no more than sixty (60) days after the operator knows or should have known of the condition necessitating the update or correction of the permit.

[20.2.72.212 NMAC - Rn, 20 NMAC 2.72.II.212, 2/2/01]

### **20.2.72.213 STARTUP AND FOLLOWUP TESTING:**

Within sixty (60) days after achieving the maximum production rate at which the source will be operated but not later than one hundred eighty (180) days after initial startup of the source, the owner or operator of the source may be required to conduct a performance test. The test method utilized shall be approved by the department. Whenever the requirements of 40 CFR 60 or 61 apply, test methods must be utilized as specified in those regulations. The owner or operator shall notify the department at least thirty (30) days prior to the test date and allow a representative of the department to be present at the test. A written report of the results of the test shall be submitted to the department by the owner or operator within thirty (30) days from the test date. This requirement may be reimposed on a source as necessary if inspections of the source indicate noncompliance with permit conditions subject to such testing, or the previous test showed noncompliance or was technically unsatisfactory. In such cases, the test requirement may be reimposed as frequently as necessary until compliance is achieved and testing is performed in a technically satisfactory manner. This testing requirement may be waived if the source is a member of a class subject to an exemption from this requirement pursuant to 20.2.72.214 NMAC, and has agreed to comply with, and its permit contains, enforceable design, operational and locational protocols set by the department for the class of sources to which the source belongs.

[20.2.72.213 NMAC - Rn, 20 NMAC 2.72.II.213, 2/2/01]

### **20.2.72.214 SOURCE CLASS EXEMPTION PROCESS (PERMIT STREAMLINING):**

A. Upon application by any person or group of persons, or upon the initiative of the department, the board may exempt any source or class of sources, from any procedural requirement of this part except the requirement to obtain a permit prior to commencement of construction if the board finds that the conditions set forth below in this section have been met. When possible, comprehensive exemptions shall be established for source classes in order to conduct expedited, streamlined permit processing for any applicant whose source is a member of such class. Exemptions may

be granted only after a public hearing of the board, at which time the basis for such exemption shall be presented and any interested person allowed to comment and to question any witness. The board's decision that an exemption under this section is justified shall be based at a minimum on each of the following findings:

(1) The department has substantial actual experience with or knowledge of the specific class of sources proposed for exemption, that such experience or knowledge is material to the application for exemption, and that such experience or knowledge includes modeling and analysis of a representative sample of such sources. Such knowledge may be acquired through, but not limited to, direct department experience with such sources, or the review of other regulatory agencies' experience, records, documentation and formal actions, or through publications of professional organizations and societies upon which engineers and scientists would conventionally rely in formulating a professional judgment;

(2) The sources possess sufficiently common characteristics of operation, process technology, emissions, emission control technology and impact on air quality that with respect to the specific requirements proposed to be exempted, protocols have been developed which, if applied to all members of that class, will ensure that air quality is protected at least as well as would be accomplished by the full permit review process; and

(3) Under such an exemption, compliance with all federal and state air quality laws, regulations, standards and emissions limitations will be assured.

**B.** Exemptions may apply statewide or regionally and may be revoked by the board only after a public hearing following at least sixty days public notice.

**C.** As may be required under federal law, all protocols established hereunder shall be submitted to the US EPA for review and approval as revisions to the State Implementation Plan. Such protocols shall be established contingent upon approval by the US EPA.

**D.** There shall be no exemptions under this section from the requirements of 20.2.74 NMAC, 20.2.77 NMAC, 20.2.78 NMAC, or 20.2.79 NMAC.

[20.2.72.214 NMAC - Rn, 20 NMAC 2.72.II.214, 2/2/01]

#### **20.2.72.215 EMERGENCY PERMIT PROCESS:**

**A.** The department may issue an emergency permit when the secretary determines an emergency exists which threatens the public health, safety or welfare, and which requires the rapid construction or modification of, or installation of equipment in, a facility subject to this part in order to mitigate, prevent or remedy such emergency.

**B.** Department personnel shall verify that the source, operating in accordance with the permit issued, can and will meet all applicable standards, emissions limitations and conditions before authorizing start-up in order to ensure that the public emergency is not worsened by excess or improperly controlled air pollution.

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

**D.** The requirements of Paragraphs 5 and 6 of Subsection A of 20.2.72.206 NMAC, Subsection C of 20.2.72.206 NMAC, and Subsections A and B of 20.2.72.207 NMAC shall not apply to emergency permits processed under this section.

**E.** Construction shall not commence until the emergency permit is issued.

[20.2.72.215 NMAC - Rn & A, 20 NMAC 2.72.II.215, 2/2/01]

#### **20.2.72.216 NONATTAINMENT AREA REQUIREMENTS:**

**A.** The requirements of this section apply to:

**(1)** a new source or modification of an existing source that will emit a regulated air contaminant such that the ambient impact of the contaminant would exceed the significant ambient concentration in 20.2.72.500 NMAC, table 1, at any location that does not meet the New Mexico ambient air quality standard for the contaminant;

**(2)** a new source or modification of an existing source that is not a major stationary source or major modification as defined in 20.2.79 NMAC and that will emit a regulated air contaminant such that the ambient impact of the contaminant would exceed the significant ambient concentration in table 1 at any location that does not meet the national ambient air quality standard for the contaminant; or

**(3)** an existing source that does not propose an increase in emissions and that will emit a regulated air contaminant such that the ambient impact of the contaminant would exceed the significant ambient concentration in 20.2.72.500 NMAC (table 1) at any location that does not meet the national or New Mexico ambient air quality standard for the contaminant.

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

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

**(2)** ensuring emission offsets are quantifiable, enforceable, and permanent by meeting the following sections of 20.2.79 NMAC:

**(a)** 20.2.79.114 NMAC (emission offset baseline);

**(b)** 20.2.79.115 NMAC (emission offsets); and

**(c)** 20.2.79.117 NMAC (air quality benefit).

**C.** An existing source that is subject to this section shall demonstrate a net air quality benefit of at least a 20 percent reduction in ambient impact for each applicable contaminant. The 20 percent reduction shall be calculated as the projected source impact subtracted from the existing source impact divided by the existing source impact. The net air quality benefit must also meet the requirements of 20.2.79.117 NMAC (air quality benefit).

[20.2.72.216 NMAC - Rn, 20 NMAC 20.2.72.II.216, 2/2/01; A, 9/6/06]

#### **20.2.72.217 COMPLIANCE CERTIFICATIONS:**

**A.** Notwithstanding any other provision in the New Mexico State Implementation Plan approved by the administrator, for the purpose of determining compliance, an owner or operator is not prohibited from using monitoring as required under 20.2.70 NMAC and incorporated into an operating permit in addition to any specified compliance methods.

**B.** The requirements of this section are only applicable to those sources which, in addition to being subject to this part are either: defined as a major source under 20.2.70 NMAC (Operating Permits), or; subject to 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants).

[20.2.72.217 NMAC - Rn, 20 NMAC 20.2.72.II.217, 2/2/01]

#### **20.2.72.218 ENFORCEMENT:**

Notwithstanding any other provision in the New Mexico State Implementation Plan approved by the administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of the terms or conditions of a permit issued pursuant to this part, including permits for sources meeting the applicability requirements 20.2.74 NMAC (Prevention of Significant Deterioration), or 20.2.79 NMAC (Permits - Nonattainment Areas).

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

(1) A monitoring or information gathering method approved for the source pursuant to 20.2.70 NMAC and incorporated in an operating permit; or

(2) Compliance methods specified in the New Mexico State Implementation Plan.

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

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

(2) Other testing, monitoring or information gathering methods that produce information comparable to that produced by any method in Subsection A of 20.2.72.218 NMAC or Paragraph 1 of Subsection B of 20.2.72.218 NMAC, above.

**C.** The requirements of this section are only applicable to those sources which, in addition to being subject to this part, are either: defined as a major source under 20.2.70 NMAC (Operating Permits), or; subject to 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants).

[20.2.72.218 NMAC - Rn, 20 NMAC 20.2.72.II.218, 2/2/01]

#### **20.2.72.219 PERMIT REVISIONS:**

##### **A. Administrative Permit Revisions:**

(1) Administrative permit revision procedures may be used only for those permit revisions that:

(a) Correct typographical errors;

(b) Provide for a minor administrative change at the source, such as a change in ownership or a change in the address or phone number of any person identified in the permit;

(c) Incorporate a change in the permit solely involving the retiring of a source or closing of a facility upon notification of the department that the permittee has ceased operations of the source or facility;

(d) Incorporate a change in the permit solely involving the deletion from the permit of a source or sources upon notification of the department that the source or sources have not been and will not be built; or

(e) Incorporate a source or activity at the facility which is exempted under Subsection B of 20.2.72.202 NMAC;

**(2)** The permittee shall apply for an administrative permit revision by filing a certified written notification of the proposed revision with the department which includes all information required by the department to review the request. The certification shall be made as required under Paragraph 12 of Subsection A of 20.2.72.203 NMAC;

**(3)** The administrative permit revision is effective upon receipt of the notification by the department;

**(4)** Administrative permit revisions shall not be subject to public notification requirements under Subsection B of 20.2.72.203 NMAC and 20.2.72.206 NMAC. The department shall attach the revision to the permit;

**(5)** Administrative permit revisions shall not be subject to filing fees or permit fees under 20.2.75 NMAC (Construction Permit Fees);

**(6)** The department is not required to reissue the permit to incorporate an administrative permit revision.

#### **B. Technical Permit Revisions:**

**(1)** Technical permit revision procedures may be used only for:

**(a)** Permit revisions that incorporate a change in the permit solely involving a change to monitoring, record keeping, or reporting requirements by the permittee, provided that the department determines that such change does not reduce the enforceability of the permit;

**(b)** Permit revisions that incorporate a change in the permit solely involving additional equipment with a potential emission rate of no more than one (1) pound per hour for any pollutant for which a National or New Mexico Ambient Air Quality Standard has been set or one (1) pound per hour for any VOC;

**(c)** Permit revisions that incorporate a change in the permit solely involving the placement of permit conditions, including emissions limitations, on sources which existed on August 31, 1972 and which have been regularly operated since that time;

**(d)** Modifications that replace an emissions unit for which the allowable emissions limits have been established in the permit, provided that the new emissions unit:

**(i)** Is equivalent to the replaced emissions unit, and serves the same function within the facility and process;

**(ii)** Has the same or lower capacity and potential emission rates;

**(iii)** Has the same or higher control efficiency, and stack parameters which are at least as effective in the dispersion of air pollutants;

**(iv)** Would not result in an increase of the potential emission rate of any other equipment at the facility;

**(v)** Shall be subject to the same or lower allowable emissions limits under the permit, and to all other permit conditions which have applied to the replaced emissions unit;

**(vi)** Would not, when operated under applicable permit conditions, cause or contribute to a violation of any national or New Mexico ambient air quality standard; and

**(vii)** Would not, as determined by the department, require additional permit conditions in order to ensure the enforceability of the permit, such as additional record keeping or reporting to show compliance;

**(e)** Permit revisions that make adjustments to the emissions limitations based on the result of the initial compliance test(s), provided that:

**(i)** The test is performed in accordance with permit conditions;

**(ii)** Such adjustment occurs within six (6) months of the compliance test;

**(iii)** No other such adjustment has occurred since the most recent permit issuance or reissuance;

**(iv)** Such adjustment does not: alter any other permit condition; trigger additional requirements under any other part, including 20.2.74 NMAC (Prevention of Significant Deterioration); or result in allowable emissions which could contribute to a violation of any national or New Mexico ambient air quality standard;

**(v)** Such request does not increase the permitted allowable emissions of the unit(s) on which the initial compliance test(s) have been performed by more than ten (10) percent; and

**(vi)** Where the permit fee calculated under 20.2.75 NMAC (Construction Permit Fees) would have been greater if it had been based on the potential emission rate as indicated by the compliance test, the balance of the permit fee is submitted as part of the technical permit revision application;

**(f)** Permit revisions that incorporate a change in the permit solely involving the addition of air pollution control equipment or the substitution of a different type of air pollution control equipment to existing equipment provided that such addition or

substitution shall not result in an increase in the potential emission rate of more than one (1) pound per hour for any pollutant for which a national or New Mexico ambient air quality standard has been set, or one (1) pound per hour for total VOCs; or

**(g)** Permit revisions that incorporate terms and conditions in the permit, such as a cap on hours of operation, limitations on throughput of a specific product or products, or limitations on equipment capacity, for the purpose of reducing the potential emission rate of a unit or source.

**(2)** A request for a technical permit revision shall be accomplished by filing a certified written notification of the proposed revision with the department on forms provided by the Department and shall include all information required by the department to review the request. The certification shall be made as required under Paragraph 12 of Subsection A of 20.2.72.203 NMAC;

**(3)** The department shall approve or deny the technical permit revision, or inform the applicant that the request must be submitted as a significant permit revision:

**(a)** Within thirty (30) days of receipt of the application; or

**(b)** If in response to significant public interest the department holds a public meeting regarding the technical permit revision, within sixty (60) days of receipt of the application;

**(4)** The department may deny an application for a technical permit revision or require that such application be submitted as a significant permit revision if:

**(a)** Such revision does not meet the criteria of this section;

**(b)** In the judgment of the department the revision would require a decision on a significant or complex issue; or

**(c)** In the judgment of the department the permittee has submitted multiple or subsequent applications for technical permit revisions under this Part that segment a larger revision or modification that would not be eligible for a technical permit revision;

**(5)** The technical permit revision shall become effective upon written approval from the department;

**(6)** Technical permit revisions shall not be subject to public notification requirements under Paragraphs 1, 4 and 5 of Subsection B of 20.2.72.203 NMAC, and 20.2.72.206 NMAC. The department shall attach the technical permit revision to the permit.

### **C. [RESERVED]**

#### **D. Significant Permit Revisions:**

**(1)** A significant permit revision is required for any modification to a source, and for revisions to any term or condition of such permit, including but not limited to emissions limitation, control technology, operating conditions, and monitoring requirements; that:

**(a)** Do not meet the criteria under the provisions for administrative or technical permit revisions under Subsections A or B of 20.2.72.219 NMAC; or

**(b)** Meet the applicability criteria under 20.2.72.402 NMAC regarding toxic air pollutants;

**(2)** Applications for significant permit revisions shall meet all requirements of this part for permits and shall be processed in accordance with the public notice, review, and hearing procedures set forth in this part for such permits.

[20.2.72.219 NMAC - Rn, 20 NMAC 2.72.II.219, 02/02/01; A, 08/27/03]

#### **20.2.72.220 GENERAL PERMITS:**

A. Issuance of general construction permits:

**(1)** The department may, after notice under Subsections A and B of 20.2.72.206 NMAC and a public hearing with opportunity for public participation under Subsection C of 20.2.72.206 NMAC issue one or more general construction permits, each covering numerous similar sources. Sources registered for coverage under a general permit shall be generally homogeneous in terms of operations, processes and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements.

**(2)** Each general construction permit shall:

**(a)** Describe which sources may qualify to register under the general construction permit;

**(b)** Specify the contents of a complete application to register under the general construction permit. The department may, in the general construction permit, provide for applications which deviate from the requirements under 20.2.72.203 NMAC, provided that such applications include:

**(i)** All information necessary to determine qualification for, and to assure compliance with, the general construction permit; and

**(ii)** Applicant's public notice requirements including, at a minimum, a notice: a) published once in the legal notices section of a newspaper in general

circulation in the county or counties in which the property on which the facility is proposed to be constructed or operated is located; and b) posted at the proposed or existing facility entrance in a publicly accessible and conspicuous place on the property on which the facility is, or is proposed to be, located, until the general permit registration is granted or denied;

**(c)** Contain permit terms and conditions which apply to all sources registered under the general construction permit, and which include:

**(i)** Sufficient terms and conditions to assure that all sources registered under and operating in accordance with the general construction permit will meet all applicable requirements under the federal act, the New Mexico Air Quality Control Act and this chapter (Air Quality), including 20.2.74 NMAC (Prevention of Significant Deterioration), 20.2.77 NMAC (New Source Performance Standards), 20.2.78 NMAC (Emission Standards for Hazardous Air Pollutants), 20.2.79 NMAC (Permits - Nonattainment Areas), and 20.2.82 NMAC (Maximum Achievable Control Technology Standards for Source Categories of Hazardous Air Pollutants), and will not cause or contribute to air contaminant levels in excess of any national or New Mexico ambient air quality standard; and

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

**(iii)** As appropriate, terms and conditions to address and report emissions occurring during upsets, startups and maintenance; and

**(d)** Specify that any document, including any application form, report, compliance certification and supporting data, submitted pursuant to this section (20.2.72.220 NMAC) shall contain a certification that meets the requirements of Paragraph 10 of Subsection A of 20.2.72.203 NMAC.

## **B. Revisions to a General Construction Permit:**

**(1)** The department may, after notice under Subsections A and B of 20.2.72.206 NMAC and a public hearing with opportunity for public participation under Subsection C of 20.2.72.206 NMAC, revise a general construction permit. Notice of the proposed revision shall also be sent to the owner or operator of all sources registered under the general construction permit.

**(2)** Revisions to a general construction permit shall include a reasonable transition schedule for existing registered sources to comply with the revised permit. The department shall revise the general permit terms and conditions only to the extent

necessary to ensure that the requirements of Sub-paragraph (c) of Paragraph 2 of Subsection A of 20.2.72.220 NMAC are met.

**C. Registration under a General Construction Permit:**

**(1)** The owner or operator of a source required to obtain a permit pursuant to this part and which qualifies to register under a general construction permit shall either:

**(a)** Apply to the department to register under the terms of the general construction permit; or

**(b)** Apply for a construction permit under 20.2.72.200 NMAC.

**(2)** Within thirty (30) days of receiving an application to register under a general construction permit, the department shall review the application for completeness and shall grant or deny the registration. The department shall not grant the registration until at least fifteen (15) days after the date the applicant's public notice was initiated. The department shall notify the applicant of its determination by certified mail. The department shall attach a copy of the general construction permit to registration approvals.

**(3)** The department shall grant registration under a general permit to a source only if:

**(a)** The application is complete and meets the requirements of this section (20.2.72.220 NMAC); and

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

**(4)** The department may grant or deny an application to register under a general construction permit without repeating the public notice and participation procedures required under 20.2.72.206 NMAC.

**(5)** Administrative review under Sections 74-2-7.H through L NMSA 1978 shall be available for a determination made by the department of whether or not a source qualifies to register for coverage under a general construction permit. However, administrative review of a registration for coverage under a general construction permit shall not extend to administrative review of the general permit itself. Administrative review of the general construction permit shall be available under Sections 74-2-7.H through L NMSA 1978 only upon issuance or revision of the general permit as a permitting action.

**(6)** Sources shall be subject to enforcement action for construction without a permit if:

(a) Construction of a source is commenced prior to the receipt of the department's written approval of registration under a general construction permit; or

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

(7) A general permit registration may be canceled, consistent with the provisions of 20.2.72.211 NMAC, for any source which ceases operation for five years or more, or permanently, and for any source for which the construction or modification is not commenced within two years from the date of issuance or, if during the construction or modification, work is suspended for a total of one year. The owner or operator shall notify the department of the anticipated and actual startup of a source, consistent with the provisions of 20.2.72.212 NMAC.

**D. Modifications to Sources Registered Under a General Construction Permit:**  
Each general construction permit shall provide that, prior to modification of a source which is registered under a general construction permit, the owner or operator shall:

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

(2) For those modifications for which the source will not continue to meet the conditions of the general construction permit after such modification, obtain a construction permit from the department under this part prior to the modification.

[20.2.72.220 NMAC - Rn & A, 20 NMAC 2.72.II.220, 2/2/01]

#### **20.2.72.221 ACCELERATED REVIEW:**

##### **A. Qualified Outside Firms:**

(1) The department shall request proposals from persons interested in providing assistance as a qualified outside firm in the accelerated review of construction permit applications under this part.

(2) The department shall evaluate the proposal submitted by the person. To be eligible to contract with the department as a qualified outside firm a person must:

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

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

**(3)** Persons who are selected as qualified outside firms shall be under contract with the department for accelerated review of construction permit applications under this section.

**B. Requests for Accelerated Review:**

**(1)** At the sole discretion of the applicant, a construction permit applicant under this part may request accelerated permit review of the application by a qualified outside firm. Applications for accelerated review shall be preceded by a pre-application meeting between the applicant and the department. Requests for accelerated review shall not be granted unless there is at least one qualified outside firm under contract with the department pursuant to Paragraph 3 of Subsection A of 20.2.72.221 NMAC. If there are no firms under contract to provide accelerated review, the department shall review the application in accordance with 20.2.72.207 NMAC.

**(2)** Such request for accelerated permit review shall be submitted with the construction permit application along with a corporate check or money order for the amount of the accelerated review filing fee as specified in 20.2.75 NMAC. The department shall notify the applicant of the names and addresses of the qualified outside firms. The applicant shall deliver a copy of the application, by mail or hand delivery, to each qualified outside firm identified by the department, unless the applicant is aware of a conflict of interest.

**(3)** Participation in the accelerated permit review process shall not relieve the applicant of any responsibilities specified in this chapter.

**(4)** Applicants who have opted for accelerated review under this section shall be subject to supplementary fees pursuant to 20.2.75 NMAC which shall be assessed in addition to all other applicable fees levied under 20.2.75 NMAC.

**(5)** Qualified outside firms under contract which are interested in performing the accelerated review on a specific application shall submit to the department:

**(a)** A statement of interest;

**(b)** A statement of qualifications for that specific application;

**(c)** An estimate of the cost and schedule for the review; and

**(d)** A notarized affidavit attesting that no conflict of interest exists on the specific permit application.

**(6)** If no qualified outside firm submits the four items required by Paragraph 5 of Subsection B of 20.2.72.221 NMAC, the department shall apply the accelerated review filing fee to the permit fee in accordance with 20.2.75 NMAC and review the

application without the assistance of a qualified outside firm and in accordance with 20.2.72.207 NMAC.

**(7)** The department shall review the submittals and determine, in the department's sole discretion, which firms qualify for any specific application.

**(8)** Prior to determining any application administratively complete for which accelerated review has been requested as allowed under 20.2.72.203 NMAC, the department shall provide the applicant a written summary of the qualified submittals showing the costs to the applicant of the accelerated review and the anticipated schedule for application review, permit development and permit issuance.

**(9)** Applicant's responsibilities for response to submittal summary:

**(a)** Within five (5) working days of receipt of the department's bid summary the applicant shall either: (i) submit to the department a written recommendation to accept one of the accelerated review bids, or a prioritized list of more than one of the accelerated review bids, including a brief justification for the recommendation(s) along with a corporate check or money order payable to the department for the amount of the accelerated review bid and a notarized affidavit attesting that no conflict of interest exists on the specific permit application; or (ii) submit to the department a written withdrawal of the request for accelerated review.

**(b)** The request for accelerated review is deemed withdrawn if the applicant fails to submit a written recommendation or withdrawal within five (5) working days of receipt of the department's bid summary unless the Department has granted an extension.

**(10)** Department's selection of qualified outside firm

**(a)** If the request for accelerated review is withdrawn, the department shall retain the accelerated review filing fee in accordance with 20.2.75 NMAC and shall review the application without the assistance of a qualified outside firm and in accordance with 20.2.72.207 NMAC.

**(b)** If the applicant recommends a qualified submittal, the department shall determine whether to accept the recommended submittal. If the department accepts the recommended submittal it shall instruct the qualified outside firm to begin review of the application. If the department rejects the recommended submittal, it shall inform the applicant and allow the applicant to recommend an alternate submittal pursuant to Paragraph 9 of Subsection B of 20.2.72.221 NMAC or, if there are no other qualified submittals, the department shall retain the accelerated review filing fee in accordance with 20.2.75 NMAC and review the application without the assistance of a qualified outside firm and in accordance with 20.2.72.207 NMAC.

### **C. Disclosure of Conflicts During Accelerated Review:**

(1) The applicant and the qualified outside firm have a continuing obligation to investigate potential conflicts of interest and to immediately disclose, in writing, any conflict of interest to the department. If a conflict of interest was not disclosed pursuant to Subparagraph d of Paragraph 5 of 20.2.72.221 NMAC or Subparagraph a of Paragraph 9 of Subsection B of 20.2.72.221 NMAC, and is later disclosed or discovered, the department may:

- (a) Deny the application pursuant to 20.2.72.208 NMAC;
- (b) Terminate accelerated review and review the application pursuant to 20.2.72.207 NMAC; or
- (c) Allow accelerated review to continue after elimination of the conflict.

(2) In choosing between these options the department shall consider whether the conflict of interest was disclosed or discovered, the timing of the disclosure or discovery, diligence in investigating potential conflicts of interest, any indication of intentional or willful failure to disclose, significance of the conflict of interest, and ability to eliminate the conflict of interest in a timely manner.

#### **D. Issuance of a Permit After Accelerated Review:**

(1) Upon completion of the review, the qualified outside firm shall provide the department with all documentation, including but not limited to all communications, notes, and drafts, pertaining to the permit application. At any time during the review, the qualified outside firm shall provide all documentation pertaining to a specific application to the department upon request. Such documentation shall be subject to the Inspection of Public Records Act, Chapter 14, Article 2 NMSA 1978, and the Confidential Information Section of the Air Quality Control Act, Section 74-2-11 NMSA 1978.

(2) The department shall review the analysis prepared by the qualified outside firm and shall issue a permit or deny the permit application in accordance with this part. The qualified outside firm's analysis is not binding on the department. The department retains final authority to accept or reject the qualified outside firm's analysis regarding the permit application.

(3) The department shall not issue the permit until both the accelerated review processing fee and any fees due pursuant to 20.2.75 NMAC have been paid.

[20.2.72.221 NMAC - N, 3/30/01]

**20.2.72.222-20.2.72.299 [RESERVED]**

**20.2.72.300 DEFINITIONS:**

In addition to the definitions in 20.2.72.7 NMAC, the following definitions apply to 20.2.72.300 NMAC - 20.2.72.399 NMAC:

**A. "Compressor station"** means a facility whose primary function is the extraction of crude oil, natural gas, or water from the earth with compressors, or movement of any fluid, including crude oil or natural gas, or products refined from these substances through pipelines or the injection of natural gas or CO<sub>2</sub> back into the earth using compressors. A compressor station may include engines to generate power in conjunction with the other functions of extraction, injection or transmission and may contain emergency flares. A compressor station may have auxiliary equipment which emits small quantities of regulated air contaminants, including but not limited to, separators, de-hydration units, heaters, treaters and storage tanks, provided the equipment is located within the same property boundaries as the compressor engine.

**B. "Good engineering practice stack height"** means  $H_{subGEP} = H + 1.5L$ , where H equals the height of any building or obstruction within 5L of the stack, and L equals the lesser of the height or maximum projected width of the building or obstruction.

**C. "Impact area"** means the circular area with a radius extending from the source to the most distant point where the total potential emissions from the facility will cause a significant ambient impact (i.e., equal or exceed the applicable significant ambient impact level in 20.2.72.500 NMAC).

**D. "Maximum projected width"** means the largest crosswind building or obstruction dimension.

**E. "Potential to emit" or "potential emissions"** means the maximum capacity of a stationary source to emit a regulated air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

**F. "Secondary emissions"** means emissions of an air contaminant which occur as a result of the construction or operation of a stationary source or modification, but do not come from the stationary source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the stationary source or modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

**G. "SUM"** means the sum of the potential emissions for oxides of nitrogen from all adjacent sources.

**H. "SUM15"** means the sum of the potential emissions for oxides of nitrogen from all adjacent sources within 15 km of the NO<sub>2</sub> impact area.

**I. "SUM25"** means the sum of the potential emissions for oxides of nitrogen from all adjacent sources within 25 km of the NO<sub>2</sub> impact area.

**J. "Sweet natural gas"** means natural gas containing no more than 0.25 grains of hydrogen sulfide per 100 standard cubic feet of gas.

[20.2.72.300 NMAC - Rn & A, 20 NMAC 2.72.III.300, 2/2/01]

### **20.2.72.301 APPLICABILITY:**

**A.** Any owner or operator intending to construct or modify a source which requires a permit under the provisions of 20.2.72.200 NMAC may elect to obtain a permit under 20.2.72.300 NMAC - 20.2.72.399 NMAC if the source category is listed in 20.2.72.501 NMAC.

**B.** 20.2.72.300 NMAC - 20.2.72.399 NMAC shall not apply to:

- (1)** Any "major stationary source" as defined in 20.2.74 NMAC;
- (2)** Any facility, either before or after construction or modification, with a total potential to emit of any regulated air contaminant greater than 200 tons per year (tpy);
- (3)** Any source subject to the requirements of 20.2.78 NMAC or 20.2.72.400 NMAC - 20.2.72.499 NMAC;
- (4)** Any reciprocating internal combustion (IC) engines and/or turbines located at petroleum refineries, chemical manufacturing plants, bulk gasoline terminals, natural gas processing plants, or at any facility containing sources in addition to IC engines and/or turbines for which an air quality permit is required through state or federal air quality regulations;
- (5)** Any source which emits or proposes to emit those contaminants for which the impact area from the facility intersects an area, or for which the area itself is: 1) designated nonattainment for federal ambient air quality standards; or 2) nonattainment for federal PSD increments or state ambient air quality standards according to ambient data or air quality modeling; or 3) shown by air quality data or dispersion or other air quality modeling that air contaminants have consumed more than 80% of state or federal ambient air quality standards or PSD increments for those areas where the baseline has been triggered for the specific PSD increments;

**(6)** Any source with the nearest property boundary located less than:

**(a)** 1 kilometer (km) from a school, residence, office building, or occupied structure. Buildings and structures within the immediate industrial complex of the source are not included.

**(b)** 3 km from the property boundary of any state park, Class II wilderness area, Class II national wildlife refuge, national historic park, state recreation area, or community with a population of more than twenty-thousand people.

**(c)** 10 km from the boundary of any community with a population of more than forty-thousand people, or

**(d)** 30 km from the boundary of any Class I area;

**(7)** Any source located in Bernalillo county or within 15 km of the Bernalillo county line.

**C.** The following sections and subsections of 20.2.72.200 NMAC - 20.2.72.299 NMAC apply to permit applications submitted pursuant to 20.2.72.300 NMAC - 20.2.72.399 NMAC: Subsections A, B and E through H of 20.2.72.200 NMAC, 20.2.72.202 NMAC, 20.2.72.204 NMAC, 20.2.72.205 NMAC, Subsection C of 20.2.72.206 NMAC, Subsections D through G of 20.2.72.207 NMAC, 20.2.72.208 NMAC, 20.2.72.209 NMAC, 20.2.72.210 NMAC, 20.2.72.211 NMAC, 20.2.72.212 NMAC, 20.2.72.214 NMAC and 20.2.72.215 NMAC. The remainder of 20.2.72.200 NMAC - 20.2.72.299 NMAC does not apply to applications submitted pursuant to 20.2.72.300 NMAC - 20.2.72.399 NMAC.

**D.** Any source, including compressor stations, consisting of IC engines and/or turbines must comply with one of the following three criteria, Paragraph 1, 2, or 3 of Subsection D of 20.2.72.301 NMAC, in order to qualify for source class permit streamlining under 20.2.72.300 NMAC - 20.2.72.399 NMAC (In demonstrating compliance with Subsection D of 20.2.72.301 NMAC, the department shall give no credit for modeled reductions in ambient air concentrations due to so much of a source's stack which exceeds good engineering stack height, or fifty (50) feet in situations where there are not obstructions or buildings associated with the source):

**(1)** The total potential to emit of each regulated contaminant from all sources at the facility shall be less than 40 tpy. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen; or

**(2)** The total potential to emit of each regulated contaminant from all emission sources at the facility shall be less than 100 tons per year (tpy) and the impact on ambient air from all sources at the facility shall be less than the ambient significance levels in 20.2.72.500 NMAC, Table 1. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen expressed as nitrogen dioxide; or

**(3)** The maximum modeled ambient impact from the total potential emissions at the facility shall be less than 50 percent of each applicable PSD increment, for those areas where the baseline has been triggered for the specific PSD increments, and state and federal ambient air quality standards; and

**(a)** There shall be no adjacent sources emitting the same regulated air contaminant(s) as the source within 2.5 km of the modeled nitrogen dioxide (NO<sub>2</sub>) impact area; and

**(b)** The "sum of the potential emissions for oxides of nitrogen from all adjacent sources" (SUM) within 15 km of the NO<sub>2</sub> impact area (SUM15) shall be less than 740 tpy; and

**(c)** The SUM25 within 25 km from the NO<sub>2</sub> impact area shall be less than 1540 tpy.

**(4)** Modifications to the auxiliary emission generating equipment at a facility qualifying and electing source class permit streamlining may commence without obtaining a permit for such modification as long as the total potential to emit of all auxiliary equipment remains at or below 1.0 lb/hr for any one regulated air contaminant and as long as the total potential to emit of each regulated air contaminant from the compressor station meets the requirements of Paragraphs 1 or 2 of Subsection D of 20.2.72.301 NMAC or previously qualified under Paragraph 3 of Subsection D of 20.2.72.301 NMAC. The applicant shall provide, in writing, the nature of all changes to the department no later than 15 days prior to the expected change.

[20.2.72.301 NMAC - Rn & A, 20 NMAC 2.72.III.301, 2/2/01]

[Annotated Note: Section 20.2.72.202 - Permit Revisions, which is referenced in Subsection C of this section, was renumbered to Section 20.2.72.219 NMAC, effective 1/7/1998]

### **20.2.72.302 CONTENTS OF APPLICATION:**

**A.** Any person seeking a permit under 20.2.72.300 NMAC - 20.2.72.399 NMAC shall do so by filing a written application with the department. For those applications not qualifying under Subsection A of 20.2.72.303 NMAC, the applicant shall also:

**(1)** Provide by certified mail a complete copy of the application and public notice to the department's field or district office nearest the source; and

**(2)** Provide by certified mail a copy of the public notice to the appropriate federal land manager if the source will locate within 50 km of the boundary of a Class I area.

**B.** The items of this section, if requested on the applicable application form, are required before the department may deem an application administratively complete. The applicant shall submit the number of copies of the permit application specified in the applicable application form. All applications shall be filed on the forms furnished by the department and shall include:

**(1)** The applicant's name and address, the person to contact regarding the application, and the name and address of the new source or modification;

**(2)** A description of the new facility or modification including all operations effecting air emissions;

**(3)** The anticipated operating schedule;

**(4)** A topographical map, at least as detailed as a 7.5 minute United States Geological Survey Topographic Quadrangle, showing the exact location and geographical coordinates of the stationary source;

**(5)** The Universal Transverse Mercator (UTM) horizontal and vertical coordinates for the facility;

**(6)** A plot plan showing the location of emission units with respect to the plant's property boundaries and the dimensions of any buildings, terrain, or obstructions which may cause emissions to be down-washed;

**(7)** A detailed description of any air pollution control device or method to be utilized, including the basis for the estimated control efficiency;

**(8)** The stack and exhaust gas parameters for all emission points, including calculations and manufacturer's or supplier's data which documents the emission rates and exhaust gas parameters;

**(9)** A comprehensive regulatory compliance review, including all pertinent data and calculations, for each applicable new source performance standard, such as 40 CFR 60, Subpart GG - Standards of Performance for Stationary Gas Turbines;

**(10)** Documentation of the manufacturer's or supplier's recommended maintenance schedules and procedures for all air pollution control equipment;

**(11)** A compliance demonstration based on US EPA approved modeling or analysis, including all pertinent calculations and computations, for all applicable requirements of 20.2.72.300 NMAC - 20.2.72.399 NMAC for any facility electing to obtain a permit under 20.2.72.300 NMAC - 20.2.72.399 NMAC;

**(12)** Documentary proof that the requirements of Paragraphs 1 and 2 of Subsection A of 20.2.72.302 NMAC have been satisfied;

**(13)** The notarized signature under oath or affirmation by the operator, the owner, or an authorized representative, certifying to the best of his or her knowledge the truth of all information submitted;

**(14)** Payment of any fees which are specified in 20.2.75 NMAC (Construction Permit Fees) as payable at the time the application is submitted; and

**(15)** Any other specifically identified relevant information as the department may reasonably require.

[20.2.72.302 NMAC - Rn & A, 20 NMAC 2.72.III.302, 2/2/01]

### **20.2.72.303 PUBLIC NOTICE AND PARTICIPATION:**

**A.** Applications qualifying under the following paragraphs of 20.2.72.300 NMAC - 20.2.72.399 NMAC are not subject to Subsection B of 20.2.72.303 NMAC and Paragraph 2 of Subsection C of 20.2.72.303 NMAC: Paragraphs 1 and 2 of Subsection D of 20.2.72.301 NMAC.

**B.** The applicant shall:

**(1)** Publish notice once in a newspaper of general circulation in the area closest to the location of the source. This notice shall appear in either the classified or legal advertisements section of the newspaper. Notice shall be published in accordance with department guidance documents and must include:

**(a)** The applicant's name and address;

**(b)** The address and phone number of the department's air quality bureau in Santa Fe, and the address of the field or district office where a copy of the application will be sent as required in Subsection A of 20.2.72.302 NMAC;

**(c)** The location and a brief description of the source;

**(d)** A summary of estimated emissions and ambient impact for each regulated contaminant for the entire facility;

**(e)** Where required in 20.2.72.300 NMAC - 20.2.72.399 NMAC, the applicant's public notice shall contain the following statement: "Any comments submitted on this permit application should address the relevant requirements of state and federal air quality regulations and the Federal Clean Air Act and the state Air Quality Control Act. The comments shall be submitted to the department's air quality bureau in Santa Fe within thirty (30) days following the date of publication";

**(f)** Any other information required by the department; and

(2) Post the notice at the proposed or existing facility entrance on the property on which the facility is, or is proposed to be located prior to submittal of the application and remaining posted until the department takes final action on the permit.

C. The department shall:

(1) Make available for public inspection the permit application. Copies of any permit application, except those portions of which may be determined as confidential in accordance with 20.2.1 NMAC (General Provisions), will be supplied upon written request and payment of reasonable costs.

(2) Allow all interested persons thirty (30) days from the date of publication of the applicant's public notice in a newspaper of general circulation, to submit written comments or evidence on the application.

[20.2.72.303 NMAC - Rn & A, 20 NMAC 2.72.III.303, 2/2/01]

#### **20.2.72.304 PERMIT DECISIONS:**

A. The department shall within thirty (30) days after its receipt of an application for a permit or permit revision review such application and determine whether it is administratively complete.

(1) If the application is deemed administratively complete, a certified letter to that effect shall be sent to the applicant.

(2) If the application is deemed administratively incomplete, a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to deem the application administratively complete. Upon receipt of such information, the department shall promptly review such information and determine whether the application is administratively complete.

(3) If the application is deemed administratively complete but no permit is required, a certified letter shall be sent to the applicant informing the applicant of the determination.

B. The department shall either grant, grant subject to conditions, or deny the permit or permit revision as soon as practicable after the department deems the application administratively complete but not to exceed the times specified below:

(1) For applications qualifying under the Paragraphs 1 and 2 of Subsection D of 20.2.72.301 NMAC, within thirty (30) days;

(2) For all other applications, within sixty (60) days, or ninety (90) days if there is a hearing under 20.2.72.206 NMAC.

[20.2.72.304 NMAC - Rn & A, 20 NMAC 2.72.III.304, 2/2/01]

### **20.2.72.305 GENERAL REQUIREMENTS:**

All sources permitted pursuant to 20.2.72.300 NMAC - 20.2.72.399 NMAC shall operate in compliance with the following conditions:

**A.** A copy of the most recent permit issued by the department shall be made available to department personnel for inspection upon request. If the permit is not kept at the plant location, a notice at the plant site shall be located in a conspicuous place stating the facility name and ownership, air quality permit number, and the address and phone number of the department in Santa Fe;

**B.** The source shall operate in compliance with all applicable state and federal regulations, including federal new source performance standards incorporated by 20.2.77 NMAC and permit conditions;

**C.** The owner or operator of the source shall be required to conduct such performance tests as specified by the department to determine compliance with emission limitations or technology requirements as specified in an applicable regulation or permit condition. Specific schedules and requirements will be listed in 20.2.72.306 NMAC for each source class and/or in the permit. Performance test requirements may be reimposed on a source as necessary if inspections of the source or other information available to the department, indicate noncompliance, or the previous test showed noncompliance or was technically unsatisfactory. In such cases, the department may reimpose such tests as frequently as necessary until compliance is achieved and testing is performed in a manner technically satisfactory to the department. The owner or operator shall:

**(1)** Arrange a pretest meeting with the department at least two weeks prior to the anticipated test date for all tests;

**(2)** Notify the department at least thirty (30) days prior to the date and time of performance testing, and provide the department an opportunity to have an observer present during testing;

**(3)** Conduct performance tests in accordance with methods and procedures specified by the department. Whenever the requirements of 40 CFR 60 apply, test methods must be utilized as specified in those regulations;

**(4)** Submit a written report to the department of the results of the test within thirty (30) days from the test date; and

**D.** The owner or operator using a catalytic converter to meet the requirements of 20.2.72.300 NMAC - 20.2.72.399 NMAC shall satisfactorily test the reduction efficiency across the catalyst bed and report the results of the test to the department according to

the permit conditions, within ninety (90) days following initial start-up and on a quarterly basis thereafter, unless an alternative testing schedule is specified by the department. The tests shall be conducted in accordance with the requirements of Subsection C of 20.2.72.305 NMAC and as required in the permit, except that the requirements of Paragraphs 1 and 2 of Subsection C of 20.2.72.305 NMAC shall be waived unless the department specifically requests a pretest meeting or notification of the next test date.

[20.2.72.305 NMAC - Rn & A, 20 NMAC 2.72.III.305, 2/2/01]

### **20.2.72.306 SOURCE CLASS REQUIREMENTS:**

**A.** In addition to the general conditions of 20.2.72.305 NMAC, each permitted source listed in 20.2.72.501 NMAC (Table 2) shall also comply with the applicable source class requirements below:

**(1)** Requirements for source class category 1 - reciprocating internal combustion (IC) engines:

**(a)** Gas fuel shall be produced natural gas, sweet natural gas, liquid petroleum gas, or fuel gas. No gas fuel shall contain more than 0.1 grain of total sulfur per dry standard cubic foot. Liquid fuel shall be first run refinery grade diesel or No. 2 fuel oil that is not a blend containing waste oils or solvents and contains less than 0.3% by weight sulfur;

**(b)** Within ninety (90) days after initial start-up of the source, the owner or operator shall conduct NO<sub>x</sub> and carbon monoxide (CO) performance tests on one or more engines (turbines) at the facility to ensure the facility is in compliance with 20.2.72.300 NMAC - 20.2.72.399 NMAC and permit requirements, including emission limits and any applicable pollution control device reduction efficiency requirements for NO<sub>x</sub>. The department shall specifically identify in the permit each engine or turbine subject to initial performance testing requirements. Tests shall be conducted in accordance with the requirements of Subsection C of 20.2.72.305 NMAC;

**(c)** Any engine which operates with a non-selective catalytic converter shall comply with the following requirements:

**i.** Any spark ignited gas-fired or any compression ignited dual fuel-fired engine shall be equipped and operated with an automatic air-fuel ratio (AFR) controller which maintains AFR in the range required to minimize NO<sub>x</sub> emissions, as recommended by the manufacturer; and

**ii.** The owner or operator shall make and maintain records to demonstrate that the manufacturer's or supplier's recommended maintenance is performed, including replacement of the oxygen sensor as necessary for oxygen-based AFR controllers, and cleaning, regeneration, and/or replacement of catalyst(s) as

necessary to maintain at least the NO<sub>x</sub> reduction efficiencies across the catalyst bed that are specified in the permit.

**B.** Requirements for source class category 2 - turbines: The source must comply with Paragraphs 1 and 2 of Subsection A of 20.2.72.306 NMAC.

[20.2.72.306 NMAC - Rn & A, 20 NMAC 2.72.III.306, 2/2/01]

#### **20.2.72.307-20.2.72.399 [RESERVED]**

#### **20.2.72.400 PREAMBLE:**

The board is concerned about the increasingly common presence of toxic air pollutants in the ambient air. The board believes that the best approach to regulating sources of toxic air pollutants over the long term is to set ambient standards for each pollutant of concern. However, because of financial constraints, the unavailability of sufficient information to establish such ambient standards, the time necessary to establish such standards for the contaminants identified as toxic air pollutants and because the board wishes to implement a toxic air pollutant permitting program as soon as possible, the board has adopted a source-by-source permit-based approach for the present. Under this permit-based approach, the board has given limited authority to the department to use factors of the OELs (occupational exposure limits) in evaluating permit applications. The board recognizes that the use of OELs, or factors of them, as ambient air standards would be inappropriate; therefore, the board has authorized their use for screening purposes only. This authorization is not intended to represent, and should not be interpreted as, a finding by the board that these factors are suitable for determining safe or unsafe ambient air concentrations. Various respected groups, such as the American Conference of Governmental Industrial Hygienists (ACGIH), may develop ambient air exposure guidelines in the future. Development of ambient air guidelines by groups such as this could be the basis for developing toxic air pollutant ambient air standards. The board also notes that the department currently is developing an emissions inventory of toxic air pollutants. An emissions inventory may identify toxic air pollutants that are of particular concern in New Mexico. The board believes that efforts like these may facilitate the development of toxic air pollutant ambient air standards. For these reasons, the board requests the department to prepare and present a report to the board within five years of the effective date of the toxic air pollutant permitting requirements. The report shall review and evaluate the implementation of the toxic air pollutant permitting program, summarize the results of the toxic air pollutant inventory gathered pursuant to AQCR 752, and review scientific and technical progress made in the area of toxic air pollutants that might facilitate the development of toxic air pollutant ambient air standards. The board shall schedule a discussion of this report at a regular monthly meeting within three months of the publication of this report.

[20.2.72.400 NMAC - Rn & A, 20 NMAC 2.72.IV.400, 2/2/01]

#### **20.2.72.401 DEFINITIONS:**

In addition to the definitions in 20.2.72.7 NMAC, the following definitions apply to 20.2.72.400 NMAC - 20.2.72.499 NMAC:

**A. "Best available control technology"** means an emission limitation based on the maximum degree of reduction in emissions of each contaminant subject to this part which the secretary (or the board), on a case-by-case basis, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts resulting from the use of such technology, determines is achievable for the source, through application of measures, processes, methods, systems, or techniques including, but not limited to, measures which:

- (1) Reduce the volume of such pollutants through process changes, substitutions of materials, or other modifications, or
- (2) Enclose systems or processes to eliminate emissions, or
- (3) Collect, capture or treat such pollutants when released from a process, stack, storage, or fugitive emission point.

**B. "Existing source"** means any source, the construction or modification of which was commenced on or before December 31, 1988.

**C. "Fixed capital costs"** means that capital needed to provide all the depreciable components.

**D. "New source"** means any source, the construction of which is commenced after December 31, 1988. The term does not include any new source which is integrally related with and integrally connected to the process of an existing source. The term includes the reconstruction of an existing source.

**E. "Occupational Exposure Limit" or "OEL"** means the eight-hour time weighted average concentration specified for workroom air in "Threshold Limit Values and Biological Exposure Indices for 1986-1987" as adopted by the American Conference of Governmental Industrial Hygienists, or for compounds not assigned an OEL in that document, the minimum detection limit specified in the National Institute for Occupational Safety and Health "Manual of Analytical Methods", Third Edition.

**F. "Oil and gas production facilities"** means facilities for the exploration, development, production, treatment, separation, storage, transport, and sale of unrefined hydrocarbons, natural gas liquids, and CO<sub>2</sub> (e.g., major SIC group 13, oil and gas extraction, SIC industry group no. 4612, crude, petroleum, pipeline and SIC industry no. 4922, natural gas transmission). Natural gas processing plants and refineries are not included for purposes of this definition.

**G. "Reconstruction"** means a modification which results in the replacement of the components or addition of integrally related equipment to an existing source to such an

extent that the fixed capital cost of the new components or equipment exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility.

**H. "Toxic air pollutant"** means any air contaminant in 20.2.72.502 NMAC.

[20.2.72.401 NMAC - Rn & A, 20 NMAC 2.72.IV.401, 2/2/01]

**20.2.72.402 APPLICABILITY:**

**A.** All the requirements of 20.2.72.400 NMAC - 20.2.72.499 NMAC for toxic air pollutants shall supplement other provisions of this Part (20.2.72 NMAC).

**B.** A permit must be obtained from the department by any person prior to the construction or modification of a new source which has total potential emissions of a toxic air pollutant into the ambient air that exceed the emission level in pounds per hour specified in 20.2.72.502 NMAC, and one or more of the following conditions are met:

**(1)** The toxic air pollutant is listed under applicable primary and secondary SIC codes appropriate for the source in the US EPA SIC/Pollutant Index (Appendix C of EPA-450/4-86-010); or

**(2)** The toxic air pollutant is known by the owner or operator to be emitted into the ambient air because of:

**(a)** Information from material safety data sheets and hazard labelling required under the OSHA Hazard Communications Standard 29 CFR 1910.1200, or

**(b)** Information from reports required under the Federal Emergency Planning and Community Right-to-Know Act of 1986, P.L. 99-499, Title III, Sections 300-330, or

**(c)** Other information reasonably available to the owner or operator based on the source's obligations under other regulatory programs; or

**(3)** The toxic air pollutant is identified by the department on or before the date the application is determined to be complete, as likely to be emitted from a source. The department shall also provide the owner or operator a reasonable basis to support the belief that the source will emit such toxic air pollutant.

**C.** The following classes of sources are exempt from the permitting requirements for toxic air pollutants:

**(1)** Gasoline Service Stations - SIC No. 5441

**(2)** Automotive Repair Shops - SIC No. 753

(3) Laundry, Cleaning, and Garment Services - SIC No. 721

(4) Domestic Woodstoves and Fireplaces

(5) Oil and Gas Production Facilities

(6) Agricultural Production - Crops, SIC No. 01

(7) Agricultural Production - Livestock, SIC No. 02

(8) Agricultural Services - SIC No. 07

(9) Containers, such as tanks, barrels, drums, cans and buckets, unless equipped with a vent that emits or may emit any toxic air pollutant, which are used in connection with the operation, maintenance or repair of a stationary source.

(10) Non-process fugitive emissions of toxic air pollutants from stationary sources, such as construction sites, unpaved roads, coal piles, tailings piles, waste piles, and fuel and ash handling operations.

**D.** An exemption or exclusion from the permitting requirements for toxic air pollutants does not relieve a source from any other requirements in this part (20.2.72 NMAC).

[20.2.72.402 NMAC - Rn & A, 20 NMAC 2.72.IV.402, 2/2/01]

#### **20.2.72.403 CONTENTS OF APPLICATION:**

**A.** For the department to deem administratively complete a permit application for the emission of a toxic air pollutant, the application shall contain, in addition to the requirements of 20.2.72.203 NMAC, the following items:

(1) Identification of all toxic air pollutants that may be emitted in excess of the screening level (specified in pounds per hour) in 20.2.72.502 NMAC;

(2) Air quality modeling, in accordance with methods approved by the US EPA or the department, that estimates ambient concentrations that would be caused by the proposed emissions. The modeling for the toxic air pollutants will include available emissions supplied by the department from registration and permitting information from all registered or permitted sources in the area of the source being permitted.

**B.** If the modeling shows that the eight-hour average ambient concentration of the toxic air pollutant exceeds one-one hundredth of the OEL and the toxic air pollutant is not identified as a known or suspected human carcinogen in 20.2.72.502 NMAC, Table B, the permit application shall also include, as a requirement for administrative

completeness, a health assessment for the toxic air pollutant under consideration. The assessment shall include consideration of the following:

- (1) Source to potential receptor data and modeling;
- (2) Relevant environmental pathway and effects data;
- (3) Available health effects data such as:
  - (a) Functional diseases;
  - (b) Mutagenicity data as an index of genotoxic effects including heritable diseases;
  - (c) Reproductive effects data;
  - (d) Other diseases; and
- (4) An integrated assessment of the human health effects for projected exposures from the applicant's facility. The assessment should use existing relevant data obtained from epidemiological studies, controlled human exposure studies, laboratory animal studies, and studies using tissues and cells.

**C.** If the toxic air pollutant is identified as a known or suspected human carcinogen in 20.2.72.502 NMAC and air quality modeling shows that the eight-hour average concentration of the toxic air pollutant exceeds one one-hundredth of the OEL or the minimum detection level in 20.2.72.502 NMAC, the permit application shall include, as a requirement for administrative completeness, information necessary to demonstrate the source will install the best available control technology to control that pollutant.

[20.2.72.403 NMAC - Rn & A, 20 NMAC 2.72.IV.403, 2/2/01]

#### **20.2.72.404 PUBLIC NOTICE AND PARTICIPATION:**

In addition to the requirements of 20.2.72.206 NMAC:

**A.** The department shall meet with the applicant during the permit application process, prior to deeming the application administratively complete, to discuss the need for additional data and information not initially submitted by the applicant; and

**B.** The department shall promptly advise the applicant of all medical or other scientific evidence the department uses to evaluate the health effects of the toxic air pollutant emissions and make available to the applicant in a timely manner all information, including all previous decisions on the toxic air pollutant in question.

[20.2.72.404 NMAC - Rn & A, 20 NMAC 2.72.IV.404, 2/2/01]

## **20.2.72.405 PERMIT DECISIONS:**

In making its decisions, the department shall consider emissions after control.

**A.** Ambient concentrations not exceeding one one-hundredth of the OEL or the minimum detection level for compounds without an OEL: If the department finds that the eight-hour average concentration of the toxic air pollutant in the ambient air does not exceed one one-hundredth of the OEL, or for compounds without an OEL, the minimum detection levels as shown in 20.2.72.502 NMAC, the department shall grant the permit. The administrative screening level of one one-hundredth the OEL and the OEL shall not be a basis for denying a permit and shall not constitute an ambient air quality standard.

**B.** Ambient concentrations exceeding one one-hundredth of the OEL or the minimum detection level for compounds without an OEL for substances identified as known or suspected human carcinogens in 20.2.72.502 NMAC: If the toxic air pollutant being considered is identified as a known or suspected carcinogen in 20.2.72.502 NMAC, Table B, and the department finds the eight-hour concentration of the toxic air pollutant in the ambient air exceeds one one-hundredth of the OEL, or for compounds without an OEL, the minimum detection level, the department shall grant the permit if the applicant implements the best available control technology to control that pollutant.

**C.** Ambient concentrations exceeding one one-hundredth of the OEL for substances not identified as carcinogens in 20.2.72.502 NMAC:

**(1)** If the applicant has been required to prepare a health assessment under Subsection B of 20.2.72.403 NMAC, the department shall prepare a Summary Review Statement (SRS) which indicates the department's opinion of the adequacy of the applicant's health assessment. The SRS will include a summary recommendation on whether the issuance of a permit will or will not with reasonable probability injure human health.

**(2)** If the applicant does not agree with the recommendation contained in the SRS, the applicant's assessment and the SRS will be provided to the Air Toxics Scientific Advisory Committee (ATSAC). The ATSAC will be composed of five members appointed by the Secretary. They will include physicians, toxicologists, industrial hygienists, or others knowledgeable of the potential health and environmental effects of air pollution. The committee will include at least one member nominated by the applicant. The ATSAC will review the applicant's assessment and the SRS in a public meeting. The ATSAC shall provide a letter to the Secretary stating: (1) whether the submitted documents provide a scientifically adequate basis to determine whether the proposed source will with reasonable probability injure human health and (2), if the documents do provide an adequate basis, whether the proposed source will with reasonable probability injure human health. If the documents are scientifically inadequate, the ATSAC shall return them to the department and indicate their inadequacies.

**(3)** The department will make a final decision on the issuance of the permit after consideration of the following factors:

**(a)** The nature of the toxic air pollutant and the size, susceptibility, and proximity of the human population;

**(b)** The pathways of human exposure (e.g., ingestion, inhalation, skin absorption);

**(c)** The short term and long term health effects associated with the toxic air pollutant at levels of exposure commensurate with the anticipated exposure level;

**(d)** Existing epidemiological data on health effects associated with the anticipated levels of exposure;

**(e)** The character of the land use of the predicted area of impact (e.g., residential, industrial, and recreational); and

**(f)** The scientific adequacy of the health and environmental assessment submitted by the applicant and the recommendation of the ATSAC. The department shall not rely on the OEL or on the administrative screening level of one one-hundredth the OEL, and it shall not be bound by prior permit decisions when considering pending applications.

**(4)** The department shall deny any application for a permit evaluated under Subsection C of 20.2.72.405 NMAC if the source will emit a toxic air pollutant in such quantities and duration as may with reasonable probability injure human health.

**D.** The department shall document, in the administrative record, all processes, facts, and reasoning relied on in making the permit decision, including citations to the relevant technical data, publications, and expert opinions considered.

**(1)** The final deliberations of the ATSAC shall be open to the public. Except for requests by members of the ATSAC for input from the applicant or department, no other comments from the applicant, department, or audience shall be allowed during final deliberations.

**(2)** Prior to a final decision, the ATSAC members may communicate among themselves in order to facilitate the evaluation process. However, all ATSAC members shall be apprised of such communications.

**(3)** Prior to a final decision, the ATSAC members may also communicate with the department and applicant in order to clarify information or secure additional information concerning the applicant's health assessment or the department's SRS. The department, applicant, and all ATSAC members shall be apprised of such communication.

[20.2.72.405 NMAC - Rn & A, 20 NMAC 2.72.IV.405, 2/2/01]

**20.2.72.406-20.2.72.499 [RESERVED]**

**20.2.72.500 TABLE 1 - SIGNIFICANT AMBIENT CONCENTRATIONS:**

<u>Pollutant</u>	<u>Averaging Time</u>	
Total Suspended Particulate	1.0 ug/m3	(Annual)
	5.0 ug/m3	(24-hour)
PM10	1.0 ug/m3	(Annual)
	5.0 ug/m3	(24-hour)
Sulfur Dioxide	1.0 ug/m3	(Annual)
	5.0 ug/m3	(24-hour)
	25.0 ug/m3	(3-hour)
Hydrogen Sulfide	1.0 ug/m3	(1-hour)
	5.0 ug/m3	(1/2-hour)
Carbon Monoxide	0.5 mg/m3	(8-hour)
	2.0 mg/m3	(1-hour)
Nitrogen Dioxide	1.0 ug/m3	(Annual)
	5.0 ug/m3	(24-hour)
Non-Methane Hydrocarbons	5.0 ug/m3	(3-hour)

[20.2.72.500 NMAC - Rn & A, 20 NMAC 2.72.V.500, 2/2/01]

**20.2.72.501 TABLE 2 - PERMIT STREAMLINING SOURCE CLASS CATEGORIES:**

1. Reciprocating internal combustion engines including portable or temporary engines
2. Turbines

[20.2.72.501 NMAC - Rn & A, 20 NMAC 2.72.V.501, 2/2/01]

**20.2.72.502 TOXIC AIR POLLUTANTS AND EMISSIONS:**

Table A- Noncarcinogens

SUBSTANCE			Emissions	
	mg/m3	per hour	OEL	in pounds
Acetic acid	25.0	1.67		
Acetic anhydride.....		20.0		1.33
Acetylene dichloride, See 1,2-Dichloroethylene				
Acetylene tetrabromide .....		15.0		1.00
Acetylsalicylic acid.....		5.00		0.333
Aldrin .....		0.25		0.0167
Allyl alcohol .....		5.00		0.333
Allyl glycidol ether.....		22.0		1.47
Allyl propyl disulfide.....		12.0		0.800
Aluminum				
metal & oxide .....		10.0		0.667
pyro powders.....		5.00		0.333
welding fumes .....		5.00		0.333
soluble salts .....		2.00		0.133
alkyls not otherwise classified .....		2.00		0.133
2-Aminoethanol, See Ethanolamine				
2-Aminopyridine .....		2.00		0.133

3-Amino 1, 2, 4-triazole, See Amitrole.....		
Amitrole .....	0.200	0.0133
Ammonia .....	18.0	1.20
Ammonium chloride fume.....	10.0	0.667
Ammonium sulfamate.....	10.0	0.667
n-Amyl acetate .....	530	35.3
Sec-Amyl acetate .....	665	44.3
Aniline homologues.....	10.0	0.667
Anisidine (p-isomer) .....	0.500	0.0333
Antimony as Sb .....	0.500	0.0333
ANTU .....	0.300	0.0200
Asphalt (petroleum) fumes .....	5.00	0.333
Atrazine .....	5.00	0.333
Azinphos-methyl.....	0.200	0.0133
Barium, soluble compounds, as Ba.....	0.500	0.0333
Benomyl .....	10.00	0.667
Benzoyl peroxide.....	5.00	0.333
Bismuth telluride.....	10.0	0.667
Se-doped.....	5.00	0.333
Borates, tetra, sodium salts.....		
anhydrous .....	1.00	0.0667
decahydrate .....	5.00	0.333
pentahydrate .....	1.00	0.0667

Boron oxide .....	10.0	0.667
Boron tribromide.....	10.0	0.667
Boron trifluoride.....	3.00	0.200
Bromacil .....	10.0	0.667
Bromine.....	0.700	0.0467
Bromine pentafluoride .....	0.700	0.0467
Bromochloromethane, see Chlorobromomethane.....		
Butanethiol, see Butyl mercaptan		
2-Butoxyethanol .....	120	8.00
n-Butyl acetate .....	710	47.3
sec-Butyl acetate.....	950	63.3
tert-Butyl acetate .....	950	63.3
Butyl acrylate.....	55.0	3.67
n-Butyl alcohol.....	150	10.0
Sec-Butyl alcohol .....	305	20.3
tert-Butyl alcohol .....	300	20.0
Butylamine .....	15.0	1.00
tert-Butyl chromate, as CrO3.....	0.100	0.00667
n-Butyl glycidol ether (BGE) .....	135	9.00
n-Butyl lactate .....		25.0
Butyl mercaptan .....	1.50	0.10
o-sec-Butylphenol .....	30.0	2.00
p-tert-Butyltoluene .....	60	4.00

Cadmium Dusts as Cd .....	0.0500	0.00333
fume as Cd.....	0.0500	0.00333
Calcium hydroxide.....	5.00	0.333
Calcium oxide.....	2.00	0.133
Camphor, synthetic .....	12.0	0.800
Captafol.....	0.100	0.00667
Carbofuran .....	0.100	0.00667
Carbon black.....	3.50	0.233
Carbon tetrabromide .....	1.40	0.0933
Carbonyl fluoride .....	5.00	0.333
Cesium hydroxide.....	2.00	0.133
Chlorinated diphenyl oxide .....	0.500	0.0333
Chlorine dioxide .....	0.300	0.0200
Chlorine trifluoride .....	0.400	0.0267
Chloroacetaldehyde .....	3.00	0.200
a-Chloroacetophenone.....	0.300	0.0200
Chloroacetyl chloride.....	0.200	0.0133
O-Chlorobenzylidene malononitrile .....	0.400	0.0267
Chlorobromomethane.....	1050	70.0
2-Chloro-1,3-butadiene, see B-Chloroprene		
Chlorodiphenyl (42% chlorine) .....	1.00	0.0667
Chlorodiphenyl (54% chlorine) .....	0.500	0.033
2-Chloroethanol, see Ethylene chlorohydrin		

1-Chloro-1-nitropropane .....	10.0	0.667
Chloropicrin .....	0.700	0.0467
o-Chlorostyrene.....	285	19.0
o-Chlorotoluene.....	250	16.7
2-Chloro-6-(trichloromethyl)pyridine, see Nitrapyrin		
Chlorpyrifos .....	0.200	0.0133
Chromium metal.....	0.500	0.0333
Clopidol .....	10.0	0.667
Cobalt as Co .....	0.100	0.00667
metal, dust & fume .....	0.100	0.00667
Copper		
fume .....	0.200	0.0133
dusts & mists, as Cu.....	1.00	0.0667
Cotton dust, raw .....	0.200	0.0133
Crotonaldehyde .....	6.00	0.400
Crufomate .....	5.00	0.333
Cyanamide .....	2.00	0.133
Cyanogen.....	20.0	1.33
Cyanogen chloride .....	0.600	0.0400
Cyclohexane .....	1050	70.0
Cyclohexanol.....	200	13.3
Cyclohexanone .....	100	6.67
Cyclohexene .....	1015	67.7

Cyclohexylamine .....	40.0	2.67
Cyclonite .....	1.50	0.100
Cyclopentadiene .....	200	13.3
Cyhexatin .....	5.00	0.333
DDT (Dichlorodiphenyl trichloroethane) .....	1.00	0.0667
Decaborane.....	0.300	0.0200
Demeton.....	0.100	0.00667
Diacetone alcohol.....	240	16.0
1,2-Diaminoethane See Ethylenediamine		
Diazinon .....	0.100	0.00667
Diborane.....	0.100	0.00667
2-N-Dibutylaminoethanol.....	14.0	0.933
Dibutyl phosphate .....	5.00	0.333
Dichloroacetylene.....	0.400	0.0267
o-Dichlorobenzene .....	300	20.0
1,3-Dichloro-5,5-dimethyl hydantoin.....	0.200	0.0133
1,2-Dichloroethylene .....	790	52.7
Dichlorofluoromethane .....	40.0	2.67
1,1-Dichloro-1-nitroethane.....	10.0	0.667
2,2-Dichloropropionic acid.....	6.00	0.400
Dicrotophos .....	0.250	0.0167
Dicyclopentadiene .....	30.0	2.00
Dicyclopentadienyl iron .....	10.0	0.667

Dieldrin .....	0.250	0.167
Diethylamine .....	30.0	2.00
2-Diethylaminoethanol.....	50.0	3.33
Diethylene triamine.....	4.00	0.267
Diethyl ether, see Ethyl ether		
Diethyl Ketone.....	705	47.0
Diethyl phthalate .....	5.00	0.333
Difluorodibromomethane .....	860	57.3
Diglycidal ether (DGE)     0.500	0.0333	
Diisobutyl ketone .....	250	16.7
Diisopropylamine.....	20.0	1.33
Dimethyl acetamide.....	35.0	2.33
Dimethylamine .....	18.0	1.20
Dimethylaminobenzene, see Xylidene		
Dimethyl-1,2-dibromo-2-dichloroethyl phosphate, see Naled		
2,6-Dimethyl-4-heptanone, see Diisobutyl ketone		
Dinitolmide .....	5.00	0.333
Dinitrobenzene (all isomers).....	1.00	0.0667
3,5-Dinitro-o-toluamide, see Dinitolmide		
Dioxathion .....	0.200	0.0133
Diphenylamine .....	10.0	0.667
Diphenylmethane diisocyanate, see Methylene bisphenyl isocyanate		
Dipropylene glycol methyl ether .....	600	40.0

Dipropyl ketone .....	235	15.7
Diquat.....	0.500	0.0333
Disulfiram .....	2.00	0.133
Disulfoton .....	0.100	0.00667
2,6-Ditert. butyl-p-cresol .....	10.0	0.667
Diuron.....	10.0	0.667
Divinyl benzene .....	50.0	3.33
Endosulfan .....	0.100	0.00667
Endrin.....	0.100	0.00667
Enzymes, see Subtilisins		
EPN.....	0.500	0.0333
2,3-Epoxy-1-propanol, see Glycidol		
Ethanethiol, see Ethyl mercaptan		
Ethanolamine .....	8.0	0.533
Ethion.....	0.400	0.0267
Ethyl acetate .....	1400	93.3
Ethylamine .....	18.0	1.20
Ethyl amyl ketone.....	130	8.67
Ethyl bromide .....	890	59.3
Ethyl butyl ketone.....	230	15.3
Ethylene chlorohydrin.....	3.00	0.200
Ethylenediamine.....	25.0	1.67
Ethyl ether .....	1200	80.0

Ethy formate.....	300	20.0
Ethylidene norbornene .....	25.0	1.67
Ethyl mercaptan .....	1.00	0.0667
N-Ethylmorpholine.....	23.0	1.53
Ethyl silicate .....	85.0	5.67
Fenamiphos .....	0.100	0.00667
Fensulfothion.....	0.100	0.00667
Fenthion .....	0.200	0.0133
Ferbam.....	10.0	0.667
Ferrovandium dust .....	1.00	0.0667
Fluorides, as F .....	2.50	0.167
Fluorine .....	2.00	0.133
Fonofos .....	0.100	0.00667
Formamide .....	30.0	2.00
Formic acid.....	9.00	0.600
Furfural.....	8.00	0.533
Furfuryl alcohol.....	40.0	2.67
Gasoline .....	900	60.0
Germanium tetrahydride.....	0.600	0.0400
Glutaraldehyde .....	0.700	0.0467
Glycidol .....	75.0	5.00
Hafnium.....	0.500	0.033
2-Heptanone, see Methyl n-amyl ketone		

3-Heptanone, see Ethyl butyl ketone

Hexachloronaphthalene .....0.200 0.0133

Hexfluoroacetone .....0.700 0.0467

2-Hexanone, see Methyl n-butyl ketone

sec-Hexyl acetate.....300 20.0

Hexylene glycol .....125 8.33

Hydrogenated terphenyls .....5.00 0.333

Hydrogen bromide.....10.0 0.667

Hydrogen peroxide .....1.50 0.100

4-Hydroxy-4-Methyl-2-pentanone, see Diacetone alcohol

2-Hydroxypropyl acrylate.....3.00 0.200

Indene .....45.0 3.00

Indium & compounds as In.....0.100 0.00667

Iodine .....1.00 0.0667

Iodoform .....10.0 0.667

Iron oxide fume (Fe<sub>2</sub>O<sub>3</sub>) as Fe .....5.00 0.333

Iron pentacarbonyl as Fe.....0.800 0.0533

Iron salts, soluble, as Fe .....1.00 0.0667

Isoamyl acetate .....525 35.0

Isoamyl alcohol .....360 24.0

Isobutyl acetate .....700 46.7

Isobutyl alcohol .....150 10.0

Isooctyl alcohol.....270 18.0

Isophorone diisocyanate .....	0.0900	0.00600
Isopropoxyethanol .....	105	7.00
Isopropyl acetate .....	950	63.3
Isopropyl alcohol .....	980	65.3
Isopropylamine .....	12.0	0.800
N-Isopropylaniline.....	10.0	0.667
Isopropyl ether .....	1050	70.0
Isopropyl glycidyl ether (IGE) .....	240	16.0
Ketene.....	0.900	0.0600
Lithium hydride .....	0.0250	00167
Magnesium oxide fume .....	10.0	0.667
Malathion.....	10.0	0.667
Manganese as Mn		
dust .....	5.00	0.333
fume .....	1.00	0.0667
Mesityl oxide .....	60	4.00
Methacrylic acid .....	70.0	4.67
Methanethiol, see Methyl mercaptan		
Methomyl.....	2.50	0.167
4-Methoxyphenol.....	5.00	0.333
Methyl acetate .....	610	40.7
Methyl acrylate .....	35.0	2.33
Methylacrylonitrile.....	3.00	0.200

Methylamine .....	12.0	0.800
Methyl amyl alcohol, see Methyl isobutyl carbinol		
Methyl n-amyl ketone .....	235	15.7
N-Methyl aniline .....	2.00	0.133
Methyl n-butyl ketone .....	20.0	1.33
Methyl 2-cyanoacrylate .....	8.00	0.533
Methylcyclohexanol.....	235	15.7
o-Methylcyclohexanone.....	230	15.3
Methyl demeton.....	0.500	0.033
Methylene bisphenyl isocyanate (MDI).....	0.200	0.0133
Methylene bis(4-cyclohexylisocyanate).....	0.110	0.00733
Methyl ethyl ketone peroxide.....	1.50	0.100
Methyl formate .....	250	16.7
5-Methyl-3-heptanone, see Ethyl amyl ketone .....		
Methyl isoamyl ketone.....	240	16.0
Methyl isobutyl carbinol.....	100	6.67
Methyl isopropyl ketone.....	705	47.0
Methyl mercaptan.....	1.00	0.0667
Methyl parathion.....	0.200	0.0133
Methyl propyl ketone .....	700	46.7
Methyl silicate.....	6.00	0.400
a-Methyl styrene.....	240	16.0
Metribuzin.....	5.00	0.333

Mevinphos.....	0.100	0.00667
Molybdenum as Mo		
soluble compounds .....	5.00	0.333
insoluble compounds.....	10.0	0.667
Monocrotophos .....	0.250	0.0167
Morpholine .....	70.0	4.67
Naled.....	3.00	0.2
Nickel Metal.....	1.00	0.0667
Nicotine .....	0.500	0.0333
Nitrapyrin.....	10.0	0.667
Nitric acid .....	5.00	0.333
p-Nitroaniline .....	3.00	0.200
p-Nitrochlorobenzene .....	3.00	0.200
Nitroethane.....	310	20.7
Nitrogen trifluoride .....	300	2.00
Nitroglycerin .....	0.500	0.00333
Nitromethane.....	250	16.7
1-Nitropropane .....	90.0	6.00
Nitrotoluene.....	11.0	0.733
Nitrotrichloromethane, see Chloropicrin		
Nonane.....	1050	70.0
Octachloronaphthalene .....	0.100	0.0067
Octane.....	1450	96.7

Oil mist, mineral .....	5.00	0.333
Osmium tetroxide as Os.....	0.00200	0.000133
Oxalic acid.....	1.00	0.0667
Oxygen difluoride .....	0.100	0.00667
Paraffin wax fume.....	2.00	0.133
Paraquat respirable sizes.....	0.100	0.00667
Pentaborane.....	0.0100	0.000667
Pentachloronaphthalene .....	0.500	0.0333
2-Pentanone, see Methyl propyl ketone .....		
Perchloromethyl mercaptan .....	0.800	0.0533
Perchloryl fluoride.....	14.0	0.933
Phenacyl chloride, see a-Chloroacetophenone		
Phenothiazine .....	5.00	0.333
Phenyl ether, vapor .....	7.00	0.467
Phenyl glycidyl ether (PGE) .....	6.00	0.400
Phenyl mercaptan .....	2.00	0.133
Phenylphosphine.....	0.250	0.0167
Phorate.....	0.0500	0.00333
Phosdrin, see Mevinphos		
Phosphoric acid.....	1.00	0.0667
Phosphorus oxychloride .....	0.600	0.0400
Phosphorus pentachloride.....	1.00	0.0667
Phosphorus pentasulfide.....	1.00	0.0667

Phosphorus trichloride.....	1.50	0.100
m-Phthalodinitrile .....	5.00	0.333
Picloram .....	10.0	0.667
Picric acid.....	0.100	0.00667
Pindone .....	0.100	0.00667
Piperazine dihydrochloride .....	5.00	0.333
2-Pivalyl-1,3-indandione, see Pindone		
Platinum		
metal .....	1.00	0.0667
soluble salts, as Pt .....	0.00200	0.000133
Potassium hydroxide .....	2.00	0.133
Propargyl alcohol .....	2.00	0.133
Propionic acid.....	30.0	2.00
n-Propyl acetate .....	840	56.0
Propyl alcohol.....	500	33.3
Propylene glycol dinitrate .....	0.300	0.200
n-Propyl nitrate.....	105	7.00
Pyrethrum.....	5.00	0.333
Pyridine .....	15.0	1.00
RDX, see Cyclonite		
Resorcinol .....	45.0	3.00
Rhodium		
metal .....	1.00	0.0667

insoluble compounds, as Rh .....	1.00	0.0667
soluble compounds, as Rh .....	0.0100	0.000667
Ronnel.....	10.0	0.667
Rotenone (commercial) .....	5.00	0.333
Selenium as Se .....	0.200	0.0133
Sesone.....	10.0	0.667
Silane, see silicon tetrahydride		
Silicon tetrahydride.....	7.00	0.467
Silver		
metal .....	0.100	0.00667
soluble compounds, as Ag .....	0.0100	0.000667
Sodium azide .....	0.300	0.0200
Sodium bisulfite.....	5.00	0.333
Sodium 2,4-dichloro-phenoxyethyl sulfate, see Sesone		
Sodium fluoroacetate .....	0.0500	0.00333
Sodium hydroxide .....	2.00	0.133
Sodium metabisulfite.....	5.00	0.333
Stibine .....	0.500	0.0333
Stoddard solvent .....	525	35.0
Strychnine .....	0.150	0.0100
Subtilisins (Proteolytic enzymes as 100%		
pure crystalline enzyme) .....	6.00E-05	4.00E-06
Sulfotep.....	0.200	0.0133

Sulfuric acid.....	1.00	0.0667
Sulfur monochloride .....	6.00	0.400
Sulfur pentafluoride .....	0.100	0.00667
Sulfur tetrafluoride .....	0.400	0.0267
Sulfuryl fluoride .....	20.0	1.33
Sulprofos .....	1.00	0.0667
Systox, see Demeton		
2,4,5-T .....	10.0	0.667
Tantalum .....	5.00	0.333
TEDP, see Sulfotep.....		
Tellurium & Compounds as Te.....	0.100	0.00667
Tellurium hexafluoride as Te .....	0.200	0.0133
Temephos .....	10.0	0.667
TEPP .....	0.0500	0.00333
Terphenyls .....	5.00	0.333
Tetrachloronaphthalene .....	2.00	0.133
Tetramethyl succinotrile.....	3.00	0.200
Tetranitromethane .....	8.00	0.533
Tetrasodium pyrophosphate.....	5.00	0.333
Tetryl .....	1.50	0.100
Thallium, soluble compounds, as Tl.....	0.100	0.00667
4,4-Thiobis (6 tert, butyl-m-cresol).....	10.0	0.667
Thioglycolic acid.....	4.00	0.267

Thionyl chloride .....	5.00	0.333
Thiram .....	5.00	0.333
Tin		
metal .....	2.00	0.133
oxide & inorganic compounds, except SnH <sub>4</sub> , as Sn.....	2.00	0.133
organic compounds as Sn.....	0.100	0.00667
m-Toluidine .....	9.00	0.600
Tributyl phosphate.....	2.50	0.167
Trichloroacetic acid .....	7.00	0.467
Trichloronaphthalene.....	5.00	0.333
Trichloronitromethane, See Chloropicrin		
1,2,3-Trichloropropane .....	300	20.0
Tricyclohexyltin hydroxide, see Cyhexatin		
Trimellitic anhydride .....	0.0400	0.00267
Trimethylamine.....	24.0	1.60
Trimethyl benzene.....	125	8.33
Trimethyl phosphite .....	10.0	0.667
2,4,6-Trinitrophenol, see Picric acid		
2,4,6-Trinitrophenylmethylnitramine, see Tetryl		
2,4,6-Trinitrotoluene (TNT).....	0.500	0.0333
Triorthosresyl phosphate.....	0.100	0.00667
Triphenyl amine.....	5.00	0.333
Triphenyl phosphate.....	3.00	0.200

Tungsten as W		
insoluble compounds.....	5.00	0.333
soluble compounds .....	1.0	37.3
Turpentine .....	560	37.3
Uranium (natural) soluble & insoluble compounds as U.....	0.200	0.0133
n-Valeraldehyde .....	175	11.7
Vanadium, as V2O5 respirable dust & fume .....	0.0500	0.00333
Vinyl toluene.....	240	16.0
VM & P Naphtha .....	1350	90.0
Warfarin.....	0.100	0.00667
Wood dust (certain hard woods as beech & oak) .....	1.00	0.0667
soft wood.....	5.00	0.333
m-Xylene a,a-diamine .....	0.100	0.00667
Xylidine.....	10.0	0.667
Yttrium.....	1.00	0.0667
Zinc chloride fume .....	1.00	0.0667
Zinc oxide fume .....	5.00	0.333
Zirconium compounds as Zr.....	5.00	0.333

---

Table B - Known or Suspected Carcinogens

SUBSTANCE	OEL	Emissions
	mg/m3	in pounds per hour

---

Coal tar volatiles, as benzene solubles .....	0.200	0.0133
B-Naphthylamine.....	0.00300*	2.00E-04
N-Phenyl-beta-naphthylamine .....	5.00**	0.333
Phenyhydrazine.....	20.0	1.33
o-Tolidine .....	11.0**	0.733
p-Toluidine .....	9.00	0.600
Vinyl cyclohexene dioxide .....	60.0	4.00

**FOOTNOTES**

The emissions in pounds per hour in Section 502 were derived using the formula listed below:

$$\text{emission level (lbs/hr)} = \text{OEL (mg/m}^3\text{)} / 15$$

\* = Compound for which an OEL is not listed by the ACGIH. Value derived by using the minimum detectable level listed in the NIOSH "Manual of Analytical Methods", Third Edition.

\*\* = Compound for which an OEL is not listed by the ACGIH and for which there is no chemical specific analytical method listed in the NIOSH "Manual of Analytical Methods", Third Edition. A minimum detectable level (MDL) was derived by using the MDL of a similar compound listed in the NIOSH analytical methods or by assigning the average MDL for a class of compounds such as "halogenated hydrocarbons". In some cases the lowest MDL of the whole class was used.

**Table C - Stack Height Release Correction Factor**

Sources may choose to use a correction factor for the release height of emissions for the purpose of determining whether a permit is necessary for the emission of a toxic air pollutant. To apply the correction go to the table below and find the minimum height of release for the toxic air pollutant and select the correction factor (CF) which corresponds to that figure. If the height of release is between two values, the lower number shall be selected; or in the event of multiple releases of the same substance from different release heights, the source may choose to use a weighted average CF, weighted by the emission rate at each. The emissions in pounds per hour is then multiplied by the CF (see below). If the emissions from your source exceed the

resulting number, you must apply for a permit from the department. Remember, this must be done for each toxic air pollutant.

CF x Emissions in Pounds per Hour

where: E - emission rate (pounds per hour)

OEL - occupational exposure limit (mg per cubic meter)

CF is a correction factor, shown in the table below, which accounts for release height.

Release Height in Meters	Correction Factor (CF)*
Less than 3	1
10	5
20	19
30	41
40	71
50	108
60	152
70	202
80	255
90	317
100	378
110	451
120	533
130	617
140	690
150	781

160	837
170	902
180	1002
190	1066
200	1161

[20.2.72.502 NMAC - Rn & A, 20 NMAC 2.72.V.502, 2/2/01]

## **PART 73: NOTICE OF INTENT AND EMISSIONS INVENTORY REQUIREMENTS**

### **20.2.73.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.73.1 NMAC - Rn, 20 NMAC 2.73.100 02/18/02]

### **20.2.73.2 SCOPE:**

All persons who own or operate a source or who intend to construct or modify a source.

[11/30/95; 20.2.73.2 NMAC - Rn, 20 NMAC 2.73.101 02/18/02]

### **20.2.73.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section 74-2-7(A)(1) and (B).

[11/30/95; 20.2.73.3 NMAC - Rn, 20 NMAC 2.73.102 02/18/02]

### **20.2.73.4 DURATION:**

Permanent.

[11/30/95; 20.2.73.4 NMAC - Rn, 20 NMAC 2.73.103 02/18/02]

### **20.2.73.5 EFFECTIVE DATE:**

November 30, 1995 except where a later date is cited at the end of a section or paragraph.

[11/30/95, 10/01/97; 20.2.73.5 NMAC - Rn, 20 NMAC 2.73.104 02/18/02]

[The latest effective date of any section in this Part is July 6, 2011.]

#### **20.2.73.6 OBJECTIVE:**

The objective of this part is to establish requirements for the submission of certain relevant information to ensure that the regulations and standards under the Air Quality Control Act and the federal act will not be violated, and to facilitate the quantification of greenhouse gas emissions in New Mexico.

[11/30/95; 20.2.73.6 NMAC - Rn, 20 NMAC 2.73.105 02/18/02; A, 01/01/08]

#### **20.2.73.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part, the following apply.

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

**B. "California climate action registry"** means the voluntary registry for greenhouse gas emissions established pursuant to California Health & Safety Code D. 26, Pt. 4, Ch. 6 (West 2007).

**C. "Commencement"** means that an owner or operator has undertaken a continuous program of construction or modification.

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

**E. "Emission report or inventory"** means a listing, by source, of the amount of air pollutants discharged into the atmosphere of a community.

**F. "Fuel carbon content"** means the mass of carbon per unit of heat content of a fuel.

**G. "Fugitive emissions"** are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

**H. "Greenhouse gas emissions reporting year"** means the calendar year in which greenhouse gas emissions required to be reported under this part occurred.

**I. "Modification"** means any physical change in, or change in the method of operation of, a stationary source which results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or which results in the emission of any regulated air contaminant not previously emitted, but does not include:

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

**J. "Nonattainment area"** means, for any air pollutant, an area which has been designated as a nonattainment area under Section 107 of the federal act.

**K. "Operator"** means the person or persons responsible for the overall operation of a facility.

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

**M. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico administrative code, unless otherwise noted; as adopted or amended by the board.

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

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

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

**P. "Potential to emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design; any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable; the potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

**Q. "Regulated air contaminant"** means any air contaminant, the emission or ambient concentration of which is regulated pursuant to the New Mexico Air Quality Control Act or the federal act.

**R. "Shutdown"** means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units.

**S. "Stationary source"** or "source" means any building, structure, equipment, facility, installation (including temporary installations), operation or portable stationary source which emits or may emit any air contaminant; any research facility may group its sources for the purpose of this part at the discretion of the secretary of the department.

**T. "The climate registry"** means the nonprofit corporation by that name incorporated under the District of Columbia Nonprofit Corporation Act with a purpose of creating and operating a multi-state greenhouse gas emissions registry.

**U. "WEB source"** means a stationary source that meets the applicability requirements of 20.2.81.101 NMAC.

**V. "Western backstop sulfur dioxide trading program"** means 20.2.81 NMAC, triggered as a backstop in accordance with the provisions in the sulfur dioxide milestones and backstop trading program implementation plan, if necessary, to ensure that regional sulfur dioxide emissions are reduced.

[11/30/95, 10/01/97; 20.2.73.7 NMAC - Rn, 20 NMAC 2.73.107 & A, 02/18/02; A, 12/31/03; A, 01/01/08]

**20.2.73.8-20.2.73.105 [RESERVED]**

**20.2.73.106 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This part amends and supersedes Air Quality Control Regulation ("AQCR") 703.1 - Notice of Intent and Emissions Inventory Requirements last filed May 29, 1990, as amended ("AQCR 703.1").

**A.** All references to AQCR 703.1 in any other rule shall be construed as a reference to this part.

**B.** The amendment and supersession of AQCR 703.1 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 703.1.

[11/30/95; 20.2.73.106 NMAC - Rn, 20 NMAC 2.73.106 02/18/02]

**20.2.73.107-20.2.73.199 [RESERVED]**

**20.2.73.200 NOTICE OF INTENT:**

**A. Applicability:**

(1) Any owner or operator intending to construct a new stationary source which has a potential emission rate greater than 10 tons per year of any regulated air contaminant or 1 ton per year of lead shall file a notice of intent with the department.

(2) Any owner or operator intending to modify a stationary source which either prior to or following the modification has a potential emission rate greater than 10 tons per year of any regulated air contaminant or 1 ton per year of lead shall file a notice of intent with the department.

(3) The requirements of 20.2.73.200 NMAC do not apply to stationary sources or modifications located in Bernalillo county.

(4) The notice of intent shall be filed prior to the commencement of construction. Construction shall not begin prior to issuance of a written determination by the department that a permit is not required, or if a permit is required, prior to the issuance of the permit under 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC.

**B. Contents of Notice:** Notices of intent shall be filed on forms furnished by the department, which shall be identical to the extent practicable, as those used for 20.2.72 NMAC (Construction Permits) and shall include:

(1) The applicant's name and address, the person to contact regarding the application, and the name and address of the new source or modification.

(2) The date of the application.

(3) A description of the new facility or modification including all operations affecting air emissions.

(4) The anticipated operating schedule.

(5) A map such as a 7.5 minute United States geological survey topographic quadrangle showing the location of the stationary source.

(6) The nature and quantities of any regulated air contaminants the new source or modification will emit, including all calculations utilized to estimate emissions.

(7) A description of any air pollution control device or method to be utilized, including the basis for the estimated control efficiency.

(8) The stack and exhaust gas parameters for all emission points.

(9) Any other relevant information as the department may reasonably require.

(10) Be signed under oath or affirmation by the operator, the owner, or an authorized representative, certifying to the best of his or her knowledge the truth of all information submitted.

**C. Review of Notice:** Within thirty days from the date a notice is received, the department shall review its content and by certified letter indicate to the applicant:

(1) the notice is incomplete and indicate specific additional material or clarification required; or

(2) a permit is not required and construction may commence; or

(3) a permit is required before construction may commence. For this case, the department will indicate whether the application is complete with respect to the requirements of each applicable permit regulation and specify additional material or clarification required if it is not complete.

**D. Verification:** In verifying information submitted in response to the requirements of this part, the department may:

(1) Enter at all reasonable times in or upon any private or public property, except private residences, which the department has reasonable cause to believe is or will become a source of air contaminants contributing to air pollution; and

(2) Require the production of information relating to emissions which cause or contribute to air pollution, including the sampling of emissions in accordance with methods and at locations and intervals as may be prescribed by the department.

## **E. Notification Requirements:**

(1) The owner or operator of a portable stationary source shall notify the department in writing of the date and site of any relocation at least fifteen days prior to its occurrence.

(2) Any owner or operator of a stationary source which will be shut down for a period of one year or more shall notify the department in writing of the actual date of shut down within thirty days after the shut down occurs.

(3) Any new owner or operator of a stationary source shall notify the department within thirty days of assuming ownership of his or her name and address.

[11/30/95; 20.20.73.200 NMAC - Rn, 20 NMAC 2.73.200-204 02/18/02]

## **20.2.73.201-20.2.73.299 [RESERVED]**

## **20.2.73.300 EMISSION INVENTORY REQUIREMENTS:**

**A. Applicability.** The requirements of 20.2.73.300 NMAC apply to the owner or operator of any stationary source located outside of Bernalillo county which:

(1) has been issued a permit under 20.2.72 NMAC (Construction Permits) during any period of time, except for toxic air pollutant permits issued under Sections 401 to 499 of 20.2.72 NMAC;

(2) is required to file a notice of intent under 20.2.73.200 NMAC; or

(3) emits in excess of 1 ton of lead or 10 tons of total suspended particulate, PM10, PM2.5, sulfur dioxide, nitrogen oxides, carbon monoxide, or volatile organic compounds in any calendar year including and subsequent to 1990.

## **B. Reporting requirements.**

(1) Any source which emits, or has the potential to emit, 5 tons per year or more of lead or lead compounds, or 100 tons per year or more of PM10, PM2.5, sulfur oxides, nitrogen oxides, carbon monoxide, or volatile organic compounds shall submit an emissions report annually.

(2) Any source defined as a major source of hazardous air pollutants under 20.2.70 NMAC (Operating Permits) shall submit an emissions report annually.

(3) Any source which is located in an ozone nonattainment area and which emits, or has the potential to emit, 25 tons per year or more of nitrogen oxides or volatile organic compounds shall submit an emissions report annually.

**(4)** Any source which is not required by Paragraph (1), (2), or (3) of Subsection B of this section (20.2.73.300 NMAC) to submit an emission report shall submit an emissions report under this part upon request by the department, but no more frequently than annually.

**(5)** Except as provided in Paragraph (8) of Subsection B of this section (20.2.73.300 NMAC), the department shall provide to the owner or operator required by this section (20.2.73.300 NMAC) to submit an emissions report a complete copy of the most current emissions report for their stationary source which is on file with the department. The department shall provide this copy to the owner or operator at least 90 days prior to the date when the source is required to submit an emissions report.

**(6)** The owner or operator shall submit to the department a complete, correct and current emissions report in the format specified by the department which reflects emissions during the previous calendar year.

**(7)** Except as provided in Paragraph (8) of Subsection B of this section (20.2.73.300 NMAC) the owner or operator shall submit the emission report by April 1 of each year in which the source is required to submit an emission report.

**(8)** Sources for which a date for submitting an annual emission report is specified in a current operating permit issued under 20.2.70 NMAC (Operating Permits) shall submit such report on that date. The department shall provide a copy of the previous emissions report upon request by the owner or operator of such source.

**(9)** Any source that is requested by the department to submit a report of greenhouse gas emissions shall:

**(a)** submit such report on the schedule and according to the greenhouse gas emissions reporting procedures established by the department, but not more often than annually; or

**(b)** report greenhouse gas emissions from the source under 20.2.87 NMAC for the greenhouse gas emissions reporting year and the two years following that year; or

**(c)** provide the department access to the requested information for the greenhouse gas emissions reporting year registered in either the climate registry or the California climate action registry; and

**(d)** keep records in support of the report for a minimum of five years.

**(10)** In determining the schedule of greenhouse gas emissions reports and reporting procedures, the department, subject to Paragraph (11) below, shall provide an opportunity for public comment, and shall consider:

(a) public comments regarding the schedule of such reports and greenhouse gas emissions reporting procedures;

(b) emissions quantification standards and best practices approved or recommended by federal and state agencies, by greenhouse gas emissions registries, and by non-governmental bodies having expertise in greenhouse gas emissions quantification;

(c) whether greenhouse gases emissions from a particular source or source type, considering the amount and chemical composition of the emissions, are expected to be minimal relative to emissions from other sources or source types, and

(d) whether emissions of a particular greenhouse gas from a source or source type, considering the amount and chemical composition of the emissions, are expected to be minimal relative to the total greenhouse gas emissions from that source or source type.

(11) The schedule for greenhouse gas emissions reports and reporting procedures pursuant to Paragraphs (9) and (10) of Subsection B of 20.2.73.300 NMAC, shall:

(a) subject to the department's selection of best available quantification methodologies, include a requirement that sources within North American industry classification system codes 211111, 211112, 213111, 213112, 486210, 221210, 486110, and 486910 subject to this part and permit requirements pursuant to 20.2.70 NMAC (Operating Permits) report at a minimum emissions of carbon dioxide and methane beginning no later than reporting year 2009 and for subsequent reporting years; and

(b) subject to the department's selection of best available quantification methodologies, include a requirement that sources within North American industry classification system codes 211111, 211112, 213111, 213112, 486210, 221210, 486110, and 486910 subject to this part pursuant to Paragraphs (1) and (2) of Subsection A of 20.2.73.300 NMAC, and not otherwise covered by Subparagraph (a), above, report at a minimum emissions of carbon dioxide and methane no later than reporting year 2010 and for subsequent reporting years as requested by the department.

**C. Content of emissions reports.** Emissions report contents for reports made under Paragraphs (1) through (8) of Subsection B of 20.2.73.300 NMAC shall include:

- (1) the name, address, if any, and physical location of the stationary source;
- (2) the name and telephone number of the person to contact regarding the emissions report;

(3) a certification signed by the owner, or operator, or a responsible official as defined in 20.2.70 NMAC attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and telephone number of the certifying official; for sources subject to 20.2.70 NMAC, the certification shall be made as required under that part;

(4) smelters shall submit an annual report of sulfur input, in tons/year;

(5) for each emission point, as required by the department:

(a) stack and exhaust gas parameters and location information;

(b) type of control equipment and estimated control efficiency;

(c) schedule of operation;

(d) estimated actual emissions, including fugitive emissions and emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime of total suspended particulate, PM10, PM2.5, ammonia, sulfur oxides, nitrogen oxides, carbon monoxide, volatile organic compounds, and lead, and, if requested by the department, speciated hazardous air pollutants, in tons per year and a description of the methods utilized to make such estimates, including calculations;

(e) the annual process or fuel combustion rates; and

(f) the fuel heat, sulfur, and ash content; and

(6) all information required under the federal act.

**D. Additional content for emissions reports from sources in ozone nonattainment areas.** Emissions reports from sources located in ozone nonattainment areas shall include, in addition to the contents specified by Subsection C of this section (20.2.73.300 NMAC), the following information:

(1) typical daily process rate during the peak ozone season, where the peak ozone season is specified by the department; and

(2) estimated actual emissions of nitrogen oxides and volatile organic compounds, which shall be reported:

(a) for each emissions point;

(b) for each process and fuel type contributing to emissions from each point;

(c) in units of tons per year for annual emissions; and

(d) in units of pounds per day for a typical day during the peak ozone season.

**E. Waiver of reporting requirements for insignificant emissions.** The department may waive the requirements of Paragraph (5) of Subsection C of this section (20.2.73.300 NMAC) for emissions which the department determines to be insignificant under 20.2.70 NMAC, except that:

(1) for sources in nonattainment areas, reporting of emissions of pollutants for which the area is nonattainment shall not be waived; and

(2) reporting of emissions for which reporting is required under the federal act shall not be waived.

**F. Emission tracking requirements for sulfur dioxide emission inventories.** All stationary sources with actual emissions of one hundred (100) tons per year or more of sulfur dioxide in the year 2000, or in any subsequent year, shall submit an annual inventory of sulfur dioxide emissions, beginning with the 2003 emission inventory. A source that meets these criteria that then emits less than 100 tons per year in a later year shall submit a sulfur dioxide inventory for tracking compliance with the regional sulfur dioxide milestones until the western backstop sulfur dioxide trading program has been fully implemented and emission tracking has occurred under 20.2.81.106 NMAC.

(1) All WEB sources will be subject to the following federally enforceable provisions:

(a) submit an annual inventory of sulfur dioxide emissions;

(b) document the emissions monitoring/estimation methodology used, and demonstrate that the selected methodology is acceptable under the inventory program;

(c) include emissions from start up, shut down, and upset conditions in the annual total inventory;

(d) use 40 CFR Part 75 methodology for reporting emissions for all sources subject to the federal acid rain program;

(e) maintain all records used in the calculation of the emissions, including but not limited to the following:

(i) amount of fuel consumed;

(ii) percent sulfur content of fuel and how the content was determined;

(iii) quantity of product monitoring data;

(iv) emissions monitoring data;

(v) operating data; and

(vi) how the emissions are calculated;

(f) maintain records of any physical changes to facility operations or equipment, or any other changes that may affect the emissions projections; and

(g) retain records for a minimum of ten years from the date of establishment, or if the record was the basis for an adjustment to the milestone, five years after the date of an implementation plan revision, whichever is longer.

(2) Changes in emission measurement techniques. Each source subject to this subsection that uses a different emission monitoring or calculation method than was used to report sulfur dioxide emissions in 2006 under this part or 40 CFR Part 75 shall adjust their reported emissions to be comparable to the emission monitoring or calculation method that was used in 2006. The calculations that are used to make this adjustment shall be included with the annual emission report.

(3) The department shall retain emission inventory records for non-utilities for 2006 until the year 2018 to ensure that changes in emissions monitoring techniques can be tracked.

**G. Content of greenhouse gas emissions reports.** Greenhouse gas emissions reports shall contain the following information, as set out in the greenhouse gas emissions reporting procedures established under Subparagraph (a) of Paragraph (9) of Subsection B of 20.2.73.300 NMAC:

(1) the name, location, and permit or notice of intent number of the stationary source;

(2) the name and telephone number of the person to contact regarding the greenhouse gas emissions report;

(3) a certification signed by the owner or operator attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and telephone number of the certifying official;

(4) for each emission point as required by the department under the greenhouse gas emissions reporting procedures, the estimated actual emissions of greenhouse gases, including fugitive emissions and emissions occurring during maintenance, start-ups, shutdowns, upsets and downtime; and

(5) if requested by the department, the fuel type, fuel heat content, and fuel carbon content.

[11/30/95, 10/01/97; 2.20.73.300 NMAC - Rn, 20 NMAC 2.73.300 - 304 02/18/02; A, 12/31/03; A, 12/31/04; A, 01/01/08; A, 07/06/11]

## **PART 74: PERMITS - PREVENTION OF SIGNIFICANT DETERIORATION (PSD)**

### **20.2.74.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board

[07/20/95; 20.2.74.1 NMAC - Rn, 20 NMAC 2.74.100, 10/31/02]

### **20.2.74.2 SCOPE:**

Any person constructing any new major stationary source or major modification as defined in this Part, that emits or will emit regulated pollutants in an attainment or unclassified area.

[07/20/95; 20.2.74.2 NMAC - Rn, 20 NMAC 2.74.101, 10/31/02]

### **20.2.74.3 STATUTORY AUTHORITY:**

The Environmental Improvement Board "shall promulgate regulations and standards in...air quality management" (NMSA 1978, section 74-1-8.A) and "the environmental improvement board...shall adopt...regulations to attain and maintain national ambient air quality standards and prevent or abate air pollution..." (NMSA 1978, section 74-2-5.B).

[07/20/95; 20.2.74.3 NMAC - Rn, 20 NMAC 2.74.102, 10/31/02]

### **20.2.74.4 DURATION:**

Permanent.

[07/20/95; 20.2.74.4 NMAC - Rn, 20 NMAC 2.74.103, 10/31/02]

### **20.2.74.5 EFFECTIVE DATE:**

July 20, 1995, except where a later date is cited at the end of a section or paragraph.

[07/20/95; 01/01/00; 20.2.74.5 NMAC - Rn, 20 NMAC 2.74.104, 10/31/02]

[The latest effective date of any section in this Part is 8/18/14.]

### **20.2.74.6 OBJECTIVE:**

The purpose of this Part is to require any person constructing any new major stationary source or major modification as defined in this Part, that emits or will emit regulated pollutants in an attainment or unclassified area, to obtain a permit from the Department in accordance with the requirements of this Part prior to the construction or modification.

[07/20/95; 20.2.74.6 NMAC - Rn, 20 NMAC 2.74.105, 10/31/02]

#### **20.2.74.7 DEFINITIONS:**

Terms used but not defined in this part shall have the meaning given them by 20.2.2 NMAC (Definitions) (formerly AQCR 100). As used in this part the following definitions shall apply.

**A. "Act"** means the Federal Clean Air Act, as amended, 42 U. S. C. Sections 7401 et seq.

**B. "Actual emissions"** means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with Paragraphs (2) through (4) of this subsection.

**(1)** This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 20.2.74.320 NMAC. Instead, Subsections G and AR of this section shall apply for those purposes.

**(2)** In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

**(3)** The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

**(4)** For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

**C. "Administrator"** means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

**D. "Adverse impact on visibility"** means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the class I federal area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and

time of the visibility impairments and how these factors correlate with the following: 1) times of visitor use of the class I federal area; and 2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

**E. "Allowable emissions"** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- (1) the applicable standards as set forth in 40 CFR Parts 60 and 61;
- (2) the applicable state implementation plan emissions limitation, including those with a future compliance date; or
- (3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

**F. "Attainment area"** means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling not to exceed any national ambient air quality standard for such pollutant, and is so designated under Section 107 (d) (1) (D) or (E) of the act.

**G. "Baseline actual emissions"** means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

**(d)** The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of this paragraph.

**(2)** For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under this part or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

**(a)** The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

**(b)** The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

**(c)** The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

**(d)** For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

**(e)** The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of this paragraph.

**(3)** For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

**(4)** For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of this subsection, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of this subsection, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of this subsection.

**H. "Baseline area"** means all lands designated as attainment or unclassifiable in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than one microgram per cubic meter (annual average) for sulfur dioxide, nitrogen dioxide, or PM<sub>10</sub>; or equal or greater than 0.3 microgram per cubic meter (annual average) for PM<sub>2.5</sub>. The major source or major modification establishes the minor source baseline date (see the definition "minor source baseline date" in this part). Lands are designated as attainment or unclassifiable under Section 107(d)(1) (A)(ii) or (iii) of the act within each federal air quality control region in the state of New Mexico. Any baseline area established originally for TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments. A TSP baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date (see "minor source baseline date" in this part).

**I. "Baseline concentration"** means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

**(1)** A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

**(a)** the actual emissions, as defined in this section, representative of sources in existence on the applicable minor source baseline date, except as provided in Paragraph (2) of this subsection;

**(b)** the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

**(2)** The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

**(a)** actual emissions, as defined in this section, from any major stationary source on which construction commenced after the major source baseline date; and

**(b)** actual emissions increases and decreases, as defined in Subsection B of this section, at any stationary source occurring after the minor source baseline date.

**J. "Begin actual construction"** means, in general, initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

**K. "Best available control technology (BACT)"** means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated pollutant which would be emitted from any proposed major stationary source or major modification, which the secretary determines is achievable on a case-by-case basis. This determination will take into account energy, environmental, and economic impacts and other costs. The determination must be achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutants. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

**L. "Building, structure, facility, or installation"** means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same first two digit code) as described in the standard industrial classification (SIC) manual, 1972, as amended by the 1977 supplement (U. S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively) or any superseding SIC manual.

**M. "Class I federal area"** means any federal land that is classified or reclassified as "class I" as described in 20.2.74.108 NMAC.

**N. "Commence"** means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary preconstruction approvals or permits and has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake and complete, within a reasonable time, a program of actual construction.

**O. "Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

**P. "Continuous emissions monitoring system (CEMS)"** means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

**Q. "Continuous emissions rate monitoring system (CERMS)"** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

**R. "Continuous parameter monitoring system (CPMS)"** means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter value(s) on a continuous basis.

**S. "Department"** means the New Mexico environment department.

**T. "Electric utility steam generating unit"** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

**U. "Emissions unit"** means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric utility steam generating unit as defined in this section. For purposes of this section, there are two types of emissions units as described in the following.

(1) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of this subsection. A replacement unit, as defined in this section, is an existing unit.

**V. "Federal land manager"** means, with respect to any lands in the United States, a federal level cabinet secretary of a federal level department (e.g. interior dept.) with authority over such lands.

**W. "Federally enforceable"** means all limitations and conditions which are enforceable by the administrator, including:

- (1) those requirements developed pursuant to 40 CFR Parts 60 and 61;
- (2) requirements within any applicable state implementation plan;
- (3) any permit requirements established pursuant to 40 CFR 52.21; or
- (4) under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

**X. "Fugitive emissions"** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**Y. "Greenhouse gas"** for the purpose of this part is defined as the aggregate group of the following six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

**Z. "High terrain"** means any area having an elevation nine hundred (900) feet or more above the base of a source's stack.

**AA. "Indian governing body"** means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

**AB. "Innovative control technology"** means any system of air pollution control that has not been adequately demonstrated in practice. But such system would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

**AC. "Low terrain"** means any area other than high terrain.

**AD. "Lowest achievable emission rate"** means, for any source, the more stringent rate of emissions based on the following:

- (1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

**(2)** the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

**AE. "Major modification"** means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in this section) of a regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

**(1)** A physical change or change in the method of operation shall not include:

**(a)** routine maintenance, repair, and replacement;

**(b)** use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

**(c)** use of an alternative fuel by reason of an order or rule under Section 125 of the act;

**(d)** use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

**(e)** use of an alternative fuel or raw material by a stationary source which:

**(i)** the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

**(ii)** the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

**(f)** an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source;

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan for the state in which the project is located; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;

(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit; this exemption shall apply on a pollutant-by-pollutant basis;

(j) the reactivation of a very clean coal-fired electric utility steam generating unit.

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.2.74.320 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.74.320 NMAC shall apply.

**AF. "Major source baseline date" means:**

(1) in the case of PM<sub>10</sub> and sulfur dioxide, January 6, 1975;

(2) in the case of nitrogen dioxide, February 8, 1988; and

(3) in the case of PM<sub>2.5</sub>, October 20, 2010.

**AG. "Major stationary source" means the following.**

(1) Any stationary source listed in table 1 (20.2.74.501 NMAC) which emits, or has the potential to emit, emissions equal to or greater than one hundred (100) tons per year of any regulated new source review pollutant.

(2) Any stationary source not listed in table 1 (20.2.74.501 NMAC) and which emits or has the potential to emit two hundred fifty (250) tons per year or more of any regulated new source review pollutant.

(3) Any physical change that would occur at a stationary source not otherwise qualifying under Paragraphs (1) or (2) of this subsection if the change would constitute a major stationary source by itself.

(4) A major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone.

(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 (20.2.74.501 NMAC) or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

**AH. "Mandatory class I federal area"** means any area identified in the Code of Federal Regulations (CFR), 40 CFR Part 81, Subpart D. See 20.2.74.108 NMAC for a list of these areas in New Mexico.

**AI. "Minor source baseline date"** means the earliest date after the trigger date on which the owner or operator of a major stationary source or major modification subject to 40 CFR 52.21 or to this part submits a complete application under the relevant regulations.

(1) The trigger date is:

(a) in the case of PM<sub>10</sub> and sulfur dioxide, August 7, 1977;

(b) in the case of nitrogen dioxide, February 8, 1988; and

(c) in the case of PM<sub>2.5</sub>, October 20, 2011.

(2) Any minor source baseline date established originally for the TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments. The department may rescind any TSP minor source baseline date where it can be shown, to the department's satisfaction, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date, did not result in a significant amount of PM-10 emissions.

**AJ. "Natural conditions"** includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

**AK. "Necessary preconstruction approvals or permits"** means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the New Mexico state implementation plan.

**AL. "Net emissions increase"** means, with respect to any regulated new source review pollutant emitted by a major stationary source, the following.

(1) The amount by which the sum of the following exceeds zero.

**(a)** The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection D of 20.2.74.200 NMAC.

**(b)** Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph shall be determined as provided in Subsection G, except that Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection G of this section shall not apply.

**(2)** An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs.

**(3)** An increase or decrease in actual emissions is creditable only if:

**(a)** it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

**(b)** the department has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

**(4)** An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

**(5)** An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

**(6)** A decrease in actual emissions is creditable only to the extent that:

**(a)** the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

**(b)** it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

**(c)** it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) Paragraph (2) of Subsection B of this section shall not apply for determining creditable increases and decreases.

**AM. "Nonattainment area"** means an area which has been designated under Section 107 of the federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by EPA.

**AN. "Portable stationary source"** means a source which can be relocated to another operating site with limited dismantling and reassembly.

**AO. "Potential to emit"** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollutant control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

**AP. "Predictive emissions monitoring system (PEMS)"** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

**AQ. "Project"** means a physical change in, or change in method of operation of, an existing major stationary source.

**AR. "Projected actual emissions"** means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated new source review pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

(1) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the

company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(2) shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection G of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of this subsection, may elect to use the emissions unit's potential to emit, in tons per year, as defined in Subsection AR of this section.

**AS.** "Regulated new source review pollutant", for purposes of this part, means the following:

(1) any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this paragraph (Paragraph (1) of Subsection AS of 20.2.74.7 NMAC) as a constituent or precursor to such pollutant; precursors identified by the administrator for purposes of NSR are the following:

(a) volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas;

(c) nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations;

(d) volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment or unclassifiable area, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations;

(2) any pollutant that is subject to any standard promulgated under Section 111 of the act;

(3) any class I or II substance subject to a standard promulgated under or established by title VI of the act; or

(4) any pollutant that otherwise is subject to regulation under the act as defined in Subsection AZ of this section;

(5) notwithstanding Paragraphs (1) through (4) of Subsection AS of this section, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in Section 112 of the act, or added to the list pursuant to Section 112(b)(2) of the act, and which have not been delisted pursuant to Section 112(b)(3) of the act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the act;

(6) particulate matter (PM) emissions, PM<sub>2.5</sub> emissions, and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits; compliance with emissions limitations for PM, PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

**AT. "Replacement unit"** means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**AU. "Secondary emissions"** means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not

come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

**AV.** "Secretary" means the cabinet level secretary of the New Mexico environment department or his or her successor.

**AW.** "Significant" means in reference to a net emissions increase or the potential of a source to emit air pollutants, a rate of emission that would equal or exceed any of the rates listed in table 2 (20.2.74.502 NMAC).

**AX.** "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection AW of this section) for that pollutant.

**AY.** "Stationary source" means any building, structure, facility, or installation which emits, or may emit, any regulated new source review pollutant.

**AZ.** "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the act, or a nationally-applicable regulation codified by the administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "greenhouse gases (GHGs)" shall not be subject to regulation except as provided in paragraphs AZ(4) and (5) of this section and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in 20.2.74.320 NMAC, and complies with the PAL permit containing the GHG PAL;

(2) for purposes of Paragraphs (3) through (5) of Subsection AZ of this section, the term "tons per year CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(a) multiplying the mass amount of emissions (tons per year), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials; for purposes of this subparagraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting

from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material);

**(b)** sum the resultant value from Subparagraph (a) of Paragraph (2) of Subsection AZ of this section for each gas to compute a tons per year CO<sub>2e</sub>;

**(3)** the term "emissions increase" as used in Paragraphs (4) and (5) of Subsection AZ of this section shall mean that both a significant emissions increase (as calculated using the procedures in Subsection D of 20.2.74.200 NMAC) and a significant net emissions increase (as defined in Subsections AL, AW and AX of 20.2.74.7 NMAC) occur; for the pollutant GHGs, an emissions increase shall be based on tons per year CO<sub>2e</sub>, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tons per year CO<sub>2e</sub> instead of applying the value in table 2 of 20.2.74 NMAC;

**(4)** beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

**(a)** the stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tons per year CO<sub>2e</sub> or more; or

**(b)** the stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of 75,000 tons per year CO<sub>2e</sub> or more; and

**(5)** beginning July 1, 2011, in addition to the provisions in Paragraph (4) of this subsection, the pollutant GHGs shall also be subject to regulation:

**(a)** at a new stationary source that will emit or have the potential to emit 100,000 tons per year CO<sub>2e</sub>; or

**(b)** at an existing stationary source that emits or has the potential to emit 100,000 tons per year CO<sub>2e</sub>, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tons per year CO<sub>2e</sub> or more;

**(6)** if a federal court stays, invalidates or otherwise renders unenforceable by the US EPA, in whole or in part, the prevention of significant deterioration and Title V greenhouse gas tailoring rule (75 FR 31514, June 3, 2010), the definition "subject to regulation" shall be enforceable by the department only to the extent that it is enforceable by US EPA.

**BA. "Temporary source"** means a stationary source which changes its location or ceases to exist within two years from the date of initial start of operations.

**BB. "Visibility impairment"** means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

**BC. "Volatile organic compound (VOC)"** means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity.

[07/20/95; 01/01/00; 20.2.74.7 NMAC - Rn, 20 NMAC 2.74.107, 10/31/02; A, 1/22/06; A, 8/31/09; A, 1/1/11; A, 6/3/11; A, 2/6/13]

#### **20.2.74.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation (AQCR) 707, which was originally filed on February 14, 1984, and subsequently refiled on July 15, 1986; August 1, 1988; and May 29, 1990. All references to AQCR 707 in any other rule shall be understood as a reference to this Part.

[07/20/95; 20.2.74.8 NMAC - Rn, 20 NMAC 2.74.106, 10/31/02]

#### **20.2.74.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87503 [1301 Siler Rd., Bldg. B, Santa Fe, NM 87507].

[07/20/95; 20.2.74.9 NMAC - Rn, 20 NMAC 2.74.109, 10/31/02; A, 01/01/11]

#### **20.2.74.10 SEVERABILITY:**

If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.74.10 NMAC - N, 1/22/06]

#### **20.2.74.11 CONSTRUCTION:**

This part shall be liberally construed to carry out its purpose.

[20.2.74.11 NMAC - N, 1/22/06]

#### **20.2.74.12 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.74.12 NMAC - N, 1/22/06]

#### **20.2.74.13 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.74.13 NMAC - N, 1/22/06]

#### **20.2.74.14 LIMITATION OF DEFENSE:**

The existence of a valid permit under this part shall not constitute a defense to a violation of any section of this part, except the requirement for obtaining a permit.

[20.2.74.14 NMAC - N, 1/22/06]

#### **20.2.74.15-20.2.74.107 [RESERVED]**

#### **20.2.74.108 RESTRICTIONS ON AREA CLASSIFICATIONS:**

##### **A. Mandatory Class I Federal areas:**

(1) The following areas which were in existence on August 7, 1977, shall be mandatory Class I Federal areas and may not be redesignated:

- (a) International parks (all of them);
  - (b) National wilderness areas which exceed 5,000 acres in size;
  - (c) National memorial parks which exceed 5,000 acres in size; and
  - (d) National parks which exceed 6,000 acres in size.
- (2) Specifically for New Mexico, these areas are:
- (a) Bandelier Wilderness, administered by NPS;
  - (b) Bosque del Apache Wilderness, administered by NFWS;
  - (c) Carlsbad Caverns National Park, administered by NPS;

- (d)** Gila Wilderness, administered by NFS;
- (e)** Pecos Wilderness, administered by NFS;
- (f)** Salt Creek Wilderness, administered by NFWS;
- (g)** San Pedro Parks Wilderness, administered by NFS;
- (h)** Wheeler Peak Wilderness, administered by NFS; and
- (i)** White Mountain Wilderness, administered by NFS; where: NPS = National Park Service, NFWS = National Fish and Wildlife Service, NFS = National Forest Service.

**B.** Areas which may be redesignated only as Class I or Class II:

**(1)** The following areas may be redesignated only as Class I or II:

**(a)** an area, as of August 7, 1977, which exceeds 10,000 acres in size and is a national monument, national primitive area, national preserve, national recreational area, national wild and scenic river, national wildlife refuge; or

**(b)** a national park or national wilderness area established after August 7, 1977 which exceeds 10,000 acres in size.

**(2)** Specifically for New Mexico, these areas include (but are not necessarily limited to):

- (a)** Apache Kid Wilderness, administered by NFS;
- (b)** Bandelier National Monument, administered by NPS;
- (c)** Bitter Lake National Wildlife Refuge, administered by NFWS;
- (d)** Blue Range Wilderness, administered by NFS;
- (e)** Bosque del Apache National Wildlife Refuge, administered by NFWS;
- (f)** Capitan Mountains Wilderness, administered by NFS;
- (g)** Cebolla Wilderness, administered by BLM;
- (h)** Chama River Canyon Wilderness, administered by NFS;
- (i)** Cruces Basin Wilderness, administered by NFS;

- (j) De-na-zin Wilderness, administered by BLM;
- (k) El Malpais National Monument, administered by NPS;
- (l) Latir Peak Wilderness, administered by NFS;
- (m) Manzano Mountain Wilderness, administered by NFS;
- (n) San Andres National Wildlife Refuge, administered by NFWS;
- (o) Sandia Mountain Wilderness, administered by NFS;
- (p) Sevilleta National Wildlife Refuge, administered by NFWS;
- (q) West Malpais Wilderness, administered by BLM;
- (r) White Sands National Monument, administered by NPS; and

(s) Withington Wilderness, administered by NFS; where: NFS = National Forest Service, NPS = National Park Service, NFWS = National Fish and Wildlife Service, BLM = Bureau of Land Management.

[07/20/95; 20.2.74.108 NMAC - Rn, 20 NMAC 2.74.108, 10/31/02]

#### **20.2.74.109-20.2.74.199 [RESERVED]**

#### **20.2.74.200 APPLICABILITY:**

**A.** The requirements of this part apply to the construction of any new major stationary source (as defined in 20.2.74.7 NMAC) or any project at an existing major stationary source in an area designated as attainment or unclassifiable.

**B.** The requirements of Sections 300 through 306, 400 and 403 of this part apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this part otherwise provides.

**C.** No new major stationary source or major modification to which the requirements of Subsections A, B, C and D of 20.2.74.300 NMAC, and Sections 301, 302, 303, 304, 305, 306, 400 and 403 of this part apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

**D.** Applicability procedures.

**(1)** Except as otherwise provided in Subsections E and F of this section, and consistent with the definition of major modification contained in 20.2.74.7 NMAC, a

project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in 20.2.74.7 NMAC), and a significant net emissions increase (as defined in Subsections AL and AX of 20.2.74.7 NMAC). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

**(2)** The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) through (4) of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in 20.2.74.7 NMAC. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

**(3)** Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in 20.2.74.7 NMAC) and the baseline actual emissions (as defined in Paragraphs (1) and (2) of Subsection G of 20.2.74.7 NMAC) for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in 20.2.74.7 NMAC).

**(4)** Actual-to-potential test for projects that involve construction of a new emissions unit(s). A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in 20.2.74.7 NMAC) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Paragraph (3) of Subsection G of 20.2.74.7 NMAC) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in 20.2.74.7 NMAC).

**(5)** Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in Paragraph (3) of this subsection for the existing unit and determined using the method specified in Paragraph (4) of this subsection for the new unit.

**E.** For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.2.74.320 NMAC.

[07/20/95; 20.2.74.200 NMAC - Rn, 20 NMAC 2.74.200, 10/31/02; A, 1/22/06; A, 01/01/11]

**20.2.74.201 EXEMPTIONS:**

This Part shall not apply to:

**A.** Each regulated pollutant emitted for which the area the source proposes to locate in is designated as nonattainment;

**B.** Sources or modifications that are part of a nonprofit health or nonprofit educational institution and are approved by the Secretary;

**C.** A portable stationary source which has previously received a permit pursuant to this Part; and

**(1)** The owner or operator proposes to relocate the source, and emissions from the source at the new location will be temporary; and

**(2)** The emissions from the source would not exceed its allowable emission rate; and

**(3)** The emissions from the source would not impact any Class I Federal area nor any area where an applicable increment is known to be violated; and

**(4)** Reasonable notice is given to the Department prior to the relocation identifying the proposed new location and probable duration of operation at the new location. Such notice shall be given to the Department not less than ten (10) days in advance of the proposed relocation unless a different time interval is previously approved by the Department;

**D.** A source or modification that would be major only if fugitive emissions, to the extent they are quantifiable, are considered in calculating the potential to emit or net emissions increase, and the source does not belong to:

**(1)** Any category in Table 1 of this Part (20.2.74.501 NMAC); or

**(2)** Any other stationary source category which as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

[07/20/95; 20.2.74.201 NMAC - Rn, 20 NMAC 2.74.201, 10/31/02]

**20.2.74.202-20.2.74.299 [RESERVED]**

**20.2.74.300 OBLIGATIONS OF OWNERS OR OPERATORS OF SOURCES:**

**A.** Any owner or operator who begins actual construction or operates a source or modification without, or not in accordance with, a permit issued under the requirements of this part shall be subject to enforcement action.

**B.** The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act, sections 74-2-1 to 74-2-17, NMSA 1978; any applicable regulations of the board; and any other requirements under local, state, or federal law.

**C.** Approval to construct shall become invalid if: 1) construction is not commenced within eighteen (18) months after receipt of such approval; 2) if construction is discontinued for a period of eighteen (18) months or more; or 3) if construction is not completed within a reasonable time. For a phased construction project, each phase must commence construction within eighteen (18) months of the projected and approved commencement date. The secretary may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified.

**D.** If a source or modification becomes a major stationary source or major modification solely due to a relaxation in any enforceable limitation (which limitation was established after August 7, 1980), on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then this part shall apply to the source or modification as though construction had not yet commenced.

**E.** Except as otherwise provided in Paragraph (6) under this subsection (Subsection E of 20.2.74.300 NMAC), the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Paragraph (6) under this subsection (Subsection E of 20.2.74.300 NMAC), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection AR of 20.2.74.7 NMAC for calculating projected actual emissions.

**(1)** Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

**(a)** a description of the project;

**(b)** identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and

**(c)** a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection AR of 20.2.74.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

**(2)** If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of this subsection to the department. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the department; however, necessary preconstruction approvals and/or permits must be obtained before beginning actual construction.

**(3)** The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Subparagraph (b) of Paragraph (1) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

**(4)** If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Subparagraph (c) of Paragraph (1) of this subsection setting out the unit's annual emissions during the calendar year that preceded submission of the report.

**(5)** If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection) by a significant amount (as defined in 20.2.74.7 NMAC) for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

- (a)** the name, address and telephone number of the major stationary source;
- (b)** the annual emissions as calculated pursuant to Paragraph (3) of this subsection; and

(c) any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection);

(6) a “reasonable possibility” under this subsection (Subsection E of 20.2.74.300 NMAC) occurs when the owner or operator calculates the project to result in either:

(a) a projected actual emissions increase of at least 50 percent of the amount that is a “significant emissions increase,” as defined under Subsection AX of 20.2.74.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

(b) a projected actual emissions increase that, added to the amount of emissions excluded under Paragraph (3) of Subsection AR of 20.2.74.7 NMAC, sums to at least 50 percent of the amount that is a “significant emissions increase,” as defined under Subsection AX of 20.2.74.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; for a project for which a reasonable possibility occurs only within the meaning under this subparagraph (Subparagraph (b) of Paragraph (6) of Subsection E of 20.2.74.300 NMAC), and not also within the meaning of Subparagraph (a) under this paragraph (Paragraph (6) of Subsection E of 20.2.74.300 NMAC), then the provisions in Paragraphs (2) through (5) under this subsection (Subsection E of 20.2.74.300 NMAC) do not apply to the project.

F. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection E of this section available for review upon request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

[07/20/95; 20.2.74.300 NMAC - Rn, 20 NMAC 2.74.300, 10/31/02; A, 1/22/06; A, 1/1/11; A, 6/3/11]

#### **20.2.74.301 SOURCE INFORMATION:**

The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this Part.

A. Information shall include, but is not limited to:

(1) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing the design and plant layout; and

(2) A detailed schedule of construction of the source or modification; and

**(3)** A detailed description of the planned system of continuous emission reduction for the source or modification, emission estimates, and other information necessary to determine that Best Available Control Technology will be applied.

**B.** Upon request by the Department, the owner or operator shall also provide information on:

**(1)** The air quality impact of the source or modification, including meteorologic and topographic data necessary to estimate such impact; and

**(2)** The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977 in the area the source or modification would affect.

[07/20/95; 20.2.74.301 NMAC - Rn, 20 NMAC 2.74.301, 10/31/02]

### **20.2.74.302 CONTROL TECHNOLOGY REQUIREMENTS:**

**A.** A new major stationary source shall apply Best Available Control Technology for each regulated pollutant that it would have the potential to emit in amounts equal to or greater than the significance levels as listed in Table 2 of this Part (20.2.74.502 NMAC). This requirement applies to each proposed emissions unit or operation that will emit such pollutant.

**B.** A major modification shall apply Best Available Control Technology for each regulated pollutant at the source when a significant net emissions increase occurs as defined in this Part. This requirement applies to each proposed emissions unit or operation where a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

**C.** For phased construction projects, the determination of Best Available Control Technology shall be reviewed and modified as appropriate at the latest reasonable time but no later than eighteen (18) months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of Best Available Control Technology for the source.

**D.** The Department may approve a system of innovative control technology for the major stationary source or major modification if:

**(1)** The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function; and

**(2)** The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Best Available

Control Technology by a date specified by the Department. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance; and

**(3)** The source or modification would meet the requirements of 20.2.74.302 NMAC and 20.2.74.303 NMAC based on the emission rate that the system of innovative control technology would be required to meet on the date specified by the Department; and

**(4)** During the interim period of achieving the permitted emission level, the source or modification would not:

**(a)** Cause or contribute to a violation of an applicable national ambient air quality standard; nor

**(b)** Impact any Class I Federal area; nor

**(c)** Impact any area where an applicable increment is known to be violated; and

**(5)** All other applicable requirements including those for public participation have been met.

**E.** The Department shall withdraw any approval to employ a system of innovative control technology if:

**(1)** The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

**(2)** The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

**(3)** The Department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

**F.** If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection E of 20.2.74.302 NMAC, the Department may allow the source or modification up to an additional three (3) years to meet the requirement for the application of Best Available Control Technology. This shall be accomplished through use of a demonstrated system of control.

**G.** If the owner or operator of a major stationary source or major modification previously issued a permit under this Part applies for an extension (as provided for under subsection C of 20.2.74.300 NMAC), and the new proposed date of construction is greater than eighteen (18) months from the date the permit would become invalid, the determination of Best Available Control Technology shall be reviewed and modified as

appropriate before such an extension is granted. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of Best Available Control Technology for the source.

**H.** With respect to PM<sub>10</sub>, for the case where PM<sub>10</sub> emissions cannot be quantified, the Best Available Control Technology limitation may be defined in terms of particulate matter emissions.

[07/20/95; 20.2.74.302 NMAC - Rn, 20 NMAC 2.74.302, 10/31/02]

### **20.2.74.303 AMBIENT IMPACT REQUIREMENTS:**

**A.** The requirements of this section shall apply to each pollutant emitted by a new major stationary source or major modification in amounts equal to or greater than those in Table 2 of this Part (20.2.74.502 NMAC). For PM<sub>10</sub>, the source will only be required to perform ambient impact analysis for PM<sub>10</sub> when the source has the potential to emit significant amounts of PM<sub>10</sub> (Table 2, 20.2.74.502 NMAC).

**B.** The allowable emission increases from the proposed source or modification, including secondary emissions, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, shall not cause or contribute to air pollution in violation of:

(1) any national ambient air quality standard in any location; or

(2) any applicable maximum allowable increase as shown in Table 4 of this Part (20.2.74.504 NMAC) over the baseline concentrations in any area;

(3) the owner or operator of the proposed major stationary source or major modification shall demonstrate that neither Paragraph (1) nor Paragraph (2) of 20.2.74.303 NMAC will occur.

[07/20/95; 20.2.74.303 NMAC - Rn, 20 NMAC 2.74.303, 10/31/02; A, 6/3/11; A, 8/18/14]

### **20.2.74.304 ADDITIONAL IMPACT REQUIREMENTS:**

**A.** The owner or operator of the proposed major stationary source or major modification shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value. The analysis can use data or information available from the Department.

**B.** The owner or operator shall also provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

[07/20/95; 20.2.74.304 NMAC - Rn, 20 NMAC 2.74.304, 10/31/02]

#### **20.2.74.305 AMBIENT AIR QUALITY MODELING:**

All estimates of ambient concentrations required by this Part shall be based on applicable air quality models, data bases, and other requirements as specified in EPA's Guideline on Air Quality Models (EPA-450/2-78-027R, July, 1986), its revisions, or any superseding EPA document, and approved by the Department. Where an air quality impact model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted. Any substitution or modification of a model must be approved by the Department. Notification shall be given by the Department of such a substitution or modification and the opportunity for public comment provided for in fulfilling the public notice requirements in subsection B of 20.2.74.400 NMAC. The Department will seek EPA approval of such substitutions or modifications.

[07/20/95; 20.2.74.305 NMAC - Rn, 20 NMAC 2.74.305, 10/31/02]

#### **20.2.74.306 MONITORING REQUIREMENTS:**

**A.** Any application for a permit under this part shall contain an analysis of ambient air quality. Air quality data can be that measured by the applicant or that available from a government agency in the area affected by the major stationary source or major modification. The analysis shall contain the following:

(1) for a major stationary source, each pollutant for which the potential to emit is equal to or greater than the significant emission rates as listed in Table 2 of this part (20.2.74.502 NMAC); or

(2) for a major modification, each pollutant that would result in a significant net emission increase.

**B.** If no national ambient air quality standard (NAAQS) for a pollutant exists, and there is an acceptable method for monitoring that pollutant, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant.

**C.** Continuous air quality monitoring data shall be required for all pollutants for which a national ambient air quality standard exists. Such data shall be submitted to the department for at least the one (1) year period prior to receipt of the permit application. The department has the discretion to:

(1) determine that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year but not less than four months; or

(2) determine that existing air quality monitoring data is representative of air quality in the affected area and accept such data in lieu of additional monitoring by the applicant.

**D.** Ozone monitoring shall be performed if monitoring data is required for volatile organic compounds. Post construction ozone monitoring data may be submitted in lieu of providing preconstruction data as required under Subsection C of 20.2.74.306 NMAC if the owner or operator of the proposed major source or major modification satisfies all the provisions of 40 CFR Part 51, Appendix S, Section IV.

**E.** The department may require monitoring of visibility in any Class I federal area where the department determines that an adverse impact on visibility may occur due primarily to the operations of the proposed new source or modification. Such monitoring shall be conducted following procedures approved by the department and subject to the following:

(1) visibility monitoring methods specified by the department shall be reasonably available and not require any research and development; and

(2) the cost of visibility monitoring required by the department shall not exceed fifty percent (50%) of the cost of ambient monitoring required by this part; if ambient monitoring is not required, the cost shall be estimated as if it were required for each pollutant to which this part applies;

(3) both preconstruction and post construction visibility monitoring may be required; in each case, the duration of such monitoring shall not exceed one (1) year.

**F.** The owner or operator of a major stationary source or major modification shall conduct post construction ambient monitoring as the department determines is necessary to validate attainment of ambient air quality standards and to assure that increments are not exceeded.

**G.** The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR 58, Appendix B during the operation of monitoring stations for purposes of satisfying the requirements of this section.

**H.** The department has the discretion to exempt a stationary source or modification from the requirements of this section with respect to monitoring for a particular pollutant if the emissions of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, increases in ambient concentrations less than the levels listed in Table 3 of this part (20.2.74.503 NMAC).

I. The department shall exempt a stationary source or modification from the requirements of this section with respect to preconstruction monitoring for a particular pollutant if:

- (1) for ozone, volatile organic compound emissions are less than one hundred (100) tons per year; or
- (2) the air pollutant is not a regulated pollutant; or
- (3) the existing ambient concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in Table 3 of this part (20.2.74.503 NMAC); or
- (4) the pollutant is not listed in Table 3 of this part (20.2.74.503 NMAC).

[07/20/95; 20.2.74.306 NMAC - Rn, 20 NMAC 2.74.306, 10/31/02; A, 6/3/11]

#### **20.2.74.307 TEMPORARY SOURCE EXEMPTIONS:**

The requirements of 20.2.74.304 NMAC and 20.2.74.306 NMAC shall not apply to a temporary source subject to this Part for a given pollutant if the allowable emissions of such pollutant would not impact any Class I Federal area or any areas where an applicable increment is violated and would be temporary.

[07/20/95; 20.2.74.307 NMAC - Rn, 20 NMAC 2.74.307, 10/31/02]

#### **20.2.74.308-20.2.74.319 [RESERVED]**

#### **20.2.74.320 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs):**

##### **A. Applicability.**

(1) The department may approve the use of an actuals PAL, including for GHGs on either a mass basis or a CO<sub>2</sub>e basis, for any existing major stationary source or any other existing GHG-only source if the PAL meets the requirements in this section. The term "PAL" shall mean "actuals PAL" throughout this section.

(2) Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total source-wide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

(a) is not a major modification for the PAL pollutant;

(b) does not have to be approved through the requirements of this part; and

(c) is not subject to the provisions in Subsection D of 20.2.74.300 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major new source review program); and

(d) does not make GHGs subject to regulation as defined by Subsection AZ of 20.2.74.7 NMAC.

(3) Except as provided under Subparagraph (c) of Paragraph (2) of this subsection, a major stationary source or GHG-only source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

#### **B. Definitions applicable to this section.**

(1) Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions (as defined in 20.2.74.7 NMAC) of all emissions units (as defined in 20.2.74.7 NMAC) at the source, that emit or have the potential to emit the PAL pollutant. For a GHG-only source, "actuals PAL" means a PAL based on the baseline actual emissions (as defined in Paragraph (13) of this subsection) of all emissions units (as defined in Paragraph (14) of this subsection) at the source, that emit or have the potential to emit GHGs.

(2) Allowable emissions means "allowable emissions" as defined in 20.2.74.7 NMAC, except as this definition is modified in accordance with the following.

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in 20.2.74.7 NMAC, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(3) Small emissions unit means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection AW of 20.2.74.7 NMAC or in the act, whichever is lower. For a GHG PAL issued on a CO<sub>2</sub>e basis, "small emissions unit" means an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO<sub>2</sub>e basis defined as "significant" for the purposes of Paragraph (3) of Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued.

(4) Major emissions unit means:

(a) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

**(b)** any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the act for nonattainment areas; for example, in accordance with the definition of major stationary source in Section 182(c) of the act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year; or

**(c)** for a GHG PAL issued on a CO<sub>2e</sub> basis, any emissions unit that emits or has potential to emit equal to or greater than the amount of GHGs on a CO<sub>2e</sub> basis that would be sufficient for a new source to trigger permitting requirements under Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued.

**(5)** Plantwide applicability limitation (PAL) means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO<sub>2e</sub> for a CO<sub>2e</sub>-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established source-wide in accordance with this section.

**(6)** PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

**(7)** PAL effective period means the period beginning with the PAL effective date and ending 10 years later.

**(8)** PAL major modification means, notwithstanding the definitions for major modification, net emissions increase, and subject to regulation in 20.2.74.7 NMAC, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

**(9)** PAL permit means the major new source review permit, the minor new source review permit, or the state operating permit under a program that is approved into the plan, or the title V permit issued by the department that establishes a PAL for a major stationary source or a GHG-only source.

**(10)** PAL pollutant means the pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is greenhouse gases.

**(11)** Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection AW of 20.2.74.7 NMAC or in the act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Paragraph (4) of this subsection. For a

GHG PAL issued on a CO<sub>2e</sub> basis, "significant emissions unit" means any emissions unit that emits or has the potential to emit GHGs on a CO<sub>2e</sub> basis in amounts equal to or greater than the amount that would qualify the unit as a small emissions unit as defined in Paragraph (3) of this subsection, but less than the amount that would qualify the unit as a major emissions unit as defined in Subparagraph (c) of Paragraph (4) of this subsection.

**(12)** GHG-only source means any existing station source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under Subsection AG of 20.2.74.7 NMAC and the amount of GHGs on a CO<sub>2e</sub> basis that would be sufficient for a new source to trigger permitting requirements for GHGs under Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated new source review pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under 20.2.74.320 NMAC.

**(13)** Baseline actual emissions for a GHG PAL means the average rate, in tons per year CO<sub>2e</sub> or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required under this section or by the department for a permit required by a plan, whichever is earlier. For any existing electric utility steam generating unit, "baseline actual emissions" for a GHG PAL means the average rate, in tons per year CO<sub>2e</sub> or tons per year GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding either the date the owner or operator begins actual construction of the project, except that the department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

**(a)** The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

**(b)** The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

**(c)** The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source must currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.

**(d)** The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for

adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (13) of this subsection.

**(14)** Emissions unit with respect to GHGs means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of this section, there are two types of emissions units as described in the following:

**(a)** A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

**(b)** An existing emissions unit is any emissions unit that does not meet the requirements in subparagraph (a) of this paragraph.

**(15)** Minor source means any stationary source that does not meet the definition of major stationary source in Subsection AG of 20.2.74.7 NMAC for any pollutant at the time the PAL is issued.

**C. Permit application requirements.** As part of a permit application requesting a PAL, the owner or operator of a major stationary source or a GHG-only source shall submit the following information to the department for approval.

**(1)** A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

**(2)** Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

**(3)** The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Subsection M of this section.

**(4)** As part of a permit application requesting a GHG PAL, the owner or operator of a major stationary source or a GHG-only source shall submit a statement by the source owner or operator that clarifies whether the source is an existing major source as defined in Paragraphs (1) and (2) of Subsection AG of 20.2.74.7 NMAC or a GHG-only source as defined in Paragraph (12) of Subsection B of this subsection.

**D. General requirements for establishing PALs.**

**(1)** The department may establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the following requirements are met.

**(a)** The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO<sub>2e</sub>, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

**(b)** The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of this section.

**(c)** The PAL permit shall contain all the requirements of Subsection G of this section.

**(d)** The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

**(e)** Each PAL shall regulate emissions of only one pollutant.

**(f)** Each PAL shall have a PAL effective period of 10 years.

**(g)** The owner or operator of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsections L through N of this section for each emissions unit under the PAL through the PAL effective period.

**(2)** At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

**E. Public participation requirements for PALs.** PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased, through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department must address all material comments before taking final action on the permit.

## **F. Setting the 10-year actuals PAL level.**

(1) Except as provided in Paragraph (2) of this subsection, the actuals PAL level for a major stationary source or GHG-only source shall be established as the sum of the baseline actual emissions (as defined in 20.2.74.7 NMAC or, for GHGs, Paragraph (13) of Subsection B of 20.2.74.320 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under Subsection AW of 20.2.74.7 NMAC or under the act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of this subsection, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(3) For CO<sub>2</sub>e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions (as defined in Paragraph (13) of Subsection B of 20.2.74.320 NMAC) of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as "significant" on a CO<sub>2</sub>e basis for the purposes of Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO<sub>2</sub>e-based PAL, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level (in tons per year CO<sub>2</sub>e) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or New Mexico regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit.

**G. Contents of the PAL permit.** The PAL permit shall contain, at a minimum, the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year or tons per year CO<sub>2</sub>e.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source or GHG-only source owner or operator applies to renew a PAL in accordance with Subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of Subsection I of this section.

(6) The calculation procedures that the major stationary source or GHG-only source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection C of this section.

(7) A requirement that the major stationary source or GHG-only source owner or operator monitor all emissions units in accordance with the provisions under Subsection M of this section.

(8) A requirement to retain the records required under Subsection M of this section on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of this section by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(11) A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation under Subsection AZ of 20.2.74.7 NMAC as long as the source complies with the PAL.

#### **H. PAL effective period and reopening of the PAL permit.**

(1) PAL effective period. The PAL effective period shall be 10 years.

(2) Reopening of the PAL permit.

**(a)** During the PAL effective period, the department shall reopen the PAL permit to:

**(i)** correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

**(ii)** reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

**(iii)** revise the PAL to reflect an increase in the PAL as provided under Subsection K of this section.

**(b)** The department may reopen the PAL permit for the following:

**(i)** to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

**(ii)** to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source or GHG-only source under the plan; and

**(iii)** to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an AQRV that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

**(c)** Except for the permit reopening in Item (i) of Subparagraph (a) of Paragraph (2) of this subsection for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of Subsection E of this section.

**I. Expiration of a PAL.** Any PAL that is not renewed in accordance with the procedures in Subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply.

**(1)** Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

**(a)** Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of this section, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet

been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of this section, such distribution shall be made as if the PAL had been adjusted.

**(b)** The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

**(2)** Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

**(3)** Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (b) of Paragraph (1) of Subsection I of this section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

**(4)** Any physical change or change in the method of operation at the major stationary source or GHG-only source will be subject to major new source review requirements if such change meets the definition of major modification in 20.2.74.7 NMAC.

**(5)** The major stationary source or GHG-only source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Subsection D of 20.2.74.300 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (2) of Subsection A of this section.

## **J. Renewal of a PAL.**

**(1)** The department shall follow the procedures specified in Subsection E of this section in approving any request to renew a PAL for a major stationary source or GHG-only source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

**(2)** Application deadline. A major stationary source or GHG-only source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application

submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source or GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

**(3)** Application requirements. The application to renew a PAL permit shall contain the following information.

- (a)** The information required in Subsection C of this section.
- (b)** A proposed PAL level.
- (c)** The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).
- (d)** Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

**(4)** PAL adjustment. In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraphs (a) and (b) of this paragraph. However, in no case may any such adjustment fail to comply with Subparagraph (c) of this paragraph.

**(a)** If the emissions level calculated in accordance with Subsection F of this section is equal to or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in Subparagraph (b) of this paragraph.

**(b)** The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

**(c)** Notwithstanding Subparagraphs (a) and (b) of this paragraph:

**(i)** if the potential to emit of the major stationary source or GHG-only source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

**(ii)** the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of Subsection K of this section (increasing a PAL).

**(5)** If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

**K. Increasing a PAL during the PAL effective period.**

**(1)** The department may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the following provisions.

**(a)** The owner or operator of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary or GHG-only source's emissions to equal or exceed its PAL.

**(b)** As part of this application, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

**(c)** The owner or operator obtains a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of this paragraph, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major new source review process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

**(d)** The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

**(2)** The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

**(3)** The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of this section.

**L. Monitoring requirements for PALs.**

**(1)** General requirements.

**(a)** Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time or CO<sub>2</sub>e per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

**(b)** The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Paragraph (2) of this subsection and must be approved by the department.

**(c)** Notwithstanding Subparagraph (b) of this paragraph, you may also employ an alternative monitoring approach that meets Subparagraph (a) of this paragraph if approved by the department.

**(d)** Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

**(2)** The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of this subsection:

**(a)** mass balance calculations for activities using coatings or solvents;

**(b)** CEMS;

**(c)** CPMS or PEMS; and

**(d)** emission factors.

**(3)** Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

**(a)** provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

**(b)** assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

**(c)** where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

**(4)** CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

**(a)** CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and

**(b)** CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

**(5)** CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

**(a)** the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

**(b)** each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

**(6)** Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

**(a)** all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

**(b)** the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

**(c)** if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the department determines that testing is not required.

**(7)** A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational

restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

**(8)** Notwithstanding the requirements in Paragraphs (3) through (7) of this subsection, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

**(a)** establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

**(b)** determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

**(9)** Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every 5 years after issuance of the PAL.

#### **M. Recordkeeping requirements.**

**(1)** The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

**(2)** The PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus 5 years:

**(a)** a copy of the PAL permit application and any applications for revisions to the PAL; and

**(b)** each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

**N. Reporting and notification requirements.** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the applicable title V operating permit program. The reports shall meet the following requirements.

**(1)** Semi-annual report. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information:

**(a)** the identification of owner and operator and the permit number;

**(b)** total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO<sub>2</sub>e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of this section;

**(c)** all data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

**(d)** a list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding 6-month period;

**(e)** the number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken;

**(f)** a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of this section; and

**(g)** a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

**(2)** Deviation report. The major stationary source or GHG-only source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to Paragraph (2) of Subsection E of 20.2.70.302 NMAC shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing Paragraph (2) of Subsection E of 20.2.70.302 NMAC. The reports shall contain the following information:

**(a)** the identification of owner and operator and the permit number;

**(b)** the PAL requirement that experienced the deviation or that was exceeded;

**(c)** emissions resulting from the deviation or the exceedance; and

**(d)** a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(3) Revalidation results. The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

**O. Transition requirements.**

(1) The department may not issue a PAL that does not comply with the requirements in this section after the administrator has approved regulations incorporating these requirements into a plan.

(2) The department may supersede any PAL which was established prior to the date of approval of the plan by the administrator with a PAL that complies with the requirements of this section.

[20.2.74.320 NMAC - N, 1/22/06; A, 1/1/11; A, 2/6/13]

**20.2.74.321-20.2.74.399 [RESERVED]**

**20.2.74.400 PUBLIC PARTICIPATION AND NOTIFICATION:**

**A.** The Department shall, within thirty (30) days after receipt of an application, review such application and determine whether it is administratively complete or there is any deficiency in the application or information submitted. To be deemed administratively complete, the application must meet the requirements of 20.2.74.301 NMAC in addition to the requirements of 20.2.72 NMAC. If the application is deemed:

(1) administratively complete, a letter to that effect shall be sent by certified mail to the applicant.

(2) administratively incomplete, a letter shall be sent by certified mail to the applicant stating what additional information or points of clarification are necessary to deem the application administratively complete. Upon receipt of the additional information or clarification, the Department shall promptly review such information and determine whether the application is administratively complete.

(3) administratively complete but no permit is required, a letter shall be sent by certified mail to the applicant informing the applicant of the determination.

**B.** For purposes of determining minor source baseline date pursuant to 40 CFR 51:

(1) An application is complete when it contains all the information necessary for processing the application. Designating an application complete for purposes of 40 CFR 51 does not preclude the Department from requesting or accepting any additional information; and

**(2)** In the event that additional information is submitted to remedy any deficiency in the application or information submitted, the date of receipt of the application shall be the date on which the Department received all required information.

**C.** The Department shall:

**(1)** Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

**(2)** Make available at the Department district and local office nearest to the proposed source a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

**(3)** Notify the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed:

**(a)** Of the application,

**(b)** The preliminary determination,

**(c)** The degree of increment consumption that is expected from the source or modification, and

**(d)** Of the opportunity for comment at a public hearing as well as written public comment. The public comment period shall be for thirty (30) days from the date of such advertisement.

**(4)** Send a copy of the notice of public comment to:

**(a)** The applicant,

**(b)** The Administrator, and

**(c)** Officials and agencies having jurisdiction over the location where the proposed construction would occur as follows:

**(i)** Any other state or local air pollution control agencies;

**(ii)** The chief executives of the city and county where the source would be located;

**(iii)** Any comprehensive regional land use planning agency; and

**(iv)** Any state, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source and other appropriate considerations.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the source.

(7) Within one hundred eighty (180) days after an application is deemed administratively complete, unless the Secretary, as specified in 20.2.72.207 NMAC, grants an extension not to exceed ninety (90) days for good cause:

(a) make a final determination of whether construction should be approved, approved with conditions, or disapproved; and

(b) notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the source.

[07/20/95; 01/01/00; 20.2.74.400 NMAC - Rn, 20 NMAC 2.74.400, 10/31/02]

#### **20.2.74.401 STACK HEIGHT CREDIT:**

The Department shall review all applications in accordance with the provisions of 20.2.80 NMAC (Stack Heights) (formerly Air Quality Control Regulation 710 -- Stack Height Requirements).

[07/20/95; 20.2.74.401 NMAC - Rn, 20 NMAC 2.74.401, 10/31/02]

#### **20.2.74.402 EXCLUSIONS FROM INCREMENT CONSUMPTION:**

Following a public hearing, the Secretary may exclude the following concentrations in determining compliance with a maximum allowable increase:

**A.** Concentrations due to the increase in emissions from stationary sources, over the emissions from such sources before the effective date of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation). Sources must have converted from the use of petroleum products, natural gas, or both by reason of such order. This exclusion shall not apply more than five (5) years after the effective date of such an order; or

**B.** Concentrations due to the increase in emissions from sources, over the emissions from such sources before the effective date of a plan in effect pursuant to the Federal Power Act. Sources must have converted from using natural gas by reason of a

natural gas curtailment plan. This exclusion shall not apply more than five (5) years after the effective date of such a plan; or

**C.** Concentrations of particulate matter due to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; or

**D.** The increase in concentrations due to new sources outside the United States over the concentrations attributed to existing sources which are included in the baseline concentrations.

[07/20/95; 20.2.74.402 NMAC - Rn, 20 NMAC 2.74.402, 10/31/02]

**20.2.74.403 ADDITIONAL REQUIREMENTS FOR SOURCES IMPACTING CLASS I FEDERAL AREAS:**

**A.** The department shall transmit to the administrator and the federal land manager a copy of each permit application relating to a major stationary source or major modification proposing to locate within one hundred (100) kilometers of any Class I federal area. The complete permit application shall be transmitted within thirty (30) days of receipt and sixty (60) days prior to any public hearing on the application. The department shall include all relevant information in the permit application. Relevant information shall include an analysis of the proposed source's anticipated impacts on visibility in the Class I federal area. The department shall consult with all affected federal land managers as to the completeness of the permit application and shall consider any analysis performed by the federal land manager concerning the impact of the proposed major stationary source or major modification on air quality related values. This consideration shall include visibility, if such analysis is received within thirty (30) days after the federal land manager receives a copy of the complete application. Additionally, the department shall notify any affected federal land manager within thirty days (30) from the date the department receives a request for a pre-application meeting from a proposed source subject to this part. Notice shall be provided to the administrator and federal land manager of every action related to the consideration of such permit. The department shall also provide the federal land manager and the administrator with a copy of the preliminary determination required under 20.2.74.400 NMAC and shall make available to them any materials used in making that determination. In any case where the department disagrees with the federal land manager's analysis of source impact on air quality related values, the department shall, either explain its decision or give notice to the federal land manager as to where the explanation can be obtained. In the case where the department disagrees with the federal land managers' analysis, the department will also explain its decision or give notice to the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed, as to where the decision can be obtained.

**B.** The department shall transmit to air quality control agencies of neighboring states and Indian governing bodies a copy of each permit application having the potential to affect Class I federal areas or increment consumption in areas under their jurisdiction. The department shall also provide the affected air quality control agencies and Indian governing bodies with a copy of the preliminary determination required under 20.2.74.400 NMAC and shall make available to them any materials used in making that determination. The department shall include a provision for a sixty (60) day comment period for the federal land managers before any public hearing on a permit application is held.

**C.** Federal land managers may demonstrate to the department that emissions from a proposed source or modification would have an adverse impact on air quality related values, including visibility, of any Class I federal lands under their jurisdiction. This may be done even though the change in air quality resulting from emissions from the proposed source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I federal area. If the department concurs with this demonstration, then the source shall not be issued a permit.

**D.** Class I waivers: The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from a proposed source or modification would have no adverse impact on air quality related values, including visibility, of Class I federal lands under his or her jurisdiction. This may be done even though the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I federal area. If the federal land manager concurs with such demonstration and so certifies to the department, the department may grant a waiver from such maximum allowable increases. Emission limitations must be included in the permit as necessary to assure that emissions of sulfur dioxide, PM<sub>10</sub>, PM<sub>2.5</sub>, and nitrogen oxides would not exceed the maximum allowable increases over minor source baseline concentrations shown in Table 5 of this part (20.2.74.505 NMAC).

**E.** For the case where the federal land manager does not perform an impact analysis with respect to visibility impairment in a Class I federal area, the department may perform such an analysis. The department shall not issue the source a permit if the department determines that an adverse impact on visibility would occur. The adverse impact must be due, primarily, to the operation of the proposed source or modification.

**F.** Sulfur dioxide waiver by governor: The owner or operator of a proposed major stationary source or major modification, which cannot be approved under Subsection D of 20.2.74.403 NMAC, may demonstrate to the governor that the source cannot be constructed by reason of an exceedance of a maximum allowable increase for a Class I federal area for sulfur dioxide for a period of twenty-four (24) hours or less. The owner or operator may also demonstrate that a waiver from this requirement would not adversely affect the air quality related values of the Class I federal area. The governor,

after consideration of the federal land manager's recommendation and subject to his concurrence, may, after notice and public hearing, grant a waiver from such maximum allowable increase. If the waiver is granted, the department shall issue a permit to the owner or operator of the source or modification. Any owner or operator of a source or modification who obtains a permit under this section shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases of ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of this part (20.2.74.506 NMAC) for periods of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, in any annual period.

**G.** Sulfur dioxide waiver by governor with the president's concurrence. In any case where the governor recommends a waiver in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president through the office of the governor. If the president so directs, the department shall issue the permit. Any source or modification that obtains a permit under this section shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases in ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of this part (20.2.74.506 NMAC) for periods of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, in any annual period.

[07/20/95; 20.2.74.403 NMAC - Rn, 20 NMAC 2.74.403, 10/31/02; A, 6/3/11]

#### **20.2.74.404-20.2.74.500 [RESERVED]**

#### **20.2.74.501 TABLE 1 - PSD SOURCE CATEGORIES:**

- A.** Carbon black plants (furnace process)
- B.** Charcoal production plants
- C.** Chemical process plants
- D.** Coal cleaning plants (with thermal dryers)
- E.** Coke oven batteries
- F.** Fossil fuel boilers (or combinations thereof) totaling more than 250 million BTU/hr heat input
- G.** Fossil fuel-fired steam electric plants of more than 250 million BTU/hr heat input
- H.** Fuel conversion plants
- I.** Glass fiber processing plants

- J. Hydrofluoric acid plants
- K. Iron and steel mills
- L. Kraft pulp mills
- M. Lime plants
- N. Municipal incinerators capable of charging more than 50 tons of refuse per day
- O. Nitric acid plants
- P. Petroleum refineries
- Q. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels
- R. Phosphate rock processing plants
- S. Portland cement plants
- T. Primary aluminum ore reduction plants
- U. Primary copper smelters
- V. Primary lead smelters
- W. Primary zinc smelters
- X. Secondary metal production plants
- Y. Sintering plants
- Z. Sulfur recovery plants
- AA. Sulfuric acid plants
- AB. Taconite ore processing plants

[07/20/95; 20.2.74.501 NMAC - Rn, 20 NMAC 2.74 Table 1, 10/31/02; A, 1/22/06]

**20.2.74.502 TABLE 2 - SIGNIFICANT EMISSION RATES:**

POLLUTANT	EMISSION RATE (TONS/YR)
Carbon monoxide	100
Fluorides	3

Lead	0.6
Municipal waste combustor	
Acid gases (measured as sulfur dioxide and hydrogen chloride)	40 (36 megagrams/year)
Metals (measured as particulate matter)	15 (14 megagrams/year)
Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 (0.0000032 megagrams/yr)
Nitrogen oxides	40
Ozone (Volatile Organic Compounds or nitrogen oxides)	40
Particulate Matter	
Particulate matter emissions	25
PM <sub>10</sub> emissions	15
Particulate Matter <sub>2.5</sub>	
Direct PM <sub>2.5</sub> emissions	10
Sulfur dioxide emissions	40
Nitrogen oxide emissions (unless demonstrated not to be a PM <sub>2.5</sub> precursor under Subsection AS of 20.2.74.7 NMAC)	40
Sulfur compounds	
Hydrogen sulfide (H <sub>2</sub> S)	10
Reduced sulfur compounds (incl. H <sub>2</sub> S)	10
Sulfur dioxide	40
Sulfuric acid mist	7
Total reduced sulfur (incl. H <sub>2</sub> S)	10
Any other pollutant regulated under the act that is not listed in this table	Any emission rate
Each regulated pollutant	Emission rate or net emissions increase associated with a major stationary source or major modification that causes an air quality impact of one microgram per cubic meter or greater (24-hr average) in any class I federal area located within 10 km of the source.

[07/20/95; 20.2.74.502 NMAC - Rn, 20 NMAC 2.74 Table 2, 10/31/02; A, 1/22/06; A, 8/31/09; A, 6/3/11]

**20.2.74.503 TABLE 3 - SIGNIFICANT MONITORING CONCENTRATIONS:**

POLLUTANT	AIR QUALITY CONCENTRATION	AVERAGING TIME
	micrograms per cubic meter	
Carbon monoxide	575	8 hours
Fluorides	0.25	24 hours
Lead	0.1	3 months
Nitrogen dioxide	14	Annual
Ozone	b	
PM <sub>10</sub>	10	24 hours
PM <sub>2.5</sub>	0 <sup>c</sup>	
Sulfur compounds		
Hydrogen sulfide (H <sub>2</sub> S)	0.20	1 hour
Reduced sulfur compounds (incl. H <sub>2</sub> S)	10	1 hour
Sulfur dioxide	13	24 hours
Sulfuric acid mist	a	
Total reduced sulfur (incl. H <sub>2</sub> S)	10	1 hour
a - No acceptable monitoring techniques available at this time. Therefore, monitoring is not required until acceptable techniques are available.		
b - No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.		
c - In accordance with <i>Sierra Club v. EPA</i> , 706 F.3d 428 (DC Cir. 2013), no exemption is available with regard to PM <sub>2.5</sub> .		

[07/20/95; 20.2.74.503 NMAC - Rn, 20 NMAC 2.74 Table 3, 10/31/02; A, 1/22/06; A, 8/31/09; A, 6/3/11; 8/18/14]

**20.2.74.504 TABLE 4 - ALLOWABLE PSD INCREMENTS:**

	Micrograms per cubic meter (µg/m <sup>3</sup> )		
	Class I	Class II	Class III
Nitrogen Dioxide annual arithmetic mean	2.5	25	50
Particulate Matter			
PM <sub>10</sub> , annual arithmetic mean	4	17	34
PM <sub>10</sub> , 24-hour maximum	8 <sup>a</sup>	30 <sup>a</sup>	60 <sup>a</sup>
PM <sub>2.5</sub> annual arithmetic mean	1	4	8
PM <sub>2.5</sub> 24-hour maximum	2 <sup>a</sup>	9 <sup>a</sup>	18 <sup>a</sup>
Sulfur Dioxide annual arithmetic mean	2	20	40

24-hour maximum	5 <sup>a</sup>	91 <sup>a</sup>	182 <sup>a</sup>
3-hour maximum	25 <sup>a</sup>	512 <sup>a</sup>	700 <sup>a</sup>
a - Not to be exceeded more than once a year.			

[07/20/95; 20.2.74.504 NMAC - Rn, 20 NMAC 2.74 Table 4, 10/31/02; A, 6/3/11]

**20.2.74.505 TABLE 5 - MAXIMUM ALLOWABLE INCREASES FOR CLASS I WAIVERS:**

	Micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ )
Nitrogen Dioxide annual arithmetic mean	25
Particulate Matter PM <sub>10</sub> , annual arithmetic mean	17
PM <sub>10</sub> , 24-hour maximum	30
PM <sub>2.5</sub> , annual arithmetic mean	4
PM <sub>2.5</sub> , 24-hour maximum	9
Sulfur Dioxide annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

[07/20/95; 20.2.74.505 NMAC - Rn, 20 NMAC 2.74 Table 5, 10/31/02; A, 6/3/11]

**20.2.74.506 TABLE 6 - MAXIMUM ALLOWABLE INCREASE FOR SULFUR DIOXIDE WAIVER BY GOVERNOR:**

Period of Exposure	Micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) Terrain Areas	
	Low	High
24-hr. maximum	36	62
3-hr. maximum	130	221

[07/20/95; 20.2.74.506 NMAC - Rn, 20 NMAC 2.74 Table 6, 10/31/02]

**PART 75: CONSTRUCTION PERMIT FEES**

**20.2.75.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.75.1 NMAC - Rp 20 NMAC 2.75.100, 03/02/01]

**20.2.75.2 SCOPE:**

**A.** All persons who apply for a permit to construct or modify a source or revise a permit, or who request a technical review of an existing permit under 20.2.72 NMAC. Part 70 (20.2.70 NMAC) operating permit emission fees are covered under 20.2.71 NMAC.

**B.** The requirements concerning the payment of an annual fee shall apply to sources with an air quality construction permit for which the application to either revise, modify or for a new permit was received following the effective date of this regulation.

[20.2.75.2 NMAC - Rp 20 NMAC 2.75.101, 03/02/01]

**20.2.75.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, Paragraph 4 of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, including specifically, Paragraph 6 of Subsection B of Section 74-2-7 NMSA 1978.

[20.2.75.3 NMAC - Rp 20 NMAC 2.75.102, 03/02/01]

**20.2.75.4 DURATION:**

Permanent.

[20.2.75.4 NMAC - Rp 20 NMAC 2.75.103, 03/02/01]

**20.2.75.5 EFFECTIVE DATE:**

March 2, 2001 except where a later date is cited at the end of a section.

**A.** For applications received prior to the effective date of this regulation, the provisions in 20.2.75 NMAC, as effective as of the date of the receipt of the application, remain effective, and fees shall be so determined.

**B.** For applications received following the effective date of this regulation, fees shall be based on the current regulation.

[20.2.75.5 NMAC - Rp 20 NMAC 2.75.104, 03/02/01; A, 12/01/03]

[The latest effective date of any section in this Part is 12/01/03.]

#### **20.2.75.6 OBJECTIVE:**

The objective of this Part is to establish a schedule of fees for the construction permit program, including construction permits, permit revisions, and technical reviews of existing permits.

[20.2.75.6 NMAC - Rp 20 NMAC 2.75.105, 03/02/01]

#### **20.2.75.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (definitions) or 20.2.72 NMAC (construction permits), as used in this Part:

**A. "air toxics review"** means the required review of a permit application for the potential emission of an air toxic regulated by 20.2.72.400 NMAC - 20.2.72.499 NMAC. As used in this Part, a level I air toxics review consists of modeling to determine whether one one-hundredth (1/100) of the occupational exposure limit, as defined in 20.2.72.401 NMAC, is met; a level II air toxics review consists of either a health assessment or best available control technology (BACT) determination, whichever is required by 20.2.72.400 NMAC - 20.2.72.499 NMAC.

**B. "applicable regulations"**, for the purpose of assessing permit fee points, mean those regulations that are applicable to the source and not the review to determine whether the regulation is applicable. Applicable regulations do not include 20.2.1 NMAC (general provisions), 20.2.2 NMAC (definitions), 20.2.3 NMAC (ambient air quality standards), 20.2.5 NMAC (source surveillance), 20.2.7 NMAC (excess emissions during malfunctions, startup, shutdown, or scheduled maintenance), 20.2.8 NMAC (emissions leaving New Mexico), 20.2.60 NMAC (open burning), 20.2.70 NMAC (operating permits), 20.2.71 NMAC (operating permit emission fees), 20.2.72 NMAC (construction permits), 20.2.73 NMAC (notice of intent and emission inventory requirements), 20.2.74 NMAC (prevention of significant deterioration (PSD)), 20.2.75 NMAC (construction permit fees), 20.2.77 NMAC (new source performance standards), 20.2.78 NMAC (emission standards for hazardous air pollutants), 20.2.79 NMAC (permits - nonattainment areas), 20.2.80 NMAC (stack heights), and 20.2.82 NMAC (maximum achievable control technology standards for source categories of hazardous air pollutants). All other Title 20, Chapter 2 NMAC Parts and all new source performance standards (excluding Subpart A) and national emission standards for hazardous air pollutants/maximum achievable control technology (NESHAP/MACT) (excluding 40 CFR Part 61 Subparts A and M and 40 CFR Part 63 Subpart A) regulations that are applicable to the source shall be counted and shall result in additional points for permit fees purposes, in accordance with the permit fee schedule in this Part.

**C. "fee unit"** means any equipment or process which generates, creates, or is the source of a regulated air contaminant, which is listed or identified in a construction permit application or application to revise a permit and which requires review and evaluation against state and federal regulations and standards. This definition does not

include sources which are exempt under 20.2.72.202 NMAC or sources for which no applicable requirements are identified in the permit. In the case of a permit modification, revision or technical review of an existing permit, the requirements of Subsection A of 20.2.75.11 NMAC apply only to the equipment or process involved in such modification, revision or review.

**D. "fugitive emissions fee unit"** means sources of fugitive emissions for which applicable requirements are identified in the permit. A maximum of one fugitive emissions fee unit shall be applied to any given application.

**E. "revision"** means any change requested by an applicant to any term or condition of a permit including but not limited to emission limitations, control technology, operating conditions and monitoring requirements. For the purposes of this regulation, revision does not include administrative revision as used in 20.2.72 NMAC.

**F. "small business"** means, for the purposes of this Part, a company that employs no more than ten (10) employees at any time during the calendar year. Employees include part-time, temporary, or limited service workers. For new sources, the responsible company official shall certify that the source does not expect to employ any more than ten (10) employees in the first year of operations. In addition, "small business" does not include (1) any source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are national or New Mexico ambient air quality standards; and (2) any major source for hazardous air pollutants under 20.2.70 NMAC.

**G. "technical review of an existing permit"** means the department's technical review of new information submitted by a permittee as required by an existing permit condition and in conjunction with proposed changes at the source that do not involve any changes to the existing permit. The review must be necessary to demonstrate that all applicable state and federal regulations and standards will continue to be met and that the existing permit will continue to be valid. This does not include required periodic reports.

[20.2.75.7 NMAC - Rp 20 NMAC 2.75.107, 03-02-01; A, 12/01/03]

#### **20.2.75.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation 700 - Filing and Permit Fees, filed November 20, 1989, as amended (AQCR 700).

**A.** All references to AQCR 700 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 700 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 700.

[20.2.75.8 NMAC - Rp 20 NMAC 2.75.106, 03/02/01]

**20.2.75.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Santa Fe, NM.

[20.2.75.9 NMAC - Rp 20 NMAC 2.75.108, 03/02/01]

**20.2.75.10 FILING FEE:**

**A.** A filing fee of five hundred dollars (\$500) shall be submitted with each filing of a notice of intent, application for a permit to construct or modify a source, or revision of a permit. The filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC.

**B.** For applications submitted under 20.2.72.221 NMAC, accelerated review, an accelerated review filing fee of one thousand dollars (\$1,000) shall be submitted in lieu of any other filing fees under this section. One-half of the accelerated review filing fee shall be applied to the cost of the accelerated review submitted by the qualified outside firm. In the event that:

**(1)** There are no qualified outside firms on contract with the department, or if all of the qualified outside firms have a conflict of interest, the entire filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC;

**(2)** No qualified outside firm submits a proposal for the accelerated permit review, one-half of this filing fee shall be applied to the total permit fee determined from the fee schedule in 20.2.75.11 NMAC;

**(3)** One or more qualified outside firms submit a proposal but all such proposals are rejected by the applicant, the accelerated review filing fee shall be forfeited and retained by the department; or

**(4)** The applicant withdraws the application for any reason, the accelerated review filing fee shall be forfeited and retained by the department.

[20.2.75.10 NMAC - Rp 20 NMAC 2.75.109, 03/02/01; A, 12/01/03]

**20.2.75.11 PERMIT FEE:**

**A.** The permit fee shall be based on the following point-based fee schedule.

<b>ACTION</b>	<b># OF POINTS</b>
<b>1. CONSTRUCTION PERMIT/TECHNICAL REVIEW OF EXISTING PERMIT</b>	
Technical Complexity	
1-5 Fee Units	5
6-15 Fee Units	1 point per fee unit
>15 Fee Units	15
Fugitive Emissions Fee Unit	5
Portable Source Relocation	1
(Paragraph 3 of Subsection D of 20.2.72.202 NMAC)	
Non-Attainment Area (20.2.79 NMAC)	75
Modeling Review	15
Air Toxics Review (20.2.72.400 NMAC - 20.2.72.499 NMAC)	
Level I	8
Level II	
Best Available Control Technology (BACT)	60
Analysis	
Health Assessment	100
Applicable Regulations	
20.2.X NMAC (per each)	3
NSPS (per each)	5
NESHAP/MACT (per each)	5
Case-by-Case MACT (20.2.83 NMAC)	100
PSD netting only (no additional PSD analysis is required)	20
PSD review (including netting) (20.2.74 NMAC)	75
<b>2. OTHER PERMITTING ACTIONS</b>	
General Permits (20.2.72.220 NMAC)	10
Streamline (each site) (20.2.72.300 NMAC- 20.2.72.399 NMAC)	10

**B.** The fee shall be the sum of all of the points that are applicable to the permitting action, multiplied by three hundred fifteen dollars (\$315).

**C.** For sources that satisfy the definition of "small business" as defined in Subsection F of 20.2.75.7 NMAC, the permit fee determined by Subsections B and E of 20.2.75.11 NMAC shall be divided by two.

**D.** For applications processed under 20.2.72.221 NMAC, Accelerated Review, the permit fee determined by Subsection B of 20.2.75.11 NMAC shall be divided by two, and shall be in addition to the cost of the accelerated review bid, as described in 20.2.72.221 NMAC.

**E.** Sources that have been issued a construction permit under 20.2.72 NMAC shall be assessed an annual fee of one thousand five hundred dollars (\$1,500). This fee shall

not apply to sources which are assessed an annual fee in accordance with 20.2.71 NMAC.

**F.** Beginning in 2005, the cost per point in Subsection B of this section and the annual fee in Subsection E of this section shall be adjusted each year on January 1 to reflect the increase, if any, by which the consumer price index for the most recent year exceeds the consumer price index for the year 2004. The amount of the change in the fee shall be determined by multiplying the existing fee by the change in the consumer price index and rounding the result to the nearest dollar. The consumer price index for any year is the average of the consumer price index for all-urban consumers published by the United States department of labor, as of the close of the twelve-month period ending on August 31 of that year.

[20.2.75.11 NMAC - Rp 20 NMAC 2.75.110, 03/02/01; A, 12/01/03]

#### **20.2.75.12 PAYMENT OF FEES:**

**A.** The Department shall refuse to accept any permit application without payment of the filing fee at the time the application is received by the Department. The filing fee and the accelerated review filing fee are non-refundable.

**B.** An invoice for permit fees shall be mailed to the applicant at the time the Department finds the application administratively complete pursuant to 20.2.72.203 NMAC. The Department shall deny any permit application or request for permit revision if the required permit fee has not been paid within thirty (30) days of invoicing, unless the Department has granted an extension. If, upon completion of the permit review, the Department determines additional fees are due, the Department shall mail an invoice to the applicant along with the signed permit. The permittee shall pay this invoice within thirty (30) days of invoicing, unless the Department has granted an extension. In the event excess fees were paid, the Department shall issue a refund for excess fees and mail the refund to the applicant.

**C.** An invoice for a request for technical review of an existing permit shall accompany the Department's response. The applicant or permittee shall pay for the review within thirty (30) days of invoicing.

**D.** Except for the refund of excess fees paid, all fees paid under this Part shall be non-refundable.

**E.** All fees paid pursuant to this Part shall be remitted in the form of a corporate or certified check or money order made payable to the Environment Department at the address specified in the notice. Upon receipt of the check, it shall be deposited in the "state air quality permit fund" established by NMSA 1978, 74-2-15 (1992).

**F.** Permittees shall pay annual fees within thirty (30) days of receipt of an invoice for annual fees for a permitted facility.

**G.** All fees shall be paid in U.S. dollars.

[20.2.75.12 NMAC - Rp 20 NMAC 2.75.111, 03/02/01]

**20.2.75.13 PERIODIC REVIEW:**

The Department shall prepare a review of the construction permit fees and construction permit program costs annually. The review shall include information on the budgets, expenditures, fund balance, and related projections. The review shall be presented to the Board within six months following the end of the fiscal year.

[20.2.75.13 NMAC - N, 03/02/01]

**PART 76: [RESERVED]**

**PART 77: NEW SOURCE PERFORMANCE STANDARDS**

**20.2.77.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[06/16/95; 20.2.77.1 NMAC - Rn, 20 NMAC 2.77.100, 06/23/00]

**20.2.77.2 SCOPE:**

Any stationary source constructing or modifying and which is subject to the requirements of 40 CFR Part 60, as amended through June 28, 2023.

[06/16/1995, 11/19/1997, 09/08/1999; 20.2.77.2 NMAC - Rn & A, 20 NMAC 2.77.101, 06/23/2000; A, 02/18/2002; A, 06/13/2003; A, 06/15/2007; A, 08/17/2009; A, 09/02/2011; A, 12/19/2013; A, 1/29/2016; A, 5/30/2017; A, 12/19/2023]

**20.2.77.3 STATUTORY AUTHORITY:**

The environmental improvement board "shall promulgate regulations and standards in...air quality management" (Section 74-1-8.A NMSA 1978) and "regulations adopted by the environmental improvement board...shall...ensure that regulations and standards under...the federal act will not be violated" (Section 74-2-7.B NMSA 1978).

[06/16/95; 20.2.77.3 NMAC - Rn, 20 NMAC 2.77.102, 06/23/00]

**20.2.77.4 DURATION:**

Permanent.

[06/16/95; 20.2.77.4 NMAC - Rn, 20 NMAC 2.77.103, 06/23/00]

#### **20.2.77.5 EFFECTIVE DATE:**

June 16, 1995, except where a later date is cited at the end of a section.

[06/16/95, 08/02/96; 20.2.77.5 NMAC - Rn, 20 NMAC 2.77.104, 6/23/00]

[The latest effective date of any section in this part is May 30, 2017.]

#### **20.2.77.6 OBJECTIVE:**

The objective of Part 77 of Chapter 2 is to adopt or establish state authority to implement new source performance standards for stationary sources in New Mexico subject to 40 CFR Part 60.

[06/16/95; 20.2.77.6 NMAC - Rn, 20 NMAC 2.77.105, 06/23/00]

#### **20.2.77.7 DEFINITIONS:**

**[RESERVED]**

[20.2.77.7 NMAC - N, 06/23/00]

#### **20.2.77.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This part amends and supersedes Air Quality Control Regulation (AQCR) 750, last filed on April 10, 1994. All references to AQCR 750 in any other rule shall be understood as a reference to this part.

[06/16/95; 20.2.77.8 NMAC - Rn, 20 NMAC 2.77.106, 06/23/00]

#### **20.2.77.9 ADOPTION OF 40 CFR PART 60:**

Except as otherwise provided, the new source performance standards as promulgated by the United States environmental protection agency, 40 CFR Part 60, as amended in the Federal Register through June 28, 2023 are hereby incorporated into this part (20.2.77 NMAC).

[06/16/1995, 08/02/1996, 11/19/1997, 09/08/1999; 20.2.77.9 NMAC - Rn & A, 20 NMAC 2.77.107, 06/02/2000; A, 02/18/2002; A, 06/13/2003; A, 06/15/2007; A, 08/17/2009; A, 09/02/2011; A, 12/19/2013; A, 1/29/2016; A, 5/30/2017; A, 12/19/2023]

#### **20.2.77.10 MODIFICATIONS AND EXCEPTIONS:**

The following modifications or exceptions are made to the incorporated federal standards:

**A.** Amend 40 CFR Part 60, Section 60.2, Definitions, as follows: For the purposes of delegation of authority which the administrator of the United States environmental protection agency may, at the administrator's discretion, delegate to the secretary of the New Mexico environment department, "administrator" means the secretary of the department or the secretary's authorized representative.

**B.** Exclude 40 CFR - Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters.

**C.** The federal standards of performance incorporated by this regulation shall not be subject to NMSA 1978, Section 74-2-8 (Variances).

**D.** Exclude 40 CFR Part 60, Subpart QQQQ – Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces.

[06/16/95; 20.2.77.10 NMAC - Rn, 20 NMAC 2.77.108, 06/23/00; A, 06/15/07; A, 1/29/16]

#### **20.2.77.11 DOCUMENTS:**

Documents incorporated and cited in this part may be viewed at the New Mexico environment department, air quality bureau.

[06/16/95; 20.2.77.11 NMAC - Rn, 20 NMAC 2.77.109, 06/23/00; A, 08/17/09; A, 1/29/16]

[As of April 2013, the air quality bureau is located at 525 Camino de los Marquez, Santa Fe NM, 87505]

## **PART 78: EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

#### **20.2.78.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[06/16/95; 20.2.78.1 NMAC - Rn, 20 NMAC 2.78.100 06/23/00]

#### **20.2.78.2 SCOPE:**

All sources emitting hazardous air pollutants which are subject to the requirements of 40 CFR Part 61, as amended through June 28, 2023.

[06/16/1995, 11/19/97, 09/08/1999; 20.2.78.2 NMAC - Rn 20 NMAC 2.78.101 & A, 06/23/2000; A, 02/18/2002; A, 06/08/2007; A, 08/17/2009; A, 09/02/2011; A, 1/29/2016; A, 5/30/2017; A, 12/19/2023]

#### **20.2.78.3 STATUTORY AUTHORITY:**

The environmental improvement board "shall promulgate regulations and standards in...air quality management" (Subsection (A) of Section 74-1-8 NMSA 1978) and

"regulations adopted by the environmental improvement board...may...prescribe standards of performance for sources and emissions standards for hazardous air pollutants..." (Subsection (D) of Section 74-2-5 NMSA 1978).

[06/16/1995; 20.2.78.3 NMAC - Rn, 20 NMAC 2.78.102 06/23/2000; A, 12/19/2023]

**20.2.78.4 DURATION:**

Permanent.

[06/16/95; 20.2.78.4 NMAC - Rn, 20 NMAC 2.78.103 06/23/00]

**20.2.78.5 EFFECTIVE DATE:**

June 16, 1995, except where a later date is cited at the end of a section.

[06/16/95, 08/02/96; 20.2.78.5 NMAC - Rn, 20 NMAC 2.78.104 06/23/00]

[The latest effective date of any section in this part is May 30, 2017.]

**20.2.78.6 OBJECTIVE:**

The objective of Part 78 of Chapter 2 is to adopt or establish state authority to implement emission standards for hazardous air pollutants in New Mexico subject to 40 CFR Part 61.

[06/16/95; 20.2.78.6 NMAC - Rn, 20 NMAC 2.78.105 06/23/00]

**20.2.78.7 DEFINITIONS:**

**[RESERVED]**

[20.2.78.7 NMAC - N, 06/23/00]

**20.2.78.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This part amends and supersedes Air Quality Control Regulation (AQCR) 751, last filed on April 10, 1994. All references to AQCR 751 in any other rule shall be understood as a reference to this part.

[06/16/95; 20.2.78.8 NMAC - Rn, 20 NMAC 2.78.106 06/23/00]

**20.2.78.9 ADOPTION OF 40 CFR PART 61:**

Except as otherwise provided, the national emission standards for hazardous air pollutants as promulgated by the United States environmental protection agency, 40

CFR Part 61, as amended in the Federal Register through June 28, 2023 are hereby incorporated into this part (20.2.78 NMAC).

[06/16/1995, 08/02/1996, 11/19/1997, 09/08/1999; 20.2.78.9 NMAC - Rn 20 NMAC 2.78.107 & A, 06/23/2000; A, 02/18/2002; A, 06/08/2007; A, 08/17/2009; A, 09/02/2011; A, 1/29/2016; A, 5/30/2017; A, 12/19/2023]

#### **20.2.78.10 MODIFICATIONS AND EXCEPTIONS:**

The following modifications or exceptions are made to the incorporated federal standards:

**A.** amend 40 CFR Part 61, Section 61.02, Definitions, as follows: For the purposes of delegation of authority which the administrator of the United States environmental protection agency may, at the administrator's discretion, delegate to the secretary of the New Mexico environment department, "administrator" means the secretary or the secretary's authorized representative.

**B.** exclude 40 CFR Part 61, Subparts B (National Emission Standards for Radon Emissions from Underground Uranium Mines), H (National Emission Standards for Emissions of Radionuclides Other Than Radon from Department of Energy Facilities), I (National Emission Standards for Radionuclide Emissions from Facilities Licensed by the NRC and Federal Facilities not covered by Subpart H), K ( National Emission Standard for Radionuclide Emissions from Elemental Phosphorus Plants), Q (National Emission Standards for Radon Emissions from Department of Energy Facilities), R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks), T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings), and W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

**C.** the federal emission standards incorporated by this regulation shall not be subject to NMSA 1978, Section 74-2-8 (Variances).

[06/16/95; 20.2.78.9 NMAC - Rn, 20 NMAC 2.78.108 06/23/00; A, 1/29/16]

#### **20.2.78.11 DOCUMENTS:**

Documents incorporated and cited in this part may be viewed at the New Mexico environment department, air quality bureau.

[06/16/95; 20.2.78.11 NMAC - Rn, 20 NMAC 2.78.109 06/23/00; A, 08/17/09; A, 1/29/16]

[As of April 2013, the air quality bureau is located at 525 Camino de los Marquez, Suite 1, Santa Fe NM, 87505]

## **PART 79: PERMITS - NONATTAINMENT AREAS**

### **20.2.79.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.79.1 NMAC - Rn, 20 NMAC 2.79.100, 10/31/02]

### **20.2.79.2 SCOPE:**

All persons who intend to construct or modify a source, except as otherwise provided by this Part.

[11/30/95; 20.2.79.2 NMAC - Rn, 20 NMAC 2.79.101, 10/31/02]

### **20.2.79.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, sections 74-2-5(C)(1) and 74-2-7(A)(1), (B), (C) and (D).

[11/30/95; 20.2.79.3 NMAC - Rn, 20 NMAC 2.79.102, 10/31/02]

### **20.2.79.4 DURATION:**

Permanent.

[11/30/95; 20.2.79.4 NMAC - Rn, 20 NMAC 2.79.103, 10/31/02]

### **20.2.79.5 EFFECTIVE DATE:**

November 30, 1995 except where a later date is cited at the end of a section.

[11/30/1995; A, 10/01/1997; 20.2.79.5 NMAC - Rn, 20 NMAC 2.79.104, 10/31/2002; A, 8/21/2021]

### **20.2.79.6 OBJECTIVE:**

The objective of this Part is to establish the requirements for obtaining a nonattainment area permit.

[11/30/95; 20.2.79.6 NMAC - Rn, 20 NMAC 2.79.105, 10/31/02]

### **20.2.79.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2.7 NMAC (Definitions), as used in this part, the following terms apply.

**A. "Actual emissions"** means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with the following, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide applicability limit under 20.2.79.120 NMAC. Instead, Subsections E and AI of this section shall apply for those purposes.

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

**B. "Administrator"** means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

**C. "Adverse impact on visibility"** means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with:

- (1) times of visitor use of the mandatory federal class I area; and
- (2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

**D. "Allowable emissions"** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- (1) the applicable standard set forth in 40 CFR Part 60 or 61;

(2) any applicable state implementation plan emissions limitation including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

**E. "Baseline actual emissions"** means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of Paragraph (1) of this subsection.

(2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under this section or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of Subsection D of 20.2.79.115 NMAC.

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (2) of this subsection.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a plantwide applicability limit for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of this subsection, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of this subsection, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of this subsection.

**F. "Begin actual construction"** means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building support and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

**G. "Best available control technology (BACT)"** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for

each regulated new source review pollutant which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

**H. "Building, structure, facility, or installation"** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement (U.S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively).

**I. "Commence"** as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

**J. "Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

**K. "Continuous emissions monitoring system"** (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

**L. "Continuous emissions rate monitoring system"** (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

**M. "Continuous parameter monitoring system"** (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and to record average operational parameter value(s) on a continuous basis.

**N. "Electric utility steam generating unit"** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

**O. "Emissions unit"** means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric steam generating unit as defined in Subsection N of this section. For purposes of this section, there are two types of emissions units.

**(1)** A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

**(2)** An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of this subsection. A replacement unit, as defined in this section, is an existing unit.

**P. "Federal class I area"** means any Federal land that is classified or reclassified "class I".

**Q. "Federal land manager"** means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

**R. "Federally enforceable"** means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

**S. "Fugitive emissions"** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**T. "Lowest achievable emission rate"** means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source; in no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

**U. "Major modification"** means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the federal Clean Air Act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which:

(i) the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit

condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source; or

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the state implementation plan for the state in which is project is located, and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.2.79.120 NMAC for a plantwide applicability limit for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.79.120 NMAC shall apply.

(3) For the purpose of applying the requirements of Subsection H of 20.2.79.109 NMAC to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to subpart 2, part D, title I of the federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(4) Any physical change in, or change in the method of operation of a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act.

**V. "Major stationary source"** means the following.

(1) Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated new source review pollutant, except that lower emissions thresholds shall apply in areas subject to subpart 2, subpart 3, or subpart 4 of part D, title I of the federal Clean Air Act, according to Subparagraphs (a) through (f) of Paragraph (1) of Subsection V of 20.2.79.7 NMAC.

**(a)** 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

**(b)** 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

**(c)** 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

**(d)** 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

**(e)** 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the United States environmental protection agency administrator).

**(f)** 70 tons per year of PM10 in any serious nonattainment area for PM10.

**(2)** For the purposes of applying the requirements of Subsection H of 20.2.79.109 NMAC to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in Subparagraphs (a) through (f) of Paragraph (1) of Subsection V of 20.2.79.7 NMAC shall apply in areas subject to subpart 2 of part D, title I of the federal Clean Air Act.

**(a)** 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

**(b)** 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

**(c)** 100 tons per year or more of nitrogen oxides in any area designated under section 107(D) of the federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

**(d)** 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

**(e)** 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

**(f)** 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

(3) Any physical change that would occur at a stationary source not qualifying under Paragraph (1) or (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

(4) A major stationary source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone.

(5) A stationary source shall not be a major stationary source due to fugitive emissions, to the extent they are quantifiable, unless the source belongs to:

(a) any category in Subsection B of 20.2.79.119 NMAC; or

(b) any other stationary source category which as of August 7, 1980 is being regulated under Section 111 or 112 of the federal Clean Air Act.

(6) A stationary source shall not be a major stationary source due to secondary emissions.

**W. "Mandatory federal class I area"** means those federal lands that are international parks, national wilderness areas which exceed five thousand (5,000) acres in size, national memorial parks which exceed five thousand (5,000) acres in size, and national parks which exceed six thousand (6,000) acres in size, and which were in existence on August 7, 1977. These areas may not be redesignated.

**X. "Natural conditions"** includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

**Y. "Necessary preconstruction approvals or permits"** means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable state implementation plan.

**Z. "Net emissions increase"**

(1) With respect to any regulated new source review pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection E of 20.2.79.109 NMAC; and

(b) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases shall be determined as provided in Subsection E of this section, except that

Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection E of this section shall not apply.

**(2)** An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs.

**(3)** An increase or decrease in actual emissions is creditable only if:

**(a)** it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

**(b)** either the department or the administrator has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

**(4)** An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

**(5)** A decrease in actual emissions is creditable only to the extent that:

**(a)** the old level of actual emissions or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

**(b)** it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

**(c)** the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress; and

**(d)** it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

**(6)** An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

**(7)** Paragraph (1) of Subsection A of this section shall not apply for determining creditable increases and decreases or after a change.

**AA. "Nonattainment area"** means, for any air pollutant an area which is designated "nonattainment" with respect to that pollutant within the meaning of Section 107(d) of the federal Clean Air Act.

**AB. "Nonattainment major new source review (NSR) program"** means a major source preconstruction permit program that has been approved by the administrator and incorporated into the New Mexico state implementation plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is a major new source review permit.

**AC. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

**AD. "Portable stationary source"** means a source which can be relocated to another operating site with limited dismantling and reassembly.

**AE. "Potential to emit"** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the PTE of a stationary source.

**AF. "Predictive emissions monitoring system" (PEMS)** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

**AG. "Prevention of significant deterioration (PSD) permit"** means any permit that is issued under 20.2.74 NMAC.

**AH. "Project"** means a physical change in, or change in the method of operation of, an existing major stationary source.

**AI. "Projected actual emissions"** means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated new source review pollutant and full utilization of the

unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(1) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(2) shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection E of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of this subsection, may elect to use the emissions unit's potential to emit, in tons per year, as defined under Subsection AE of this section.

**AJ.** "Regulated new source review pollutant", for purposes of this section, means the following:

(1) nitrogen oxides or any volatile organic compounds;

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

(3) any pollutant that is identified under this paragraph (Paragraph (3) of Subsection AJ of 20.2.79.7 NMAC) as a constituent or precursor of a general pollutant listed in Paragraphs (1) or (2) of this subsection, provided that such constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant; precursors identified by the administrator for purposes of NSR are the following:

(a) volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;

(b) sulfur dioxide is a precursor to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas;

(c) nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations;

(d) volatile organic compounds and ammonia are presumed not to be precursors to PM<sub>2.5</sub> in any PM<sub>2.5</sub> nonattainment area, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations; or

(4) PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in nonattainment major NSR permits; compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

**AK. "Replacement unit"** means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**AL. "Secondary emissions"** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the

purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

**AM. "Significant" means:**

**(1)** In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates: carbon monoxide, 100 tons per year; nitrogen oxides, 40 tons per year; sulfur dioxide, 40 tons per year; PM<sub>10</sub> emissions, 15 tons per year; ozone, 40 tons per year of volatile organic compounds or nitrogen oxides; lead, 0.6 tons per year, PM<sub>2.5</sub>: 10 tpy of direct PM<sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM<sub>2.5</sub> precursor under Subsection AJ of 20.2.79.7 NMAC.

**(2)** Notwithstanding the significant emissions rate for ozone in Paragraph (1) of Subsection AM of 20.2.79.7 NMAC, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

**(3)** For the purposes of applying the requirements of Subsection H of 20.2.79.109 NMAC to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in Paragraphs (1), (2), and (5) of Subsection AM of 20.2.79.7 NMAC shall apply to nitrogen oxides emissions.

**(4)** Notwithstanding the significant emissions rate for carbon monoxide under Paragraph (1) of Subsection AM of 20.2.79.7 NMAC significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the U.S. environmental protection agency administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

**(5)** Notwithstanding the significant emissions rates for ozone under Paragraphs (1) and (2) of Subsection AM of 20.2.79.7 NMAC, any increase in actual

emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to subpart 2, part D, title I of the federal Clean Air Act shall be considered a significant net emissions increase.

**AN. "Significant emissions increase"** means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection AM of this Section) for that pollutant.

**AO. "Stationary source"** means any building, structure, facility, or installation which emits or may emit any regulated new source review pollutant.

**AP. "Temporary source"** means a stationary source which changes its location or ceases to exist within one year from the date of initial start of operations.

**AQ. "Visibility impairment"** means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

[11/30/1995; 20.2.79.7 NMAC - Rn, 20 NMAC 2.79.107, 10/31/2002; A, 1/22/2006; A, 8/31/2009; A, 6/3/2011; A, 8/21/2021]

#### **20.2.79.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 709 -- Permits -- Nonattainment Areas last filed June 25, 1992, as amended ("AQCR 709").

**A.** All references to AQCR 709 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 709 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 709.

[11/30/95; 20.2.79.8 NMAC - Rn, 20 NMAC 2.79.106, 10/31/02]

#### **20.2.79.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau.

[11/30/1995; 20.2.79.9 NMAC - Rn, 20 NMAC 2.79.108, 10/31/2002; A, 8/21/2021]

#### **20.2.79.10 SEVERABILITY:**

If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.79.10 NMAC - N, 1/22/06]

**20.2.79.11 CONSTRUCTION:**

This part shall be liberally construed to carry out its purpose.

[20.2.79.11 NMAC - N, 1/22/06]

**20.2.79.12 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.79.12 NMAC - N, 1/22/06]

**20.2.79.13 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.79.13 NMAC - N, 1/22/06]

**20.2.79.14 LIMITATION OF DEFENSE:**

The existence of a valid permit under this part shall not constitute a defense to a violation of any section of this part, except the requirement for obtaining a permit.

[20.2.79.14 NMAC - N, 1/22/06]

**20.2.79.15-20.2.79.108 [RESERVED]**

**20.2.79.109 APPLICABILITY:**

**A.** Any person constructing any new major stationary source or major modification shall obtain a permit from the department in accordance with the requirements of this part prior to the start of construction or modification if either of the following conditions apply:

**(1)** the major stationary source or major modification will be located within a nonattainment area so designated pursuant to Section 107 of the federal Clean Air Act

and will emit a regulated pollutant for which it is major and which the area is designated nonattainment for; or

**(2)** the major stationary source or major modification will be located within an area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the federal Clean Air Act, when it would cause or contribute to a violation of any national ambient air quality standard. A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed any of the significance levels in Subsection A of 20.2.79.119 NMAC at any location that does not or would not meet the applicable national standard. (See Subsection D of 20.2.79.109 NMAC).

**B.** The requirements of this part apply to each regulated pollutant meeting the criteria of either Paragraph (1) or Paragraph (2) of Subsection A of 20.2.79.109 NMAC.

**C.** For an area which is nonattainment for ozone, volatile organic compounds and oxides of nitrogen are the regulated pollutants which may make this part applicable under the provisions of Paragraph (1) of Subsection A of 20.2.79.109 NMAC.

**D.** Other requirements.

**(1)** A new major stationary source or major modification which meets the criteria of Paragraph (2) of Subsection A of 20.2.79.109 NMAC shall demonstrate that the source or modification will not cause or contribute to a violation of any national ambient air quality standard by meeting the following requirements and no others of this part:

**(a)** Paragraph (2) of Subsection C of 20.2.79.112 NMAC regarding emission offsets;

**(b)** Subsection D of 20.2.79.112 NMAC regarding a net air quality benefit;

**(c)** 20.2.79.114 NMAC - Emission Offset Baseline;

**(d)** 20.2.79.115 NMAC - Emission Offset; and

**(e)** 20.2.79.117 NMAC - Air Quality Benefit.

**(2)** In addition, a new source or modification which meets the criteria of Paragraph (2) of Subsection A of 20.2.79.109 NMAC and is also a major stationary source or major modification as defined in 20.2.74 NMAC (prevention of significant deterioration (PSD)), shall obtain a PSD permit under the provisions of 20.2.74 NMAC.

**E.** Applicability procedures.

**(1)** Except as otherwise provided in Paragraph (6) of this subsection, and consistent with the definition of major modification, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in Subsection AM of 20.2.79.7 NMAC), and a significant net emissions increase (as defined in Subsections Z and AM of 20.2.79.7 NMAC). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

**(2)** The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3), (4) and (5) of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

**(3)** Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions (as defined in Paragraphs (1) and (2) of Subsection E of 20.2.79.7 NMAC, as applicable), for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in Subsection AM of 20.2.79.7 NMAC).

**(4)** Actual-to-potential test for projects that involve construction of a new emissions unit(s). A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Paragraph (3) of Subsection E of 20.2.79.7 NMAC) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in Subsection AM of 20.2.79.7 NMAC).

**(5)** Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in Paragraph (3) of this subsection for the existing unit and determined using the method specified in Paragraph (4) of this subsection for the new unit.

**(6)** any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.2.79.120 NMAC.

**F.** Except as otherwise provided in Paragraph (6) under this subsection (Subsection F of 20.2.79.109 NMAC), the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Paragraph (6) under this subsection (Subsection F of 20.2.79.109 NMAC), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection AI of 20.2.79.7 NMAC for calculating projected actual emissions.

**(1)** Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

**(a)** a description of the project;

**(b)** identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and

**(c)** a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection AI of 20.2.79.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

**(2)** If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of this subsection to the department. Nothing in this paragraph shall be construed to require the owner or operator of such a unit to obtain any determination from the department; however, necessary preconstruction approvals or permits, or both must be obtained before beginning actual construction.

**(3)** The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified in Subparagraph (b) of Paragraph (1) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

**(4)** If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each

year during which records must be generated under Paragraph (3) of this subsection setting out the unit's annual emissions during the year that preceded submission of the report.

**(5)** If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection, by a significant amount (as defined in Subsection AM of 20.2.79.7 NMAC) for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

- (a)** the name, address and telephone number of the major stationary source;
- (b)** the annual emissions as calculated pursuant to Paragraph (3) of this subsection; and
- (c)** any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

**(6)** A "reasonable possibility" under this subsection (Subsection F of 20.2.79.109 NMAC) occurs when the owner or operator calculates the project to result in either:

**(a)** a projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection AN of 20.2.79.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

**(b)** a projected actual emissions increase that, added to the amount of emissions excluded under Subparagraph (3) of Subsection AI of 20.2.79.7 NMAC, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection AN of 20.2.79.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; for a project for which a reasonable possibility occurs only within the meaning of Subparagraph (b) of Paragraph (6) of Subsection F of 20.2.79.109 NMAC, and not also within the meaning of Subparagraph (a) of Paragraph (6) of Subsection F of 20.2.79.109 NMAC, then provisions Paragraphs (2) through (5) under this subsection (Subsection F of 20.2.79.109 NMAC) do not apply to the project.

**G.** The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection F of this section (20.2.79.109

NMAC) available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

**H.** The requirements of this section (20.2.79.109 NMAC) applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the U.S. environmental protection agency administrator has granted a NO<sub>x</sub> waiver applying the standards set forth under section 182(f) of the federal Clean Air Act and the waiver continues to apply.

**I.** In meeting the emissions offset requirements of 20.2.79.115 NMAC, the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in Subsections J through N of 20.2.79.109 NMAC.

**J.** In meeting the emissions offset requirements of 20.2.79.115 NMAC for ozone nonattainment areas that are subject to subpart 2, part D, title I of the federal Clean Air Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

- (1)** in any marginal nonattainment area for ozone, at least 1.1:1;
- (2)** in any moderate nonattainment area for ozone, at least 1.15:1;
- (3)** in any serious nonattainment area for ozone, at least 1.2:1;
- (4)** in any severe nonattainment area for ozone, at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved state implementation plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and
- (5)** in any extreme nonattainment area for ozone, at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved state implementation plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC).

**K.** Notwithstanding the requirements of Subsection J of 20.2.79.109 NMAC for meeting the requirements of 20.2.79.115 NMAC, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to subpart 2, part D title I of the federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to subpart 2, part D, title I of the federal Clean Air Act.

**L.** In meeting the emissions offset requirements of 20.2.79.115 NMAC for ozone nonattainment areas that are subject to subpart 1, part D, title I of the federal Clean Air Act, (but are not subject to subpart 2, part D title I of the federal Clean Air Act including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions increase of VOC shall be at least 1:1.

**M.** The requirements of 20.2.79.109 NMAC applicable to major stationary sources and major modifications of PM<sub>10</sub> shall also apply to major stationary sources and major modifications of PM<sub>10</sub> precursors except where the US. environmental protection agency administrator determines that such sources do not contribute significantly to PM<sub>10</sub> levels that exceed the PM<sub>10</sub> ambient standards in the area.

**N.** In meeting the emissions offset requirements of 20.2.79.115 NMAC, the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this paragraph. The department may allow the offset requirements in 20.2.79.115 NMAC for direct PM<sub>2.5</sub> emissions or emissions of precursors of PM<sub>2.5</sub> to be satisfied by offsetting reductions in direct PM<sub>2.5</sub> emissions or emissions of any PM<sub>2.5</sub> precursor identified under Subsection AJ of 20.2.79.7 NMAC if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

[11/30/1995; 20.2.79.109 NMAC - Rn, 20 NMAC 2.79.109, 10/31/2002; A, 1/22/2006; A, 8/31/2009; A, 6/3/2011; A, 8/21/2021]

#### **20.2.79.110 SOURCE OBLIGATION:**

**A.** The requirements of this Part shall apply as though construction had not yet commenced at the time that a source or modification becomes a major source or major modification solely due to a relaxation in any enforceable limitation established after August 7, 1980.

**B.** The issuance of a permit by the Department shall not relieve any owner or operator of the responsibility to comply with the provisions of the Air Quality Control Act, sections 74-2-1 to 74-2-17, NMSA 1978, any applicable regulations of the Board, and any other requirements under local, state, or federal law.

**C.** Any owner or operator who commences construction or operates a major stationary source or major modification without, or not in accordance with, a permit issued under the requirements of this Part shall be subject to enforcement action.

**D.** Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. For a phased construction project, each phase must commence construction within 18 months of the projected and approved commencement date. The Secretary

may extend the 18-month period upon a satisfactory showing that an extension is justified.

**E.** For phased construction projects, the determination of the lowest achievable emission rate shall be reviewed and modified as appropriate at the latest reasonable time but no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of lowest achievable emission rate.

**F.** If the owner or operator previously issued a permit under this Part applies for an extension as provided for under subsection D of 20.2.79.110 NMAC, and the new proposed date of construction is greater than 18 months from the date the permit would become invalid, the determination of lowest achievable emission rate shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or operator may be required to demonstrate the adequacy of any previous determination of lowest achievable emission rate.

[11/30/95; 20.2.79.110 NMAC - Rn, 20 NMAC 2.79.110, 10/31/02]

#### **20.2.79.111 APPLICATION CONTENTS:**

The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to perform any analysis or make any determination required under this Part. The items of this section are required before the Department may deem an application administratively complete. All applications shall include:

**A.** All information required by subsection A of 20.2.72.203 NMAC; and

**B.** A detailed schedule for construction of the major stationary source or major modification; and

**C.** A detailed description of the planned system of continuous emission reduction to be implemented, emission estimates, and other information necessary to demonstrate that the lowest achievable emission rate or any other applicable emission limitation will be maintained.

[11/30/95; A, 01/01/00; 20.2.79.111 NMAC - Rn, 20 NMAC 2.79.111, 10/31/02]

#### **20.2.79.112 SOURCE REQUIREMENTS:**

In order for a permit to be granted, all of the following conditions shall be met:

**A.** The major stationary source or major modification shall be designed such that the lowest achievable emission rate (LAER) will be met and maintained for each pollutant emitted which is subject to this Part;

**B.** The owner or operator of the proposed new or modified source has demonstrated that all existing major stationary sources owned or operated by such person (or any entity controlling, controlled by, or under common control with such person) in this state are in compliance with, or on a schedule for compliance, with all applicable emission limitations and standards, under the Federal Act, and all conditions in a federally enforceable permit;

**C. Emission Reductions:**

**(1)** Emission reductions (offsets) at existing sources shall occur prior to or concurrent with the start of operation of the proposed major stationary source or major modification for each pollutant emitted which is subject to this Part. As a general rule, such offsets shall be at least twenty percent (20%) greater than the allowable emissions of the proposed new major stationary source or major modification, and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction in the actual emissions of such air pollutant from the same or other sources in the area. An offset less than twenty percent (20%) but at least ten percent (10%, or 1:1.1 ratio), may be allowed if reasonable progress toward the attainment of the applicable NAAQS will be achieved. A higher level of offset reduction may be required in order to demonstrate that a net air quality benefit will occur; or

**(2)** A new major stationary source or major modification which is subject to the requirements of subsection D of 20.2.79.109 NMAC shall obtain sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major stationary source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard.

**D.** Emission offsets shall provide a net air quality benefit in the area where the national ambient air quality standard for that pollutant is violated; and

**E.** The owner or operator of the proposed major stationary source or major modification has conducted an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

**F.** The proposed major stationary source or major modification will meet all applicable emission requirements in the New Mexico State Implementation Plan, any applicable new source performance standard in 40 CFR Part 60, and any national emission standard for hazardous air pollutants in 40 CFR Part 61.

[11/30/95; A, 10/01/97; 20.2.79.112 NMAC - Rn, 20 NMAC 2.79.112, 10/31/02]

**20.2.79.113 ADDITIONAL REQUIREMENTS FOR SOURCES IMPACTING MANDATORY FEDERAL CLASS I AREAS:**

**A.** The requirements of this section apply only to proposed major stationary sources or major modifications that meet the criteria of paragraph (1) of subsection A of 20.2.79.109 NMAC and that also are major stationary sources or major modifications as defined in 20.2.74 NMAC. A major stationary source or major modification which meets the criteria of paragraph (2) of subsection A of 20.2.79.109 NMAC may be subject to requirements for Federal Class I Areas in 20.2.74 NMAC if that Part applies.

**B.** The Department shall transmit to the Administrator and any affected Federal Land Manager a copy of each permit application and any information relevant to any proposed major stationary source or major modification which may have an impact on visibility in any mandatory Federal Class I area. Relevant information will include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The application shall be transmitted within thirty (30) days of receipt by the Department and at least sixty (60) days prior to any public hearing on the application. Additionally, the Department shall notify any affected Federal Land Manager within thirty (30) days from the date the Department receives a request for a pre-application meeting from a proposed source subject to this Part. The Department shall consult with the affected Federal Land Manager prior to making a determination of completeness for any such permit application. The Department shall also provide the Federal Land Manager and the Administrator with a copy of the preliminary determination on the permit application and shall make available to them any materials used in making that determination.

**C.** The owner or operator of any proposed major stationary source or major modification which may have an impact on visibility in a mandatory Federal Class I area shall include in the permit application an analysis of the anticipated impacts on visibility in such areas.

**D.** The Department may require monitoring of visibility in any mandatory Federal Class I area where the Department determines an adverse impact on visibility may occur due to the operations of the proposed new source or modification. Such monitoring shall be conducted following procedures approved by the Department and subject to the following conditions:

**(1)** Visibility monitoring methods specified by the Department shall be reasonably available and not require any research and development; and

**(2)** Both preconstruction and post construction visibility monitoring may be required. In each case, the duration of such monitoring shall not exceed one year.

**E.** The Department shall consider any analysis with respect to visibility impacts provided by the Federal Land Manager if it is received within thirty (30) days from the date a complete application is given to the Federal Land Manager. In any case where the Department disagrees with the Federal Land Manager's analysis, the Department shall either explain its decision to the Federal Land Manager or give notice as to where the explanation can be obtained. In the case where the Department disagrees with the

Federal Land Manager's analysis, the Department will also explain its decision or give notice to the public by means of an advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed as to where the decision can be obtained.

**F.** In making its determination as to whether or not to issue a permit, the Department shall ensure that the source's emissions will be consistent with making reasonable progress toward the national visibility goal of preventing any future impairment of visibility in mandatory Federal Class I areas. The Department may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the useful life of the source.

[11/30/95; 20.2.79.113 NMAC - Rn, 20 NMAC 2.79.113, 10/31/02]

#### **20.2.79.114 EMISSION OFFSET BASELINE:**

The baseline for determining credit for emission offsets shall be the most stringent emissions limitation pursuant to a New Mexico air quality regulation or federally enforceable permit which is applicable and in effect at the time the application to construct is filed. If neither a state air quality regulation nor a federally enforceable permit contains an emissions limitation for the source, the baseline shall be the actual emissions of the source from which offset credit is obtained. Where a source is subject to an emission standard established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPS) and a different State Implementation Plan or permit limitation, including any emission limitation used in demonstrating reasonable further progress, the more stringent emission standard shall be used as the baseline for determining credit for emission offsets.

[11/30/95; 20.2.79.114 NMAC - Rn, 20 NMAC 2.79.114, 10/31/02]

#### **20.2.79.115 EMISSION OFFSETS:**

All emission offsets approved by the department shall meet the following criteria.

**A.** All emission reductions claimed as offset credit shall be from decreases of the same pollutant for which the offset is required.

**B.** All emission reductions claimed as offset credit shall occur prior to or concurrent with the start of operation of the proposed source. In addition, past reductions must have occurred later than the date upon which the area became nonattainment in order to be creditable.

**C.** For the case where emission reductions claimed as offset credit occur at the source subject to this part, such reductions shall be a condition required by a federally enforceable permit. For the case where emission reductions claimed as offset credit

occur at a neighboring source, such reductions shall be incorporated as modifications to pertinent federally enforceable permits held by the neighboring source. If the neighboring source has no relevant permits, the reductions shall be approved as a revision to the state implementation plan by the board.

**D.** Offset credit for any emissions reduction can be claimed only to the extent that the department or U.S. EPA has not relied on it in previously issuing any permit or in demonstrating attainment or reasonable further progress.

**E.** No emissions reduction credit shall be allowed for replacing one volatile organic compound with another of lesser reactivity, except as approved by the U.S. EPA reactivity guidance found at 42 *federal register* 35314, (1977), and any amendments thereto.

**F.** Emission reduction credit may be allowed for a source permanently curtailing production or operating hours below baseline levels provided that the work force to be affected has been notified of the curtailment.

**(1)** Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours below baseline levels may be generally credited for offsets if such reductions are surplus, permanent, quantifiable, and federally enforceable. In addition, the shutdown or curtailment is creditable only if it occurred after the date of the most recent emissions inventory used in the state implementation plan's demonstration of attainment. However, in no event may credit be given for shutdowns which occurred prior to August 7, 1977. For purposes of this paragraph, a permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the date of the base year inventory, if the projected inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units.

**(2)** Such reductions may be credited in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new emission unit is a replacement for the shutdown or curtailed emission unit, and the provisions of Paragraph (1) of Subsection F of 20.2.79.7 NMAC are observed.

**G.** Where the most stringent emissions limit which is applicable allows greater emissions than the potential to emit of the offsetting source, emission offset credit will be allowed only for control below the potential to emit of the source.

**H.** The emission limit for determining emission offset credit involving an existing fuel combustion source shall be the most stringent emission standard which is applicable for this source for the type of fuel being burned at the time the permit application is filed. If the existing source commits to switch to a cleaner fuel, emission offset credit based on the difference between the allowable emissions of the fuels involved shall be acceptable

only if an alternative control measure, which would achieve the same degree of emission reduction should the source switch back to a fuel which produces more pollution, is specified in a permit issued by the department.

**I.** The owner or operator desiring to utilize an emission reduction as an offset shall submit to the department the following information:

**(1)** a detailed description of the process to be controlled and the control technology to be used; and

**(2)** emission calculations showing the types and amounts of actual emissions to be reduced; and

**(3)** the effective date of the reduction.

**J.** Source shutdowns and curtailments in production or operating hours may be used for emission offset credit only if they occur after August 7, 1977, or less than one year prior to the date of permit application, whichever is earlier, and the proposed new source for which the offset is to apply is a replacement for the shutdown or curtailment.

**K.** The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

[11/30/1995; 20.2.79.115 NMAC - Rn, 20 NMAC 2.79.115, 10/31/2002; A, 1/22/2006; A, 8/31/2009; A, 8/21/2021]

#### **20.2.79.116 BANKING OF EMISSION REDUCTION:**

**A.** Any stationary source which decreases actual emissions of a regulated pollutant in excess of the requirements of this Part or any other applicable air quality regulation or permit emission limitation may preserve or bank such excess emission reductions for sale or future use.

**B.** The owner or operator desiring to preserve such reductions shall submit a written request prior to the actual emission reduction to the Department which contains the following information:

**(1)** A detailed description of the process(es) to be controlled and the control technology to be used; and

**(2)** Emission calculations showing the types and amounts of actual emissions to be reduced; and

(3) The effective date(s) of such reductions.

**C.** The Department shall:

(1) Verify the amount of emission reduction claimed in the written request;  
and

(2) Approve or deny the request for banking of the emission reduction and notify the applicant in writing of the decision; and

(3) Keep appropriate records of any emission reduction accepted for banking;  
and

(4) For the case where emission reductions are approved in excess of those required for obtaining a permit under this Part, the Department shall make such reductions a condition of the permit; and

(5) For the case where emission reductions are approved not in conjunction with granting a permit, the Department shall preserve such reductions as a State Implementation Plan revision which must be approved by the Environmental Improvement Board.

**D.** Use and Sale of Emission Reductions.

(1) The use of any preserved emission reduction is confined to meeting the emission offset requirements of this Part or 20.2.72 NMAC.

(2) The provisions of this Part apply to the future use of any preserved emission reduction as if such reductions were obtained concurrently with the commencement of operations of the new or modified source.

(3) Before the use or sale of any preserved emission reduction occurs, written notification must be given to the Department. Such notice shall be in writing and shall identify the permit(s) and State Implementation Plan revision(s) in which such reductions are preserved. The Department must verify the availability of the preserved reduction before any use or sale occurs.

(4) The use of preserved emission reduction credits is subject to the criteria of 20.2.79.115 NMAC - Emission Offsets.

[11/30/95; 20.2.79.116 NMAC - Rn, 20 NMAC 2.79.116, 10/31/02]

**20.2.79.117 AIR QUALITY BENEFIT:**

All demonstrations of the occurrence of a net air quality benefit shall meet the following criteria:

**A.** Emission offsets for volatile organic compounds or nitrogen oxides emissions impacting an ozone nonattainment area may be obtained from sources located in the broad vicinity of the proposed new source or modification, subject to approval by the Department. Atmospheric dispersion modeling will not be required to demonstrate the net air quality benefit that occurs due to reductions in volatile organic compound emissions.

**B.** An applicant which proposes emission offsets for sulfur dioxide, particulate matter, carbon monoxide, nitrogen oxides, or any other pollutant may be required by the Department to submit atmospheric dispersion modeling to demonstrate a net air quality benefit will occur. For any case involving these pollutants where stack emissions and fugitive or ground level emissions are offsetting, atmospheric dispersion modeling shall be required to demonstrate a net air quality benefit will occur.

[11/30/95; 20.2.79.117 NMAC - Rn, 20 NMAC 2.79.117, 10/31/02]

### **20.2.79.118 PUBLIC PARTICIPATION AND NOTIFICATION:**

**A.** The Department shall, within thirty (30) days after its receipt of an application for a permit or significant permit revision subject to this Part, review such application and determine whether it is administratively complete. If the application is deemed:

(1) administratively complete, a letter to that effect shall be sent by certified mail to the applicant.

(2) administratively incomplete, a letter shall be sent by certified mail to the applicant stating what additional information or points of clarification are necessary to deem the application administratively complete. Upon receipt of the additional information or clarification, the Department shall promptly review such information and determine whether the application is administratively complete.

(3) administratively complete but no permit is required, a letter shall be sent by certified mail to the applicant informing the applicant of the determination.

**B.** The Department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available at the Department, district and local office nearest to the proposed source a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public by advertisement in a newspaper of general circulation in the area in which the proposed major stationary source or major modification would be

constructed, of the application, the preliminary determination, and of the opportunity for comment at a public hearing as well as written public comment. The public comment period shall be for forty-five days from the date of such advertisement.

(4) Send a copy of the notice of public comment to the applicant, the Administrator, and to officials and agencies having jurisdiction over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies, the chief executives of the city and county where the source would be located, any regional comprehensive land use planning agency, and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source and other appropriate considerations. Public hearings shall be held in the geographic area likely to be impacted by the source.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the source.

(7) Within ninety (90) days after the application is deemed administratively complete, unless the Secretary grants an extension, as specified in 20.2.72.207 NMAC, not to exceed ninety (90) days for good cause:

(a) make a final determination whether construction should be approved, approved with conditions, or disapproved, or whether no permit is required; and

(b) notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the source.

[11/30/95; A, 01/01/00; 20.2.79.118 NMAC - Rn, 20 NMAC 2.79.118, 10/31/02]

**20.2.79.119 TABLES:**

**A. Significant ambient concentrations:**

Pollutant	[Concentration in micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) or milligrams per cubic meter ( $\text{mg}/\text{m}^3$ )]				
	Averaging Time				
	Annual	24-hr	8-hr	3-hr	1-hr
Sulfur dioxide	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	--	25 $\mu\text{g}/\text{m}^3$	--
PM <sub>10</sub>	1.0 $\mu\text{g}/\text{m}^3$	5 $\mu\text{g}/\text{m}^3$	--	--	--
PM <sub>2.5</sub>	0.3 $\mu\text{g}/\text{m}^3$	1.2 $\mu\text{g}/\text{m}^3$			

Nitrogen dioxide	1.0 µg/m <sup>3</sup>	--	--	--	--
Carbon monoxide	--	--	0.5 mg/m <sup>3</sup>	--	2 mg/m <sup>3</sup>

**B. Fugitive emissions source categories:**

- (1) carbon black plants (furnace process);
- (2) charcoal production plants;
- (3) chemical process plants;
- (4) coal cleaning plants (with thermal dryers);
- (5) coke oven batteries;
- (6) fossil fuel-fired steam electric plants of more than 250 million Btu/hr heat input;
- (7) fossil fuel boiler (or combination thereof) totaling more than 250 million Btu/hr heat input;
- (8) fuel conversion plants;
- (9) glass fiber processing plants;
- (10) hydrofluoric acid plants;
- (11) iron and steel mill plants;
- (12) kraft pulp mills;
- (13) lime plants;
- (14) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (15) nitric acid plants;
- (16) petroleum refineries;
- (17) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (18) phosphate rock processing plants;
- (19) portland cement plant;

- (20) primary lead smelters;
- (21) primary zinc smelters;
- (22) primary aluminum ore reduction plants;
- (23) primary copper smelters;
- (24) secondary metal production plants;
- (25) sintering plants;
- (26) sulfur recovery plants;
- (27) sulfuric acid plants;
- (28) taconite ore processing plants.

[11/30/1995; 20.2.79.119 NMAC - Rn, 20 NMAC 2.79.119, 10/31/2002; A, 6/3/2011; A, 8/21/2021]

#### **20.2.79.120 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs):**

##### **A. Applicability.**

(1) The department may approve the use of an actuals PAL for any existing major stationary source (except as provided in Paragraph (2) of this subsection) if the PAL meets the requirements of this section. The term "PAL" shall mean "actuals PAL" throughout this section.

(2) Actuals PALs shall not be allowed for VOC or NO<sub>x</sub> for any major stationary source located in an extreme ozone nonattainment area.

(3) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

(a) is not a major modification for the PAL pollutant;

(b) does not have to be approved through the requirements of this part; and

(c) is not subject to the provisions in 20.2.79.110 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major new source review program).

**(4)** Except as provided under Subparagraph (c) of Paragraph (3) of this subsection, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

**B. Definitions.** When a term is not defined in this subsection, it shall have the meaning given in 20.2.79.7 NMAC or in 20.2.2 NMAC.

**(1)** Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit the PAL pollutant.

**(2)** Allowable emissions means "allowable emissions" as defined in 20.2.79.7 NMAC, except as this definition is modified according to the following.

**(a)** The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

**(b)** An emissions unit's potential to emit shall be determined using the definition in this part, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

**(3)** Small emissions unit means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection AM of 20.2.79.7 NMAC or in the federal Clean Air Act, whichever is lower.

**(4)** Major emissions unit means:

**(a)** any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

**(b)** any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the federal Clean Air Act for nonattainment areas; for example, in accordance with the definition of major stationary source in Section 182 (c) of the federal Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

**(5)** Plantwide applicability limitation (PAL) means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established source-wide in accordance with this section.

(6) PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(7) PAL effective period means the period beginning with the PAL effective date and ending 10 years later.

(8) PAL major modification means, notwithstanding the definitions for major modification and net emissions increase in 20.2.79.7 NMAC, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(9) PAL permit means the major new source review permit, the minor NSR permit, or the state operating permit under the requirements of 20.2.72 NMAC, 20.2.74 NMAC, 20.2.79 NMAC, or the title V permit under the requirements of 20.2.70 NMAC issued by the department that establishes a PAL for a major stationary source.

(10) PAL pollutant means the pollutant for which a PAL is established at a major stationary source.

(11) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection AM of 20.2.79.7 NMAC or in the federal Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Paragraph (4) of Subsection B of this section.

**C. Permit application requirements.** As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval.

(1) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations or work practices apply to each unit.

(2) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of this section.

#### **D. General requirements for establishing PALs.**

**(1)** A PAL at a major stationary source may be allowed by the department, provided that at a minimum, the following requirements are met.

**(a)** The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

**(b)** The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of this section.

**(c)** The PAL permit shall contain all the requirements of Subsection G of this section.

**(d)** The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

**(e)** Each PAL shall regulate emissions of only one pollutant.

**(f)** Each PAL shall have a PAL effective period of 10 years.

**(g)** The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsections L through N of this section for each emissions unit under the PAL through the PAL effective period.

**(2)** At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under 20.2.79.115 NMAC unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

**E. Public participation requirement for PALs.** PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department shall address all material comments before taking final action on the permit.

#### **F. Setting the 10-year actuals PAL level.**

(1) Except as provided in Paragraph (2) of this subsection, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in 20.2.79.7 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under 20.2.79.7 NMAC or under the act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of this subsection, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

**G. Contents of the PAL permit.** The PAL permit shall contain, at a minimum, all of the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of Subsection I of this section.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of this section.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Subsection L of this section.

(8) A requirement to retain the records required under Subsection M of this section on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of this section by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

#### **H. PAL effective period and reopening of the PAL permit.**

(1) PAL effective period. The permit shall specify a PAL effective period of 10 years.

(2) Reopening of the PAL permit.

(a) During the PAL effective period, the department shall reopen the PAL permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the owner or operator of the major stationary source creates credible emissions reductions for use as offsets under 20.2.79.115 NMAC; or

(iii) revise the PAL to reflect an increase in the PAL as provided under Subsection K of this section.

(b) The department may reopen the PAL permit for the following:

(i) to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(ii) to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source under this part; or

(iii) to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Item (i) of Subparagraph (a) of this paragraph for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Subsection E of this section.

**I. Expiration of a PAL.** Any PAL which is not renewed in accordance with the procedures in Subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply.

(1) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of this section, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of this section, such distribution shall be made as if the PAL had been adjusted.

(b) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (a) of Paragraph (1) of this subsection, the source shall continue to

comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

**(4)** Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major new source review requirements if such change meets the definition of major modification in 20.2.79.7 NMAC.

**(5)** The major stationary source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Subsection A of 20.2.79.110 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (3) of Subsection A of this section.

#### **J. Renewal of a PAL.**

**(1)** The department shall follow the procedures specified in Subsection E of this section in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

**(2)** Application deadline. A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

**(3)** Application requirements. The application to renew a PAL permit shall contain the following information.

**(a)** The information required in Paragraphs (1) through (3) of Subsection C of this section.

**(b)** A proposed PAL level.

**(c)** The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

**(d)** Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

**(4)** PAL adjustment. In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraph (a) of this paragraph. However, in no case may any such adjustment fail to comply with Subparagraph (b) of this paragraph.

**(a)** If the emissions level calculated in accordance with Subsection F of this section is equal to or greater than 80 percent of the PAL level, the department may:

**(i)** renew the PAL at the same level without considering the factors set forth in Item (ii) of this subparagraph; or

**(ii)** set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

**(b)** Notwithstanding Subparagraph (a) of this paragraph:

**(i)** if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

**(ii)** the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Subsection K of this section (increasing a PAL).

**(5)** If the compliance date for a New Mexico or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

#### **K. Increasing a PAL during the PAL effective period.**

**(1)** The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

**(a)** The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

**(b)** As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions

units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

**(c)** The owner or operator shall obtain a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of Paragraph (1) of Subsection K of this section, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

**(d)** The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

**(2)** The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of Subsection K of this section), plus the sum of the baseline actual emissions of the small emissions units.

**(3)** The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of this section.

L. Monitoring requirements for PALs.

**(1)** General Requirements.

**(a)** Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

**(b)** The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Subparagraphs

(a) through (d) of Paragraph (2) of this subsection and must be approved by the department.

**(c)** Notwithstanding Subparagraph (b) of this paragraph, the owner or operator may also employ an alternative monitoring approach that meets Subparagraph (a) of this paragraph if approved by the department.

**(d)** Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

**(2)** The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of this subsection:

**(a)** mass balance calculations for activities using coatings or solvents;

**(b)** CEMS;

**(c)** CPMS or PEMS; and

**(d)** emission factors.

**(3)** Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

**(a)** provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

**(b)** assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

**(c)** where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

**(4)** CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

**(a)** CEMS must comply with applicable performance specifications found in 40 CFR part 60, appendix B; and

**(b)** CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

**(5)** CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

**(a)** the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

**(b)** each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

**(6)** Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

**(a)** all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

**(b)** the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

**(c)** if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the department determines that testing is not required.

**(7)** A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

**(8)** Notwithstanding the requirements in Paragraphs (3) through (7) of this subsection, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

**(a)** establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

**(b)** determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

**(9)** Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every five years after issuance of the PAL.

**M. Recordkeeping requirements.**

**(1)** The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

**(2)** The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:

**(a)** a copy of the PAL permit application and any applications for revisions to the PAL; and

**(b)** each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

**N. Reporting and notification requirements.** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the requirements of 20.2.70 NMAC. The reports shall meet the following requirements.

**(1)** Semi-Annual Report. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information.

**(a)** The identification of owner and operator and the permit number.

**(b)** Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of this section.

**(c)** All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

**(d)** A list of any emissions units modified or added to the major stationary source during the preceding six-month period.

**(e)** The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

**(f)** A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of this section.

**(g)** A signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

**(2)** Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

**(a)** the identification of owner and operator and the permit number;

**(b)** the PAL requirement that experienced the deviation or that was exceeded;

**(c)** emissions resulting from the deviation or the exceedance; and

**(d)** a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

**(3)** Revalidation results. The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

#### **O. Transition requirements.**

**(1)** The department shall not issue a PAL that does not comply with the requirements of this section after the administrator has approved these regulations.

**(2)** The department may supersede any PAL which was established prior to the date of approval of this part by the administrator with a PAL that complies with the requirements of this section.

[20.2.79.120 NMAC - N, 1/22/2006; A, 8/21/2021]

### **PART 80: STACK HEIGHTS**

**20.2.80.1 ISSUING AGENCY:**

Environmental Improvement Board.

[11/30/95; 20.2.80.1 NMAC - Rn, 20 NMAC 2.80.100 10/31/02]

**20.2.80.2 SCOPE:**

All persons who own or operate a source or who intend to construct or modify a source.

[11/30/95; 20.2.80.2 NMAC - Rn, 20 NMAC 2.80.101 10/31/02]

**20.2.80.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-7.

[11/30/95; 20.2.80.3 NMAC - Rn, 20 NMAC 2.80.102 10/31/02]

**20.2.80.4 DURATION:**

Permanent.

[11/30/95; 20.2.80.4 NMAC - Rn, 20 NMAC 2.80.103 10/31/02]

**20.2.80.5 EFFECTIVE DATE:**

November 30, 1995.

[11/30/95; 20.2.80.5 NMAC - Rn, 20 NMAC 2.80.104 10/31/02]

[The latest effective date of any section in this Part is 10/31/02.]

**20.2.80.6 OBJECTIVE:**

The objective of this Part is to establish requirements for the evaluation of stack heights and other dispersion techniques in permitting decisions.

[11/30/95; 20.2.80.6 NMAC - Rn, 20 NMAC 2.80.105 10/31/02]

**20.2.80.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), the definitions in 40 CFR Sections 51.100(z) and (ff)-(kk) (1987) are hereby incorporated as state regulations and, as used in this Part: "Part" means an air quality control regulation under Title 20,

Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the Board.

[11/30/95; 20.2.80.7 NMAC - Rn, 20 NMAC 2.80.107 10/31/02]

**20.2.80.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Air Quality Control Regulation ("AQCR") 710, -- Stack Height Requirements, last filed March 15, 1988, as amended.

**A.** All references to AQCR 710 in any other rule shall be construed as a reference to this Part.

**B.** The amendment and supersession of AQCR 710 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 710.

[11/30/95; 20.2.80.8 NMAC - Rn, 20 NMAC 2.80.106 10/31/02]

**20.2.80.9 DOCUMENTS:**

Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [2048 Galisteo St., Santa Fe, NM 87505].

[11/30/95; 20.2.80.9 NMAC - Rn, 20 NMAC 2.80.108 10/31/02]

**20.2.80.10-20.2.80.108 [RESERVED]**

**20.2.80.109 NEW SOURCES OR MODIFIED EXISTING SOURCES:**

Except as otherwise provided, in evaluating air quality impacts for a proposed new source or modification of an existing source requiring a permit pursuant to 20.2.72 NMAC (Construction Permits); 20.2.74 NMAC (Prevention of Significant Deterioration (PSD)); or 20.2.79 NMAC (Permits - Nonattainment Areas), the Department shall give no credit for reductions in emissions due to the length of a source's stack height that exceeds good engineering practice or due to any other dispersion technique.

[11/30/95; 20.2.80.109 NMAC - Rn, 20 NMAC 2.80.109 10/31/02]

**20.2.80.110 EXISTING STACKS:**

The provisions of 20.2.80.109 NMAC shall not apply to:

**A.** Stack heights in existence or dispersion techniques implemented on or before December 31, 1970, except where air contaminants are being emitted from such stacks

or using such dispersion techniques by sources, as defined in section 111(a)(3) of the Federal Act, which were constructed, or reconstructed, or for which major modifications, as defined in 40 CFR Sections 51.165(a)(1)(v)(A), 51.166(b)(2)(i) and 52.21(b)(2)(i), were carried out after December 31, 1970; or

**B.** Coal-fired steam electric generating units subject to the provisions of section 118 of the Federal Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a contract awarded before February 8, 1974.

[11/30/95; 20.2.80.110 NMAC - Rn, 20 NMAC 2.80.110 10/31/02]

#### **20.2.80.111 DEMONSTRATION STUDY:**

**A.** Notification: Before the Department issues a permit, pursuant to 20.2.72 NMAC, 20.2.74 NMAC, or 20.2.79 NMAC, which contains a new or revised emission limitation that is based on a good engineering stack height that exceeds the height allowed by 40 CFR Part 51 Section 51.100(ii) (1) or (2) (1987), the Department shall notify the public of the availability of the demonstration study. Such notice shall be given in the manner specified in the applicable regulation for the permit application. Interested parties shall have thirty (30) days from the date of the notice to submit comments on the demonstration and to request a public hearing.

**B.** Public Hearing: If the Secretary determines there is significant public interest, he shall hold a public hearing. If a public hearing is held, the Department shall give notice of the time, date, and place of the hearing. The hearing shall be held within forty-five (45) days of the notice. The hearing may be combined with any other public hearing to be held on the permit application.

**C.** Final Determination: After the hearing, the Department shall make its final decision on the new or revised emission limitation.

[11/30/95; 20.2.80.111 NMAC - Rn, 20 NMAC 2.80.111 10/31/02]

#### **20.2.80.112 VARIANCES:**

Because sources subject to the federal stack height regulation cannot be granted variances from that requirement, the requirements of this Part shall not be subject to section 74-2-8 NMSA 1978.

[11/30/95; 20.2.80.111 NMAC - Rn, 20 NMAC 2.80.112 10/31/02]

### **PART 81: WESTERN BACKSTOP SULFUR DIOXIDE TRADING PROGRAM**

#### **20.2.81.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.81.1 NMAC - N, 12/31/03]

**20.2.81.2 SCOPE:**

All geographic areas within the jurisdiction of the environmental improvement board.

[20.2.81.2 NMAC - N, 12/31/03]

**20.2.81.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section 74-2-5 (A), (B) and (C).

[20.2.81.3 NMAC - N, 12/31/03]

**20.2.81.4 DURATION:**

Permanent.

[20.2.81.4 NMAC - N, 12/31/03]

**20.2.81.5 EFFECTIVE DATE:**

December 31, 2003, except where a later date is cited at the end of a section.

[20.2.81.5 NMAC - N, 12/31/03]

[The latest effective date of any section in this part is July 6, 2011.]

**20.2.81.6 OBJECTIVE:**

**A.** 20.2.81 NMAC implements the western backstop sulfur dioxide trading program ("WEB trading program") provisions required under the federal regional haze rule, 40 CFR 51.309, and New Mexico's regional haze implementation plan.

**B.** Nothing in 20.2.81 NMAC waives any requirement otherwise in effect or subsequently required under another program, including rules governing new sources.

[20.2.81.6 NMAC - N, 12/31/03]

**20.2.81.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions), as used in this part, the following definitions shall apply.

**A. "Account certificate of representation"** means the completed and signed submission required to designate an account representative for a web source or an account representative for a general account.

**B. "Account representative"** means the individual who is authorized through an account certificate of representation to represent owners and operators of the WEB source with regard to matters under the web trading program or, for a general account, who is authorized through an account certificate of representation to represent the persons having an ownership interest in allowances in the general account with regard to matters concerning the general account.

**C. "Act"** means the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

**D. "Actual emissions"** means total annual sulfur dioxide emissions determined in accordance with 20.2.81.106 NMAC, or determined in accordance with 20.2.73 NMAC for sources that are not subject to 20.2.81.106 NMAC.

**E. "Allocate"** means to assign allowances to a WEB source through Section C1 of the implementation plan.

**F. "Allowance"** means the limited authorization under the WEB trading program to emit one ton of sulfur dioxide during a specified control period or any control period thereafter subject to the terms and conditions for use of unused allowances as established by 20.2.81 NMAC.

**G. "Allowance limitation"** means the tonnage of sulfur dioxide emissions authorized by the allowances available for compliance deduction for a WEB source for a control period under 20.2.81.109 NMAC on the allowance transfer deadline for that control period.

**H. "Allowance tracking system"** means the system developed by the department where allowances under the WEB trading program are recorded, held, transferred and deducted.

**I. "Allowance tracking system account"** means an account in the allowance tracking system established for purposes of recording, holding, transferring, and deducting allowances.

**J. "Allowance transfer deadline"** means the deadline established in Subsection B of 20.2.81.107 NMAC when allowances must be submitted for recording in a WEB source's compliance account in order to demonstrate compliance for that control period.

**K. "Best available retrofit technology (BART)"** means that emission reduction control device, facility, method, or system, used to achieve the best continuous emission reduction for each pollutant emitted by an existing stationary facility. The emission limitation shall be established on a case-by-case basis taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

**L. "Compliance account"** means an account established in the allowance tracking system under Subsection A of 20.2.81.105 NMAC for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation.

**M. "Compliance certification"** means a submission to the department by the account representative as required under Subsection B of 20.2.81.109 NMAC to report a WEB source's compliance or noncompliance with 20.2.81 NMAC.

**N. "Control period"** means the period beginning January 1 of each year and ending on December 31 of the same year, inclusive.

**O. "Emission unit"** means any part of a stationary source that emits or would have the potential to emit any pollutant subject to regulations under the Clean Air Act.

**P. "Emissions tracking database"** means the central database where sulfur dioxide emissions for WEB sources as recorded and reported in accordance with 20.2.81 NMAC are tracked to determine compliance with allowance limitations.

**Q. "Existing source"** means, a stationary source that commenced operation before the program trigger date.

**R. "Fugitive emissions"** are those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**S. "General account"** means an account established in the allowance tracking system under 20.2.81.105 NMAC for the purpose of recording allowances held by a person that are not to be used to show compliance with an allowance limitation.

**T. "Milestone"** means the maximum level of stationary source regional sulfur dioxide emissions for each year from 2003 to 2018, established according to the procedures in section A of the sulfur dioxide milestones and backstop trading program implementation plan.

**U. "New web source"** means a WEB source that commenced operation on or after the program trigger date.

**V. "New source set-aside"** means a pool of allowances that are available for allocation to new sources in accordance with the provisions of the sulfur dioxide milestones and backstop trading program implementation plan.

**W. "Owner or operator"** means any person who is an owner or who operates, controls or supervises a WEB source, and includes but is not be limited to any holding company, utility system or plant manager.

**X. "Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico administrative code, unless otherwise noted, as adopted or amended by the board.

**Y. "Potential to emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is enforceable by the EPA administrator.

**Z. "Program trigger date"** means the date that the department determines that the WEB trading program has been triggered in accordance with the provisions of section A2 of the sulfur dioxide milestones and backstop trading program implementation plan.

**AA. "Program trigger years"** means the years shown in table 1, column 3, of the sulfur dioxide milestones and backstop trading program implementation plan for the applicable milestone if the WEB trading program is triggered as described in section A of the sulfur dioxide milestones and backstop trading program implementation plan.

**AB. "Retired source"** means a WEB source that has received a retired source exemption as provided in Subsection D of 20.2.81.101 NMAC. Any retired source resuming operations under Subsection D of 20.2.81.101 NMAC, must submit its exemption as part of its registration materials.

**AC. "Serial number"** means, when referring to allowances, the unique identification number assigned to each allowance by the tracking systems administrator, in accordance with Subsection B of 20.2.81.104 NMAC.

**AD. "Special reserve compliance account"** means an account established in the allowance tracking system under 20.2.81.105 NMAC for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation for emission units that are monitored for sulfur dioxide in accordance with 20.2.81.106 NMAC.

**AE. "Sulfur dioxide emitting unit"** means any equipment that is located at a WEB source and that emits sulfur dioxide.

**AF. "Sulfur dioxide milestones and backstop trading program implementation plan"** or "implementation plan" means section C of the New Mexico regional haze state implementation plan.

**AG. "Stationary source"** means any building, structure, facility or installation that emits or may emit any air pollutant subject to regulation under the Clean Air Act.

**AH. "Submit"** means sent to the appropriate authority under the signature of the account representative. For purposes of determining when something is submitted, an official U.S. postal service postmark, or equivalent electronic time stamp, shall establish the date of submittal.

**AI. "Ton"** means 2000 pounds and, for any control period, any fraction of a ton equaling 1000 pounds or more shall be treated as one ton and any fraction of a ton equaling less than 1000 pounds shall be treated as zero tons.

**AJ. "Tracking system administrator"** means the person designated by the department as the administrator of the allowance tracking system and the emission tracking database.

**AK. "Web source"** means a stationary source that meets the applicability requirements of 20.2.81.101 NMAC.

**AL. "Western backstop sulfur dioxide trading program ("WEB trading program")"** means 20.2.81 NMAC, triggered as a backstop in accordance with the provisions in the sulfur dioxide milestones and backstop trading program implementation plan, if necessary, to ensure that regional sulfur dioxide emissions are reduced.

[20.2.81.7 NMAC - N, 12/31/03; A, 07/06/11]

#### **20.2.81.8-20.2.81.99 [RESERVED]**

#### **20.2.81.100 WEB TRADING PROGRAM TRIGGER:**

**A.** Except as provided in Subsection B of this section, the provisions of 20.2.81 NMAC shall apply on the program trigger date that is established in accordance with the procedures outlined in the sulfur dioxide milestones and backstop trading program implementation plan.

**B.** 20.2.81.110 NMAC, special penalty provisions for 2018 milestone, shall apply on January 1, 2018 and shall remain effective until the provisions of 20.2.81.110 NMAC have been fully implemented.

**C.** The department shall report to the environmental improvement board every two years following the trigger of this program on the distributions of emissions allowances under the program.

[20.2.81.100 NMAC - N, 12/31/03; A, 07/06/11]

### **20.2.81.101 WEB TRADING PROGRAM APPLICABILITY:**

**A. General applicability.** 20.2.81 NMAC applies to any stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and which are under the control of the same person or persons under common control, belonging to the same industrial grouping, and that are described in Paragraphs 1 through 4 of Subsection B. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group as described in the North American industry classification system (NAICS), 2007.

#### **B. The following are WEB sources.**

**(1)** All BART-eligible sources as defined in 40 CFR 51.301 that are BART-eligible due to sulfur dioxide emissions.

**(2)** All stationary sources not meeting the criteria of Paragraph 1 of Subsection B of 20.2.81.101 NMAC, that have actual sulfur dioxide emissions of 100 tons or more per year in the program trigger years or any subsequent year. The fugitive emissions of a stationary source shall not be considered in determining whether it is a WEB source unless the source belongs to one of the following categories of stationary source:

- (a)** coal cleaning plants (with thermal dryers);
- (b)** Kraft pulp mills;
- (c)** Portland cement plants;
- (d)** primary zinc smelters;
- (e)** iron and steel mills;
- (f)** primary aluminum ore reduction plants;
- (g)** primary copper smelters;
- (h)** municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i)** hydrofluoric, sulfuric, or nitric acid plants;
- (j)** petroleum refineries;

- (k)** lime plants;
  - (l)** phosphate rock processing plants;
  - (m)** coke oven batteries;
  - (n)** sulfur recovery plants;
  - (o)** carbon black plants (furnace process);
  - (p)** primary lead smelters;
  - (q)** fuel conversion plants;
  - (r)** sintering plants;
  - (s)** secondary metal production plants;
  - (t)** chemical process plants;
  - (u)** fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
  - (v)** petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
  - (w)** taconite ore processing plants;
  - (x)** glass fiber processing plants;
  - (y)** charcoal production plants;
  - (z)** fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
  - (aa)** any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the Clean Air Act.
- (3)** A new source that begins operation after the program trigger date and has the potential to emit 100 tons or more of sulfur dioxide per year.
- (4)** The department may determine on a case-by-case basis, with concurrence from the EPA administrator, that a source defined in Paragraph 2 of Subsection B of 20.2.81.101 NMAC is not a WEB source if the source:

(a) in each of the previous five years had actual sulfur dioxide emissions of less than 100 tons per year; and

(b) had actual sulfur dioxide emissions of 100 tons or more in a single year due to a temporary emission increase that was caused by a sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, failure of process equipment, or a failure to operate in a normal or usual manner; and

(c) took timely and reasonable action to minimize the temporary emission increase; and

(d) has corrected the failure of air pollution control equipment, process equipment, or process by the time of the department's determination under this section; or

(e) had to switch fuels or feedstocks on a temporary basis and as a result of an emergency situation or unique and unusual circumstances besides cost of such fuels or feedstocks; and

(f) a temporary emission increase due to poor maintenance or careless operation does not meet the criteria of this section.

**C. Duration of program participation.** Except as provided for in Subsection D of 20.2.81.101 NMAC, once a source is subject to the WEB trading program, it will remain in the program every year thereafter.

**D. Retired source exemption: application.**

(1) Any WEB that is retired shall apply for a retired source exemption. The WEB source may only be considered retired if all sulfur dioxide emitting units at the source are retired. The application shall contain all of the following information:

(a) identification of the WEB source, including plant name and an appropriate identification code in a format specified by the department;

(b) name of account representative;

(c) description of the status of the WEB source, including the date that the WEB source was retired;

(d) signed certification that the WEB source is retired and will comply with the requirements of Subsection D of 20.2.81.101 NMAC; and

(e) verification that the WEB source has a general account where any unused allowances or future allocations will be recorded.

**(2) Responsibilities of retired sources.** The retired source exemption becomes effective when the department notifies the source that the retired source exemption has been granted.

**(3)** A retired source shall be exempt from 20.2.81.106 NMAC and 20.2.81.109 NMAC, except as provided below.

**(a)** A retired source shall not emit any sulfur dioxide after the date the retired source exemption is effective.

**(b)** A WEB source shall submit sulfur dioxide emissions reports, as required by Subsection O of 20.2.81.106 NMAC for any time period the source was operating prior to the effective date of the retired source exemption. The retired source shall be subject to the compliance provisions of 20.2.81.109 NMAC, including the requirement to hold allowances in the source's compliance account to cover all sulfur dioxide emissions prior to the date the source was permanently retired.

**(c)** A retired source that is still in existence but no longer emitting sulfur dioxide shall, for a period of five years from the date the records are created, retain records demonstrating the effective date of the retired source exemption for purposes of this part.

**(4)** Resumption of operations.

**(a)** Should a retired source desire to resume operation, the retired source shall submit registration materials as follows:

**(i)** if the source is required to obtain a new source review permit or operating permit under 20.2.70 NMAC, 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC prior to resuming operation, then the source shall submit registration information as described in 20.2.81.103 NMAC and a copy of the retired source exemption with the application required under 20.2.70 NMAC, 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC; or

**(ii)** if the source is not required to obtain a new source review permit or operating permit under 20.2.70 NMAC, 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC prior to resuming operation, then the source shall submit registration information as described in Subsection A of 20.2.81.103 NMAC and a copy of the retired source exemption to the department at least ninety days prior to resumption of operation.

**(b)** The retired source exemption shall automatically expire on the day the source resumes operation.

**(5)** Loss of future allowances. A WEB source that is retired and that does not apply to the department for a retired source exemption within ninety days of the date

that the source is retired shall forfeit any unused and future allowances. The abandoned allowances shall be retired by the tracking system administrator.

[20.2.81.101 NMAC - N, 12/31/03; A, 07/06/11]

#### **20.2.81.102 ACCOUNT REPRESENTATIVE FOR WEB SOURCES:**

Each WEB source must identify one account representative and may also identify an alternate account representative who may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

##### **A. Identification and certification of an account representative.**

**(1)** The account representative and any alternate account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative and any alternate binding on the owners and operators of the WEB source.

**(2)** The account representative shall submit to the department and the tracking system administrator a signed and dated account certificate of representation (certificate) that contains the following elements:

**(a)** identification of the WEB source by plant name, state and an appropriate identification code in a format specified by the department;

**(b)** the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

**(c)** a list of owners and operators of the WEB source; and

**(d)** information to be part of the emission tracking system database in accordance with the implementation plan. the specific data elements shall be as specified by the department to be consistent with the data system structure, and may include basic facility information that may appear in other reports and notices submitted by the WEB source, such as county location, industrial classification codes, and similar general facility information.

**(e)** the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on the owners and operators of the WEB source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB trading program on behalf of the owners and operators of the WEB source and that each such owner and operator shall be fully bound by my representations, actions,

inactions, or submissions and by any decision or order issued to me by the department regarding the WEB trading program."

(3) Upon receipt by the department of the complete certificate, the account representative and any alternate account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each owner and operator of the WEB source in all matters pertaining to the WEB trading program. The owners and operators shall be bound by any decision or order issued by the department regarding the WEB trading program.

(4) No WEB allowance tracking system account shall be established for the WEB source until the tracking system administrator has received a complete certificate. Once the account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

#### **B. Requirements and responsibilities.**

(1) The responsibilities of the account representative include, but are not limited to, the transferring of allowances, and the submission of monitoring plans, registrations, certification applications, sulfur dioxide emissions data and compliance reports as required by 20.2.81 NMAC, and representing the source in all matters pertaining to the WEB trading program.

(2) Each submission under this program shall be signed and certified by the account representative for the WEB source. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of the owners and operators of the WEB source for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

#### **C. Changing the account representative or owners and operators.**

(1) Changes to the account representative or the alternate account representative. The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the department and the tracking system administrator under Paragraph 3 of Subsection A of 20.2.81.102 NMAC, with the change taking effect upon receipt of such certificate by the department. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the tracking system administrator receives the superseding certificate

shall be binding on the new account representative and the owners and operators of the WEB source.

**(2) Changes in owners and operators.**

**(a)** Within thirty days of any change in the owners and operators of the WEB source, including the addition of a new owner or operator, the account representative shall submit a revised certificate amending the list of owners and operators to include such change.

**(b)** In the event a new owner or operator of a WEB source is not included in the list of owners and operators submitted in the certificate, such new owner or operator shall be deemed to be subject to and bound by the certificate, the representations, actions, inactions, and submissions of the account representative of the WEB source, and the decisions, orders, actions, and inactions of the department as if the new owner or operator were included in such list.

[20.2.81.102 NMAC - N, 12/31/03]

**20.2.81.103 REGISTRATION:**

**A. Deadlines.**

**(1)** Each source that is a WEB source on or before the program trigger date shall register by submitting the initial certificate required in Subsection A of 20.2.81.102 NMAC to the department no later than 180 days after the program trigger date.

**(2)** Any existing source that becomes a WEB source after the program trigger date shall register by submitting the initial certificate required in Subsection A of 20.2.81.102 NMAC to the department no later than September 30 of the year following the inventory year in which the source exceeded the emission threshold.

**(3)** Any new WEB source shall register by submitting the initial certificate required in Subsection A of 20.2.81.102 NMAC to the department prior to the commencement of operation.

**B. Integration into permits.**

**(1)** Any allocation, transfer or deduction of allowance to or from the compliance account of a WEB source shall not require revision of the WEB source's operating permit under 20.2.70 NMAC.

**(2)** Any WEB source is not required to have a permit under 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC at any time after this rule becomes effective, must at all times possess a permit that includes the requirements of 20.2.81 NMAC. If it does not possess a title V permit under 20.2.70 NMAC , it may satisfy this paragraph's

requirements by obtaining or modifying a permit under 20.2.72, NMAC, 20.2.74 NMAC or 20.2.79 NMAC to incorporate the requirements of 20.2.81 NMAC. The source must at all times possess a permit that includes these requirements.

[20.2.81.103 NMAC - N, 12/31/03]

#### **20.2.81.104 ALLOWANCE ALLOCATIONS:**

**A.** The tracking system administrator shall record the allowances for each WEB source in the compliance account for a WEB source once the allowances are allocated by the department under section C1 of the sulfur dioxide milestones and backstop trading program implementation plan. If applicable, the tracking system administrator shall record a portion of the sulfur dioxide allowances for a WEB source in a special reserve account assigned to the department to account for any allowances to be held by the Department in accordance with Subsection B of 20.2.81.106 NMAC.

**B.** The tracking system administrator shall assign a serial number to each allowance in accordance with section C2 of the sulfur dioxide milestones and backstop trading program implementation plan.

**C.** All allowances shall be allocated, recorded, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

**D.** An allowance is not a property right, and is a limited authorization to emit one ton of sulfur dioxide valid only for the purpose of meeting the requirements of 20.2.81 NMAC. No provision of this WEB trading program or other law should be construed to limit the authority of the United States or the department to terminate or limit such authorization.

**E. Early reduction bonus allocation.** Any WEB source that reduces permitted annual sulfur dioxide emissions to a level that is below the floor level allocation established for that source in section C1 of the sulfur dioxide milestones and backstop trading program implementation plan between 2003 and the program trigger year may apply to the department for an early reduction bonus allocation. The application shall be submitted no later than ninety days after the program trigger date. Any WEB source that applies and receives early reduction bonus allocations shall retain the records referenced below for a minimum of five years after the early reduction bonus allowance is certified in accordance with section C1.1(a) (3) of the implementation plan. The application for an early reduction bonus allocation shall contain the following information.

**(1)** Copies of all permits or other enforceable documents that include annual sulfur dioxide emissions limits for the WEB source during the period the WEB source was generating the early reductions. Such permits or enforceable documents shall

require monitoring for sulfur dioxide emissions that meets the requirements in Subsection A and Subsection C of 20.2.81.106 NMAC and that the monitoring provisions were in effect one year prior to the beginning of the credit generating period.

**(2)** Copies of emissions monitoring reports, for one year prior to the beginning of the credit generating period and for the period the WEB source was generating the early reductions, that documents the actual annual sulfur dioxide emissions. The emissions monitoring reports during the credit generating period must demonstrate that the actual annual sulfur dioxide emissions were below the floor level allocation established for that source in section C1 of the sulfur dioxide milestones and backstop trading program implementation plan.

**(3)** Demonstration that the floor level established for the source in accordance with section C1 of the sulfur dioxide milestones and backstop trading program implementation plan was calculated using data that are consistent with the new monitoring methodology under Subsection A of 20.2.81.106 NMAC. If new monitoring techniques change the floor level for the source, then a demonstration of the new floor level based on new monitoring techniques shall be included in the application.

#### **F. Request for allowances for new WEB sources or modified WEB sources.**

**(1)** A new WEB source or an existing WEB source that has increased production capacity through a permitted change in operations under 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC may apply to the department for an allocation from the new source set-aside, as outlined in section C1.3 of the implementation plan.

**(a)** A new WEB source is eligible to apply for an annual allocation equal to the permitted annual sulfur dioxide emission limit for that source after the source has commenced operation.

**(b)** An existing WEB source is eligible to apply for an annual allocation equal to the permitted annual sulfur dioxide emission limit for that source that is attributable to any amount of production capacity that is greater than the permitted production capacity for that source as of January 1, 2003.

**(c)** A source that has received a retired source exemption under Subsection D of 20.2.81.101 NMAC is not eligible to apply for an allocation from the new source set-aside.

**(2)** The application for an allocation from the new source set-aside shall contain the following information:

**(a)** for existing WEB sources, documentation that shows the permitted production capacity of the source before and after the new permit; or

(b) for new WEB sources, documentation of the actual date of the commencement of operation and a copy of the permit.

[20.2.81.104 NMAC - N, 12/31/03]

#### **20.2.81.105 ESTABLISHMENT OF ACCOUNTS:**

**A. Allowance tracking system accounts.** All WEB sources shall open a compliance account. Any person may open a general account for holding and transferring allowances. In addition, if a Web source conducts monitoring under Subsection B of 20.2.81.106 NMAC, the WEB source shall open a special reserve compliance account for allowances associated with units monitored under those provisions. The WEB source and account representative shall have no rights to transfer allowances in or out of such special reserve compliance account. The department shall allocate allowances to the account in accordance with Paragraph 5 of Subsection B of 20.2.81.106 NMAC and all such allowances for each control period shall be retired each year for compliance in accordance with 20.2.81.109 NMAC. To open either type of account; an application that contains the following information shall be submitted:

(1) the name, mailing address, e-mail address, telephone number, and facsimile number of the account representative; for a compliance account, include a copy of the account certificate of representation of the account representative and any alternate as required in Paragraph 2 of Subsection A of 20.2.81.102 NMAC; for a general account, include the account certificate of representation of the account representative and any alternate as required in Paragraph 2 of Subsection C or 20.2.81.105 NMAC;

(2) the WEB source or organization name;

(3) the type of account to be opened; and

(4) a signed certification of truth and accuracy by the account representative according to Paragraph 2 of Subsection A of 20.2.81.102 for compliance accounts and for general accounts, certification of truth and accuracy by the account representative according to Subsection D of 20.2.81.105 NMAC.

**B. Account representative for general accounts.** For a general account, one account representative shall be identified and an alternate account representative may be identified and may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative shall be deemed to be a representation, action, inaction or submission by the account representative.

**C. Identification and certification of an account representative for general accounts.**

(1) The account representative shall be appointed by an agreement that makes the representations, actions, inactions or submissions of the account representative binding on all persons who have an ownership interest with respect to allowances held in the general account.

(2) The account representative shall submit to the department and the tracking system administrator a signed and dated account certificate of representation (certificate) that contains the following elements:

(a) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(b) the organization name; and

(c) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on all persons who have an ownership interest in allowances in the general account with regard to matters concerning the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB trading program on behalf of said persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department regarding the general account."

(3) Upon receipt by the department of the complete certificate, the account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each person who has an ownership interest in allowances held in the general account with regard to all matters concerning the general account. Such persons shall be bound by any decision or order issued by the department.

(4) No WEB allowance tracking system general account shall be established until the tracking system administrator has received a complete certificate. Once the account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

**D. Requirements and responsibilities.** Each submission for the general account shall be signed and certified by the account representative for the general account. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of all person who have an ownership interest in allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

**E. Changing the account representative.** The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the department and the tracking system administrator under Paragraph 2 of Subsection C of 20.2.81.105 NMAC, with the change taking effect upon receipt of such certificate by the department. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the department receives the superseding certificate shall be binding on the new account representative and all persons having ownership interest with respect to allowances held in the general account.

**F. Changes to the account.** Any change to the information required in the application for an existing account under Subsection A of 20.2.81.105 NMAC shall require a revision of the application.

[20.2.81.105 NMAC - N, 12/31/03]

#### **20.2.81.106 MONITORING, RECORDKEEPING AND REPORTING - GENERAL REQUIREMENTS ON MONITORING METHODS:**

**A.** For each sulfur dioxide emitting unit at a WEB source shall comply with the following, as applicable, to monitor and record sulfur dioxide mass emissions.

**(1)** If a unit is subject to 40 CFR Part 75 under a requirement separate from the WEB trading program, the unit shall meet the requirements contained in Part 75 with respect to monitoring, recording and reporting sulfur dioxide mass emissions.

**(2)** If a unit is not subject to 40 CFR Part 75 under a requirement separate from the WEB trading program, a unit shall use one of the following monitoring methods, as applicable:

**(a)** a continuous emission monitoring system (CEMS) for sulfur dioxide and flow that complies with all applicable monitoring provisions in 40 CFR Part 75;

**(b)** if the unit is a gas- or oil-fired combustion device, the excepted monitoring methodology in Appendix D to 40 CFR Part 75, or, if applicable, the low mass emissions (LME) provisions (with respect to sulfur dioxide mass emissions only) of Section 75.19 of 40 CFR Part 75;

**(c)** one of the optional WEB protocols, if applicable, in 20.2.81.111 NMAC or 20.2.81.112 NMAC; or

**(d)** a petition for site-specific monitoring that the source submits for approval by the department, and approval by the U.S. environmental protection agency in accordance with Paragraph 5 of Subsection O of 20.2.81.106 NMAC.

**(3)** A permanently retired unit shall not be required to monitor under this section if such unit was permanently retired and had no emissions for the entire period for which the WEB source implements this Paragraph 3 and the account representative certifies in accordance with Subsection B of 20.2.81.109 NMAC that these conditions were met. In the event that a permanently retired unit recommences operation, the WEB source shall meet the requirements of this Section 20.2.81.106 NMAC in the same manner as if the unit was a new unit.

**B.** Notwithstanding Subsection A of this section, the WEB source with a unit that meets one of the conditions of Paragraph 1 of Subsection B of 20.2.81.106 NMAC may elect to have the provisions of this Paragraph 1 apply to that unit.

**(1)** Any of the following units may implement Subsection B of 20.2.81.106 NMAC:

**(a)** any smelting operation where all of the emissions from the operation are not ducted to a stack;

**(b)** any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery; or

**(c)** any other type of unit without add-on sulfur dioxide control equipment, if no control level was assumed for the WEB source in establishing the floor level (and reducible allocation) provided in section C1 of the implementation plan.

**(2)** For each unit covered by Subsection B of 20.2.81.106 NMAC, the account representative shall submit a notice to request that Subsection B of 20.2.81.106 NMAC apply to one or more sulfur dioxide emitting units at a WEB source. The notice shall be submitted in accordance with the compliance dates specified in Paragraph 1 of Subsection M of 20.2.81.106 NMAC, and shall include the following information (in a format specified by the department with such additional, related information as may be requested):

**(a)** a notice of all units at the applicable source, specifying which of the units are to be covered by Subsection B of 20.2.81.106 NMAC;

**(b)** consistent with the emission estimation methodology used to determine the floor level (and reducible allocation) for the source in accordance with section C1 of the implementation plan, the portion of the WEB source's overall allowance allocation that is attributable to any unit(s) covered by this paragraph; and

**(c)** an identification of any such units that are permanently retired.

**(3)** For each new unit at an existing WEB source for which the WEB source seeks to comply with this Subsection B of 20.2.81.106 NMAC; and for which the account representative applies for an allocation under the new source set-aside

provisions of Subsection F of 20.2.81.104 NMAC, the account representative shall submit a modified notice under Paragraph 2 of Subsection B of 20.2.81.106 NMAC, that includes such new sulfur dioxide emitting unit(s). The modified notice shall be submitted in accordance with the compliance dates in Paragraph 1 of Subsection M of 20.2.81.106 NMAC, but no later than the date on which a request is submitted under Paragraph 1 of Subsection F of 20.2.81.104 NMAC for allocations from the set-aside.

**(4)** The department shall evaluate the information submitted by the WEB source in Paragraphs 2 and 3 of Subsection B of 20.2.81.106 NMAC, and may issue a notice to the source to exclude any units that do not qualify under this Subsection B of 20.2.81.106 NMAC or to adjust the portion of allowances attributable to units that do qualify to be consistent with the emission estimation methodology used to establish the floor level (and reducible allocation) for the source.

**(5)** The department shall allocate allowances equal to the adjusted portion of the WEB source's allowances under Paragraphs 2, 3, and 4 of Subsection B of 20.2.81.106 NMAC in a special reserve compliance account provided that no such treatment of the WEB source's allocation will be required for any unit that is permanently retired and had no emissions for the entire period for which the WEB source implements this Subsection B and the account representative certifies in accordance with 20.2.81.109 NMAC that these conditions are met. In the event that a permanently retired unit recommences operation, the WEB source shall meet the requirements of this Section 20.2.81.106 NMAC in the same manner as if the unit was a new unit.

**(6)** The account representative for a WEB source shall submit an annual emissions statement for each unit under this Subsection B of 20.2.81.106 NMAC in accordance with Subsection O of 20.2.81.106 NMAC. The WEB source shall maintain operating records sufficient to estimate annual emissions in a manner consistent with the emission estimation methodology used to establish the floor level (and reducible allocation) for the source. In addition, if the estimated emissions from all such units at the WEB source are greater than the allowances for the current control year held in the special reserve compliance account under Paragraph 5 of Subsection B of 20.2.81.106 NMAC for the WEB source, the account representative shall report the excess amount as part of the annual report for the WEB source under 20.2.81.109 NMAC and be required to use other allowances in the standard compliance account for the WEB source to account for such emissions, in accordance with 20.2.81.109 NMAC.

**(7)** The remaining provisions of this section shall not apply to units covered by Subsection B of 20.2.81.106 NMAC except where otherwise noted.

**(8)** A WEB source may opt to modify the monitoring for an sulfur dioxide emitting unit to use monitoring under Subsection A of 20.2.81.106 NMAC, but any such monitoring change shall take effect on January 1 of the next compliance year. In addition, the account representative shall submit an initial monitoring plan at least 180 days prior to the date on which the new monitoring will take effect and a detailed monitoring plan in accordance with Subsection D of 20.2.81.106 NMAC. The account

representative shall also submit a revised notice under Subsection B of 20.2.81.106 NMAC at the same time that the initial monitoring plan is submitted.

**C.** For any monitoring that the WEB source uses under this section (including Paragraph 1), the WEB source (and, as applicable, the account representative) shall implement, certify, and use such monitoring in accordance with this section, and shall record and report the data from such monitoring as required in this section. In addition, the WEB source (and, as applicable, the account representative) shall not:

(1) except for an alternative approved by the U.S. EPA administrator for a WEB source that implements monitoring under Paragraph 1 of Subsection A of 20.2.81.106 NMAC, use an alternative monitoring system, alternative reference method or another alternative for the required monitoring method without having obtained prior written approval in accordance with Paragraph 5 of Subsection O of 20.2.81.106 NMAC;

(2) operate an sulfur dioxide emitting unit so as to discharge, or allow to be discharged, sulfur dioxide emissions to the atmosphere without accounting for these emissions in accordance with the applicable provisions of this section;

(3) disrupt the approved monitoring method or any portion thereof, and thereby avoid monitoring and recording sulfur dioxide mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing or maintenance is performed in accordance with the applicable provisions of this section; or

(4) retire or permanently discontinue use of an approved monitoring method, except under one of the following circumstances:

(a) during a period when the unit is exempt from the requirements of this section, including retirement of a unit as addressed in Paragraph 3 of Subsection A of 20.2.81.106 NMAC;

(b) the WEB source is monitoring emissions from the unit with another certified monitoring method approved under this section for use at the unit that provides data for the same parameter as the retired or discontinued monitoring method; or

(c) the account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with this section, and the WEB source recertifies thereafter a replacement monitoring system in accordance with the applicable provisions of this section.

**D. Monitoring plan general provisions.** The WEB source of a sulfur dioxide emitting unit that uses a monitoring method under Paragraph 2 of Subsection A of 20.2.81.106 NMAC shall meet the following requirements:

(1) prepare and submit to the department an initial monitoring plan for each monitoring method that the WEB source uses to comply with this section; in accordance with Subsection F of 20.2.81.106 NMAC, the plan shall contain sufficient information on the units involved, the applicable method, and the use of data derived from that method to demonstrate that all unit sulfur dioxide emissions are monitored and reported; the plan shall be submitted in accordance with the compliance deadlines specified in Subsection M of 20.2.81.106 NMAC;

(2) prepare, maintain and submit to the department a detailed monitoring plan prior to the first day of certification testing in accordance with the compliance deadline specified in Subsection M of 20.2.81.106 NMAC; the plan shall contain the applicable information required by Subsection D of 20.2.81.106 NMAC; the department may require that the monitoring plan (or portions thereof) be submitted electronically; the department also may require that the plan be submitted on an ongoing basis in electronic format as part of the quarterly report submitted under Paragraph 1 of Subsection O of 20.2.81.106 NMAC or resubmitted separately within after any change is made to the plan in accordance with the following Paragraph 3 of Subsection D of 20.2.81.106 NMAC; and

(3) whenever the WEB source makes a replacement, modification, or change in one of the systems or methodologies provided for in Paragraph 2 of Subsection A of 20.2.81.106 NMAC, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan (e.g., a change to serial number for a component of a monitoring system), then the WEB source shall update the monitoring plan in accordance with the compliance deadline specified in Subsection M of 20.2.81.106 NMAC.

**E.** A WEB source with a sulfur dioxide emitting unit that uses a method under Paragraph 1 of Subsection A of 20.2.81.106 NMAC (a unit subject to 40 CFR Part 75 under a program other than this WEB trading program) shall meet the requirements of Subsections D-I of 20.2.81.106 NMAC by preparing, maintaining and submitting a monitoring plan in accordance with the requirements of 40 CFR Part 75, provided that the WEB source also shall submit the entire monitoring plan to the department upon request.

**F. Initial monitoring plan.** The account representative shall submit an initial monitoring plan for each sulfur dioxide emitting unit (or group of units sharing a common methodology) that, except as otherwise specified in an applicable provision in 20.2.81.111 NMAC, contains the following information.

(1) For all sulfur dioxide emitting units involved in the monitoring plan:

(a) plant name and location;

(b) plant and unit identification numbers assigned by the department;

(c) type of unit (or units for a group of units using a common monitoring methodology);

(d) identification of all stacks or pipes associated with the monitoring plan;

(e) types of fuel(s) fired (or sulfur containing process materials used in the sulfur dioxide emitting unit), and the fuel classification of the unit if combusting more than one type of fuel and using a 40 CFR Part 75 methodology;

(f) type(s) of emissions controls for sulfur dioxide installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process;

(g) maximum hourly heat input capacity, or process throughput capacity, if applicable;

(h) identification of all units using a common stack; and

(i) indicator of whether any stack identified in the plan is a bypass stack.

(2) For each unit and parameter required to be monitored, identification of monitoring methodology information, consisting of monitoring methodology, monitor locations, substitute data approach for the methodology, and general identification of quality assurance procedures. If the proposed methodology is a site-specific methodology submitted pursuant to Subparagraph d of Paragraph 2 of Subsection A of 20.2.81.106 NMAC, the description under this paragraph shall describe fully all aspects of the monitoring equipment, installation locations, operating characteristics, certification testing, ongoing quality assurance and maintenance procedures, and substitute data procedures.

(3) If the WEB source intends to petition for a change to any specific monitoring requirement otherwise required under this section, such petition may be submitted as part of the initial monitoring plan.

(4) The department may issue a notice of approval or disapproval of the initial monitoring plan based on the compliance of the proposed methodology with the requirements for monitoring in this section.

**G. Detailed monitoring plan.** The account representative shall submit a detailed monitoring plan that, except as otherwise specified in an applicable provisions in 20.2.81.111 NMAC or 20.2.81.112 NMAC, shall contain the following information.

(1) Identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer or probe) in a CEMS (e.g., sulfur dioxide pollutant concentration monitor, flow monitor, moisture monitor), a 40 CFR Part 75, Appendix D monitoring system (e.g., fuel flowmeter, data acquisition

and handling system), or a protocol in 20.2.81.111 NMAC or 20.2.81.112 NMAC , including:

- (a)** manufacturer, model number and serial number;
- (b)** component or system identification code assigned by the facility to each identifiable monitoring component, such as the analyzer or probe;
- (c)** designation of the component type and method of sample acquisition or operation (e.g., in situ pollutant concentration monitor or thermal flow monitor);
- (d)** designation of the system as a primary or backup system;
- (e)** first and last dates the system reported data;
- (f)** status of the monitoring component; and
- (g)** parameter monitored.

**(2)** Identification and description of all major hardware and software components of the automated data acquisition and handling system, including:

- (a)** hardware components that perform emission calculations or store data for quarterly reporting purposes (provide the manufacturer and model number); and
- (b)** software components (provide the identification of the provider and model or version number).

**(3)** Explicit formulas for each measured emissions parameter, using component or system identification codes for the monitoring system used to measure the parameter that links the system observations with the reported concentrations and mass emissions. The formulas shall contain all constants and factors required to derive mass emissions from component or system code observations and an indication of whether the formula is being added, corrected, deleted, or is unchanged. The WEB source with a low mass emissions unit for which the WEB source is using the optional low mass emissions excepted methodology in Section 75.19(c) of 40 CFR Part 75 is not required to report such formulas.

**(4)** Inside cross-sectional area (square feet) at flow monitoring location (for units with flow monitors, only).

**(5)** If using CEMS for sulfur dioxide and flow, for each parameter monitored: scale, maximum potential concentration (and method of calculation), maximum expected concentration (if applicable) (and method of calculation), maximum potential flow rate (and method of calculations), span value, full-scale range, daily calibration units of measure, span effective date and hour, span inactivation date and hour,

indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value in standard cubic feet per hour (scfh) for each unit or stack using sulfur dioxide or flow component monitors.

**(6)** If the monitoring system or excepted methodology provides for use of a constant, assumed, or default value for a parameter under specific circumstances, then the following information for each value of such parameter shall be included:

- (a)** identification of the parameter;
- (b)** default, maximum, minimum, or constant value, and units of measure for the value;
- (c)** purpose of the value;
- (d)** indicator of use during controlled and uncontrolled hours;
- (e)** types of fuel;
- (f)** source of the value;
- (g)** value effective date and hour;
- (h)** date and hour value is no longer effective (if applicable); and
- (i)** for units using the excepted methodology under Section 75.19 of 40 CFR Part 75, the applicable sulfur dioxide emission factor.

**(7)** Unless otherwise specified in Section 6.5.2.1 of Appendix A to 40 CFR Part 75, for each unit or common stack on which hardware CEMS are installed:

- (a)** the upper and lower boundaries of the range of operation (as defined in Section 6.5.2.1 of Appendix A to 40 CFR Part 75), or thousand of lb/hr of steam, or ft/sec (as applicable);
- (b)** the load or operating level(s) designated as normal in Section 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of pounds per hour lb/hr of steam, or feet per second ft/sec (as applicable);
- (c)** the two load or operating levels (i.e., low, mid, or high) identified in Section 6.5.2.1 of Appendix A to 40 CFR Part 75 as the most frequently used;
- (d)** the date of the data analysis used to determine the normal load (or operating) level(s) and the two most frequently-used load (or operating) levels; and

**(e)** activation and deactivation dates when the normal load or operating level(s) change and are updated.

**(8)** For each unit that is complying with 40 CFR Part 75 for which the optional fuel flow-to-load test in Section 2.1.7 of Appendix D to 40 CFR Part 75 is used:

**(a)** the upper and lower boundaries of the range of operation (as defined in Section 6.5.2.1 of Appendix A to 40 CFR Part 75), expressed in thousand of lb/hr of steam;

**(b)** the load level designated as normal, pursuant to Section 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam; and

**(c)** the date of the load analysis used to determine the normal load level.

**(9)** Information related to quality assurance testing, including (as applicable): identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels (percent of span) for the calibration error test and linearity check; calculations for determining maximum potential concentration, maximum expected concentration (if applicable), maximum potential flow rate, and span.

**(10)** If applicable, apportionment strategies under Sections 75.10 through 75.18 of 40 CFR Part 75.

**(11)** Description of site locations for each monitoring component in a monitoring system, including schematic diagrams and engineering drawings and any other documentation that demonstrates each monitor location meets the appropriate siting criteria. For units monitored by a continuous emission monitoring system, diagrams shall include:

**(a)** a schematic diagram identifying entire gas handling system from unit to stack for all units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in the initial monitoring plan and Paragraphs 1 and 3 of Subsection G of 20.2.81.106 NMAC; the schematic diagram must depict the height of any monitor locations; comprehensive or separate schematic diagrams shall be used to describe groups of units using a common stack; and

**(b)** stack and duct engineering diagrams showing the dimensions and locations of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks.

**(12)** A data flow diagram denoting the complete information handling path from output signals of CEMS components to final reports.

**H.** In addition to supplying the information in Subsections F and G above, the WEB source with an sulfur dioxide emitting unit using either of the methodologies in Subparagraph b of Paragraph 2 of Subsection A of 20.2.81.106 NMAC shall include the following information in its monitoring plan for the specific situations described.

**(1)** For each gas-fired or oil-fired sulfur dioxide emitting unit for which the WEB source uses the optional protocol in Appendix D to 40 CFR Part 75 for sulfur dioxide mass emissions, the WEB source shall include the following information in the monitoring plan:

- (a)** parameter monitored;
- (b)** type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate (i.e., upper range value or unit maximum) for each fuel flowmeter;
- (c)** test method used to check the accuracy of each fuel flowmeter;
- (d)** submission status of the data;
- (e)** monitoring system identification code;
- (f)** the method used to demonstrate that the unit qualifies for monthly gross calorific value (GCV) sampling or for daily or annual fuel sampling for sulfur content, as applicable;
- (g)** a schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeter(s), and the stack(s); the schematic diagram must depict the installation location of each fuel flowmeter and the fuel sampling location(s); comprehensive and separate schematic diagrams shall be used to describe groups of units using a common pipe;
- (h)** for units using the optional default sulfur dioxide emission rate for "pipeline natural gas" or "natural gas" in Appendix D to 40 CFR Part 75, the information on the sulfur content of the gaseous fuel used to demonstrate compliance with either Section 2.3.1.4 or 2.3.2.4 of Appendix D to 40 CFR Part 75;
- (i)** for units using the 720 hour test under Section 2.3.6 of Appendix D to 40 CFR Part 75 to determine the required sulfur sampling requirements, report the procedures and results of the test; and
- (j)** for units using the 720 hour test under Section 2.3.5 of Appendix D to 40 CFR Part 75 to determine the appropriate fuel GCV sampling frequency, report the procedures used and the results of the test.

**(2)** For each sulfur dioxide emitting unit for which the WEB source uses the low mass emission excepted methodology of Section 75.19 to 40 CFR Part 75, the WEB source shall include the following information in the monitoring plan that accompanies the initial certification application:

**(a)** the results of the analysis performed to qualify as a low mass emissions unit under Section 75.19(c) to 40 CFR Part 75; this report shall include either the previous three years actual or projected emissions; the following items shall be included: a) current calendar year of application; b) type of qualification; c) years one, two, and three; d) annual measured, estimated or projected sulfur dioxide mass emissions for years one, two, and three; and e) annual operating hours for years one, two, and three;

**(b)** a schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeter(s), and the stack(s); comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe;

**(c)** for units which use the long term fuel flow methodology under Section 75.19(c)(3) to 40 CFR Part 75, a diagram of the fuel flow to each unit or group of units and a detailed description of the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units;

**(d)** a statement that the unit burns only gaseous fuel(s) and/or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only gaseous fuel(s) and/or fuel oil and a list of the fuels that are projected to be burned;

**(e)** a statement that the unit meets the applicability requirements in Sections 75.19(a) and (b) to 40 CFR Part 75 with respect to sulfur dioxide emissions; and

**(f)** any unit historical actual, estimated and projected sulfur dioxide emissions data and calculated sulfur dioxide emissions data demonstrating that the unit qualifies as a low mass emissions unit under Sections 75.19(a) and (b) to 40 CFR Part 75.

**(3)** For each gas-fired unit the WEB source shall include the following in the monitoring plan: current calendar year, fuel usage data as specified in the definition of gas-fired in Section 72.2 of 40 CFR Part 72, and an indication of whether the data are actual or projected data.

**I.** The specific elements of a monitoring plan under Subsection D of 20.2.81.106 NMAC shall not be part of an operating permit for a WEB source issued in accordance with the title V of the Clean Air Act, and modifications to the elements of the plan shall not require a permit modification.

#### **J. Certification and recertification.**

(1) All monitoring systems are subject to initial certification and recertification testing as specified in 40 CFR Part 75, 20.2.81.111 NMAC or ; 20.2.81.112 NMAC. Certification or recertification of a monitoring system by the U.S. environmental protection agency for a WEB source that is subject to 40 CFR Part 75 under a requirement separate from 20.2.81 NMAC shall constitute certification under the WEB trading program.

(2) The WEB source with a sulfur dioxide emitting unit not otherwise subject to 40 CFR Part 75 that monitors sulfur dioxide mass emissions in accordance with 40 CFR Part 75 to satisfy the requirements of this section shall perform all of the tests required by that regulation and shall submit the following:

(a) a test notice, not later than 21 days before the certification testing of the monitoring system, provided that the department may establish additional requirements for adjusting test dates after this notice as part of the approval of the initial monitoring plan under Subsection F of 20.2.81.106 NMAC;

(b) an initial certification application within 45 days after testing is complete;

(c) a monitoring system shall be considered provisionally certified while the application is pending, and the system shall be deemed certified if the department does not approve or disapprove the system within six months after the date on which the application is submitted; and

(d) whenever an audit of any monitoring certified under 20.2.81 NMAC, and a review of the initial certification or recertification application, reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement of 20.2.81 NMAC, both at the time of the initial certification or recertification application submission and at the time of the audit, the department will issue a notice of disapproval of the certification status of such system or component; for the purposes of this paragraph, an audit shall be either a field audit of the facility or an audit of any information submitted to the department regarding the facility; by issuing the notice of disapproval, the certification status is revoked prospectively, and the data measured and recorded shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the WEB source completes subsequently approved initial certification or recertification tests in accordance with the procedures in Subsection J of 20.2.81.106 NMAC; the WEB source shall apply the substitute data procedures in Paragraph 2 of Subsection L of 20.2.81.106 NMAC to replace, prospectively, all of the invalid, non-quality-assured data for each disapproved system or component.

**K. Ongoing quality assurance and quality control.** The WEB source shall satisfy the applicable quality assurance and quality control requirements of Part 75 or, if the WEB source is subject to a WEB protocol in 20.2.81.111 NMAC , the applicable quality

assurance and quality control requirements in 20.2.81.111 NMAC on and after the date that certification testing commences.

#### **L. Substitute data procedures.**

(1) For any period after certification testing is complete in which quality assured, valid data are not being recorded by a monitoring system certified and operating in accordance with 20.2.81 NMAC, missing or invalid data shall be replaced with substitute data in accordance with 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in 20.2.81.111 NMAC or 20.2.81.112 NMAC, with substitute data in accordance with 20.2.81.111 NMAC.

(2) For a sulfur dioxide emitting unit that does not have a certified or provisionally certified monitoring system in place as of the beginning of the first control period for which the unit is subject to the WEB trading program, the WEB source shall:

(a) if the WEB source will use a CEMS to comply with this section, substitute the maximum potential concentration of sulfur dioxide for the unit and the maximum potential flow rate, as determined in accordance with 40 CFR Part 75; the procedures for conditional data validation under Section 75.20(b)(3) may be used for any monitoring system under 20.2.81 NMAC that uses these 40 CFR Part 75 procedures, as applicable;

(b) if the WEB source will use the 40 CFR Part 75 Appendix D methodology, substitute the maximum potential sulfur content, density or gross calorific value for the fuel and the maximum potential fuel flow rate, in accordance with Section 2.4 of Appendix D to 40 CFR Part 75;

(c) if the WEB source will use the 40 CFR Part 75 methodology for low mass emissions units, substitute the sulfur dioxide emission factor required for the unit as specified in 40 CFR 75.19 and the maximum rated hourly heat input, as defined in 40 CFR 72.2; or

(d) if using a protocol in 20.2.81.111 NMAC or 20.2.81.112 NMAC, follow the procedures in the applicable protocol.

#### **M. Compliance deadline.**

(1) The initial monitoring plan shall be submitted by the following dates.

(a) For each source that is a WEB source on or before the program trigger date, the monitoring plan shall be submitted 180 days after such program trigger date.

(b) For any existing source that becomes a WEB source after the program trigger date, the monitoring plan shall be submitted by September 30 of the year following the inventory year in which the source exceeded the emissions threshold.

**(c)** For any new WEB source, the monitoring plan shall be included with the permit application under 20.2.70 NMAC, 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC.

**(2)** A detailed monitoring plan under Subsection E of 20.2.81.106 NMAC shall be submitted no later than 45 days prior to commencing certification with the following Paragraph 3.

**(3)** Emission monitoring systems shall be installed, operational and shall have met all of the certification testing requirements of this 20.2.81.106 NMAC (including any referenced in 20.2.81.111 NMAC or 20.2.81.112 NMAC) by the following dates.

**(a)** For each source that is a WEB source on or before the program trigger date, two years prior to the start of the first control period as described in 20.2.81.109 NMAC.

**(b)** For any existing source that becomes a WEB source after the program trigger date, one year after the due date for the monitoring plan under Subparagraph b of Paragraph 2 of Subsection M of 20.2.81.106 NMAC.

**(c)** For any new WEB source, (or any new unit at a WEB source under Paragraph 3 Subparagraph a or b, the earlier of 90 unit operating days or 180 calendar days after the date the new source commences operation.

**(4)** The WEB source shall submit test notices and certification applications in accordance with the deadlines set forth in Paragraph 2 of Subsection J of 20.2.81.106 NMAC.

**(5)** For each applicable control period, the WEB source shall submit each quarterly report under Subsection O of 20.2.81.106 NMAC by no later than 30 days after the end of each calendar quarter and shall submit the annual report under Subsection O of 20.2.81.106 NMAC no later than 60 days after the end of each calendar year.

#### **N. Recordkeeping.**

**(1)** The WEB source shall keep copies of all reports, registration materials, compliance certifications, sulfur dioxide emissions data, quality assurance data, and other submissions under 20.2.81 NMAC for a period of five years. In addition, the WEB source shall keep a copy of all account certificates of representation. Unless otherwise requested by the WEB source and approved by the department, the copies shall be kept on site at the source.

**(2)** The WEB source shall keep records of all operating hours, quality assurance activities, fuel sampling measurements, hourly averages for sulfur dioxide, stack flow, fuel flow, or other continuous measurements, as applicable, and any other

applicable data elements specified in this section , 20.2.81.111 NMAC or in 20.2.81.112 NMAC. The WEB source shall maintain the applicable records specified in 40 CFR Part 75 for any sulfur dioxide emitting unit that uses a Part 75 monitoring method to meet the requirements of this section.

### **O. Reporting.**

**(1)** Quarterly reports. For each sulfur dioxide emitting unit, the account representative shall submit a quarterly report within thirty days after the end of each calendar quarter. The report shall be in a format specified by the department to include hourly and quality assurance activity information and shall be submitted in a manner compatible with the emissions tracking database designed for the WEB trading program. If the WEB source submits a quarterly report under 40 CFR Part 75 to the U.S. EPA administrator, no additional report under this paragraph shall be required, provided, however, that the department may require that a copy of that report (or a separate statement of quarterly and cumulative annual sulfur dioxide mass emissions) be submitted separately to the department.

**(2)** Annual report. Based on the quarterly reports, each WEB source shall submit an annual statement of total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source. The annual report shall identify the total emissions for all units monitored in accordance with Subsection A of 20.2.81.106 NMAC and the total emissions for all units with emissions estimated in accordance with Subsection B of 20.2.81.106 NMAC. The annual report shall be submitted within 60 days after the end of a control period.

**(3)** If the department so directs that any monitoring plan, report, certification, recertification, or emissions data required to be submitted under this section be submitted to the tracking system administrator.

**(4)** The department may review and reject any report submitted under this Subsection O of 20.2.81.106 NMAC that contains errors or fails to satisfy the requirements of this section, and the account representative shall resubmit the report to correct any deficiencies.

**(5)** A WEB source may petition for an alternative to any requirement specified in Paragraph 2 of Subsection A of 20.2.81.106 NMAC. The petition shall require approval of the department and the U.S. EPA administrator. Any petition submitted under this paragraph shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

**(a)** identification of the WEB source and applicable sulfur dioxide emitting unit(s);

**(b)** a detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(c) a description and diagram of any equipment and procedures used in the proposed alternative, if applicable;

(d) a demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and is consistent with the purposes of 20.2.81 NMAC and that any adverse effect of approving such alternative will be de minimis; and

(e) any other relevant information that the department may require.

(6) For any monitoring plans, reports, or other information submitted under 20.2.81.106 NMAC, the WEB source shall ensure that, where applicable, identifying information is consistent with the identifying information provided in the most recent certificate of representation for the WEB source submitted under 20.2.81.102 NMAC.

[20.2.81.106 NMAC - N, 12/31/03; A, 07/06/11]

#### **20.2.81.107 ALLOWANCE TRANSFERS:**

**A. Procedure.** To transfer allowances, the account representative shall submit the following information to the tracking system administrator:

- (1) the transfer account number(s) identifying the transferor account;
- (2) the transfer account number(s) identifying the transferee account;
- (3) the serial number of each allowance to be transferred; and
- (4) the transferor's account representative's name and signature and date of submission.

**B. Deadline.** The allowance transfer deadline is midnight Pacific standard time March 1 of each year (or if this date is not a business day, midnight of the first business day thereafter) following the end of the control period. By this time, the transfer of the allowances into the WEB source's compliance account must be correctly submitted to the tracking system administrator in order to demonstrate compliance under Subsection A of 20.2.81.109 NMAC for that control period.

**C. Retirement of Allowances.** To transfer allowances for the purpose of retirement, the account representative shall submit the following information to the tracking system administrator:

- (1) the transfer account number(s) identifying the transferor account;
- (2) the serial number of each allowance to be retired; and

(3) the transferor's account representative's name and signature and date of submission accompanied by a signed statement acknowledging that each retired allowance as no longer available for future transfers from or to any account.

[20.2.81.107 NMAC - N, 12/31/03]

**20.2.81.108 USE OF ALLOWANCES FROM A PREVIOUS YEAR:**

**A.** Any allowance that is held in a compliance account or general account shall remain in such an account unless and until the allowance is deducted in conjunction with the compliance process, or transferred to another account.

**B.** In order to demonstrate compliance under Subsection A of 20.2.81.109 NMAC for a control period, WEB sources shall only use allowances allocated for that current control period or any previous year. Because all allowances held in a special reserve compliance account for a WEB source that monitors certain units in accordance with Subsection B of 20.2.81.106 NMAC will be deducted for compliance for each control period, no banking of such allowances for use in a subsequent year is permitted by 20.2.81 NMAC.

**C.** If flow control procedures for the current control period have been triggered as outlined in section C4.2 of the sulfur dioxide milestones and backstop trading program implementation plan, then the use of allowances that were allocated for any previous year shall be limited as follows.

(1) The number of allowances that are held in each compliance account and general account as of the allowance transfer deadline for the immediately previous year and that were allocated for any previous year shall be determined.

(2) The number determined in Paragraph 1 shall be multiplied by the flow control ratio established in accordance with section C4.2 of the sulfur dioxide milestones and backstop trading program implementation plan to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period.

(3) Allowances that were allocated for a previous year in excess of the number determined in Paragraph 2 may also be used for the current control period. If such allowances are used to make a deduction, three allowances shall be deducted for each deduction of one allowance required under 20.2.81.109 NMAC.

**D.** Special provisions for the year 2018. After compliance with the 2017 allowance limitation has been determined in accordance with Subsection A of 20.2.81.109 NMAC, allowances allocated for any year prior to 2018 shall not be used for determining compliance with the 2018 allowance limitation or any future allowance limitation.

[20.2.81.108 NMAC - N, 12/31/03; A, 07/06/11]

## **20.2.81.109 COMPLIANCE:**

### **A. Compliance with allowance limitations.**

**(1)** The WEB source shall hold allowances, in accordance with Paragraph 2 of Subsection A of 20.2.81.109 NMAC and 20.2.81.108 NMAC, as of the allowance transfer deadline in the WEB source's compliance account (together with any current control year allowances held in the WEB source's special reserve compliance account under Subsection B of 20.2.81.106 NMAC in an amount not less than the total sulfur dioxide emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of 20.2.81.106 NMAC.

**(a)** For each source that is a WEB source on or before the program trigger date, the first control period is the calendar year that is six years following the calendar year for which sulfur dioxide emissions exceeded the milestone in accordance with procedures in section A of the sulfur dioxide milestones and backstop trading program implementation plan.

**(b)** For any existing source that becomes a WEB source after the program trigger date, the first control period is the calendar year that is four years following the inventory year in which the source exceeded the sulfur dioxide emissions threshold.

**(c)** For any new WEB source after the program trigger date the first control period is the first full calendar year that the source is in operation.

**(d)** If the WEB trading program is triggered in accordance with the 2013 review procedures in section A4 of the sulfur dioxide milestones and backstop trading program implementation plan, the first control period for each source that is a WEB source on or before the program trigger date is the year 2018.

**(2)** Allowance transfer deadline. An allowance may only be deducted from the WEB source's compliance account if:

**(a)** the allowance was allocated for the current control period or meets the requirements in 20.2.81.108 NMAC for use of allowances from a previous control period; and

**(b)** the allowance was held in the WEB source's compliance account as of the allowance transfer deadline for the current control period, or was transferred into the compliance account by an allowance transfer correctly submitted for recording by the allowance transfer deadline for the current control period.

**(3)** Compliance with allowance limitations shall be determined as follows.

**(a)** The total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source that are monitored under Subsection B of 20.2.81.106 NMAC, as

reported by the source in Paragraph 2 or 4 of Subsection O of 20.2.81.106 NMAC, and recorded in the emissions tracking database shall be compared to the allowances held in the source's special reserve compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with 20.2.81.108 NMAC. If the emissions are equal to or less than the allowances in such account, all such allowances shall be retired to satisfy the obligation to hold allowances for such emissions. If the total emissions from such units exceeds the allowances in such special reserve account, the WEB source shall account for such excess emissions in Subparagraph b of this paragraph.

**(b)** The total annual sulfur dioxide emissions for all sulfur dioxide emitting units at the source that are monitored under Subsection A of 20.2.81.106 NMAC, as reported by the source in Paragraph 2 or 4 of Subsection O of 20.2.81.106 NMAC, and recorded in the emissions tracking database, together with any excess emissions as calculated in the preceding Subparagraph a, shall be compared to the allowances held in the source's compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with 20.2.81.108 NMAC.

**(c)** If the comparison in Subparagraph b of this paragraph results in emissions that exceed the allowances held in the source's compliance account, the source has exceeded its allowance limitation and the excess emissions are subject to the allowance deduction penalty in Subsection C of this section.

**(4)** Other than allowances in a special reserve compliance account for units monitored under Subsection B of 20.2.81.106 NMAC, to the extent consistent with 20.2.81.108 NMAC, allowances shall be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's account representative. Deduction of any other allowances as necessary for compliance with the allowance limitation shall be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account. The allowances held in a special reserve compliance account pursuant to Subsection B of 20.2.81.106 NMAC shall be deducted as specified in Subparagraph a of Paragraph 3 of Subsection A of 20.2.81.109 NMAC.

## **B. Certification of compliance.**

**(1)** For each control period in which a WEB source is subject to the allowance limitation, the account representative of the source shall submit to the department a compliance certification report for the source.

**(2)** The compliance certification report shall be submitted no later than the allowance transfer deadline of each control period, and shall contain the following:

**(a)** identification of each WEB source;

(b) at the account representative's option, the serial numbers of the allowances that are to be deducted from a source's compliance account for compliance with the allowance limitation; and

(c) the compliance certification report according to Paragraph 3 of this section.

(3) In the compliance certification report, the account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the WEB source in compliance with the WEB trading program, whether the WEB source for which the compliance certification is submitted was operated during the control period covered by the report in compliance with the requirements of the WEB trading program applicable to the source including:

(a) whether the WEB source operated in compliance with the sulfur dioxide allowance limitation;

(b) whether sulfur dioxide emissions data has been submitted to the department in accordance with Subsection A of 20.2.81.106 NMAC and other applicable guidance, for review, revision as necessary, and finalization for forwarding to the sulfur dioxide allowance tracking system for recording;

(c) whether the monitoring plan that governs the WEB source has been maintained to reflect the actual operation and monitoring of the source, and contains all information necessary to attribute sulfur dioxide emissions to the source, in accordance with Subsection A of 20.2.81.106 NMAC;

(d) whether all the sulfur dioxide emissions from the WEB source if applicable, were monitored or accounted for either through the applicable monitoring or through application of the appropriate missing data procedures;

(e) if applicable, whether any sulfur dioxide emitting unit for which the WEB source is not required to monitor in accordance with Paragraph 3 of Subsection A of 20.2.81.106 NMAC remained permanently retired and had no emissions for the entire applicable period; and

(f) whether there were any changes in the method of operating or monitoring the WEB source that required monitor recertification; if there were any such changes, the report shall specify the nature, reason, and date of the change, the method to determine compliance status subsequent to the change, and specifically, the method to determine sulfur dioxide emissions.

**C. Allowance deduction penalty for any WEB source exceeding its allowance limitations.**

(1) If emissions from a WEB source exceed the allowance limitation for a control period, as determined in accordance with Subsection A of 20.2.81.109 NMAC, the source's allowance held in its compliance account will be reduced by an amount equal to three times the source's tons of excess emissions. If the compliance account does not have sufficient allowances allocated for that control period, the required number of allowances shall be deducted from the WEB source's compliance account regardless of the control period for which they were allocated, once allowances are recorded in the account.

(2) Any allowance deduction required under this section shall not affect the liability of the owners and operators of the WEB source for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act, implementing regulations or applicable state or tribal law. Accordingly, a violation can be assessed each day of the control period for each ton of sulfur dioxide emissions in excess of its allowance limitation if the department so chooses.

#### **D. Liability.**

(1) WEB source liability for non-compliance. Separate and regardless of any allowance deduction penalty, a WEB source that violates any requirement of 20.2.81 NMAC is subject to civil and criminal penalties under the Air Quality Control Act and the Clean Air Act. Each day of the control period is a separate violation, and each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation.

#### **(2) General liability.**

(a) Any provision of the WEB trading program that applies to a source or an account representative shall apply also to the owners and operators of such source.

(b) Any person who violates any requirement or prohibition of the WEB trading program shall be subject to enforcement pursuant to applicable state, tribal or federal law.

(c) Any person who knowingly makes a false material statement in any record, submission, or report under this WEB trading program shall be subject to criminal enforcement pursuant to the applicable state, tribal or federal law.

[20.2.81.109 NMAC - N, 12/31/03; A, 07/06/11]

#### **20.2.81.110 SPECIAL PENALTY PROVISIONS FOR THE 2018 MILESTONE:**

**A.** If the WEB trading program is triggered as outlined in section A of the sulfur dioxide milestones and backstop trading program implementation plan, and the first

control period will not occur until after the year 2018, the following provisions shall apply for the 2018 emissions year.

**(1)** All WEB sources shall register, and open a compliance account within 180 days after the program trigger date, in accordance with Subsection A of 20.2.81.103 NMAC and 20.2.81.105 NMAC.

**(2)** The tracking system administrator shall record the allowances for the 2018 control period for each WEB source in the source's compliance account once the department allocates the 2018 allowances under section C1 and D1 of the sulfur dioxide milestones and backstop trading program implementation plan.

**(3)** The allowance transfer deadline is midnight Pacific standard time on May 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter). WEB sources may transfer allowances as provided in Subsection A of 20.2.81.107 NMAC until the allowance transfer deadline. For each control period after 2018 that the special penalty provisions are assessed, the dates for the 2019 control period will be adjusted forward by one year.

**(4)** A WEB source shall hold allowances allocated for 2018 including those transferred into the compliance account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total sulfur dioxide emissions for 2018. Emissions shall be determined using the pre-trigger monitoring provisions in section B of the sulfur dioxide milestones and backstop trading program implementation plan, and 20.2.73 NMAC.

**(5)** In accordance with Subsection D of 20.2.81.108 NMAC and Paragraph 4 of Subsection A of 20.2.81.110 NMAC, the department shall seek at least the minimum financial penalty of \$5,000 per ton of sulfur dioxide emissions in excess of the WEB source's allowance limitation.

**(a)** Any source may resolve its excess emissions violation by agreeing to a streamline settlement approach where the source pays a penalty of \$5,000 per ton or partial ton of excess emissions, and payment is received within 90 calendar days after the issuance of a notice of violation.

**(b)** Any source that does not resolve its excess emissions violation in accordance with the streamlined settlement approach in Subparagraph a of this paragraph will be subject to civil enforcement action, in which the department shall seek a financial penalty for the excess emissions based on the state's statutory maximum civil penalties.

**(6)** Each ton of sulfur dioxide emissions in excess of a source's allowance limitation is a separate violation and each day of a control period is a separate violation.

**B.** The provisions in 20.2.81.110 NMAC shall continue to apply for each year after the 2018 emission year until:

(1) the first control period under the WEB trading program under Paragraph 1 of Subsection A of 20.2.81.109 NMAC; or

(2) the department determines, in accordance with section A3.10 of the implementation plan, that the 2018 sulfur dioxide milestone has been met.

**C.** If 20.2.81.110 NMAC was implemented, the following shall apply to each emissions year after the 2018 emissions year.

(1) The tracking system administrator will record the allowances for the control period for the specific year for each WEB source in the source's compliance account once the department allocates the allowances under section C1 of the sulfur dioxide milestones and backstop trading program implementation plan.

(2) The allowance transfer deadline for the 2019 emissions year shall be midnight Pacific standard time on May 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter); and for each control period after 2018 that the special penalty provisions are assessed, the May 31, 2021 allowance transfer deadline for the 2019 control period will be adjusted forward by one year.

(3) A WEB source must hold allowances allocated for that specific emissions year, or any year after 2018, including those transferred into the compliance account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total sulfur dioxide emissions for the specific emissions year. Emissions are determined using the pre-trigger monitoring provisions in section B of the sulfur dioxide milestones and backstop trading program implementation plan, and 20.2.73 NMAC.

(4) An allowance deduction penalty and financial penalty shall be assessed and levied in accordance with Subsection D of 20.2.81.108 NMAC, Paragraph 4 of Subsection A of 20.2.81.109 NMAC, and Subsection C of 20.2.81.109 NMAC, except that sulfur dioxide emissions shall be determined under Paragraph 3 of Subsection C of 20.2.81.110 NMAC.

[20.2.81.110 NMAC - N, 12/31/03; A, 07/06/11]

## **20.2.81.111 NMAC SULFUR DIOXIDE MONITORING OF FUEL GAS COMBUSTION DEVICES:**

### **A. Applicability.**

(1) The provisions of this protocol are applicable to fuel gas combustion devices at petroleum refineries.

**(2)** Fuel gas combustion devices include boilers, process heaters, and flares used to burn fuel gas generated at a petroleum refinery.

**(3)** Fuel gas means any gas which is generated and combusted at a petroleum refinery. Fuel gas does not include:

**(a)** natural gas, unless combined with other gases generated at a petroleum refinery;

**(b)** gases generated by a catalytic cracking unit catalyst regenerator;

**(c)** gases generated by fluid coking burners;

**(d)** gases combusted to produce sulfur or sulfuric acid; or

**(e)** process upset gases generated due to startup, shutdown, or malfunctions.

#### **B. Monitoring Requirements.**

**(1)** Except as provided in Paragraphs 2 and 3 of 20.2.81.111 NMAC, fuel gas combustion devices shall use a continuous fuel gas monitoring system (CFGMS) to determine the total sulfur content (reported as H<sub>2</sub>S) of the fuel gas mixture prior to combustion, and continuous fuel flow meters to determine the amount of fuel gas burned.

**(a)** Fuel gas combustion devices having a common source of fuel gas may be monitored for sulfur content at one location, if monitoring at that location is representative of the sulfur content of the fuel gas being burned in any fuel gas combustion device.

**(b)** The CFGMS shall meet the performance requirements in Performance Specification 2 in Appendix B to 40 CFR Part 60, and the following.

**(i)** Continuously monitor and record the concentration by volume of total sulfur compounds in the gaseous fuel reported as ppmv H<sub>2</sub>S.

**(ii)** Have the span value set so that the majority of readings fall between 10 and 95 percent of the range.

**(iii)** Record negative values of zero drift, for initial certification and daily calibration error tests.

**(iv)** Calibration drift shall be 5.0 percent of the span.

**(v)** Methods 15A, 16, or approved alternatives for total sulfur, are the reference methods for the relative accuracy test. The relative accuracy test shall include a bias test in accordance with Paragraph 3 of Subsection D of 20.2.81.111 NMAC.

**(c)** All continuous fuel flow meters shall comply with the provisions of Section 2.1.5 of Appendix D to 40 CFR Part 75.

**(d)** The hourly mass sulfur dioxide emissions rate for all the fuel combustion devices monitored by this approach shall be calculated using the following equation:

$$E_t = (C_s)(Q_f)(K)$$

where:  $E_t$  = Total sulfur dioxide emissions in lb/hr from applicable fuel gas combustion devices

$C_s$  = Sulfur content of the fuel gas as  $H_2S$ (ppmv)

$Q_f$  = Fuel gas flow rate to the applicable fuel gas combustion devices (scf/hr)

$K = 1.660 \times 10^{-7}$  (lb/scf)/ppmv

**(2)** In place of a CFGMS in Paragraph 1 of Subsection B of 20.2.81.111 NMAC, fuel gas combustion devices having a common source of fuel gas may be monitored with an sulfur dioxide CEMS flow CEMS and (if necessary) a moisture monitoring system at only one location, if the CEMS monitoring at that location is representative of the sulfur dioxide emission rate (lb sulfur dioxide/scf fuel gas burned) of all applicable fuel gas combustion devices. Continuous fuel flow meters shall be used in accordance with Paragraph 2 of Subsection B of 20.2.81.111 NMAC, and the fuel gas combustion device monitored by a CEMS shall have separate fuel metering.

**(a)** Each CEMS for sulfur dioxide and flow, and (if applicable) moisture, shall comply with the operating requirements, performance specifications, and quality assurance requirements of 40 CFR Part 75.

**(b)** All continuous fuel flow meters shall comply with the provisions of Section 2.1.5 of Appendix D to 40 CFR Part 75.

**(c)** The sulfur dioxide hourly mass emissions rate for all the fuel gas combustion devices monitored by this approach shall be determined by the ratio of the amount of fuel gas burned by the CEMS-monitored fuel gas combustion device to the total fuel gas burned by all applicable fuel gas combustion devices using the following equation:

$$E_t = (E_m)(Q_t)/(Q_m)$$

where:  $E_t$  = Total sulfur dioxide emissions in lb/hr from applicable fuel gas combustion devices.

$E_m$  = sulfur dioxide emissions in lb/hr from the CEMS-monitored fuel gas combustion device, calculated using Equation F-1 or (if applicable) F-2 in Appendix F to 40 CFR Part 75

$Q_t$  = Fuel gas flow rate (scf/hr) from applicable fuel gas combustion devices.

$Q_m$  = Fuel gas flow rate (scf/hr) to the CEMS-monitored fuel gas combustion device.

**(3)** In place of a CFGMS in Paragraph 1 of Subsection B of 20.2.81.111 NMAC, fuel gas combustion devices having a common source of fuel gas may be monitored with an sulfur dioxide - diluent CEMS at only one location, if the CEMS monitoring at that location is representative of the sulfur dioxide emission rate (lb sulfur dioxide/mmBtu) of all applicable fuel gas combustion devices. If this option is selected, the owner or operator shall conduct fuel gas sampling and analysis for gross calorific value (GCV), and shall use continuous fuel flow metering in accordance with Paragraph 1 of Subsection B of 20.2.81.111 NMAC, with separate fuel metering for the CEMS-monitored fuel gas combustion device.

**(a)** Each sulfur dioxide - diluent CEMS shall comply with the applicable provisions for sulfur dioxide monitors and diluent monitors in 40 CFR Part 75, and shall use the procedures in Section 3 of Appendix F to Part 75 for determining sulfur dioxide emission rate (lb/mmBtu) by substituting the term sulfur dioxide for  $no_x$  in that section, and using a K factor of  $1.660 \times 10^{-7}$  (lb/scf) ppmv instead of the  $NO_x$  K factor.

**(b)** All continuous fuel flow meters and fuel gas sampling and analysis for GCV to determine the heat input ratio shall comply with the applicable provisions of Section 2.1.5 and 2.3.4 of Appendix D to 40 CFR Part 75.

**(c)** The sulfur dioxide hourly mass emissions rate for all the fuel gas combustion devices monitored by this approach shall be determined by the ratio of the fuel gas heat input to the CEMS-monitored fuel gas combustion device to the total fuel gas heat input to all applicable fuel gas combustion devices using the following equation:

$$E_t = (E_m)(Q_t)/(GCV) / 10^6$$

where:  $E_t$  = Total sulfur dioxide emissions in lbs/hr from applicable fuel gas combustion devices.

$E_m$  = sulfur dioxide emissions in lb/mmBtu from the CEMS - monitored fuel gas combustion device.

$Q_t$  = Fuel gas flow rate (scf/hr) to the applicable fuel gas combustion devices.

GCV = Fuel Gross Calorific Value (Btu/scf)

$10^6$  = Conversion from Btu to million Btu

**(d)** The owner or operator shall calculate total sulfur dioxide mass emissions for each calendar quarter and each calendar year based on the emissions in lb/hr and equations F-3 and F-4 in Appendix F to 40 CFR Part 75, Appendix F.

**C. Certification and recertification requirements.** All monitoring systems are subject to initial certification and recertification testing as follows.

**(1)** The owner or operator shall comply with the initial testing and calibration requirements in performance specification 2 in Appendix B of 40 CFR Part 60 and Subparagraph b of Paragraph 1 of Subsection B of 20.2.81.111 NMAC for each CFGMS.

**(2)** Each CEMS for sulfur dioxide and flow or each sulfur dioxide-diluent CEMS shall comply with the testing and calibration requirements specified in 40 CFR Part 75, Section 75.20 and appendices A and B, except that each sulfur dioxide-diluent CEMS shall meet the relative accuracy requirements for a NO<sub>x</sub>-diluent CEMS (lb/mmBtu).

**(3)** A continuous fuel flow meter shall comply with certification requirements in Section 2.1.5 of Appendix D of 40 CFR Part 75.

**D. Quality assurance/quality control requirements.**

**(1)** A quality assurance and quality control (QA/QC) plan shall be developed and implemented for each CEMS for sulfur dioxide and flow or the sulfur dioxide-diluent CEMS in compliance with Sections 1, 1.1, and 1.2 of Appendix B of 40 CFR Part 75.

**(2)** A quality assurance and quality control plan shall be developed and implemented for each continuous fuel flow meter and fuel sampling and analysis in compliance with Sections 1, 1.1, and 1.3 Appendix B of 40 CFR Part 75. The owner or operator shall meet the requirements in Section 2.1.6 of Appendix D to 40 CFR Part 75, and may use the procedures set forth in Section 2.1.7 of that appendix.

**(3)** A quality assurance and quality control plan shall be developed and implemented for each CFGMS in compliance with Sections 1 and 1.1 of Appendix B to 40 CFR Part 75, and the following.

**(a)** Perform a daily calibration error test of each CFGMS at two gas concentrations, one low level and one high level. Calculate the calibration error as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the error is greater than 5.0 percent of the span value.

(b) In addition to the daily calibration error test, an additional calibration error test shall be performed whenever a daily calibration error test is failed, whenever a monitoring system is returned to service following repairs or corrective actions that may affect the monitor measurements, or after making manual calibration adjustments.

(c) Perform a linearity test once every operating quarter. Calculate the linearity as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the linearity error is greater than 5.0 percent of a reference value, and the absolute value of the difference between average monitor response values and a reference value is greater than 5.0 ppm.

(d) Perform a relative accuracy test audit once every four operating quarters. Calculate the relative accuracy as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the relative accuracy is greater than 20.0 percent of the mean value of the reference method measurements.

(e) Using the results of the relative accuracy test audit, conduct a bias test in accordance with Appendix A to 40 CFR Part 75, and calculate and apply a bias adjustment factor if required.

#### **E. Missing data procedures.**

(1) For any period in which valid data are not being recorded by an sulfur dioxide CEMS or flow CEMS specified in this section, missing or invalid data shall be replaced with substitute data in accordance with the requirements in subpart D of 40 CFR Part 75.

(2) For any period in which valid data are not being recorded by an sulfur dioxide-diluent CEMS specified in this section, missing or invalid data shall be replaced with substitute data on a rate basis (lb/mmBtu) in accordance with the requirements for sulfur dioxide monitors in subpart D of 40 CFR Part 75.

(3) For any period in which valid data are not being recorded by a continuous fuel flow meter or for fuel gas GCV sampling and analysis specified in this section, missing or invalid data shall be replaced with substitute data in accordance with missing data requirements in Section 2.4 of Appendix D to 40 CFR Part 75.

(4) For any period in which valid data are not being recorded by the CFGMS specified in this section, hourly missing or invalid data shall be replaced with substitute data in accordance with the missing data requirements for units performing hourly gaseous fuel sulfur sampling in Section 2.4 of Appendix D to 40 CFR Part 75.

**F. Monitoring plan and reporting requirements.** In addition to the general monitoring plan and reporting requirements of 20.2.81.106 NMAC, the owner or operator shall meet the following additional requirements.

(1) The monitoring plan shall identify each group of units that are monitored by a single monitoring system under this 20.2.81.111 NMAC, and the plan shall designate an identifier for the group of units for emissions reporting purposes. For purpose of submitting emissions reports, no apportionment of emissions to the individual units within the group is required.

(2) If the provisions of Paragraph 2 or 3 of Subsection B of 20.2.81.111 NMAC are used, provide documentation and an explanation to demonstrate that the sulfur dioxide emission rate from the monitored unit is representative of the rate from non-monitored units.

[20.2.81.111 NMAC - N, 12/31/03]

### **20.2.81.112 NMAC PREDICTIVE FLOW MONITORING SYSTEMS FOR KILNS WITH POSITIVE PRESSURE FABRIC FILTER:**

**A. Applicability.** The provisions of this protocol are applicable to cement kilns or lime kilns that:

- (1) are controlled by a positive pressure fabric filter;
- (2) combust only a single fuel, no fuel blends; and
- (3) have operating conditions upstream of the fabric filter that the WEB source documents would reasonably prevent reliable flow monitor measurements; this protocol does not modify the sulfur dioxide monitoring requirements in 20.2.81.106 NMAC.

**B. Monitoring requirements.**

- (1) A cement or lime kiln with a positive pressure fabric filter shall use a predictive flow monitoring system (PFMS) to determine the hourly kiln exhaust gas flow.
- (2) A PFMS is the total equipment necessary for the determination of exhaust gas flow using process or control device operating parameter measurements and a conversion equation, a graph, or computer program to produce results in cubic feet per hour.
- (3) The PFMS shall meet the following performance specifications.
  - (a) Sensors readings and conversion of sensor data to flow in cubic feet per hour must be automated.
  - (b) The PFMS must allow for the automatic or manual determination of failed monitors. At a minimum a daily determination must be performed.

(c) The PFMS shall have provisions to check the calibration error of each parameter that is individually measured. The owner or operator shall propose appropriate performance specifications in the initial monitoring plan for all parameters used in the PFMS comparable to the degree of accuracy required for other monitoring systems used to comply with 20.2.81 NMAC. The parameters shall be tested at two levels, low: 0 to 20 percent of full scale, and high: 50 to 100 percent of full scale. The reference value need not be certified.

(d) The relative accuracy of the PFMS must be  $\leq 10.0$  percent of the reference method average value, and include a bias test in accordance with Paragraph 3 of Subsection D of 20.2.81.112 NMAC.

**C. Certification Requirements.** The PFMS is subject to initial certification testing. The source owner or operator shall:

(1) demonstrate the ability of the PFMS to identify automatically or manually a failed monitor;

(2) provide evidence of calibration testing of all monitoring equipment. Any tests conducted within the previous 12 months of operation that are consistent with the QA/QC plan for the PFMS are acceptable for initial certification purposes; and

(3) perform an relative accuracy test audit and accompanying bias test once every four operating quarters. Calculate the relative accuracy (and bias adjustment factor) as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the flow relative accuracy is greater than 10.0 percent of the mean value of the reference method.

**D. Quality assurance and quality control requirements.** A quality assurance and quality control plan shall be developed and implemented for each PFMS in compliance with Sections 1 and 1.1 of Appendix B of 40 CFR Part 75, and the following:

(1) perform a daily monitor failure check;

(2) perform calibration tests of all monitors for each parameter included in the PFMS. At a minimum, calibrations shall be conducted prior to each relative accuracy test audit; and

(3) perform a relative accuracy test audit and accompanying bias test once every four operating quarters. Calculate the relative accuracy (and bias adjustment factor) as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the flow relative accuracy is greater than 10.0 percent of the mean value of the reference method.

**E. Missing data.** For any period in which valid data are not being recorded by the PFMS specified in this section, hourly missing or invalid data shall be replaced with

substitute data in accordance with the flow monitor missing data requirements for non-load based units in subpart D of 40 CFR Part 75.

**F. Monitoring plan requirements.** In addition to the general monitoring plan requirements of 20.2.81.106 NMAC, the owner or operator shall meet the following additional requirements.

(1) The monitoring plan shall document the reasons why stack flow measurements upstream of the fabric filter are unlikely to provide reliable flow measurements over time.

(2) The initial monitoring plan shall explain the relationship of the proposed parameters and stack flow, and discuss other parameters considered and the reasons for not using those parameters in the PFMS. The department may require that the subsequent monitoring plan include additional explanation and documentation for the reasonableness of the proposed PFMS.

[20.2.81.112 NMAC - N, 12/31/03]

## **PART 82: MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY STANDARDS FOR SOURCE CATEGORIES OF HAZARDOUS AIR POLLUTANTS**

### **20.2.82.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[Rn, 20 NMAC 2.82.1, 08/14/98; 20.2.82.1 NMAC - Rn, 20 NMAC 2.82.100, 06/23/00]

### **20.2.82.2 SCOPE:**

All sources emitting hazardous air pollutants, which are subject to the requirements of 40 CFR Part 63, as amended through June 28, 2023.

[Rn, 20 NMAC 2.82.2, 08/14/1998; A, 08/14/1998; A, 09/08/1999; 20.2.82.2 NMAC - Rn & A, 20 NMAC 2.82.101, 06/23/2000; A, 02/18/2002; A, 06/13/2003; A, 06/08/2007; A, 08/17/2009; A, 09/02/2011; A, 12/19/2013; A, 1/29/2016; A, 5/30/2017; A, 12/19/2023]

### **20.2.82.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, Paragraphs (4) and (7) of Subsection (A) of Section 74-1-8 NMSA 1978, and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Subsections (A), (B) and (D) of Section 74-2-5. Subsection (D) of Section 74-2-5 provides that "regulations adopted by the environmental improvement board may prescribe standards of performance for sources and emissions standards for hazardous air pollutants...".

[Rn, 20 NMAC 2.82.3, 08/14/1998; A, 08/14/1998; 20.2.82.3 NMAC - Rn, 20 NMAC 2.82.102, 06/23/2000; A, 12/19/2023]

**20.2.82.4 DURATION:**

Permanent.

[Rn, 20 NMAC 2.82.4, 08/14/98; 20.2.82.4 NMAC - Rn, 20 NMAC 2.82.103, 06/23/00]

**20.2.82.5 EFFECTIVE DATE:**

November 27, 1994, except where a later date is cited at the end of a section.

[Rn, 20 NMAC 2.82.5, 08/14/98; A, 08/14/98; 20.2.82.5 NMAC - Rn, 20 NMAC 2.82.104, 06/23/00]

[The latest effective date of any section in this part is May 30, 2017.]

**20.2.82.6 OBJECTIVE:**

The objective of this part is to adopt or establish state authority to implement emission standards for hazardous air pollutants for the source categories in New Mexico subject to federal standards. The United States environmental protection agency requires New Mexico to adopt such standards in order to implement requirements in Section 112 of the Clean Air Act.

[Rn, 20 NMAC 2.82.6, 08/14/98; A, 08/14/98; 20.2.82.6 NMAC - Rn, 20 NMAC 2.82.105, 06/23/00; A, 1/29/16]

**20.2.82.7 DEFINITIONS:**

**[RESERVED]**

[20.2.82.7 NMAC - Rn, 20 NMAC 2.82.107 06/23/00]

**20.2.82.8 ADOPTION OF 40 CFR PART 63:**

Except as otherwise provided in Section 20.2.82.10 NMAC (below), the national emission standards for hazardous air pollutants for source categories as promulgated by the United States environmental protection agency, 40 CFR Part 63, as amended in the Federal Register through June 28, 2023 are hereby incorporated into this part (20.2.82 NMAC).

[Rn, 20 NMAC 2.82.7, 08/14/1998; A, 08/14/1998; A, 09/08/1999; 20.2.82.8 NMAC - Rn & A, 20 NMAC 2.82.106, 06/23/2000; A, 02/18/2002; A, 06/13/2003; A, 06/08/2007; A, 08/17/2009; A, 09/02/2011; A, 12/19/2013; A, 1/29/2016; A, 5/30/2017; A, 12/19/2023]

**20.2.82.9 SOURCES SUBJECT TO 40 CFR 63.40 - 63.44 OF SUBPART B (CONSTRUCTED AND RECONSTRUCTED MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS):**

The owner or operator of a source subject to these provisions, that will be constructing or reconstructing after June 29, 1999, shall not construct or reconstruct unless:

**A.** the source has received a maximum achievable control technology (MACT) determination and approval from the department under this part; and

**B.** the MACT determination and approval has been incorporated into a permit under 20.2.72 NMAC - Construction Permits or 20.2.70 NMAC - Operating Permits.

[08/14/98; 20.2.82.9 NMAC - Rn, 20 NMAC 2.82.108, 06/23/00]

**20.2.82.10 MODIFICATIONS AND EXCEPTIONS:**

The following modifications or exceptions are made to the incorporated federal standards:

**A.** general provisions: amend 40 CFR Part 63, Subpart A - General Provisions, Section 63.2, Definitions, as follows: For the purposes of delegation of authority which the administrator of the United States environmental protection agency may, at the administrator's discretion, delegate to the secretary of the New Mexico environment department, "administrator" means the secretary or the secretary's authorized representative.

**B.** variances: the federal emission standards incorporated by this part shall not be subject to NMSA 1978, Section 74-2-8 (Variances).

**C.** constructed and reconstructed major sources: the effective date for incorporation of 40 CFR 63.40 - 63.44 of Subpart B under 20.2.82.8 NMAC shall be June 29, 1999.

[Rn, 20 NMAC 2.82.8, 08/14/98; A, 08/14/98; 20.2.82.10 NMAC - Rn, 20 NMAC 2.82.109, 06/23/00; A, 1/29/16]

**20.2.82.11 DOCUMENTS:**

Documents incorporated and cited in this part may be viewed at the New Mexico environment department, air quality bureau.

[08/14/98; 20.2.82.11 NMAC - Rn, 20 NMAC 2.82.110 06/23/00; A, 08/17/09; A, 1/29/16]

[As of April 2013, the air quality bureau is located at 525 Camino de los Marquez, Suite 1, Santa Fe NM, 87505]

## **PART 83: [RESERVED]**

## **PART 84: ACID RAIN PERMITS**

### **20.2.84.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.2.84.1 NMAC - 06/16/95; Rn, 20 NMAC 2.84.100 06/15/00]

### **20.2.84.2 SCOPE:**

All affected sources under the federal acid rain program which operate in the jurisdiction of this part.

[20.2.84.2 NMAC - 06/16/95; Rp 20 NMAC 2.84.101, 06/15/00]

### **20.2.84.3 STATUTORY AUTHORITY:**

The environmental improvement board "shall promulgate regulations and standards in...air quality management" (NMSA 1978, Section 74-1-8.A) and "regulations adopted by the environmental improvement board...shall...ensure that regulations and standards under...the federal act will not be violated." (NMSA 1978, Section 74-2-7.B).

[20.2.84.3 NMAC - 06/16/95; Rp 20 NMAC 2.84.102, 06/15/00]

### **20.2.84.4 DURATION:**

Permanent.

[20.2.84.4 NMAC - 06/16/95; Rn, 20 NMAC 2.84.103 06/15/00]

### **20.2.84.5 EFFECTIVE DATE:**

June 16, 1995, unless a later date is cited at the end of a section.

[20.2.84.5 NMAC - 06/16/95; Rn, 20 NMAC 2.84.104 & A, 06/15/00]

[The latest effective date of any section in this Part is June 15, 2007]

### **20.2.84.6 OBJECTIVE:**

The objective of this rule is to establish permitting required by 40 CFR Part 72, and to fulfill state requirements that accommodate the implementation of the federal acid rain program, which is designed to control acid deposition at the national level.

[20.2.84.6 NMAC - 06/16/95; Rn, 20 NMAC 2.84.105 & A, 06/15/00]

**20.2.84.7 DEFINITIONS:**

"affected source" has the meaning given to that term in the federal regulations promulgated under Title IV of the federal act, and includes all sources subject to Title IV of the federal Act.

[20.2.84.7 NMAC - 06/16/95; Rn, 20 NMAC 2.84.107 & A, 06/15/00]

**20.2.84.8 ADOPTION BY REFERENCE OF FEDERAL ACID RAIN PERMITTING REQUIREMENTS:**

Except as otherwise provided in 20.2.84.10 NMAC, the portions of the federal acid rain program promulgated by the United States environmental protection agency under 40 CFR Part 72 (including all portions of Parts 73, 74, 75, 77 and 78 referenced therein) and 76, and amended in the federal register through May 18, 2005, to implement Sections 407 (nitrogen oxides emission reduction program), 408 (permits and compliance plans) and 412 (monitoring, reporting and recordkeeping requirements) of the federal act, are hereby incorporated into this part.

[20.2.84.8 NMAC - N, 06/15/00; A, 06/15/07]

**20.2.84.9 DOCUMENTS:**

Documents incorporated and cited in this part may be viewed at the New Mexico environment department, air quality bureau, Harold Runnels building, 1190 St. Francis drive, Santa Fe, NM 87503.

[20.2.84.9 NMAC - 06/16/95; Rn, 20 NMAC 2.84.108 06/15/00]

**20.2.84.10 MODIFICATIONS AND EXCEPTIONS:**

The following modifications or exceptions are made to the incorporated federal rules:

**A.** for purposes of this part, the term "permitting authority" shall mean the department; and

**B.** requirements imposed on affected sources under the federal Act shall not be subject to NMSA 1978, Section 74-2-8 [Variances].

[20.2.84.10 NMAC - N, 06/15/00]

**PART 85: MERCURY EMISSION STANDARDS AND COMPLIANCE SCHEDULES FOR ELECTRIC GENERATING UNITS [REPEALED]**

[This part was repealed on May 5, 2014.]

## **PART 86: BEST AVAILABLE CONTROL TECHNOLOGY FOR MERCURY AT NEW POWER PLANTS**

### **20.2.86.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.86.1 NMAC - N, 02/10/08]

### **20.2.86.2 SCOPE:**

All persons who operate or intend to construct a coal-fired power plant within the jurisdiction of the environmental improvement board, except those coal-fired power plants constructed and generating electric power and energy before July 1, 2007.

[20.2.86.2 NMAC - N, 02/10/08]

### **20.2.86.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 et seq., including specifically, Section 74-2-5(C)(4).

[20.2.86.3 NMAC - N, 02/10/08]

### **20.2.86.4 DURATION:**

Permanent.

[20.2.86.4 NMAC - N, 02/10/08]

### **20.2.86.5 EFFECTIVE DATE:**

02/10/08 except where a later date is cited at the end of a section.

[20.2.86.5 NMAC - N, 02/10/08]

### **20.2.86.6 OBJECTIVE:**

The objective of this part is to require implementation of mercury emission control strategies for coal-fired power plants subject to this part.

[20.2.86.6 NMAC - N, 02/10/08]

## **20.2.86.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC (Definitions) and 20.2.74 NMAC (Permits - Prevention of Significant Deterioration (PSD)), as used in this part, the following definitions apply.

**A.** "Best available control technology (BACT)" means an emissions limitation as defined in 20.2.74 NMAC (Permits - Prevention of Significant Deterioration (PSD)).

**B.** "Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American society of testing and materials (ASTM) standard specification for classification of coals by rank D388-77, 90, 91, 95, 98a or 99 (Reapproved 2004).

**C.** "Coal-fired" means combusting any of coal or coal-derived fuel, alone or in combination with any amount of any other fuel.

**D.** "Control strategy" means equipment, processes or actions used to reduce air pollution.

**E.** "Control strategy selection report" means a report completed as a component of a 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC permit application that shall be submitted by the applicant to the department pursuant to 20.2.86.104 NMAC.

**F.** "Input fuel" means fuel used in a stationary coal-fired boiler or stationary coal-fired combustion turbine to generate electricity.

**G.** "Operator" means any person who operates, controls, or supervises a power plant or a facility that includes a power plant and shall include, but not be limited to, any holding company, utility system, or plant manager of such power plant.

**H.** "Owner" means any of the following persons:

(1) any holder of any portion of the legal or equitable title in a power plant;

(2) any holder of a leasehold interest in a power plant; or

(3) any purchaser of power from a power plant under a life-of-the-unit firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such power plant.

**I.** "Power plant" means one or more stationary coal-fired boiler or stationary coal-fired combustion turbine that is subject to this part pursuant to 20.2.86.100 NMAC.

**J.** "State" means:

(1) for purposes of referring to a governing entity, the state of New Mexico; or

(2) for purposes of referring to a geographic area, all geographic areas within the jurisdiction of the environmental improvement board.

K. "Submit" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation in person, by United States postal service, or by other means of dispatch or transmission and delivery. Compliance with any "submission" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

[20.2.86.7 NMAC - N, 02/10/08]

**20.2.86.8 DOCUMENTS:**

Documents incorporated and cited in this part may be viewed at the New Mexico environment department air quality bureau offices in Santa Fe.

[20.2.86.8 NMAC - N, 02/10/08]

[The current address for the New Mexico environment department air quality bureau is 1301 Siler Road, Building B, Santa Fe, NM 87507]

**20.2.86.9 SEVERABILITY:**

If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.86.9 NMAC - N, 02/10/08]

**20.2.86.10 CONSTRUCTION:**

This part shall be liberally construed to carry out its purpose.

[20.2.86.10 NMAC - N, 02/10/08]

**20.2.86.11 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.86.11 NMAC - N, 02/10/08]

**20.2.86.12 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.86.12 NMAC - N, 02/10/08]

**20.2.86.13 LIMITATION OF DEFENSE:**

The existence of a valid permit under this part shall not constitute a defense to a violation of any section of this part, except the requirement for obtaining a permit.

[20.2.86.13 NMAC - N, 02/10/08]

**20.2.86.14-20.2.86.99 [RESERVED]**

**20.2.86.100 APPLICABILITY:**

The part applies to all coal-fired power plants within the jurisdiction of the environmental improvement board, except for coal-fired power plants constructed and generating electric power and energy before July 1, 2007.

[20.2.86.100 NMAC - N, 02/10/08]

**20.2.86.101 MERCURY CONTROL STRATEGIES:**

Prior to and at all times when generating electric power, each coal-fired power plant shall implement a control strategy for mercury emissions that removes the greater of what is achievable with best available control technology or ninety percent removal of the mercury from the input fuel.

[20.2.86.101 NMAC - N, 02/10/08]

**20.2.86.102 EXEMPTIONS:**

Coal-fired power plants constructed and generating electric power before July 1, 2007 are not subject to this part.

[20.2.86.102 NMAC - N, 02/10/08]

**20.2.86.103 LIABILITY:**

Any provision of this part that applies to a coal-fired power plant shall also apply to the owners and operators of such coal-fired power plant.

[20.2.86.103 NMAC - N, 02/10/08]

**20.2.86.104 PERMIT REQUIREMENTS:**

**A.** As a component of a 20.2.72 NMAC, 20.2.74 NMAC or 20.2.79 NMAC permit application, the owner or operator of any power plant subject to this part shall submit to the department a control strategy selection report that analyzes control of mercury emissions. The control strategy selection report shall:

(1) analyze and indicate whether BACT or ninety percent removal of mercury from the input fuel results in greater mercury emission reductions;

(2) indicate, based on control efficiency, whether BACT or ninety percent removal of mercury from the input fuel is to be implemented at the power plant to reduce mercury emissions; and

(3) provide sufficient documentation (i.e., manufacturers guarantees, emissions calculations, etc.) to support the control strategy chosen under Paragraph (2) of this subsection.

**B.** The department shall make a final determination, based on control efficiency, whether BACT or ninety percent removal of mercury from the input fuel shall be implemented at the power plant to reduce mercury emissions. The control strategy that results in greater control efficiency shall be used by the department to determine an allowable mercury emission limit. The department shall include the allowable mercury emission limit in the resulting air quality permit as an enforceable permit condition. The department shall establish monitoring and recordkeeping requirements that ensure compliance with the permit condition.

[20.2.86.104 NMAC - N, 02/10/08]

#### **20.2.86.105 GENERAL REQUIREMENTS FOR MONITORING AND REPORTING:**

**A.** Any power plant subject to this part with a nameplate capacity of greater than 25 megawatts electric producing electricity for sale shall comply with all applicable requirements for monitoring and reporting pursuant to 20.2.85.111 NMAC and 40 CFR 75 subpart I.

**B.** Any power plant subject to this part with a nameplate capacity of less than or equal to 25 megawatts electric producing electricity for sale shall provide the department with an annual report. The annual report shall:

(1) include adequate information to demonstrate compliance with the mercury control limit set by the air quality permit issued by the department; and

(2) be submitted to the department annually within 30 calendar days of the anniversary of the date that the air quality permit was issued.

[20.2.86.105 NMAC - N, 02/10/08]

#### **20.2.86.106 INSPECTIONS AND INFORMATION REQUESTS:**

**A.** For the purpose of determining compliance with this part the department may inspect any power plant and may inspect and copy related records, including records documenting the effectiveness of the mercury control strategy.

**B.** For the purpose of determining compliance with this part, the department may require the owner or operator of a power plant to submit any documentation related to a power plant subject or potentially subject to this part, except that this subsection shall not be construed to require the creation of a new record.

[20.2.86.106 NMAC - N, 02/10/08]

#### **PART 87: GREENHOUSE GAS EMISSIONS REPORTING [REPEALED]**

[This part was repealed on January 1, 2011]

#### **PART 88: EMISSION STANDARDS FOR NEW MOTOR VEHICLES [REPEALED]**

[This part was repealed on December 19, 2013.]

#### **PART 89: QUALIFIED GENERATING FACILITY CERTIFICATION**

##### **20.2.89.1 ISSUING AGENCY:**

New Mexico Environment Department.

[20.2.89.1 NMAC - N, 12/20/08]

##### **20.2.89.2 SCOPE:**

All entities that have an interest in a qualified generating facility pursuant to NMSA 1978, Sections 7-9G-2, 7-2-18.25, and 7-2A-25.

[20.2.89.2 NMAC - N, 12/20/08; A, 09/26/09]

##### **20.2.89.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 7-9G-2, 7-2-18.25, and 7-2A-25, and NMSA 1978, Section 62-6-28.

[20.2.89.3 NMAC - N, 12/20/08; A, 09/26/09]

##### **20.2.89.4 DURATION:**

Permanent.

[20.2.89.4 NMAC - N, 12/20/08]

**20.2.89.5 EFFECTIVE DATE:**

December 20, 2008, except where a later date is cited at the end of a section.

[20.2.89.5 NMAC - N, 12/20/08]

[The latest effective date of any section in this part is 09/26/09.]

**20.2.89.6 OBJECTIVE:**

The objective of this part is to establish requirements for issuance of a certificate of eligibility for advanced energy tax credits pursuant to NMSA 1978, Sections 7-9G-2, 7-2-18.25, and 7-2A-25.

[20.2.89.6 NMAC - N, 12/20/08; A, 09/26/09]

**20.2.89.7 DEFINITIONS:**

In addition to the terms defined in 20.2.2 NMAC, the following definitions shall apply to terms used in this part.

**A. "Department"** means the environment department.

**B. "Entity"** means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality.

**C. "Geothermal electric generating facility"** means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part.

**D. "Interest in a qualified generating facility"** means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility.

**E. "Name-plate capacity"** means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement.

**F. "Qualified generating facility"** means a facility for which construction is anticipated to begin not later than December 31, 2015 and is:

(1) a solar thermal electric generating facility that begins or began construction on or after July 1, 2007 and that may include an associated renewable energy storage facility;

(2) a recycled energy project if that facility begins or began construction on or after July 1, 2007;

(3) a solar photovoltaic electric generating facility that begins or began construction on or after July 1, 2009 and that may include an associated renewable energy storage facility; or

(4) a geothermal electric generating facility that begins or began construction on or after July 1, 2009.

**G. "Recycled energy"** means energy produced by a generation unit with a name-plate capacity of not more than 15 megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel.

**H. "Small business"** means a business entity, including its affiliates, that is independently owned and operated and employs fifty or fewer full-time employees. In addition, "small business" does not include any source which may emit more than fifty (50) tons per year of any regulated air contaminant for which there is a national or New Mexico ambient air quality standard, or seventy-five (75) tons per year of all regulated air contaminants for which there are national or New Mexico ambient air quality standards; and any major source for hazardous air pollutants under 20.2.70 NMAC.

**I. "Solar photovoltaic electric generating facility"** means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity.

**J. "Solar thermal electric generating facility"** means an electric generating facility with a name-plate capacity of one megawatt or more that utilizes solar energy conversion technologies that convert solar energy to electricity by heating a working fluid to power a turbine that drives a generator, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part. Examples of these systems include, but are not limited to, central receiver systems, parabolic dish, and solar trough.

[20.2.89.7 NMAC - N, 12/20/08; A, 09/26/09]

**20.2.89.8 SEVERABILITY:**

If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.89.8 NMAC - N, 12/20/08]

**20.2.89.9 CONSTRUCTION:**

This part shall be liberally construed to carry out its purpose.

[20.2.89.9 NMAC - N, 12/20/08]

**20.2.89.10 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.89.10 NMAC - N, 12/20/08]

**20.2.89.11 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.89.11 NMAC - N, 12/20/08]

**20.2.89.12-20.2.89.199 [RESERVED]**

**20.2.89.200 APPLICABILITY:**

Any entity that has an interest in a qualified generating facility located in New Mexico may apply for a certificate of eligibility under this part. Only one certificate shall be granted to a qualified generating facility. If changes to the facility are planned or made that could result in the facility no longer meeting certification requirements as a qualified generating facility, the entity that has an interest in a qualified generating facility shall apply to the department for a reevaluation of the certification under this part. A complete application including fees pursuant to section 20.2.89.400 NMAC shall be submitted with that application for reevaluation.

[20.2.89.200 NMAC - N, 12/20/08; A, 09/26/09]

**20.2.89.201 APPLICATION REQUIREMENTS:**

**A.** Entities that have an interest in a qualified generating facility may submit an application for a certificate of eligibility for an advanced energy tax credit.

**B.** All applications shall include all of the following items and information.

(1) Be filled out on the form(s) furnished by the department.

(2) State the applicant's name and address.

(3) Include a topographical map, at least as detailed as the 7.5 minute topographic quadrangle map published by the United States geological survey, showing the exact location and geographical coordinates of the proposed construction or installation of the facility or project.

(4) Include a full description of the process, including a process flow sheet, or, if the department so requires, layout and assembly drawings.

(5) All information relied upon by the applicant to support its position that the facility meets the criteria for a qualified generating facility.

(6) Contain other information requested by the department to determine whether the facility meets the criteria for a qualified generating facility.

(7) Be notarized and signed under oath or affirmation by an entity that has an interest in the facility certifying, to the best of his or her knowledge, the truth of all information in the application and addenda, if any.

(8) Contain payment of any fees which are specified in 20.2.89.400 NMAC, payable at the time the application is submitted.

[20.2.89.201 NMAC - N, 12/20/08; A, 09/26/09]

#### **20.2.89.202 CERTIFICATION PROCEDURES:**

**A.** The department shall either grant or deny the certification within 180 days after the department receives the application.

**B.** The department shall grant or deny the certification based on information contained in the department's administrative record. The administrative record shall consist of the application, any other evidence submitted by the applicant, and any other evidence considered by the department. The applicant has the burden of demonstrating that a certificate should be issued.

[20.2.89.202 NMAC - N, 12/20/08]

#### **20.2.89.203 CANCELLATION OF CERTIFICATION:**

The department shall cancel a previously issued certification and notify the department of taxation and revenue if the department finds that the plans for the facility are changed, or the facility is changed, so that the facility no longer meets the requirements of this part as a qualified generating facility.

[20.2.89.203 NMAC - N, 12/20/08; A, 09/26/09]

**20.2.89.204-20.2.89.399 [RESERVED]**

**20.2.89.400 FEES:**

**A.** Fees for the review of applications for certification shall be \$5,000 per application.

**B.** For sources that satisfy the definition of "small business" as defined in Subsection F of 20.2.89.7 NMAC, the permit fee determined by Subsection A of this section shall be divided by two.

**C.** Fees collected pursuant to this part shall be included with the application for certification. The department shall refuse to accept any application without inclusion of the fee.

**D.** All fees paid pursuant to this part shall be remitted in the form of a corporate or certified check or money order made payable to the environment department at the address specified on the application form. Upon receipt of the check, it shall be deposited in the "state air quality permit fund" established by NMSA 1978, 74-2-15 (1992).

**E.** All fees shall be paid in U.S. dollars.

**F.** Beginning on January 1, 2010, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act.

[20.2.89.400 NMAC - N, 12/20/08; A, 09/26/09]

**PART 90: FIELD CITATIONS**

**20.2.90.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.90.1 NMAC - N, 12/12/08]

**20.2.90.2 SCOPE.**

This part applies to the field citation program for minor violations of the Air Quality Control Act, NMSA 1978, Sections 74-2-1 to 74-2-17, the air quality regulations, 20.2 NMAC, and any permit issued under the act or regulations.

[20.2.90.2 NMAC - N, 12/12/08]

### **20.2.90.3 STATUTORY AUTHORITY.**

Environmental Improvement Act, NMSA 1978, Section 74-1-8(A)(4), and Air Quality Control Act, NMSA 1978, Sections 74-2-1 to 74-2-17, including specifically NMSA 1978, Section 74-2-12.

[20.2.90.3 NMAC - N, 12/12/08]

### **20.2.90.4 DURATION:**

Permanent.

[20.2.90.4 NMAC - N, 12/12/08]

### **20.2.90.5 EFFECTIVE DATE:**

12/12/2008, except where a later date is cited at the end of a section.

[20.2.90.5 NMAC - N, 12/12/08]

### **20.2.90.6 OBJECTIVE:**

The objective of this part is to implement the provisions of NMSA 1978, Section 74-2-12 of the Air Quality Control Act establishing a field citation program for minor violations of the act, air quality regulations and permits issued under the act and regulations.

[20.2.90.6 NMAC - N, 12/12/08]

### **20.2.90.7 DEFINITIONS:**

As used in this part, the following definitions apply. Terms defined in the act or regulations and not defined in this part are used consistent with the meanings provided in the act or regulations.

**A. "Act"** means the Air Quality Control Act, NMSA 1978, Sections 74-2-1 to 74-2-17.

**B. "Air quality regulations"** or "regulations" mean the air quality (statewide) regulations compiled at 20.2 NMAC.

C. "**Department**" means the New Mexico environment department.

D. "**Division**" means the environmental protection division of the department.

E. "**Field citation**" means a written document issued by the division alleging a minor violation that sets forth the nature of the alleged minor violation and, if applicable, an assessment of a penalty.

F. "**Hearing officer**" means the individual appointed by the secretary to conduct a proceeding under this part.

G. "**Minor violation**" means an failure of a person to comply with any requirement or condition of any applicable provision of the Air Quality Control Act, air quality regulations, or a permit issued under the act or regulations that, with the exception of minor violations of 20.2.60 NMAC, Open Burning, and 20.2.65 NMAC, Smoke Management, meets all of the following criteria:

(1) does not result in or contribute to, an increase in emissions of any air contaminant;

(2) does not cause an increase in emissions of any toxic air contaminant in excess of any emission standard or limitation or other state or federal requirement that is applicable to that toxic air contaminant;

(3) does not cause or contribute to the violation of any state or federal ambient air quality standard; and

(4) does not hinder the ability of the department to determine compliance with any other applicable air quality state or federal law, rule, regulation, information request, order, variance, permit, or other requirement.

H. "**Party**" means the appellant and the division.

I. "**Person**" means an individual, entity, source, facility, business or company.

J. "**Secretary**" means the secretary of the department, or any person who assumes the role of secretary for purposes of this part in the event of the secretary's disqualification, recusal or delegation of authority to another person.

[20.2.90.7 NMAC - N, 12/12/08]

#### **20.2.90.8 CONSTRUCTION:**

This part shall be liberally construed to carry out its purpose.

[20.2.90.8 NMAC - N, 12/12/08]

#### **20.2.90.9 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.90.9 NMAC - N, 12/12/08]

#### **20.2.90.10 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local laws.

[20.2.90.10 NMAC - N, 12/12/08]

#### **20.2.90.11-20.2.90.107 [RESERVED]**

#### **20.2.90.108 GENERAL PROVISIONS - COMPUTATION OF TIME:**

In computing any period of time prescribed or allowed by this part, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal state holiday, in which event the time is extended until the end of the next day, which is not a Saturday, Sunday or legal state holiday. Whenever a party must act within a prescribed period after service upon him, and service is by mail, three days is added to the prescribed period. The three-day extension does not apply to any deadline under the Air Quality Control Act.

[20.2.90.108 NMAC - N, 12/12/08]

#### **20.2.90.109 REQUIREMENTS:**

For the purposes of this part, the following requirements shall apply to the issuance of, and response to, a field citation.

**A.** A person who is issued a field citation pursuant to this part shall have the period specified from the date of service of the field citation in which to achieve compliance. Within five (5) working days of achieving compliance, the person who received the field citation shall sign the citation, stating that the person has complied with the citation and return it to the department address provided in the citation. A false statement that compliance has been achieved shall constitute a violation of this part.

**B.** The department may require a person subject to a field citation to submit reasonable and necessary information to support a claim of compliance.

**C.** Nothing in this part shall be construed as preventing the re-inspection of a source or facility to ensure that the minor violation(s) cited in the field citation has been corrected.

**D.** Notwithstanding any other provision of this part, if a person fails to comply with a field citation within the prescribed period, or if the department determines that the circumstances surrounding a particular minor violation are such that immediate enforcement is warranted to prevent harm to any person(s) or to the environment, the department may take any enforcement action authorized by law.

**E.** If a person wishes to request a hearing on the alleged minor violation(s) cited or penalty assessed in the field citation, the person may file a hearing request as prescribed in 20.2.90.110 NMAC.

**F.** If a person does not file a hearing request, that person shall pay the penalty assessed in the field citation within thirty (30) calendar days of service of the field citation.

**G.** Payment of a penalty assessed in a field citation issued pursuant to this part shall not be a defense to further enforcement by the department to correct a violation cited in the field citation or to assess the maximum statutory penalty pursuant to the Air Quality Control Act if the violation continues.

**H.** Any person who fails to comply with the compliance requirements of a field citation by the date specified or who fails to pay a penalty assessed within thirty (30) calendar days of service of the field citation may be subject to further enforcement action pursuant to the Air Quality Control Act.

**I.** The department may issue a warning, without penalty, as a field citation for the first offense.

[20.2.90.109 NMAC - N, 12/12/08]

#### **20.2.90.110 FIELD CITATIONS: HEARING REQUESTS:**

**A.** Any person who receives a field citation from the department may request a hearing before the department. The request must be made in writing to the secretary within fifteen (15) working days after the field citation has been issued, with completed assessment of penalty, if any, and shall include a copy of the field citation. Unless a hearing request is received by the secretary within fifteen (15) working days after the field citation is issued, the decision of the department shall be final.

**B.** If a hearing request is received within the fifteen (15) working days time limit, the secretary shall hold a hearing within fifteen (15) working days after receipt of the request. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail.

**C.** The department shall present the field citation and supporting evidence first, followed by the appellant who has the burden of proving no violation had occurred and shall present any evidence to support the request for hearing.

**D.** Hearings shall be held at a place designated by the secretary unless other mutually agreed upon arrangements are made. The secretary may designate a hearing officer to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

**E.** Motions. All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, state the relief sought, and state whether it is opposed or unopposed. Each motion may be accompanied by an affidavit, certificate, or other evidence relied upon and shall be served upon the secretary or hearing officer and the other parties. An unopposed motion shall state that concurrence of all other parties was obtained. Any party upon whom an opposed motion is served shall have an opportunity to file a response. To expedite the proceedings, no replies shall be allowed except upon leave from the hearing officer.

**F.** Discovery. No discovery shall be allowed, including requests for admission, interrogatories, and depositions.

**G.** Upon request, the hearing shall be recorded. The person who requests the recording shall pay recording costs.

**H.** In field citation hearings, the rules governing civil procedure and evidence in district court do not apply. Hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary shall decide and announce if the hearing record will remain open and for how long and for what reason it will be left open.

**I.** Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within fifteen (15) working days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice. Appeals from the secretary's final decision are by NMSA 1978, Section 74-2-9.

**J.** Pursuant to 20.1.5.2 NMAC, these hearing procedures supersede the procedures provided in 20.1.5 NMAC.

[20.2.90.110 NMAC - N, 12/12/08]

### **20.2.90.111 PENALTIES:**

First time violators of the field citation rule who demonstrate cooperation in compliance may be fined up to one hundred dollars (\$100.00) per violation. First time violators of the field citation rule who fail to demonstrate cooperation in compliance may be fined up to two hundred dollars (\$200.00) per violation. Multiple time violators of the field citation rule who demonstrate cooperation in compliance may be fined up to five hundred dollars (\$500.00) per violation. Multiple time violators of the field citation rule who fail to demonstrate cooperation in compliance may be fined up to one thousand dollars (\$1,000.00) per violation. Provided, however, that penalties assessed in a field citation shall not exceed one thousand dollars (\$1,000.00) per day per violation or a maximum of fifteen thousand dollars (\$15,000.00). In determining the amount of a penalty to be assessed pursuant to this section, the person issuing the field citation shall take into account the seriousness of the violation, any good-faith effort to comply with the applicable requirements and other relevant factors.

[20.2.90.111 NMAC - N, 12/12/08]

### **20.2.90.112 SERVICE OF FIELD CITATION:**

Service of a field citation shall be accomplished by any of the following methods:

**A.** personal service by a department representative who shall obtain the signature of a person who is an owner, operator, employee, or representative of the source, facility or property being inspected at the time the field citation is issued, with a copy of the signed citation sent by certified first class mail to the facility's operations headquarters when appropriate; if such person refuses or fails to sign the field citation, the failure or refusal to sign shall not affect the validity of service nor of the citation or subsequent proceedings; or

**B.** service by certified first class mail.

[20.2.90.112 NMAC - N, 12/12/08]

## **PART 91 NEW MOTOR VEHICLE EMISSION STANDARDS**

### **20.2.91.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.91.1 NMAC - Rp, 20.2.91.1 NMAC, 12/31/2023]

### **20.2.91.2 SCOPE:**

All manufacturers, dealers, rental car agencies, the United States, state and local governments, or other persons who deliver for sale, offer for sale, sell, import, deliver,

purchase, rent, lease, acquire, receive, or register model year 2027 and subsequent model year passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles or motor vehicle engines, heavy-duty vehicles, heavy-duty engines or motor vehicle engines. All regulated entities subject to compliance with 20.2.91.120 NMAC (Large Entity Reporting Requirement).

[20.2.91.2 NMAC - Rp, 20.2.91.2 NMAC, 12/31/2023]

**20.2.91.3 STATUTORY AUTHORITY:**

The Environmental Improvement Act, Paragraph (4) of Subsection A of Section 74-1-8 NMSA 1978, and the Air Quality Control Act, Sections 74-2-1 through 74-2-17 NMSA 1978.

[20.2.91.3 NMAC - Rp, 20.2.91.3 NMAC, 12/31/2023]

**20.2.91.4 DURATION:**

Permanent.

[20.2.91.4 NMAC - Rp, 20.2.91.4 NMAC, 12/31/2023]

**20.2.91.5 EFFECTIVE DATE:**

December 31, 2023, except where a later date is cited at the end of a section.

[20.2.91.5 NMAC - Rp, 20.2.91.5 NMAC, 12/31/2023]

**20.2.91.6 OBJECTIVE:**

To adopt and implement the California vehicle emission standards and requirements statewide pursuant to Section 177 of the federal Clean Air Act.

[20.2.91.6 NMAC - Rp, 20.2.91.6 NMAC, 12/31/2023]

**20.2.91.7 DEFINITIONS:**

The definitions in the Air Quality Control Act, Section 74-2-2 NMSA 1978 shall apply in 20.2.91 NMAC. If a term is defined in Section 74-2-2 NMSA 1978 and 20.2.91 NMAC, the definition in 20.2.91 NMAC shall apply. The definitions in 20.2.2.7 NMAC shall not apply in 20.2.91 NMAC. When a term in a provision of the California code of regulations (CCR), Title 13, Title 17, or the California health and safety code (CHSC) incorporated by reference is given a different meaning than the term defined for general purposes in 20.2.91 NMAC, the specific CCR or CHSC section's meaning and application of the term shall control, except that all references in the incorporated sections of the CCR and CHSC shall have a different meaning unique to New Mexico whenever appropriate depending on context and the entity's authority, as follows: "California" shall, whenever

appropriate, mean "New Mexico"; the "California Air Resources Board," "CARB," "state board", or "board" shall mean the "environmental improvement board" or "department," depending on the context; and "Executive Officer" shall mean the "secretary," provided, however, the terms in the CCR and CHSC definitions incorporated by reference in 20.2.91.7 NMAC (Definitions) shall not be changed. For registration of a motor vehicle, when a term defined herein is also defined in the Motor Vehicle Code, Articles 1 through 8 of Chapter 66 NMSA 1978, and is given a different meaning than the term defined for general purposes in 20.2.91 NMAC, the Motor Vehicle Code meaning, and application of the term shall control.

**A. "California Air Resources Board" or "CARB"** means the same in 20.2.91 NMAC as it is defined in CHSC, Section 39003.

**B. "Certification"** means the same in 20.2.91 NMAC as it is defined in CHSC, Section 39018.

**C. "Dealer"** means the same in 20.2.91 NMAC as it is defined in Subsection B of Section 57-16-3 NMSA 1978.

**D. "Emission standards"** means the same in 20.2.91 NMAC as it is defined in CHSC, Section 39027, which New Mexico is authorized to adopt pursuant to 42 U.S.C. § 7507.

**E. "Emergency vehicle"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 1961.3(f)(10).

**F. "Environmental improvement board"** means the same in 20.2.91 NMAC as it is defined in Subsection A of Section 74-1-3 NMSA 1978.

**G. "Fleet"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 2012(d).

**H. "Fleet owner"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 2012(d).

**I. "Greenhouse gas"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 1961.3(18).

**J. "Heavy-duty engine"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 1900(b)(5) or CCR, Title 17, Section 95662, as applicable.

**K. "Heavy-duty vehicle"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 1900(b)(6) or CCR, Title 17, Section 95662, as applicable.

**L. "Light-duty truck"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 1900(b)(11).

**M. "Manufacturer"** means the same in 20.2.91 NMAC as it is defined in Subsection J of Section 57-16-3 NMSA 1978.

**N. "Medium-duty"** means the same in 20.2.91 NMAC as it is defined in CHSC, Section 39037.5.

**O. "Medium-duty passenger vehicle"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 1900(b)(12).

**P. "Medium-duty vehicle"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 1900(b)(13) or CCR, Title 17, Section 95662, as applicable.

**Q. "Methane"** means the chemical compound containing one atom of carbon and four atoms of hydrogen.

**R. "Model year"** means the same in 20.2.91 NMAC as it is defined in CHSC, Section 39038.

**S. "Motor vehicle"** means the same in 20.2.91 NMAC as it is defined in CHSC, Section 39039.

**T. "Motor vehicle engine"** means the same in 20.2.91 NMAC as it is defined in CHSC, Section 39042.5.

**U. "Non-methane organic gas"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 1961.2.

**V. "Particulate matter"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 1961.2.

**W. "Passenger car"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 1900(b)(17).

**X. "Passenger vehicle"** means the same in 20.2.91 NMAC as it is defined in CHSC, Section 39046.

**Y. "Plug-in hybrid electric vehicle" or "PHEV"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 1962.4 and CCR, Title 13, Section 1963, as applicable.

**Z. "Recall"** means the same in 20.2.91 NMAC as it is defined in CCR, Title 13, Section 1900(b)(19).

**AA. "Register"** means to register a motor vehicle with the New Mexico motor vehicle division.

**BB.** "Sale" or "sell" means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate purchaser.

**CC.** "Truck" means the same in 20.2.91 NMAC as it is defined in CHSC, Section 39054.

**DD.** "Ultimate purchaser" means the same in 20.2.91 NMAC as it is defined in CHSC, Section 39055.5.

**EE.** "Vehicle" means the same in 20.2.91 NMAC as it is defined in CHSC, Section 39059.

**FF.** "Zero-emission vehicle" or "ZEV" means the same in 20.2.91 NMAC as it is incorporated in CCR, Title 13, Sections 1962.2(a) and 1962.4(b).

**GG.** "ZEV value" means a unit, expressed numerically, demonstrating delivery of qualified zero-emission vehicles or other vehicle allowances for the annual ZEV requirement.

[20.2.91.7 NMAC - Rp, 20.2.91.7 NMAC, 12/31/2023]

#### **20.2.91.8 DOCUMENTS:**

Documents incorporated and cited in 20.2.91 NMAC may be viewed on the department's website and at the New Mexico environment department climate change bureau.

[20.2.91.8 NMAC - Rp, 20.2.91.8 NMAC, 12/31/2023]

[As of July 2023, the Climate Change Bureau is located at 525 Camino de los Marquez, Suite 1, Santa Fe, New Mexico 87505.]

#### **20.2.91.9 SEVERABILITY:**

If any provision of 20.2.91 NMAC, or the application of such provision to any person or circumstance, is held invalid, the remainder of 20.2.91 NMAC, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.91.9 NMAC – Rp 20.2.91.9 NMAC, 12/31/2023]

#### **20.2.91.10 CONSTRUCTION:**

20.2.91 NMAC shall be liberally construed to carry out its purpose.

[20.2.91.10 NMAC – Rp 20.2.91.10, 12/31/2023]

#### **20.2.91.11 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of 20.2.91 NMAC shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.91.11 NMAC – Rp 20.2.91.11, 12/31/2023]

#### **20.2.91.12 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with 20.2.91 NMAC does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.2.91.12 NMAC - Rp 20.2.91.12, 12/31/2023]

#### **20.2.91.13 LIMITATION OF DEFENSE:**

The existence of a valid registration or certification under 20.2.91 NMAC shall not constitute a defense to a violation of 20.2.91 NMAC, except the requirement for obtaining a registration or certification.

[20.2.91.13 NMAC - Rp 20.2.91.13, 12/31/2023]

#### **20.2.91.14 to 20.2.91.100 [RESERVED]**

[20.2.91.100 NMAC - Repealed, 12/31/2023]

#### **20.2.91.101 GENERAL REQUIREMENTS:**

**A.** Except as otherwise required, 20.2.91 NMAC shall apply to new motor vehicles, including passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles, where "new" means model years 2027 through 2032 with 7,500 miles or fewer on the odometer, and for dealers the mileage at the time of sale as determined by the odometer statement when the dealer acquired the motor vehicle; and medium-duty passenger vehicles, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines, where "new" means model years 2027 and subsequent with 7,500 miles or fewer on the odometer, and for dealers the mileage at the time of sale as determined by the odometer statement when the dealer acquired the motor vehicle.

**B.** A manufacturer, dealer, rental car agency, the United States, state or local government, or other person shall not deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, heavy-duty vehicles, heavy-duty engines, or motor vehicle engines unless such motor vehicle or motor vehicle engine is certified to the California vehicle emission standards, as incorporated by reference pursuant to 20.2.91 NMAC.

**C.** Each manufacturer shall comply with the motor vehicle emission standards, zero-emission motor vehicle requirements, reporting, warranty, labeling, recall campaign, and other applicable requirements contained in 20.2.91 NMAC.

**D.** Each manufacturer, dealer, rental car agency, the United States, state and local government, and other person shall comply with the department's inspection and information requests issued pursuant to 20.2.91.115 NMAC (Inspections and Information Requests).

**E.** Each person registering a motor vehicle in New Mexico shall comply with the registration requirements in 20.2.91 NMAC.

**F.** The requirements in 20.2.91 NMAC shall not be applicable if exempt, as provided in 20.2.91.103 NMAC (Exemptions).

**G.** The requirements in 20.2.91 NMAC shall be in compliance with the Motor Vehicle Dealers Franchising Act, Sections 57-16-1 through 57-16-16 NMSA 1978.

**H.** Except as provided in 20.2.91.120 (Large Entity Reporting Requirement), all regulated entities shall submit information specified in CCR, Title 13, Sections 2012.1 and 2012.2 to the secretary.

**I.** In 20.2.91 NMAC, New Mexico is inclusive of the city of Albuquerque and Bernalillo county, which allows for compliance on a statewide basis.

[20.2.91.101 NMAC - Rp 20.2.91.101, 12/31/2023]

#### **20.2.91.102 INCORPORATION BY REFERENCE:**

**A.** Sections of the CCR and the CHSC incorporated by reference herein include the regulations as they existed on the effective date in 20.2.91.5 NMAC (Effective Date); incorporated sections of the CCR and the CHSC do not incorporate a later adoption or amendment of the regulation.

**B.** Each manufacturer of a passenger car, light-duty truck, medium-duty passenger vehicle, medium-duty vehicle, heavy-duty vehicle, heavy-duty engine, or motor vehicle engine shall comply with each applicable standard in Title 13 and Title 17 of the CCR as incorporated by reference herein, as applicable.

**C.** The CCR sections from Title 13 and Title 17 unless otherwise noted incorporated by reference include:

(1) Title 13, Section 1900: Definitions. As amended, 11/30/2022.

(2) Title 13, Section 1956.8: Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy-Duty Engines and Vehicles, 2021 and

Subsequent Zero-Emission Powertrains, and 2022 and Subsequent Model Heavy-Duty Hybrid Powertrains (medium-duty vehicle greenhouse gas emission standards at 1956.8(h) only). As amended, 11/30/2022.

(3) Title 13, Section 1961.2: Exhaust Emission Standards and Test Procedures - 2015 through 2025 Model Year Passenger Cars, and Light-Duty Trucks, and 2015 through 2028 Model Year Medium-Duty Vehicles. As amended, 11/30/2022.

(4) Title 13, Section 1961.3: Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles. As amended, 11/30/2022.

(5) Title 13, Section 1961.4: Exhaust Emission Standards and Test Procedures — 2026 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as amended 11/30/2022, except that subsection 1961.4(g)(1) is not adopted by reference.

(6) Title 13, Section 1962.2: Zero-Emission Vehicle Standards for 2018 through 2025 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles. As amended, 11/30/2022.

(7) Title 13, Section 1962.3: Electric Vehicle Charging Requirements. As amended, 11/30/2022.

(8) Title 13, Section 1962.4: Zero-Emission Vehicle Requirements for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks, as amended 11/30/2022, except that subsection 1962.4(c)(1)(B) model years "2033", "2034" and "2035 and subsequent" with corresponding percentage requirements and subsection 1962.4(e)(2)(A)(3) are not adopted by reference.

(9) Title 13, Section 1962.5: Data Standardization Requirements for 2026 and Subsequent Model Year Light-Duty Zero Emission Vehicles and Plug-in Hybrid Electric Vehicles. As amended 11/30/2022.

(10) Title 13, Section 1962.6: Battery Labeling Requirements. As amended 11/30/2022.

(11) Title 13, Section 1962.7: In-Use Compliance, Corrective Action and Recall Protocols for 2026 and Subsequent Model Year Zero-Emission and Plug-in Hybrid Electric Passenger Cars and Light-Duty Trucks. As amended, 11/30/2022.

(12) Title 13, Section 1962.8: Warranty Requirements for Zero-Emission and Batteries in Plug-in Hybrid Electric 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks. As amended 11/30/2022.

(13) Title 13, Section 1963: Advanced Clean Trucks Purpose, Applicability, Definitions, and General Requirements. As amended, 3/15/2021.

(14) Title 13, Section 1963.1: Advanced Clean Trucks Deficits. As amended, 3/15/2021.

(15) Title 13, Section 1963.2: Advanced Clean Trucks Credit Generation, Banking, and Trading. As amended, 3/15/2021.

(16) Title 13, Section 1963.3: Advanced Clean Trucks Compliance Determination. As amended, 3/15/2021.

(17) Title 13, Section 1963.4: Advanced Clean Trucks Reporting and Recordkeeping. As amended, 3/15/2021.

(18) Title 13, Section 1963.5(a)(1)-(3): Advanced Clean Trucks Enforcement. As amended, 3/15/2021.

(19) Title 13, Section 1964: Special Test Procedures for Certification and Compliance – New Modifier Certified Motor Vehicles. As amended, 3/15/2021.

(20) Title 13, Section 1965: Emission Control, Smog Index, and Environmental Performance Labels - 1979 and Subsequent Model-Year Motor Vehicles. As amended, 11/30/2022.

(21) Title 13, Section 1968.2: Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines. As amended, 11/30/2022.

(22) Title 13, Section 1969: Motor Vehicle Service Information - 1994 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Engines and Vehicles, and 2007 and Subsequent Model Heavy-Duty Engines. As amended, 11/30/2022.

(23) Title 13, Section 1971.1: On-Board Diagnostic System Requirements -- 2010 and Subsequent Model-Year Heavy-Duty Engines. As amended, 3/15/2021.

(24) Title 13, Section 1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions. As amended, 11/30/2022.

(25) Title 13, Section 1978: Standards and Test Procedures for Vehicle Refueling Emissions. As amended, 11/30/2022.

(26) Title 13, Section 2012: Advanced Clean Trucks, Large Entity Reporting Requirement. As amended, 3/15/2021.

(27) Title 13, Section 2012.1: General Entity Information Reporting. As amended, 3/15/2021.

(28) Title 13, Section 2012.2: Vehicle Usage by Facility Reporting. As amended, 3/15/2021.

(29) Title 13, Section 2035: Purpose, Applicability, and Definitions. As amended, 10/1/2019.

(30) Title 13, Section 2036: Defects Warranty Requirements for 1979 Through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles; and 2020 and Subsequent Model Year Trailers. As amended, 12/22/2021.

(31) Title 13, Section 2037: Defects Warranty Requirements for 1990 and Subsequent Model Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, and Motor Vehicle Engines Used in Such Vehicles. As amended, 11/30/2022.

(32) Title 13, Section 2038: Performance Warranty Requirements for 1990 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and Motor Vehicle Engines Used in Such Vehicles. As amended, 11/30/2022.

(33) Title 13, Section 2039: Emission Control System Warranty Statement. As amended, 12/26/1990.

(34) Title 13, Section 2040: Vehicle Owner Obligations. As amended, 10/1/2019.

(35) Title 13, Section 2041: Mediation; Finding of Warrantable Condition. As amended, 12/26/1990.

(36) Title 13, Section 2046: Defective Catalyst. As amended, 2/15/1979.

(37) Title 13, Section 2047: Certification Procedures for User Modifier-certified Motor Vehicles. As amended, 1/8/1988.

(38) Title 13, Section 2062: Assembly-line Test Procedures - 1998 and Subsequent Model Years. As amended, 8/7/2012.

(39) Title 13, Section 2109: New Vehicle Recall Provisions. As amended, 12/30/1983.

(40) Title 13, Section 2111: Applicability. As amended, 12/22/2021.

(41) Title 13, Section 2112: Definitions. As amended, 11/30/2022.

(42) Title 13, Section 2113: Initiation and Approval of Voluntary and Influenced Emission-Related Recalls. As amended, 12/22/2021.

(43) Title 13, Section 2114: Voluntary and Influenced Recall Plans. As amended, 12/22/2021.

(44) Title 13, Section 2115: Eligibility for Repair. As amended, 12/22/2021.

(45) Title 13, Section 2116: Repair Label. As amended, 12/22/2021.

(46) Title 13, Section 2117: Proof of Correction Certificate. As amended, 12/22/2021.

(47) Title 13, Section 2118: Notification. As amended, 12/22/2021.

(48) Title 13, Section 2119: Recordkeeping and Reporting Requirements. As amended, 12/22/2021.

(49) Title 13, Section 2120: Other Requirements Not Waived. As amended, 1/26/1995.

(50) Title 13, Section 2121: Penalties. As amended, 12/22/2021.

(51) Title 13, Section 2122: General Provisions. As amended, 12/8/2010.

(52) Title 13, Section 2123: Initiation and Notification of Ordered Emission-Related Recalls. As amended, 12/22/2021.

(53) Title 13, Section 2124: Availability of Public Hearing. As amended, 1/26/1995.

(54) Title 13, Section 2125: Ordered Recall Plan. As amended, 12/22/2021.

(55) Title 13, Section 2126: Approval and Implementation of Recall Plan. As amended, 12/22/2021.

(56) Title 13, Section 2127: Notification of Owners. As amended, 12/22/2021.

(57) Title 13, Section 2128: Repair Label. As amended, 12/22/2021.

(58) Title 13, Section 2129: Proof of Correction Certificate. As amended, 12/22/2021.

(59) Title 13, Section 2130: Capture Rates and Alternative Measures. As amended, 12/22/2021.

- (60) Title 13, Section 2131: Preliminary Tests. As amended, 12/22/2021.
- (61) Title 13, Section 2132: Communication with Repair Personnel. As amended, 1/26/1995.
- (62) Title 13, Section 2133: Recordkeeping and Reporting Requirements. As amended, 12/22/2021.
- (63) Title 13, Section 2135: Extension of Time. As amended, 1/26/1995.
- (64) Title 13, Section 2137: Vehicle, Engine, and Trailer Selection. As amended, 11/30/2022.
- (65) Title 13, Section 2139: Testing. As amended, 11/30/2022.
- (66) Title 13, Section 2140: Notification and Use of Test Results. As amended, 11/30/2022.
- (67) Title 13, Section 2141: General Provisions. As amended, 12/22/2021.
- (68) Title 13, Section 2142: Alternative Procedures. As amended, 12/22/2021.
- (69) Title 13, Section 2143: Failure Levels Triggering Recall and Corrective Action. As amended, 12/22/2021.
- (70) Title 13, Section 2144: Emission Warranty Information Report. As amended, 12/22/2021.
- (71) Title 13, Section 2145: Field Information Report. As amended, 12/22/2021.
- (72) Title 13, Section 2146: Emissions Information Report. As amended, 12/22/2021.
- (73) Title 13, Section 2147: Demonstration of Compliance with Emission Standards. As amended, 11/30/2022.
- (74) Title 13, Section 2148: Evaluation of Need for Recall. As amended, 12/22/2021.
- (75) Title 13, Section 2149: Notification and Subsequent Action. As amended, 12/22/2021.
- (76) Title 13, Section 2166: General Provisions. As amended, 12/22/2021.
- (77) Title 13, Section 2166.1: Definitions As amended, 12/22/2021.

(78) Title 13, Section 2167: Required Recall and Corrective Action for Failures of Exhaust After- Treatment Devices, on-Board Computers or Systems, Urea Dosers, Hydrocarbon Injectors, Exhaust Gas Recirculation Valves, Exhaust Gas Recirculation Coolers, Turbochargers, Fuel Injectors. As amended, 12/22/2021.

(79) Title 13, Section 2168: Required Corrective Action and Recall for Emission-Related Component Failures. As amended, 12/22/2021.

(80) Title 13, Section 2169: Required Recall or Corrective Action Plan. As amended, 12/22/2021.

(81) Title 13, Section 2169.1: Approval and Implementation of Corrective Action Plan. As amended, 12/22/2021.

(82) Title 13, Section 2169.2: Notification of Owners. As amended, 12/22/2021.

(83) Title 13, Section 2169.3: Repair Label. As amended, 12/22/2021.

(84) Title 13, Section 2169.4: Proof of Correction Certificate. As amended, 12/22/2021.

(85) Title 13, Section 2169.5: Preliminary Tests. As amended, 12/22/2021.

(86) Title 13, Section 2169.6: Communication with Repair Personnel. As amended, 12/22/2021.

(87) Title 13, Section 2169.7: Recordkeeping and Reporting Requirements. As amended, 12/22/2021.

(88) Title 13, Section 2169.8: Extension of Time. As amended, 12/22/2021.

(89) Title 13, Section 2170: Penalties. As amended, 12/22/2021.

(90) Title 13, Section 2235: Requirements. As amended, 10/1/2019.

(91) Title 13, Section 2423: Exhaust Emission Standards and Test. As amended, 12/22/2021.

(92) Title 13, Section 2485: Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling. As amended, 12/22/2021.

(93) Title 17, Section 95660: Purpose. As amended, 11/30/2022.

(94) Title 17, Section 95661: Applicability. As amended, 12/5/2014.

(95) Title 17, Section 95662: Definitions. As amended, 12/22/2021.

(96) Title 17, Section 95663: Greenhouse Gas Exhaust Emission Standards and Testing Procedures for New 2014 and Subsequent Model Heavy-Duty Vehicles. As amended, 12/22/2021.

[20.2.91.102 NMAC - Rp, 20.2.91.102 NMAC, 12/31/2023]

### **20.2.91.103 EXEMPTIONS:**

The following motor vehicles shall not be subject to 20.2.91 NMAC.

**A.** Military tactical vehicles, which shall mean the same in this section as in CCR, Title 13, Section 1905.

**B.** Motor vehicles sold for registration in a state that is not New Mexico.

**C.** Motor vehicles that have greater than 7,500 miles on the odometer.

**D.** Motor vehicles available for rent to a final destination outside of New Mexico.

**E.** Motor vehicles transferred from one person to another person due to: death, inheritance, devise or bequest; divorce, dissolution, annulment or legal separation; merger or consolidation; bankruptcy; court judgment or decree; or possessory lien, seizure or foreclosure.

**F.** Emergency vehicles.

**G.** A motor vehicle acquired by a resident of New Mexico to replace a motor vehicle registered to such resident that was stolen, damaged, or failed beyond reasonable repair while out of state, provided that such replacement motor vehicle is acquired out of state when the previously owned motor vehicle was stolen, damaged, or failed beyond reasonable repair.

**H.** A motor vehicle with a right-hand drive configuration that is not available in a California-certified model, purchased by a rural route postal carrier and used primarily for work.

**I.** Motor vehicles purchased by a nonresident before establishing residency in New Mexico, regardless of the mileage on the odometer.

**J.** Motor vehicles purchased by a resident of New Mexico while assigned to active government service outside New Mexico.

**K.** Custom and assembled motor vehicles that:

(1) are maintained for occasional transportation, exhibitions, club activities, parades, tours, testing of operation, repair, maintenance, and similar uses; and

(2) are not used for general daily transportation.

L. A vehicle sold for the purpose of being wrecked or dismantled.

M. Motor vehicles used exclusively in the conduct of agricultural operations, like implements of husbandry not including a vehicle whose existing design is primarily for the transportation of persons or property on a highway, or road machinery not regularly operated on public streets and highways.

N. A vehicle defined as an "excluded bus" pursuant to CCR, Title 13, Section 1963(c)(11).

[20.2.91.103 NMAC - Rp, 20.2.91.103 NMAC, 12/31/2023]

**20.2.91.104 FLEET AVERAGE NON-METHANE ORGANIC GAS PLUS OXIDES OF NITROGEN EXHAUST EMISSION STANDARDS, REPORTING AND COMPLIANCE:**

A. Beginning model year 2027 and subsequent years, this 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) applies to manufacturers that deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register passenger cars, light-duty trucks, and medium-duty vehicles pursuant to the requirements of CCR, Title 13, Section 1961.4.

B. Each manufacturer subject to 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) shall comply with fleet average non-methane organic gas plus oxides of nitrogen exhaust emission standards for passenger cars, light-duty trucks, and medium-duty vehicles, and other requirements set forth in CCR, Title 13, Section 1961.4. Compliance shall be based on the motor vehicles subject to 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) and 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall be determined on a statewide basis.

C. Each manufacturer subject to Subsection B of 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) shall accrue fleet average non-methane organic gas plus oxides of nitrogen exhaust emission standard credits and debits and may use credits in accordance with CCR, Title 13, Section 1961.4. Each manufacturer shall accrue and use debits and credits based on the number of motor vehicles subject to Subsection B of 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) and Subsection B of 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of

Nitrogen Exhaust Emission Standards, Reporting and Compliance). Accounting for the use of debits and credits shall be on a statewide basis.

**D.** Each manufacturer subject to Subsection A of 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) shall submit a report by May 1 of each year to the department that includes the statewide fleet average non-methane organic gas plus oxides of nitrogen exhaust emission data for the model year just ended. The report shall be in accordance with the procedures in CCR, Title 13, Section 1961.4 and be in the same format used to report such information to CARB. If a manufacturer elects to report the information required pursuant to Subsection B of 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) and Subsection B of 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) using the pooling provisions set forth in CCR, Title 13, Section 1961.4, the manufacturer shall report to the department the information for the entire pool as well as for the portion specific to New Mexico.

[20.2.91.104 NMAC - Rp, 20.2.91.104 NMAC, 12/31/2023]

#### **20.2.91.105 PARTICULATE MATTER EXHAUST EMISSION STANDARDS, REPORTING AND COMPLIANCE:**

Beginning model year 2027 and subsequent years, each manufacturer subject to 20.2.91.105 NMAC (Particulate Matter Exhaust Emission Standards, Reporting and Compliance) shall comply with particulate exhaust emission standards for passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles, and other requirements set forth in CCR, Title 13, Section 1961.4. Compliance shall be based on the motor vehicles subject to 20.2.91.105 NMAC (Particulate Matter Exhaust Emission Standards, Reporting and Compliance) and 20.11.104.105 NMAC (Particulate Matter Exhaust Emission Standards, Reporting and Compliance) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall be determined on a statewide basis.

[20.2.91.105 NMAC - Rp, 20.2.91.105 NMAC, 12/31/2023]

#### **20.2.91.106 FLEET AVERAGE GREENHOUSE GAS EXHAUST EMISSION STANDARDS, REPORTING AND COMPLIANCE:**

**A.** Beginning model year 2027 and subsequent years, this 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) applies to manufacturers that deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register passenger cars, light-duty trucks, and medium-duty vehicles pursuant to the requirements of CCR, Title 13, Section 1961.3.

**B.** Each manufacturer subject to 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) shall comply with fleet average greenhouse gas exhaust emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles, and other requirements set forth in CCR, Title 13, Section 1961.3. Compliance shall be based on the motor vehicles subject to 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) and 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall be determined on a statewide basis.

**C.** Each manufacturer subject to Subsection B of 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) shall accrue fleet average greenhouse gas exhaust emission standard credits and debits and may use credits in accordance with CCR, Title 13, Section 1961.3. Each manufacturer shall accrue and use debits and credits based on the number of motor vehicles subject to Subsection B of 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) and Subsection B of 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance). Accounting for the use of debits and credits shall be on a statewide basis.

**D.** Each manufacturer subject to Subsection B of 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) shall submit a report by May 1 of each year to the department that includes the statewide fleet average greenhouse gas exhaust emission standard data for the model year just ended. The report shall include the number of motor vehicles in each test group, delineated by model type certified pursuant to CCR, Title 13, Section 1961.3, be in accordance with the procedures in CCR, Title 13, Section 1961.3, and be in the same format used to report such information to CARB. If a manufacturer reports the information required pursuant to Subsection B of 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) and Subsection B of 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) using option number 2 for the "Calculation of fleet average carbon dioxide value" set forth in CCR, Title 13, Section 1961.3(a)(5)(D), the manufacturer shall report the information for the entire pool as well as for the portion specific to New Mexico.

[20.2.91.106 NMAC - Rp, 20.2.91.106 NMAC, 12/31/2023]

#### **20.2.91.107 FLEET AVERAGE EXHAUST EMISSION STANDARDS REMEDIATION REPORT:**

**A.** If the department determines that a report submitted by a manufacturer pursuant to 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) or 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and

Compliance) demonstrates that the manufacturer is not in compliance with the fleet average non-methane organic gas plus oxides of nitrogen exhaust emission standards or the fleet average greenhouse gas exhaust emission standards, respectively, the department shall require the manufacturer to submit a fleet average remediation report to the department.

**B.** A fleet average remediation report shall be submitted to the department within 60 calendar days after notice from the department.

**C.** The fleet average remediation report shall, at a minimum:

- (1) describe how the manufacturer intends to equalize any accrued debits;
- (2) identify all motor vehicle models and the percentage of each model delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico with their corresponding certification standards for New Mexico and California in relation to total sales in each respective state; and
- (3) describe how the manufacturer intends to achieve compliance with the fleet average non-methane organic gas plus oxides of nitrogen exhaust emission standards or the fleet average greenhouse gas exhaust emission standards, as applicable, in future model years.

[20.2.91.107 NMAC - Rp, 20.2.91.107 NMAC, 12/31/2023

#### **20.2.91.108 LIGHT- AND MEDIUM-DUTY ZERO-EMISSION VEHICLE REQUIREMENTS, REPORTING AND COMPLIANCE:**

**A.** Effective model years 2027 through 2032, this 20.2.91.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) applies to manufacturers that deliver for sale, offer for sale, sell, import, deliver or lease passenger cars, light-duty trucks, and medium-duty vehicles pursuant to the requirements of CCR, Title 13, Section 1962.4.

**B.** Each manufacturer subject to 20.2.91.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) shall comply with the annual ZEV requirement set forth in CCR, Title 13, Section 1962.4 using New Mexico specific vehicle production volume calculated in accordance with CCR, Title 13, Section 1962.4. Manufacturer's compliance with the annual ZEV requirement in New Mexico shall be based on the motor vehicles subject to 20.2.91.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) and 20.11.104.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall be determined on a statewide basis.

**C.** Each manufacturer subject to 20.2.91.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) shall submit to the department all reports in accordance with CCR, Title 13, Section 1962.4 for motor vehicles delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico during the previous model year. The reports shall be on a statewide basis and formatted as determined by the department.

**D.** Manufacturers subject to 20.2.91.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) may fulfill a portion of their compliance requirement with any of the additional vehicle values and allowances in accordance with CCR, Title 13, Section 1962.4, including:

(1) PHEVs produced and delivered for sale in New Mexico in accordance with CCR, Title 13, Section 1962.4;

(2) New ZEVs and PHEVs provided for use in qualified community-based clean mobility programs in New Mexico, which means a program determined by the department to qualify as a community-based clean mobility program pursuant to guidance issued by the department; the department shall determine that a program qualifies as a community-based clean mobility program before a manufacturer may earn vehicle values pursuant to the requirements of CCR, Title 13, Section 1962.4;

(3) ZEVs and PHEVs initially leased in New Mexico and sold at the end of lease to a New Mexico dealer participating in a financial assistance program, which means a vehicle purchase incentive program where approved dealers accept a point-of-sale incentive for used ZEVs and PHEVs for lower-income consumers; qualifying programs in New Mexico will be approved by the department and posted on the department website;

(4) New ZEVs and PHEVs delivered for sale in New Mexico below the manufacturer's suggested retail price threshold in accordance with CCR, Title 13, Section 1962.4; and

(5) Early compliance vehicle values for model years 2025 and 2026 earned in accordance with CCR, Title 13, Section 1962.4.

**E.** Manufacturers subject to 20.2.91.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) may fulfill any deficit portion of their total annual ZEV requirement with additional allowances in accordance with CCR, Title 13, Section 1962.4 and 20.2.91.109 (Voluntary Early Action Credits and Onetime Values), including:

(1) with converted ZEV values and PHEV values earned pursuant to 20.2.91.109 NMAC (Voluntary Early Action Credits and Onetime Values);

(2) with ZEV values and PHEV values transferred from other states ("Pooled Values") pursuant to CCR, Title 13, Section 1962.4.

**F.** In New Mexico, manufacturers shall make up any deficits incurred for a model year by submitting a commensurate amount of ZEV values to the secretary within three years to fulfill any remaining deficit of their annual ZEV requirement in a given model year in accordance with CCR, Title 13, Section 1962.4.

[20.2.91.108 NMAC - Rp, 20.2.91.108 NMAC, 12/31/2023]

### **20.2.91.109 VOLUNTARY EARLY ACTION CREDITS AND ONETIME VALUES:**

**A.** Beginning July 1, 2022, for model years 2023 through 2025, this 20.2.91.109 NMAC (Voluntary Early Action Credits and Onetime Values) applies to manufacturers that deliver for sale, offer for sale, sell, import, deliver or lease passenger cars, light-duty trucks, and medium-duty vehicles pursuant to the requirements of CCR, Title 13, Section 1962.2.

**B.** A manufacturer may earn early action credits for motor vehicles delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico as set forth in CCR, Title 13, Section 1962.2. To earn early action credits, a manufacturer shall report all prior model year qualifying motor vehicles from this Subsection B of 20.2.91.109 NMAC (Voluntary Early Action Credits and Onetime Values) and Subsection B of 20.11.104.109 NMAC (Voluntary Early Action Credits and Onetime Values) to the department before May 1 following each applicable year. The department shall verify, record, track, and report early action credits calculated on a statewide basis. At the conclusion of the reporting for model year 2025, the department shall follow CARB's procedures to convert early action credits to ZEV values and PHEV values as set forth in CCR, Title 13, Section 1962.4(g)(2)(A).

**C.** For model 2025, a manufacturer may earn either early action credits as set forth 20.2.91.109 NMAC (Voluntary Early Action Credits and Onetime Values) and 20.2.104.109 NMAC (Voluntary Early Action Credits and Onetime Values) or early compliance vehicle values as set forth in 20.2.91.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance), both which are calculated on a statewide basis. A manufacturer shall make this election in its report for model year 2025.

**D.** In addition to earning early action credits, a manufacturer may earn onetime ZEV values and PHEV values equal to their converted early action credits, calculated on a statewide basis. To earn the onetime ZEV and PHEV values, a manufacturer shall submit a request to the department by May 1, 2026.

**E.** Notwithstanding the provisions set forth in CCR, Title 13, Subsections 1962.4(g)(2)(B) and (C), ZEV values and PHEV values issued pursuant to 20.2.91.109 NMAC (Voluntary Early Action Credits and Onetime Values) may be used, and shall

only be used by a manufacturer subject to 20.2.91.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) or traded to a manufacturer subject to 20.2.91.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) to fulfill a deficit portion of their annual ZEV requirement in New Mexico for model years 2027 through 2029.

**F.** ZEV values and PHEV values issued pursuant to 20.2.91.109 NMAC (Voluntary Early Action Credits and Onetime Values) may only be used for compliance with the annual ZEV requirements in New Mexico.

**G.** Motor vehicle early action credits or onetime values shall not constitute or convey a property right.

[20.2.91.109 NMAC - Rp, 20.2.91.109, 12/31/2023]

#### **20.2.91.110 ADDITIONAL REPORTING:**

**A.** Beginning model year 2027 and subsequent years, each manufacturer subject to 20.2.91 NMAC shall submit to the department, within 30 calendar days of a request from the department:

(1) A copy of the applicable CARB executive order.

(2) Any documentation the department determines necessary for the effective administration and enforcement of 20.2.91 NMAC, including without limitation certification materials submitted to CARB and documentation regarding the sale of each motor vehicle subject to 20.2.91 NMAC.

(3) Any emission warranty information reports prepared in accordance with CCR, Title 13.

**B.** If these records are available electronically, the manufacturer shall submit the records in an electronic format approved by the department.

[20.2.91.110 NMAC - Rp, 20.2.91.110 NMAC, 12/31/2023]

#### **20.2.91.111 WARRANTIES:**

**A.** Beginning model year 2027 and subsequent years, each manufacturer of a motor vehicle subject to 20.2.91 NMAC shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle shall comply over its period of warranty coverage with all applicable requirements of CCR, Title 13, Sections 1962.4, 2035 through 2038, 2040, and 2046. Subsection C of 20.2.91.103 NMAC (Exemptions) shall not apply to this section.

**B.** Except as otherwise provided in Subsection B of 20.2.91.111 NMAC (Warranties) each manufacturer subject to 20.2.91 NMAC shall include with each motor vehicle or motor vehicle engine, the emission control systems warranty statement that complies with the requirements of CCR, Title 13, Section 2039, except:

(1) A manufacturer shall modify the emission control systems warranty statement as necessary to inform motor vehicle owners of the applicability of the warranty in New Mexico.

(2) For the purpose of the documents required pursuant to CCR, Title 13, Section 2039(c), a manufacturer is only required to submit such documents upon request of the department.

**C.** Upon the department's request, a manufacturer of a motor vehicle subject to 20.2.91 NMAC shall submit to the department within 30 calendar days any emission warranty information report submitted to CARB, as required in CCR, Title 13, Section 2144.

[20.2.91.111 NMAC - Rp, 20.2.91.111 NMAC, 12/31/2023]

#### **20.2.91.112 LABELS:**

Beginning model year 2027 and subsequent years, a manufacturer, dealer, rental car agency, the United States, state or local government, or other persons shall deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, heavy-duty vehicles, heavy-duty engines, or motor vehicle engines in New Mexico with emission control labels and environmental performance labels affixed in accordance with CCR, Title 13, Section 1965.

[20.2.91.112 NMAC - Rp, 20.2.91.112 NMAC, 12/31/2023]

#### **20.2.91.113 RECALL CAMPAIGNS:**

**A.** Beginning model year 2027 and subsequent years, each manufacturer of a motor vehicle subject to 20.2.91 NMAC shall be subject to all recall campaign requirements of CCR, Title 13, including Sections 1962.4, 2035 through 2038, 2040, and 2046.

**B.** Any order issued, or enforcement action taken by CARB to correct noncompliance that results in a recall campaign of a motor vehicle pursuant to CCR, Title 13, including Sections 1962.7, and 2111 through 2135 shall be prima facie evidence concerning noncompliance for a motor vehicle registered in New Mexico. If the manufacturer demonstrates to the department's satisfaction that the order or action is not applicable to a motor vehicle registered in New Mexico, the department shall not pursue a recall campaign of that motor vehicle.

**C.** If a manufacturer initiates a voluntary or influenced emission-related recall campaign pursuant to CCR, Title 13, including Sections 1962.7, and 2113 through 2121, the recall campaign shall include all affected motor vehicles registered in New Mexico.

**D.** For a motor vehicle subject to an order or action under Subsection B of 20.2.91.113 NMAC (Recall Campaigns) and Subsection B of 20.2.104.113 NMAC (Recall Campaigns), each manufacturer shall send to each owner of an affected motor vehicle registered in New Mexico a notice that complies with the requirements in CCR, Title 13, including Sections 1962.7, 2118 and 2127, as applicable, including a telephone number for owners to obtain answers to questions regarding the recall.

[20.2.91.113 NMAC - Rp, 20.2.91.113 NMAC, 12/31/2023]

#### **20.2.91.114 REGISTRATION AND FEES:**

**A.** Effective January 1, 2026, for each manufacturer delivering for sale, offering for sale, selling, importing, delivering, or leasing passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, heavy-duty vehicles, heavy-duty engines or motor vehicle engines subject to 20.2.91 NMAC shall obtain a registration from the department. The department shall issue a registration for a period of 10 years subject to an annual registration fee as set forth in Section C of 20.1.91.114 NMAC (Registration and Fees) and 20.1.104.114 NMAC (Registration and Fees). It shall be a violation of 20.2.91 NMAC for a manufacturer subject to 20.2.91 NMAC to not obtain a registration in accordance with Subsection A of 20.2.91.114 NMAC (Registration and Fees).

**B.** Effective January 1, 2026, each manufacturer subject to 20.2.91.114 NMAC (Registration and Fees) and 20.2.104.114 NMAC (Registration and Fees) shall report to the department the type and number of passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, and heavy-duty vehicles, heavy-duty engines or motor vehicle engines subject to 20.2.91 NMAC delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico during the previous model year. The manufacturer shall submit the report to the department by May 1 of each year. Failure to timely submit the report shall be a violation of Subsection B of 20.2.91.114 NMAC (Registration and Fees) and cause for the department to revoke the manufacturer's registration.

**C.** The department shall assess an annual registration fee for the period beginning July 1 and ending June 30 of the subsequent year.

(1) The department shall assess annual registration fees by apportioning the total registration fee among all registrants according to each manufacturer's reported market share for the previous model year, calculated on a statewide basis.

(2) Within 45 calendar days after the report required by 20.2.91.114 NMAC (Registration and Fees) is due, the department shall notify each registrant of the registration fee required for the next registration period. Within 30 calendar days of the department's notice of the required registration fee, each registrant shall remit the specified amount payable to the New Mexico environment department.

(3) The total registration fee is \$300,000 and shall increase annually by the consumer price index through model year 2032. Beginning model year 2033, the total registration fee is \$100,000 and shall increase annually by the consumer price index.

(4) Failure to timely pay the annual registration fee shall be a violation of Subsection C of 20.2.91.114 NMAC (Registration and Fees) and cause for the department to revoke the manufacturer's registration.

**D.** Manufacturers seeking to earn early action credits and onetime values under 20.2.91.109 NMAC (Voluntary Early Action Credits and Onetime Values) shall pay a \$20,000 registration fee that is separate and apart from the annual registration fee required by Section C of 20.2.91.114 NMAC (Registration and Fees) by May 1 following each applicable model year.

[20.2.91.114 NMAC - Rp, 20.2.91.114 NMAC, 12/31/2023]

#### **20.2.91.115 INSPECTIONS AND INFORMATION REQUESTS:**

**A.** The department may inspect motor vehicles, and may inspect and copy relevant, non-financial records, including records documenting motor vehicle origin, certification, delivery, or sales, and any record of emission-related part repairs performed under warranty.

**B.** The department may require a manufacturer, dealer, rental car agency, the United States, state or local government, or other person to submit or may inspect and copy itself, relevant, non-financial records related to a motor vehicle subject or potentially subject to 20.2.91 NMAC, except that Subsection B of 20.2.91.115 NMAC (Inspections and Information Requests) shall not be construed to require the creation of a new record.

[20.2.91.115 NMAC - Rp, 20.2.91.115 NMAC, 12/31/2023]

#### **20.2.91.116 RECORDKEEPING:**

All manufacturers, dealers, rental car agencies, the United States, state and local governments, or other persons shall retain records pertaining to compliance under 20.2.91 NMAC.

[20.2.91.116 NMAC Rp, 20.2.91.116 NMAC, 12/31/2023]

### **20.2.91.117 PROHIBITED:**

Failure to comply with the emission standards, recordkeeping, reporting, or other requirements of 20.2.91 NMAC within the timeframes specified shall constitute a violation of 20.2.91 NMAC subject to enforcement action under Section 74-2-12 NMSA 1978.

[20.2.91.117 NMAC - Rp, 20.2.91.117 NMAC, 12/31/2023]

### **20.2.91.118 EXHAUST EMISSION STANDARDS FOR HEAVY-DUTY ENGINES:**

**A.** Beginning model year 2027 and subsequent years, this 20.2.91.118 NMAC (Exhaust Emission Standards for Heavy-Duty Engines) applies to manufacturers that deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive heavy-duty vehicles, heavy-duty engines or other motor vehicle engines pursuant to the requirements of CCR, Title 13, Sections 1900, 1956.8, 1961.2, 1965, 1968.2, 1971.1, 2035, 2036, 2166, 2166.1, 2167 through 2170, 2111 through 2119, 2121, 2123, 2125 through 2131, 2133, 2137, 2139 through 2149, 2423 and 2485.

**B.** Each manufacturer subject to 20.2.91.118 NMAC (Exhaust Emission Standards for Heavy-Duty Engines) shall comply with the heavy-duty engine emissions standards and other requirements set forth in CCR, Title 13, Sections 1900, 1956.8, 1961.2, 1965, 1968.2, 1971.1, 2035, 2036, 2166, 2166.1, 2167 through 2170, 2111 through 2119, 2121, 2123, 2125 through 2131, 2133, 2137, 2139 through 2149, 2423 and 2485. Compliance shall be based on the motor vehicles subject to 20.2.91.118 NMAC (Exhaust Emission Standards for Heavy-Duty Engines) and 20.11.104.118 NMAC (Exhaust Emission Standards for Heavy-Duty Engines) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, purchases, rents, leases, acquires or receives in New Mexico, and shall be determined on a statewide basis.

[20.2.91.118 NMAC - Rp, 20.2.91.118 NMAC, 12/31/2023]

### **20.2.91.119 MEDIUM- AND HEAVY-DUTY ZERO-EMISSION VEHICLE REQUIREMENT, REPORTING AND COMPLIANCE:**

**A.** Beginning model year 2027 and subsequent years, this 20.2.91.119 NMAC (Medium- and Heavy-Duty Zero-emission Vehicle Requirement, Reporting and Compliance) applies to manufacturers that deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive medium-duty vehicles, heavy-duty vehicles, heavy-duty engines or other motor vehicle engines pursuant to the requirements of CCR, Title 13, Sections 1963, 1963.1, 1963.2, 1963.4 and 1963.5.

**B.** Each manufacturer subject to 20.2.91.119 NMAC (Medium- and Heavy-Duty Zero-Emission Vehicle Requirement, Reporting and Compliance) shall deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire or receive medium-duty vehicles, heavy-duty vehicles, heavy-duty engines or other motor vehicle engines

certified as ZEVs to New Mexico in accordance with CCR, Title 13, Sections 1963, 1963.1, 1963.2, 1963.4 and 1963.5.

**C.** Each manufacturer subject to 20.2.91.119 NMAC (Medium- and Heavy-Duty Zero-emission Vehicle Requirement, Reporting and Compliance) shall comply with the ZEV sales percentage schedule set forth in CCR, Title 13, Section 1963.1 using New Mexico specific ZEV sales calculated in accordance with CCR, Title 13, Section 1963.1. Manufacturer's compliance with the ZEV sales percentage shall be based on medium-duty vehicles, heavy-duty vehicles, heavy-duty engines or other motor vehicle engines subject to 20.2.91.119 NMAC (Medium- and Heavy-Duty Zero-Emission Vehicles Requirement, Reporting and Compliance) and 20.2.104.119 NMAC (Medium- and Heavy-Duty Zero-Emission Vehicles Requirement, Reporting and Compliance) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall be determined on a statewide basis.

**D.** Before May 1 of each year, each manufacturer subject to 20.2.91.119 NMAC (Medium- and Heavy-Duty Zero-emission Vehicle Requirement, Reporting and Compliance) shall submit to the department a report detailing ZEV sales percentage performance by identifying qualifying medium-duty vehicles, heavy-duty vehicles, heavy-duty engines or other motor vehicle engines transferred to or from any manufacturer or, offered for sale, sold, imported, delivered, or leased in New Mexico during the previous model year in accordance with CCR, Title 13, Sections 1963.1. The report shall include the resulting surplus or deficit in meeting the ZEV sales percentage for the model year after applying any ZEV deficits or credits according to CCR Title 13, Section 1963.1. ZEV sales percentage performance shall be on a statewide basis. The report shall be prepared in the same format used to report ZEV sales percentage performance compliance to CARB.

**E.** Each manufacturer subject to 20.2.91.119 NMAC (Medium- and Heavy-Duty Zero-emission Vehicle Requirement, Reporting and Compliance) may generate, bank and trade ZEV credits for qualifying medium-duty vehicles, heavy-duty vehicles, heavy-duty engines or other motor vehicle engines delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico in accordance with 20.2.91.119 NMAC (Medium- and Heavy-Duty Zero-emission Vehicle Requirement, Reporting and Compliance) and CCR, Title 13, Sections 1963, 1963.1, and 1963.2.

**F.** Beginning with the model year 2025 any manufacturer that produces on-road vehicles over 8,500 pounds gross vehicle weight rating for sale in New Mexico may generate, bank and trade ZEV credits for vehicles certified as ZEVs in accordance with CCR, Title 13, Sections 1963, 1963.1, 1963.2, 1963.4, and 1963.5 for such vehicles pursuant to CCR, Title 13 Section 1963.2.

[20.2.91.119 NMAC - Rp, 20.2.91.119 NMAC, 12/31/2023]

**20.2.91.120 LARGE ENTITY REPORTING REQUIREMENT:**

**A.** Beginning model year 2027 and subsequent years, this 20.2.91.120 NMAC (Large Entity Reporting Requirement) applies to entities in accordance with CCR, Title 13, Sections 2012, 2012.1, and 2012.2.

**B.** Each entity subject to this 20.2.91.120 NMAC (Large Entity Reporting Requirement) shall comply with the large entity reporting requirement in accordance with such sections provided however that every occurrence of "California" shall be replaced with "New Mexico", "Executive Officer" shall be replaced with "Secretary", "Public Utilities Commission" shall be replaced with "Public Regulation Commission", and all other replacements clarifying that Sections 2012, 2012.1, and 2012.2 are requirements in New Mexico in accordance with this section. For purposes of compliance with 20.2.91.120 (Large Entity Reporting Requirement) only, all exemptions under CCR, Title 13, Section 2012(c) apply, and do not apply to another other subsection of 20.2.91 NMAC.

**C.** Each entity subject to this 20.2.91.120 NMAC (Large Entity Reporting Requirement) shall report complete information to the secretary by May 1, 2025, through the department's Advanced Clean Trucks webpage. Vehicle data shall be reported as the fleet was comprised on a date of the fleet owner's choosing any time after December 31, 2023. The reporting entity shall maintain the records of their information required by CCR Title 13, Sections 2012.1 and 2012.2 for five years following the report date. To the extent reports submitted contain confidential data, entities may choose to designate that information as confidential.

[20.2.91.120 NMAC - Rp, 20.2.91.120 NMAC, 12/31/2023]

## **PART 92-97: [RESERVED]**

## **PART 98: CONFORMITY OF GENERAL FEDERAL ACTIONS TO THE STATE IMPLEMENTATION PLAN [REPEALED]**

[This part was repealed on November 25, 2013.]

## **PART 99: CONFORMITY TO THE STATE IMPLEMENTATION PLAN OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS**

### **20.2.99.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.2.99.1 NMAC - Rp, 20.2.99.1 NMAC, 09/15/14]

### **20.2.99.2 SCOPE:**

Agencies affected by this part are: federal transportation agencies (the federal highway administration (FHWA) and the federal transit administration (FTA) of the United States

department of transportation (US DOT)), and state and local agencies responsible for transportation planning and air quality management that are within the geographic jurisdiction of the environmental improvement board (see also 20.2.99.6 NMAC).

**A.** The provisions of this part shall apply in all nonattainment areas and maintenance areas for transportation-related criteria pollutants for which the area is designated as a nonattainment area or has a maintenance plan.

**B.** The provisions of this part apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>) and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM<sub>2.5</sub>).

**C.** The provisions of this part apply with respect to emissions of the following precursor pollutants in nonattainment areas or maintenance areas:

- (1) volatile organic compounds (VOCs) and nitrogen oxides in ozone areas;
- (2) nitrogen oxides in nitrogen dioxide areas;
- (3) volatile organic compounds or nitrogen oxides in PM<sub>10</sub> areas if:

(a) the US EPA region 6 administrator or the department has made a finding (including a finding as part of the New Mexico state implementation plan (SIP) or a submitted implementation plan revision) that transportation-related emissions of one or both of these precursor emissions within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the metropolitan planning organization (MPO) (or the New Mexico department of transportation (NMDOT) in the absence of an MPO) and US DOT; or

(b) the applicable SIP (or implementation plan submission) establishes an approved (or adequate) motor vehicle emissions budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;

(4) nitrogen oxides in PM<sub>2.5</sub> areas, unless both the US EPA regional administrator and the department have made a finding that transportation-related emissions of nitrogen oxides within the nonattainment area are not a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has notified the MPO (or the NMDOT in the absence of an MPO) and US DOT, or the applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) motor vehicle emissions budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and

(5) VOCs, sulfur dioxide (SO<sub>2</sub>) or ammonia (NH<sub>3</sub>) in PM<sub>2.5</sub> areas either if the US EPA regional administrator or the department has made a finding that

transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) motor vehicle emissions budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

**D.** The provisions of this part apply to PM<sub>2.5</sub> nonattainment areas and maintenance areas with respect to PM<sub>2.5</sub> from re-entrained road dust if the US EPA regional administrator or the department has made a finding that re-entrained road dust emissions within the area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO (or the NMDOT in the absence of an MPO) and US DOT, or if the applicable SIP (or implementation plan submission) includes re-entrained road dust in the approved (or adequate ) motor vehicle emissions budget as part of the reasonable further progress, attainment or maintenance strategy.

**E.** The provisions of this part apply to maintenance areas through the last year of a maintenance area's approved CAA Section 175A(b) maintenance plan, unless the applicable implementation plan specifies that the provisions of this part (20.2.99 NMAC) shall apply for more than 20 years.

[20.2.99.2 NMAC - Rp, 20.2.99.2 NMAC, 09/15/14]

### **20.2.99.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, Paragraph (4) and (7) of Subsection A of Section 74-1-8 NMSA 1978 and Air Quality Control Act, Sections 74-2-1 NMSA 1978 *et seq.*, including specifically, Subsections (A), (B) and (C) of Section 74-2-5 NMSA 1978. Subsection (B) of Section 74-2-5 NMSA 1978 provides that the environmental improvement board shall adopt regulations "to attain and maintain national ambient air quality standards and prevent or abate air pollution."

[20.2.99.3 NMAC - Rp, 20.2.99.3 NMAC, 09/15/14]

### **20.2.99.4 DURATION:**

Permanent.

[20.2.99.4 NMAC - Rp, 20.2.99.4 NMAC, 09/15/14]

### **20.2.99.5 EFFECTIVE DATE:**

September 15, 2014, except where a later date is cited at the end of a section.

[20.2.99.5 NMAC - Rp, 20.2.99.5 NMAC, 09/15/14]

[The latest effective date of any section in this part is 09/15/14.]

**20.2.99.6 OBJECTIVE:**

The purpose of this part is to implement Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), the related requirements of 23 U.S.C. 109(j), and regulations under 40 CFR Part 93 Subpart A, with respect to the conformity of transportation plans, programs and projects which are developed, funded or approved by the US DOT, the NMDOT, MPOs or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53) to the SIP, as developed pursuant to Section 110 and Part D of the CAA. This part sets forth policy and procedures for consultations demonstrating and assuring conformity of such activities to the SIP and for resolving interagency conflicts.

[20.2.99.6 NMAC - Rp, 20.2.99.6 NMAC, 09/15/14]

**20.2.99.7 DEFINITIONS:**

Terms used but not defined in this part shall have the meaning given them by the CAA Titles 23 and 49 U.S.C., US EPA regulations, US DOT regulations, and 20.2.2 NMAC (Definitions), in that order of priority.

**A. "Applicable implementation plan"** is defined in Section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110 (of the CAA), promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

**B. "CAA"** means the Clean Air Act, as amended, 42 U.S.C. 7401, *et seq.*

**C. "Cause or contribute to a new violation"** for a project means:

(1) to cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

(2) to contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

**D. "CFR"** means the code of federal regulations.

**E. "Conformity determination"** means the demonstration of consistency with motor vehicle emissions budgets for each pollutant and precursor identified in the applicable SIP. The conformity determination is the affirmative written documentation declaring conformity with the applicable SIP which is submitted to FHWA and FTA for

approval with US EPA consultation. An affirmative conformity determination means conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities will not:

- (1) cause or contribute to a new violation of any standard in any area;
- (2) increase the frequency or severity of any existing violation of any standard in any area; or
- (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

**F. "Consultation"** means that one party confers with another identified party, provides or makes available all relevant information to that party, and, prior to taking any action, considers the views of that party and (except with respect to those actions for which only notification is required) responds to written comments in a timely, substantive written manner prior to any final decision on such action. Such views and written response shall be made part of the record of any decision or action. Specific procedures and processes are described in 20.2.99.102 through 20.2.99.110 NMAC.

**G. "Control strategy implementation plan revision"** is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA Sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), 189(b)(1)(A) and 189(d); and Sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provisions requiring a demonstration of reasonable further progress or attainment).

**H. "Criteria pollutants"** are the six principal pollutants for which national ambient air quality standards exist.

**I. "Department"** means the New Mexico environment department.

**J. "Design concept"** means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.

**K. "Design scope"** means the design aspects of a facility which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person-carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

**L. "Donut areas"** are geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment area or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment area and maintenance areas.

**M. "FHWA"** means the federal highway administration of US DOT.

**N. "FHWA/FTA project"** means, for the purpose of this part, any highway or transit project which is proposed to receive funding assistance and approval through the federal-aid highway program or the federal mass transit program, or requires federal highway administration (FHWA) or federal transit administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

**O. "FTA"** means the federal transit administration of US DOT.

**P. "Highway project"** is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

**Q. "Hot-spot analysis"** is an estimation of likely future localized CO, PM<sub>10</sub> or PM<sub>2.5</sub> pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment area or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

**R. "Increase the frequency or severity"** means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

**S. "Isolated rural nonattainment and maintenance areas"** are areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas that do not have federally required metropolitan transportation plans or transportation improvement programs

(TIPs) and do not have projects that are part of the emissions in such areas are instead included in statewide TIPs. These are not donut areas.

**T. "Limited maintenance plan"** means a maintenance plan that US EPA has determined meets US EPA's limited maintenance plan policy criteria for a given national ambient air quality standard (NAAQS) and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

**U. "Maintenance area"** means any geographic region of the United States previously designated nonattainment pursuant to the CAA amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

**V. "Maintenance plan"** means an implementation plan under Section 175A of the CAA, as amended.

**W. "Memorandum of agreement" or "MOA"** means a document agreed upon by cooperating parties.

**X. "Metropolitan planning organization" or "MPO"** means the policy board of an organization created as a result of the designation process in 23 U.S.C.134(d).

**Y. "Milestone"** has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM<sub>10</sub> nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

**Z. "Motor vehicle emissions budget"** is that portion of the total allowable emissions, defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the national ambient air quality standards, for any criteria pollutant or its precursors, allocated by the state implementation plan to highway and transit vehicle use and emissions.

**AA. "National ambient air quality standards" or "NAAQS"** are those standards established pursuant to Section 109 of the CAA.

**AB. "NEPA"** means the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, *et seq.*

**AC. "NEPA process completion"** means, for the purposes of this part, with respect to FHWA or FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a finding of no significant

impact, or to issue a record of decision on a final environmental impact statement under NEPA.

**AD. "NMDOT"** means the New Mexico department of transportation or its successor agency or authority, as represented by the department secretary or his or her designee.

**AE. "Nonattainment area"** means any geographic region of the United States which has been designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

**AF. "Project"** means a highway project or transit project.

**AG. "Recipient of funds designated under Title 23 U.S.C. or the federal transit laws"** means any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or federal transit law funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

**AH. "Re-entrained road dust"** means emissions which are produced by travel on paved and unpaved roads, including emissions from anti-skid and de-icing material(s).

**AI. "Regionally significant project"** means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum:

- (1) all principal arterial highways; and
- (2) all fixed guideway transit facilities that offer an alternative to regional highway travel.

**AJ. "Standard"** means a national ambient air quality standard.

**AK. "State implementation plan" or "SIP"** means an applicable implementation plan and the applicable portion (or portions) of the New Mexico state implementation plan, or most recent revision thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) of the CAA and which

implements the relevant requirements of the CAA (see the definition for "applicable implementation plan").

**AL.** "Title 23 U.S.C." means Title 23 of the United States Code.

**AM.** "Transit" means mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

**AN.** "Transit project" means an undertaking to: implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules or fares. It may consist of several phases. For analytical purposes, it shall be defined inclusively enough to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

**AO.** "Transportation control measure" or "TCM" means any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA Section 176(c)(8), that is either one of the types listed in Section 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this part.

**AP.** "Transportation improvement program" or "TIP" means a transportation improvement program developed by a metropolitan planning organization under Title 23 U.S.C. 134(j).

**AQ.** "Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

**AR.** "Transportation project" is a highway project or a transit project.

**AS.** "US EPA" means the United States environmental protection agency.

**AT.** "US DOT" means the United States department of transportation.

**AU.** "**Written commitment**" means, for the purposes of this part, a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

[20.2.99.7 NMAC - Rp, 20.2.99.7 NMAC, 09/15/14]

#### **20.2.99.8 DOCUMENTS:**

Documents incorporated and cited in this part may be viewed at the New Mexico environment department, air quality bureau, Santa Fe, NM.

[20.2.99.8 NMAC - Rp, 20.2.99.8 NMAC, 09/15/14]

#### **20.2.99.9-20.2.99.100 [RESERVED]**

#### **20.2.99.101 APPLICABILITY:**

**A.** Action applicability.

**(1)** Conformity determinations are required for:

**(a)** the adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO (or NMDOT in the absence of an MPO) or US DOT;

**(b)** the adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO (or NMDOT in the absence of an MPO) or US DOT; and

**(c)** the approval, funding, or implementation of FHWA/FTA projects.

**(2)** Conformity determinations are not required under this part for individual projects which are not FHWA/FTA projects.

**B.** Geographic and pollutant applicability are set out in 20.2.99.2 NMAC (Scope).

**C.** Limitations. In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must be in place at the time of project approval.

**D.** Grace period for new nonattainment areas. For areas or portions of areas which have been continuously designated attainment or not designated for any standard for ozone, CO, PM<sub>10</sub>, PM<sub>2.5</sub> or NO<sub>2</sub> since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any standard for any of these pollutants, the provisions of this subpart shall not apply with respect to that standard for 10 months following the effective date of final designation to nonattainment for each standard for such pollutant.

[20.2.99.101 NMAC - Rp, 20.2.99.109 NMAC, 09/15/14]

### **20.2.99.102 CONSULTATION:**

**A.** 20.2.99.102 through 20.2.99.110 NMAC provide procedures for the interagency (federal, state, and local) consultation process, resolution of conflicts, and public consultation. Public consultation procedures will be developed in accordance with the requirements for public involvement in 23 CFR part 450. The affected agencies listed in Subsection C of 20.2.99.102 NMAC shall undertake a consultation process with each other prior to the development of: 1) conformity determinations; 2) major activities listed in 20.2.99.103 NMAC below; 3) specific major activities listed in 20.2.99.106 NMAC below; and 4) specific routine activities listed in 20.2.99.107 NMAC below. This consultation process shall follow the consultation procedures described in 20.2.99.105 NMAC below.

**B.** Prior to US EPA's approval of this part, any MPO (or NMDOT in the absence of an MPO) and NMDOT, before making any conformity determinations, shall provide reasonable opportunity for consultation with the department, the local transportation agency in the county where the nonattainment area or maintenance area is located, the local air quality agency in the county in which the nonattainment area or maintenance area is located, New Mexico FHWA division offices, FTA region 6 offices, and US EPA region 6, including consultation on the issues described in 20.2.99.103 NMAC. This opportunity for consultation shall be provided prior to the determination of conformity.

#### **C.** Affected agencies.

**(1)** Agencies which are affected by this part and which are required to participate in the consultation process are:

- (a)** the designated MPO for the nonattainment area or maintenance area;
- (b)** the department;
- (c)** NMDOT;
- (d)** the local transportation agency for the county or city in which the nonattainment area or maintenance area is located;

**(e)** the local transit agency for the city or county in which the nonattainment area or maintenance area is located;

**(f)** US EPA region 6;

**(g)** New Mexico FHWA division offices;

**(h)** FTA region 6;

**(i)** local air quality agencies; and

**(j)** any other organization or resource agency within the state responsible under state law for developing, submitting or implementing transportation-related provisions of an implementation plan.

**(2)** Agencies which may be affected by this part and which are entitled to participate in the interagency consultation process include:

**(a)** NMDOT district office for the county in which the nonattainment area or maintenance area is located; and

**(b)** the city or county government in the city or county where the nonattainment area or maintenance area is located.

**D.** Policy level points of contact and policy level meetings.

**(1)** The policy level points of contact for participating organizations are as follows:

**(a)** MPO: executive director or designee;

**(b)** department: secretary or designee;

**(c)** NMDOT: secretary or designee;

**(d)** NMDOT district office: district engineer;

**(e)** local government: chief administrative officer or designee;

**(f)** US EPA region 6: regional administrator or designee;

**(g)** FHWA NM division office: division administrator or designee;

**(h)** FTA region 6: regional administrator or designee; and

**(i)** other organizations: as directed in writing.

(2) Policy level meetings shall be those meetings to which the following individuals have been given ample notice thereof:

(a) policy level points of contact for all agencies which are required to participate in the conformity process; and

(b) the policy level points of contact for all agencies and organizations which are entitled to participate and have submitted a written request to participate in the conformity process.

[20.2.99.102 NMAC - Rp, 20.2.99.116 NMAC, 09/15/14]

### **20.2.99.103 AGENCY ROLES IN CONSULTATION:**

Specific roles of the agencies participating in the interagency consultation process are listed below. Specific responsibilities of the agencies participating in the interagency consultation process are listed in 20.2.99.104 NMAC. For the purposes of this part, the lead agency for all conformity processes and procedures is that agency which is responsible for initiating the consultation process, preparing the initial and final drafts of the document or decision, and for assuring the adequacy of the interagency consultation process.

**A.** The department shall be the lead agency for the development of:

(1) applicable control strategy implementation plan revisions for the nonattainment area or maintenance area;

(2) the list of transportation control measures (TCMs) to be submitted as part of the SIP; and

(3) any amendments or revisions thereto.

**B.** In the case of areas in which an MPO has been established, the designated MPO for the nonattainment area or maintenance area shall be the lead agency for:

(1) development of the unified planning work program under 23 CFR 450.314;

(2) development of the transportation plan for the nonattainment area or maintenance area;

(3) development of the transportation improvement program (TIP) for the nonattainment area or maintenance area;

(4) any amendments or revisions thereto;

(5) any determinations of conformity under this part for which that MPO is responsible;

(6) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas; and

(7) development of TCMs, in cooperation with the department.

**C.** In the case of areas in which an MPO has not been established, NMDOT shall be the lead agency for:

(1) development of the transportation plan for the nonattainment area or maintenance area;

(2) development of the TIP for the nonattainment area or maintenance area;

(3) any amendments or revisions thereto;

(4) any determinations of conformity under this part for which an MPO would otherwise be responsible;

(5) choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas; and

(6) development of TCMs, in cooperation with the department.

[20.2.99.103 NMAC - Rp, 20.2.99.117 NMAC, 09/15/14]

**20.2.99.104 AGENCY RESPONSIBILITIES IN CONSULTATION:**

**A.** The department shall be responsible for developing or providing:

(1) emissions inventories;

(2) motor vehicle emissions budgets;

(3) air quality modeling;

(4) attainment demonstrations;

(5) control strategy implementation plan revisions;

(6) regulatory TCMs; and

(7) updated motor vehicle emissions factors.

**B.** The designated MPO (or, in nonattainment areas or maintenance areas where an MPO has not been established, NMDOT) shall be responsible for:

- (1)** developing transportation plans and TIPs;
- (2)** developing and evaluating TCM transportation impacts;
- (3)** developing transportation and socioeconomic data and planning assumptions and providing such data and planning assumptions for use in air quality analysis to determine conformity of transportation plans, TIPs, and projects;
- (4)** monitoring regionally significant projects;
- (5)** developing system or facility-based or other programmatic (non-regulatory) TCMs;
- (6)** providing technical input on motor vehicle emissions budgets; and
- (7)** performing transportation modeling, regional emissions analyses and documentation of timely implementation of TCMs needed for conformity assessments.

**C.** NMDOT shall be responsible for:

- (1)** providing technical input on proposed revisions to motor vehicle emissions factors;
- (2)** distributing draft and final highway or transit project environmental documents to other agencies; and
- (3)** convening air quality technical review meetings on specific highway or transit plans, programs and projects when requested by other agencies or as needed.

**D.** FHWA New Mexico offices and FTA region 6 shall be responsible for:

- (1)** assuring timely action on final findings of conformity, after consultation with other agencies as provided in 20.2.99.102 through 20.2.99.110 NMAC; and
- (2)** providing guidance on conformity and the transportation planning process to agencies participating in the interagency consultation process.

**E.** US EPA region 6 shall be responsible for providing guidance on conformity criteria and procedures to agencies participating in the interagency consultation process.

[20.2.99.104 NMAC - Rp, 20.2.99.118 NMAC, 09/15/14]

### **20.2.99.105 GENERAL CONSULTATION PROCEDURES:**

The following are the responsibilities of lead and participating agencies at each stage of the consultation process.

**A.** It shall be the affirmative responsibility of the lead agency to initiate the consultation process by:

- (1)** notifying other participants of the plan, program or project which must undergo the interagency consultation process;
- (2)** preparing an initial draft of the document being developed, together with necessary supporting information;
- (3)** convening consultation meetings and agendas when the initial draft of the document being developed is complete; and
- (4)** appointing the conveners of technical meetings.

**B.** It shall be the responsibility of the lead agency to facilitate the interagency consultation process by:

- (1)** conferring with all other agencies identified under Subsection C of 20.2.99.102 NMAC who are participating in the particular consultation process;
- (2)** providing all appropriate information needed for meaningful input to the participating agencies, including timely notification of all policy level and relevant technical meetings;
- (3)** soliciting early and continuing input from participating agencies;
- (4)** scheduling consultation meetings as specified in this part;
- (5)** conducting the consultation process as described in this section (20.2.99.105 NMAC);
- (6)** assuring that all relevant documents and information, including drafts of the document being developed and necessary background documents, are supplied to all participants in the consultation process in a timely manner;
- (7)** assuring, where required, policy-level contact with those agencies;
- (8)** considering the views of each participating agency and (except with respect to those actions for which only notification is required) responding to written comments in a timely, substantive written manner prior to making any final decision on the document that is the subject of the consultation process; and

**(9)** assuring that such views and written responses are made part of the record of any decision or action.

**C.** Regular consultation on major activities, as defined in 20.2.99.106 NMAC, shall include policy level meetings beginning no later than nine months prior to the date a final document is required (or the date on which such agency begins its own work on such document, if later) and continuing at regular, scheduled intervals no less frequently than quarterly. In addition, technical meetings shall be convened as necessary. Not later than 30 days prior to the adoption or approval of the final document or decision, the lead agency shall supply the final draft document, including all relevant information and documents, as appropriate, to the participating agencies.

**D.** Regular consultation on routine activities, as defined in 20.2.99.107 NMAC, shall include meetings at regular, scheduled intervals no less frequently than semiannually, and shall be on the agenda of at least one policy level meeting. In addition, technical meetings shall be convened as necessary.

**E.** The lead agency shall provide each final document for which a consultation process was required to be undertaken (including, but not limited to, the relevant portions of SIPs or implementation plan revisions, transportation plans, and TIPs, and determinations of conformity), together with all supporting information, as appropriate, to each participating agency within 14 calendar days after adopting or approving such document or making such determination. The lead agency may supply a checklist of available supporting information, which the participating agencies may use to request all or part of such supporting information, in lieu of generally distributing all supporting information.

**F.** It shall be the responsibility of each participating agency (those listed in Paragraph (1) of Subsection C of 20.2.99.102 NMAC) during the consultation process to:

**(1)** confer with the lead and other participating agencies (those listed in Paragraph (1) of Subsection C of 20.2.99.102 NMAC) in the consultation process;

**(2)** review and comment as appropriate (including comments in writing) on all proposed and final draft documents and decisions within 30 days of receipt;

**(3)** attend consultation and decision meetings;

**(4)** assure policy-level contact with other participants;

**(5)** provide input on any area of substantive expertise or responsibility (including, but not limited to planning assumptions, modeling, information on status of TCM implementation, and interpretation of regulatory or other requirements); and

(6) provide technical assistance to the lead agency or consultation process in accordance with this section when requested.

G. A meeting that is scheduled or required for another purpose may be used for the purposes of consultation if the conformity consultation purpose is specifically identified in the announcement for the meeting and all participating agencies are notified of such meeting.

[20.2.99.105 NMAC - Rp, 20.2.99.119 NMAC, 09/15/14]

#### **20.2.99.106 CONSULTATION PROCEDURES FOR SPECIFIC MAJOR ACTIVITIES:**

An interagency consultation process among the members of the lead and participating agencies shall be undertaken for the following specific major activities in accordance with all the procedures specified in 20.2.99.105 NMAC above. The lead agency for each activity shall be as specified, and the participating agencies shall be the agencies specified in Subsection C of 20.2.99.102 NMAC above.

A. Evaluation and choice of each model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses, including vehicle miles traveled (VMT) forecasting. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).

B. Determination of which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and design scope from the transportation plan or TIP. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).

C. Evaluation of whether projects otherwise exempted from meeting the requirements of this part should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).

D. Determination of whether past obstacles to implementation of TCMs which are behind the schedule established in the SIP have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. Consultation shall also include consideration of whether delays in TCM implementation necessitate revisions to the SIP to remove TCMs or substitute TCMs or other emission reduction measures. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).

E. Determination of whether:

**(1)** the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement; and

**(2)** the project's design concept and design scope have changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility; the lead agency shall be the MPO (or NMDOT in the absence of an MPO).

**F.** Determination of what forecast of VMT to use in establishing or tracking motor vehicle emissions budgets, developing transportation plans, TIPs, or making conformity determinations. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).

**G.** Verification of what forecast of VMT to use in developing SIPs. The lead agency shall be the air quality bureau of the department.

**H.** Consultation, within the context of a memorandum of agreement (MOA), on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins. The lead agency shall be NMDOT.

**I.** Evaluation of events which will trigger new conformity determinations. The lead agency shall be the MPO (or NMDOT in the absence of an MPO).

**J.** In the event that the metropolitan planning area does not include the entire nonattainment area or maintenance area, an interagency consultation process involving the designated MPO for the nonattainment area or maintenance area, NMDOT, local transportation agencies, and the department, shall be undertaken, in the context of an MOA, for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment area or maintenance area. The lead agency shall be NMDOT.

**K.** In nonattainment areas or maintenance areas where more than one MPO is involved, such MPOs must develop an MOA or memorandum of understanding reflecting their consultation.

**L.** In nonattainment areas or maintenance areas where the MPO's jurisdiction does not cover the entire nonattainment area or maintenance area, the MPO and NMDOT must develop an MOA or a memorandum of understanding reflecting their consultation.

**M.** In choosing conformity tests and methodologies for isolated rural nonattainment and maintenance areas, the lead agency shall be the MPO (or NMDOT in the absence of an MPO).

## **20.2.99.107 CONSULTATION PROCEDURES FOR SPECIFIC ROUTINE ACTIVITIES:**

An interagency consultation process among the lead and participating agencies shall be undertaken for the following routine activities in accordance with all the procedures specified in 20.2.99.105 NMAC. The lead agency for each activity shall be as specified, and the participating agencies shall be the agencies specified in Subsection C of 20.2.99.102 NMAC above or as specified for the specific activity. Not later than 30 days prior to the preparation of the final document or decision, the lead agency shall supply all relevant information and documents, as appropriate, to the participating agencies.

**A.** Identification of projects located at sites in PM<sub>10</sub> nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM<sub>10</sub> hot-spot analysis. The lead agency shall be either the MPO or NMDOT, in cooperation with the department.

**B.** Assumption of the location and design concept and design scope of projects which are disclosed to the MPO, as required by Subsection D of 20.2.99.107 NMAC, but whose sponsors have not yet decided these features in sufficient detail to perform the regional emissions analysis. The lead agency shall be either the MPO or NMDOT. Participating agencies shall include recipients of funds designated under Title 23 U.S.C. or the federal transit laws.

**C.** The design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys). The lead agency shall be either NMDOT or the MPO, as applicable. Participating agencies shall be the MPO, the department, and NMDOT.

**D.** Regionally significant non-FHWA/FTA projects.

**(1)** Assurance that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and design scope, or the no-build option are still being considered), including all those sponsored by recipients of funds designated under Title 23 U.S.C. or the federal transit laws, are disclosed to the MPO on a regular basis, and assurance that any changes to those plans are immediately disclosed. The lead agency for this process shall be the agency which is implementing the project. Participating agencies shall be the MPO, the department, NMDOT, local transportation and transit agencies for the city or county in which the nonattainment area or maintenance area is located, and recipients of funds designated under Title 23 U.S.C. or the federal transit laws.

**(2)** The sponsor of any such regionally significant project, and any agency that becomes aware of any such project through applications for approval, permitting, funding or otherwise, shall disclose such project to the designated MPO for the nonattainment area or maintenance area and NMDOT in a timely manner. Such

disclosure shall be made not later than the first occasion on which any of the following actions is sought:

- (a) any policy board action necessary for the project to proceed;
- (b) the issuance of administrative permits for the facility or for construction of the facility;
- (c) the execution of a contract to design or construct the facility;
- (d) the execution of any indebtedness for the facility;
- (e) any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project; or
- (f) the execution of any contract to design or construct or any approval needed for any facility that is dependent on the completion of a regionally significant project.

(3) In the case of any such regionally significant project that has not been disclosed in a timely manner to the designated MPO for the nonattainment area or maintenance area, NMDOT, and other interested agencies participating in the consultation process, such regionally significant project and all other regionally significant projects of that sponsor shall be deemed to be not included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and to be not consistent with the motor vehicle emissions budget in the SIP. In the case of repeated failures to disclose regionally significant projects by an agency that becomes aware of any such project through applications for approval, permitting or funding, all other regionally significant projects within the jurisdiction of such agency shall be deemed to be not included in the regional emissions analysis supporting the currently conforming TIP's conformity determination and to be not consistent with the motor vehicle emissions budget in the SIP.

(4) For the purposes of this section (20.2.99.107 NMAC), the phrase "adopt or approve of a regionally significant project" means the first time any action necessary to authorizing a project occurs, such as any policy board action necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

[20.2.99.107 NMAC - Rp, 20.2.99.121 NMAC, 09/15/14]

#### **20.2.99.108 NOTIFICATION PROCEDURES FOR ROUTINE ACTIVITIES:**

Notification of affected agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.102 NMAC) of transportation plan or TIP amendments which merely add or delete exempt projects shall be the affirmative responsibility of NMDOT or the MPO. Such notification shall be provided not later than 30 days prior to the preparation of the final draft of the document or decision. This process shall include:

**A.** notification of the affected agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.102 NMAC) early in the process of decision on the final document; and

**B.** supplying all relevant documents and information to the affected agencies (including those listed in Paragraph (1) of Subsection C of 20.2.99.102 NMAC).

[20.2.99.108 NMAC - Rp, 20.2.99.122 NMAC, 09/15/14]

### **20.2.99.109 CONFLICT RESOLUTION AND APPEALS TO THE GOVERNOR:**

**A.** Any conflict among state agencies or between state agencies and an MPO shall be escalated to the governor if the conflict cannot be resolved by the heads of the involved agencies. Prior to such escalation, such agencies shall make every effort to resolve any differences, including personal meetings between the heads of such agencies or their policy-level representatives, to the extent possible.

**B.** The department has 14 calendar days to appeal a determination of conformity (or other policy decision under this part) to the governor after NMDOT or the MPO has notified the department of the resolution of all comments on such determination of conformity or policy decision. Such 14-day period shall commence when the MPO or NMDOT has confirmed receipt by the secretary of the department of the resolution of the comments of the department. If the department appeals to the governor, the final conformity determination must have the concurrence of the governor. The department must provide notice of any appeal under this subsection to the MPO and NMDOT. If the department does not appeal to the governor within 14 days, the MPO or NMDOT may proceed with the final conformity determination.

**C.** In the case of any comments with regard to findings of fiscal constraint or air quality effects of any determination of conformity, NMDOT has 14 calendar days to appeal a determination of conformity (or other policy decision under this part) to the governor after the MPO has notified the department or NMDOT of the resolution of all comments on such determination of conformity or policy decision. Such 14-day period shall commence when the MPO has confirmed receipt by the secretary of the department or NMDOT of the resolution of the comments of NMDOT. If NMDOT appeals to the governor, the final conformity determination must have the concurrence of the governor. NMDOT must provide notice of any appeal under this subsection to the MPO and the department. If NMDOT does not appeal to the governor within 14 days, the MPO may proceed with the final conformity determination.

**D.** The governor may delegate the role of hearing any such appeal under this subsection and of deciding whether to concur in the conformity determination to another official or agency within the state, but not to the head or staff of the department or any local air quality agency, NMDOT, a state transportation commission or board, any agency that has responsibility for one of these functions or an MPO.

[20.2.99.109 NMAC - Rp, 20.2.99.123 NMAC, 09/15/14]

#### **20.2.99.110 PUBLIC CONSULTATION PROCEDURES:**

**A.** Affected agencies making conformity determinations on transportation plans, programs and projects shall establish a proactive public involvement process which provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for all transportation plans, TIPs, and projects, consistent with the requirements of 23 CFR part 450, including Sections 450.316 (a), 450.322(c), and 450.324(c) as in effect on the date of adoption of this part. Any charges imposed for public inspection and copying should be consistent with the fee schedule contained in 49 CFR 7.43. In addition, any such agency must specifically address in writing all public comments which allege that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. Any such agency shall also provide opportunity for public involvement in conformity determinations for projects to the extent otherwise required by law (e.g. NEPA).

**B.** The opportunity for public involvement provided under this section (20.2.99.110 NMAC) shall include access to information, emissions data, analyses, models and modeling assumptions used to perform a conformity determination, and the obligation of any such agency to consider and respond in writing to significant comments.

**C.** No transportation plan, TIP or project may be found to conform unless the determination of conformity has been subject to a public involvement process in accordance with this section, without regard to whether the US DOT has certified any process under 23 CFR part 450.

[20.2.99.110 NMAC - Rp, 20.2.99.124 NMAC, 09/15/14]

#### **20.2.99.111 ENFORCEABILITY OF DESIGN CONCEPT AND DESIGN SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES:**

**A.** Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under Title 23 U.S.C. or the federal transit laws, FHWA or FTA must obtain from the project sponsor or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as

conditions for NEPA process completion with respect to local CO, PM<sub>10</sub>, or PM<sub>2.5</sub> impacts. Before a conformity determination is made, written contractual commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and design scope which is used in the regional emissions analysis or used in the project-level hot-spot analysis.

**B.** Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall provide written contractual commitments and must comply with the obligations of such commitments.

**C.** Written contractual commitments to mitigation or control measures shall be obtained prior to a positive conformity determination, and project sponsors must comply with such commitments.

**D.** If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements, motor vehicle emissions budget requirements and interim emissions requirements are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under 20.2.99.102 through 20.2.99.110 NMAC. The MPO (or NMDOT in the absence of an MPO) and US DOT must find that the transportation plan and TIP still satisfy the applicable requirements for motor vehicle emissions budgets and interim motor vehicle emissions budgets, and that the project still satisfies the requirements for hot spots, and therefore that the conformity determinations for the transportation plan, TIP and project are still valid. This finding is subject to the applicable public consultation requirements in 20.2.99.110 NMAC for conformity determinations for projects.

[20.2.99.111 NMAC - Rp, 20.2.99.150 NMAC, 09/15/14]

#### **20.2.99.112 SAVINGS PROVISION:**

The federal conformity rules under 40 CFR Part 93 Subpart A, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of CAA Section 176(c) until such time as this conformity implementation plan revision is approved by US EPA. Following US EPA approval of this revision to the SIP (or a portion thereof), the approved (or approved portion of) the department's criteria and procedures would govern conformity determinations and the federal conformity regulations contained in 40 CFR Part 93 would apply only for the portion, if any, of the department's conformity provisions that is not approved by US EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the department revises its SIP to specifically remove them and that revision is approved by US EPA.

[20.2.99.112 NMAC - Rp, 20.2.99.154 NMAC, 09/15/14]

## **PART 100: GREENHOUSE GAS REDUCTION PROGRAM [REPEALED]**

[This part was repealed on June 7, 2012]

## **PART 101: CARBON DIOXIDE EMISSION STANDARDS FOR COAL-FIRED ELECTRIC GENERATING FACILITIES**

### **20.2.101.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.2.101.1 NMAC – N, 01/01/2023]

### **20.2.101.2 SCOPE:**

All geographic areas within the jurisdiction of the Environmental Improvement Board.

[20.2.101.2 NMAC – N, 01/01/2023]

### **20.2.101.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, Section 74-1-1 to 74-1-16 NMSA 1978, including specifically Paragraph (4) of Subsection A of Section 74-1-8 NMSA 1978, and Air Quality Control Act, Sections 74-2-1 to 74-2-22 NMSA 1978, including specifically Subparagraph (b) of Paragraph (1) of Subsection B of Section 74-2-5 NMSA 1978.

[20.2.101.3 NMAC - N, 01/01/2023]

### **20.2.101.4 DURATION:**

Permanent.

[20.2.101.4 NMAC - N, 01/01/2023]

### **20.2.101.5 EFFECTIVE DATE:**

January 1, 2023, except where a later date is cited at the end of a section.

[20.2.101.5 NMAC - N, 01/01/2023]

### **20.2.101.6 OBJECTIVE:**

The objective of this Part is to establish a carbon dioxide (CO<sub>2</sub>) emission standard for coal-fired electric generating facilities with an original installed capacity exceeding three hundred megawatts.

[20.2.101.6 NMAC - N, 01/01/2023]

## 20.2.101.7 DEFINITIONS:

In addition to the terms defined in 20.2.2.7 NMAC (Definitions), as used in this Part, the following terms apply:

**A. "Affected Electric Generating Facility or Affected EGF"** means a new or existing electric generating facility with an original installed capacity exceeding 300 megawatts and that uses coal as a fuel source.

**B. "Continuous emission monitoring system or CEMS"** means the equipment used to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system), a permanent record of CO<sub>2</sub> emissions or stack gas volumetric flow rate.

**C. "Department"** means the New Mexico environment department.

**D. "Electric generating facility (EGF)"** means a facility that generates electricity and includes all appurtenances and pollution control devices, and including, but not limited to all processes and equipment used to separate, compress, and transport CO<sub>2</sub> or other pollutants to offsite locations. A facility may include one or more electric generating units (EGU) at the same location.

**E. "Megawatt-hour (MWh)"** means the net generation from the affected EGU as determined by 40 CFR Part 60.5540.

**F. "Operating day"** means a calendar day during which any fuel is combusted in the affected EGU at any time.

**G. "Operator"** means the person or persons responsible for the overall operation of an affected EGF.

**H. "Owner"** means the person or persons who own all or part of an affected EGF.

**I. "Rolling average"** means the weighted average of all data, meeting quality assurance and quality control requirements normalized pursuant to this Part, collected during the applicable averaging period. A 365-operating-day rolling average is calculated by adding the hourly mass emissions over the previous 365 operating days and dividing that sum by the hourly generation (MWh-net) during the same period. A 30-operating-day rolling average is calculated by adding the hourly mass emissions over the previous 30 operating days and dividing that sum by the hourly generation (MWh-net) during the same period.

[20.2.101.7 NMAC - N, 01/01/2023]

## 20.2.101.8 SEVERABILITY:

If any provision of this Part, or the application of this provision to any person or circumstance is held invalid, the remainder of this Part, or the application of this provision to any person or circumstance other than those as to which it is held invalid, shall not be affected thereby.

[20.2.101.8 NMAC - N, 01/01/2023]

**20.2.101.9 CONSTRUCTION:**

This Part shall be liberally construed to carry out its purpose.

[20.2.101.9 NMAC - N, 01/01/2023]

**20.2.101.10 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of this Part shall not affect administrative or judicial action initiated under those prior versions.

[20.2.101.10 NMAC - N, 01/01/2023]

**20.2.101.11 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this Part does not relieve a person from the responsibility to comply with other applicable federal, state, or local laws, rules, or regulations, including more stringent controls.

[20.2.101.11 NMAC - N, 01/01/2023]

**20.2.101.12 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the New Mexico environment department air quality bureau.

[20.2.101.12 NMAC - N, 01/01/2023]

**20.2.101.13-20.2.101.110 [RESERVED]**

**20.2.101.111 APPICABILITY:**

This Part shall apply to new and existing affected electric generating facilities.

[20.2.101.111 NMAC - N, 01/01/2023]

**20.2.101.112 EMISSION STANDARD:**

After January 1, 2023, the owner or operator of an affected EGF shall limit CO2 emissions from the EGF to no more than 1,100 pounds per megawatt-hour on a 365-

operating-day rolling average basis. The calculation shall be performed within 15 days of the end of each calendar month. The calculation of pounds of CO<sub>2</sub> emitted must include all CO<sub>2</sub> emitted during the compliance period, including but not limited to emissions during startup, shutdown, maintenance, and malfunction. The calculation of megawatt-hours generated during the compliance period must include all net megawatt-hours generated by the affected EGF.

[20.2.101.112 NMAC - N, 01/01/2023]

### **20.2.101.113 MONITORING REQUIREMENTS:**

**A.** Owners or operators of an affected EGF shall prepare a monitoring plan to quantify the hourly CO<sub>2</sub> mass emission rate in tons per hour (tph) in accordance with the applicable provisions of this Section and 40 CFR Part 75.53(g). The monitoring plan shall be submitted to the Department and in place prior to reporting emission data and the results of the monitoring system certification test under Subsection A of 20.2.101.113 NMAC. The monitoring plan shall be updated as appropriate.

**B.** Owners or operators shall determine the hourly CO<sub>2</sub> mass emissions in pounds or tons from each affected electric generating unit (EGU) according to paragraphs (1) through (5) of Subsection B of 20.2.101.113 NMAC.

(1) Owners or operators shall install, certify, operate, maintain, and calibrate a CO<sub>2</sub> continuous emission monitoring system (CEMS) to directly measure and record the hourly average CO<sub>2</sub> concentration in the affected EGU exhaust gas emitted to the atmosphere, and a flow monitoring system to measure hourly average stack gas flow rates, in accordance with 40 CFR Part 75.10(a)(3)(i). As an alternative to direct measurement of the CO<sub>2</sub> concentration, provided that the affected EGU does not employ carbon separation (e.g., carbon capture and storage), owners or operators may use data from a certified oxygen (O<sub>2</sub>) monitor to calculate the hourly average CO<sub>2</sub> concentration in accordance with 40 CFR Part 75.10(a)(3)(iii). If the CO<sub>2</sub> concentration is measured on a dry basis, owners or operators shall also install, certify, operate, maintain, and calibrate a continuous moisture monitoring system, in accordance with 40 CFR Part 75.11(b). Alternatively, owners or operators may either use an appropriate fuel-specific default moisture value from 40 CFR Part 75.11(b) or submit a petition to the Department for a site-specific default moisture value.

(2) For each CEMS used to comply with this Part, owners or operators shall meet the applicable certification and quality assurance procedures in 40 CFR Part 75.20 and Appendices A and B of 40 CFR Part 75.

(3) Owners or operators shall use only unadjusted exhaust gas volumetric flow rates to determine the hourly CO<sub>2</sub> mass emission rate from each affected EGU. Owners or operators shall not apply the bias adjustment factors described in Section 7.6.5 of Appendix A to 40 CFR Part 75 to the exhaust gas flow rate data.

(4) Owners or operators shall select an appropriate reference method to set up the flow monitor and perform the ongoing Relative Accuracy Test Audit (RATA), in accordance with 40 CFR Part 75. If owners or operators use a Type-S pitot tube or a pitot tube assembly for the flow RATA, owners or operators shall calibrate the pitot tube or pitot tube assembly. Owners or operators may not use the 0.84 default Type-S pitot tube coefficient specified in Method 2.

(5) Owners or operators shall calculate the hourly CO<sub>2</sub> mass emissions (in tons) as described in Subparagraphs (a) through (c) of Paragraph (5) of Subsection B of 20.2.101.113 NMAC. Owners and operators shall only perform this calculation for valid operating hours, as defined in 40 CFR Part 60.5540(a)(1).

(a) Begin with the hourly CO<sub>2</sub> mass emission rate (tons/hour), obtained either from Equation F-11 of Appendix F of 40 CFR Part 75 (if the CO<sub>2</sub> concentration is measured on a wet basis), or by following the procedure in section 4.2 of Appendix F of 40 CFR Part 75 (if the CO<sub>2</sub> concentration is measured on a dry basis).

(b) Next, multiply each hourly CO<sub>2</sub> mass emission rate by the EGU or stack operating time in hours (as defined in 40 CFR Part 72.2), to calculate the tons of CO<sub>2</sub>.

(c) The hourly CO<sub>2</sub> emission rate and the EGU (or stack) operating hours used to calculate the CO<sub>2</sub> emission rate shall be recorded under 20.2.101.114 NMAC and shall be reported as required under 20.2.101.115 NMAC.

**C.** Owners or operators shall install, calibrate, maintain, and operate a sufficient number of watt meters to continuously measure and record the hourly net electric output from each affected EGU. These measurements shall be performed using 0.2 class electricity metering instrumentation and calibration procedures as specified under ANSI Standards No. C12.20 (see 40 CFR Part 60.17).

**D.** Consistent with 40 CFR Part 60.5520, if two or more affected EGUs serve a common electric generator, the owners or operators shall apportion the combined hourly net energy output to the individual affected EGU according to the fraction of the total steam load contributed by each EGU. Alternatively, if the EGUs are identical, owners or operators may apportion the combined hourly net electrical load to the individual EGUs according to the fraction of the total heat input contributed by each EGU.

**E.** In accordance with 40 CFR Part 60.13(g) and 40 CFR Part 60.5520, if an owner or operator of two or more affected EGUs that utilize the CEMS provisions in Subsection B of 20.2.101.113 NMAC share a common exhaust stack, the owners or operators may monitor the hourly CO<sub>2</sub> mass emissions at the common stack, in lieu of monitoring each EGU separately. If an owner or operator chooses this option, the hourly net generation shall be the sum of the hourly net generation for each individual affected EGU, and the owner or operator shall express the operating time as "stack operating hours" (as defined in 40 CFR Part 72.2). If an owner or operator demonstrates

compliance with the emission standard of this Part at the common exhaust stack, each affected EGU utilizing the stack shall be determined to be in compliance.

**F.** In accordance with 40 CFR Part 60.13(g) and 40 CFR Part 60.5520, if an owner or operator of an affected EGU utilizing the CEMS provisions in Subsection B of 20.2.101.113 NMAC has exhaust gas that is emitted to the atmosphere through multiple stacks (or if the exhaust gases are routed to a common stack through multiple ducts and owners or operators elect to monitor the ducts), the owner or operator shall monitor the hourly CO<sub>2</sub> mass emissions and the "stack operating time" (as defined in 40 CFR Part 72.2) at each stack or duct separately. Owners or operators shall determine compliance with the emission standard of this Part by summing the CO<sub>2</sub> mass emissions measured at the individual stacks or ducts and dividing by the total net generation for the affected EGU.

**G.** Operating hours in which CO<sub>2</sub> mass emission rates are calculated using maximum potential values are not "valid operating hours" (as defined in 40 CFR Part 60.5540(a)(1)) and shall not be used in the compliance determinations under 40 CFR Part 60.5540.

[20.2.101.113 NMAC - N, 01/01/2023]

#### **20.2.101.114 RECORDKEEPING REQUIREMENTS:**

**A.** Owners or operators shall maintain records of the information used to demonstrate compliance with this Part as specified in 40 CFR Parts 60.7(b) and 40 CFR Part 60.7(f) and shall comply with the applicable recordkeeping requirements of subpart F of 40 CFR Part 75. Owners or operators not subject to the requirements of 40 CFR Part 75 shall, at minimum, keep the records required under 40 CFR Part 60.5560(b)(2).

**B.** Owners or operators shall keep records of the calculations performed to determine the hourly and daily total CO<sub>2</sub> mass emissions in tons for:

- (1) Each operating day for each affected EGU; and
- (2) Each monthly rolling 30-operating-day period.

**C.** Consistent with 40 CFR Part 60.5520, owners or operators shall keep records of the applicable data recorded and the calculations performed and used to determine the gross energy output for each operating month for each affected EGU.

**D.** Owners or operators shall keep records of the calculations performed to determine any site-specific carbon-based F-factors used in the emissions calculations (if applicable).

**E.** Owners or operators shall maintain records of the information used to demonstrate compliance with Section 114, of 20.2.101 NMAC and as specified in 40 CFR Part 60.5560.

**F.** Owners or operators shall comply with the following requirements for record retention:

- (1) records shall be in a form suitable and readily available for review;
- (2) owners or operators shall maintain each record for ten years after the date of conclusion of each compliance period; and
- (3) Owners or operators shall maintain a record onsite for at least 5 years after the date of each measurement, maintenance, corrective action, report, or record, according to 40 CFR Part 60.7. Records that are accessible from a central location by a computer or other means that instantly provide access at the site meet this requirement. Owners or operators may maintain the records offsite for the remaining year as required by Subsection F of 20.2.101.114 NMAC.

[20.2.101.114 NMAC - N, 01/01/2023]

#### **20.2.101.115 REPORTING REQUIREMENTS:**

**A.** Owners or operators shall comply with the following reporting requirements:

(1) Owners or operators shall submit electronic quarterly reports. For the first 12 months, owners or operators shall submit an electronic quarterly report no later than 30 days after the end of each quarter. Thereafter, owners or operators shall submit a report for each subsequent calendar quarter, no later than 30 days after the end of the quarter.

(2) Owners or operators shall include the following information in each quarterly report:

(a) each rolling average CO<sub>2</sub> mass emission rate for which the last (twelfth) operating month in a 12-operating-month compliance period falls within the calendar quarter. Except as provided in this part, owners or operators shall calculate each average CO<sub>2</sub> mass emission rate for the compliance period according to the procedures in 40 CFR Part 60.5540. Owners or operators shall report the dates (month and year) of the first and twelfth operating months in each compliance period for which owners or operators performed a CO<sub>2</sub> mass emission rate calculation. Owners or operators shall identify compliance periods that ended in each quarterly report;

(b) if one or more compliance periods end in the quarter, owners or operators shall identify each operating month in the calendar quarter where owners or operators of an affected EGF violated the emission standard of this Part;

(c) if one or more compliance periods end in the quarter and there are no violations for an affected EGF, the owners or operators shall include an affirmative compliance statement in the quarterly report; and

(d) the percentage of valid operating hours in each 12-operating-month compliance period (i.e., the total number of valid operating hours (as defined in 40 CFR Part 60.5540(a)(1)) in that period divided by the total number of operating hours in that period and multiplied by one hundred percent).

(3) In the final quarterly report for each calendar year, owners or operators shall include the potential electric output of the affected EGU and the net energy output over the four quarters of the calendar year, in accordance with 40 CFR Part 60.5520.

**B.** Owners or operators shall meet all applicable reporting requirements under subpart G of 40 CFR Part 75 with reporting beginning January 1, 2023, or the date on which the EGF becomes an affected facility under this Part.

**C.** If any required monitoring system has not been provisionally certified by the applicable date on which emissions data reporting is required to begin under paragraph 40 CFR Part 60.55(c)(3), the maximum (or in some cases, minimum) potential value for the parameter measured by the monitoring system shall be reported until the required certification testing is successfully completed, in accordance with 40 CFR Part 75.4(j), 40 CFR Part 75.37(b), or section 2.4 of Appendix D of 40 CFR Part 75 (as applicable).

[20.2.101.115 NMAC - N, 01/01/2023]

## **PART 102-299: [RESERVED]**

## **PART 300: REPORTING OF GREENHOUSE GAS EMISSIONS [REPEALED]**

[This part was repealed on March 14, 2012]

## **PART 301: GREENHOUSE GAS REPORTING - VERIFICATION REQUIREMENTS [REPEALED]**

[This part was repealed on March 14, 2012]

## **PART 302-349: [RESERVED]**

## **PART 350: GREENHOUSE GAS CAP-AND-TRADE PROVISIONS [REPEALED]**

[This part was repealed on March 14, 2012]

# **CHAPTER 3: RADIATION PROTECTION**

## **PART 1: GENERAL PROVISIONS**

### **20.3.1.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.3.1.1 NMAC - Rp, 20.3.1.1 NMAC, 04/30/2009]

### **20.3.1.2 SCOPE:**

Except as otherwise specifically provided, this part applies to all persons who receive, possess, use, transfer, own or acquire any source of radiation; provided, however, that nothing in this part shall apply to any person to the extent that such person is subject to regulations by the NRC. Regulation by the state of source material, byproduct material and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the NRC and 10 CFR Part 150.

[20.3.1.2 NMAC - Rp, 20.3.1.2 NMAC, 04/30/2009]

### **20.3.1.3 STATUTORY AUTHORITY:**

Sections 74-1-9, 74-3-5 and 74-3-9 NMSA 1978.

[20.3.1.3 NMAC - Rp, 20.3.1.3 NMAC, 04/30/2009]

### **20.3.1.4 DURATION:**

Permanent.

[20.3.1.4 NMAC - Rp, 20.3.1.4 NMAC, 04/30/2009]

### **20.3.1.5 EFFECTIVE DATE:**

April 30, 2009, unless a later date is cited at the end of a section.

[20.3.1.5 NMAC - Rp, 20.3.1.5 NMAC, 04/30/2009]

### **20.3.1.6 OBJECTIVES:**

**A.** To protect the public and occupationally exposed individuals from unnecessary exposure to ionizing radiation.

**B.** To provide for the safe possession and use of radioactive materials and radiation machines in keeping with the ALARA principle, as defined in 20.3.4.7 NMAC.

[20.3.1.6 NMAC - Rp, 20.3.1.6 NMAC, 04/30/2009]

#### **20.3.1.7 DEFINITIONS:**

As used in these regulations, these terms have the definitions as set forth below.

**A. "Accelerator"** (See particle accelerator).

**B. "Accelerator produced material"** means any material made radioactive by exposure to radiation from a particle accelerator.

**C. "Act"** means the Radiation Protection Act (Sections 74-3-1 through 74-3-16, NMSA 1978).

**D. "Agreement state"** means any state with which the United States nuclear regulatory commission (NRC) or the United States atomic energy commission (AEC) has entered into an effective agreement under Section 274b of the Atomic Energy Act, as amended (73 Stat. 689).

**E. "Board"** means the environmental improvement board.

**F. "Byproduct material"** means:

(1) any radioactive material, (except special nuclear material), yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes; underground ore bodies depleted by these solution extraction operations do not constitute byproduct material within this definition;

(3) any discrete source of radium-226 that is produced, extracted or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical or research activity;

(4) any material that:

(a) has been made radioactive by use of a particle accelerator; and

(b) is produced, extracted or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical or research activity; or

(5) any discrete source of naturally occurring radioactive material, other than source material, that

(a) NRC, in consultation with the administrator of the environmental protection agency (EPA), the secretary of energy, the secretary of homeland security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(b) before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical or research activity.

**G. "Calibration"** means the quantitative evaluation and adjustment, as deemed necessary by the department, of radiation measuring instruments by a department approved laboratory. Calibration includes the determination of:

(1) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or

(2) the strength of a source of radiation relative to a standard using national institute of standards and technology (NIST) traceable sources and approved techniques.

**H. "CFR"** means code of federal regulations.

**I. "Chelating agent"** means amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid and polycarboxylic acids.

**J. "Commercial waste disposal"** means disposal of radioactive waste as a business enterprise.

**K. "Consortium"** means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a federal facility or a medical facility.

**L. "Council"** means the radiation technical advisory council (RTAC).

**M. "Curie"** means that amount of radioactive material which disintegrates at the rate of 37 billion atoms per second.

**N. "Cyclotron"** means a particle accelerator in which the charged particles travel in an outward spiral or circular path. A cyclotron accelerates charged particles at energies

usually in excess of 10 megaelectron volts and is commonly used for production of short half-life radionuclides for medical use.

**O. "Decommission"** means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(1) release of the property for unrestricted use and termination of the license;  
or

(2) release of the property under restricted conditions and termination of the license.

**P. "Department"** means the environment department, its successors, or its predecessors, the environmental improvement agency, or the environmental protection division of the environment department.

**Q. "Depleted uranium"** means the source material uranium which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

**R. "Discrete source"** means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical or research activities.

**S. "DOE"** means the United States department of energy established by the Department of Energy Organization Act (Public Law 95-91, 91 Stat. 565, 42 U.S.C. 7101 et. seq.) to the extent that the DOE, or its duly authorized representatives, exercises functions formerly vested in the United States atomic energy commission (AEC), its chairman, members, officers and components and transferred to the United States energy research and development administration (ERDA) and to the administrator thereof pursuant to sections 104(b), (c) and (d) of the Energy Reorganization Act (Public Law 93-438, 88 Stat. 1233 at 1237, 42 U.S.C. 5814) and retransferred to the secretary of energy pursuant to section 301(a) of the Department of Energy Organization Act (Public Law 95-91, 91 Stat. 565 at 577-578, 42 U.S.C. 7151).

**T. "DOT"** means the United States department of transportation.

**U. "EPA"** means the United States environmental protection agency.

**V. "FDA"** means the United States food and drug administration.

**W. "Former U.S. atomic energy commission (AEC) or NRC licensed facilities"** means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants or critical mass experimental facilities where AEC or NRC licenses have been terminated.

**X. "Government agency"** means any state or federal executive department, commission, independent establishment, corporation, wholly or partly owned by any state or the United States of America which is an instrumentality of the state or United States, or any board, bureau, division, service, office, officer, authority, administration or other establishment in the executive branch of the government.

**Y. "Hazardous waste"** means those wastes designated as hazardous by EPA regulations in 40 CFR Part 261.

**Z. "Healing arts"** means those professional disciplines authorized by the laws of this state to use x-rays or radioactive material in the diagnosis or treatment of human or animal disease.

**AA. "Human use"** means the internal or external administration of radiation or radioactive material to human beings for the purpose of medical diagnosis or therapy.

**BB. "Individual"** means any human being.

**CC. "Inspection"** means an official examination or observation including, but not limited to, tests, surveys and monitoring to determine compliance with rules, regulations, orders, requirements and license or registration conditions of the department.

**DD. "License"** means a license issued by the department in accordance with 20.3 NMAC.

**EE. "Licensed material"** means radioactive material received, possessed, used, transferred or disposed of under a general or specific license issued by the department.

**FF. "Licensee"** means the holder of a license.

**GG. "Licensing state"** means any state with regulations equivalent to the suggested state regulations for control of radiation (SSRCR) relating to, and an effective program for, the regulatory control of NARM (as defined in 20.3.1.7 NMAC) and which has been granted final designation by the conference of radiation control program directors, incorporated (CRCPD).

**HH. "Lost or missing licensed material"** means licensed material whose location is unknown. This definition includes, but is not limited to, material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

**II. "Major processor"** means a user processing, handling or manufacturing radioactive material exceeding type A quantities as unsealed sources or material, or exceeding 4 times type B quantities as sealed sources, but does not include nuclear

medicine programs, universities, industrial radiographers or small industrial programs. Type A and B quantities are defined in 10 CFR Part 71.4.

**JJ. "Mixed waste"** contains both hazardous waste (as defined by Resource Conservation and Recovery Act (RCRA) and its amendments) and radioactive waste (as defined by Atomic Energy Act (AEA) and its amendments). It is jointly regulated by NRC or NRC's agreement states and EPA or EPA's RCRA authorized states. The fundamental and most comprehensive statutory definition is found in the Federal Facilities Compliance Act (FFCA) where Section 1004(41) was added to RCRA: "The term 'mixed waste' means waste that contains both hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act."

**KK. "NARM"** means any naturally occurring or accelerator-produced radioactive material. It does not include source or special nuclear material.

**LL. "Natural radioactivity"** means radioactivity of naturally occurring nuclides.

**MM. "NRC"** means the United States nuclear regulatory commission or its duly authorized representatives.

**NN. "Ore refineries"** means all processors of a radioactive material ore including uranium mills or other source material extraction facilities.

**OO. "Particle accelerator"** (accelerator) means any machine capable of accelerating electrons, protons, deuterons or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 megaelectron volt. For purposes of this definition, "accelerator" is an equivalent term. Particle accelerators which intentionally produce radioactive materials or produce radioactive materials incidental to the operation of an accelerator shall be subject to the licensing requirements in 20.3.3 NMAC. Particle accelerators which produce radiation for research, diagnostic or therapeutic purposes shall be subject to the registration requirements in 20.3.2 and 20.3.9 NMAC.

**PP. "Person"** means:

(1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than NRC or DOE, any state or any political subdivision of or any political entity within a state, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and

(2) any legal successor, representative, agent or agency of the foregoing.

**QQ. "PET"** means positron emission tomography.

**RR.** **"Qualified expert"** means an individual having the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs; for example, individuals certified in the appropriate field by the American board of radiology (ABR), or the American board of health physics (ABHP), or the American board of medical physics (ABMP) or those having equivalent qualifications. With reference to the calibration of radiation therapy equipment, an individual having, in addition to the above qualifications, training and experience in the clinical applications of radiation physics to radiation therapy; for example, individuals certified in therapeutic radiological physics or x-ray and radium physics by the ABR, or those having equivalent qualifications. With reference to providing medical physics services to certified mammographic facilities, such individuals must meet the requirements as defined by the FDA.

**SS.** **"Radiation"** (ionizing radiation), as used in this chapter, means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons and other particles capable of producing ions. Radiation, as used in this chapter, does not include non-ionizing radiation, such as radiowaves or microwaves, visible, infrared or ultraviolet light.

**TT.** **"Radiation machine"** means any device capable of producing radiation except those devices with radioactive material as the only source of radiation.

**UU.** **"Radiation safety officer"** means one who has the knowledge and responsibility to apply appropriate radiation protection regulations.

**VV.** **"Radioactive material"** means any material in any physical or chemical form which emits radiation spontaneously.

**WW.** **"Radioactivity"** means the transformation of unstable atomic nuclei by the emission of radiation.

**XX.** **"Radioisotope"** (see radioactive material).

**YY.** **"Radionuclide"** (see radioactive material).

**ZZ.** **"Registrant"** means a holder of a registration and any person who is registered or legally obligated to register with the department pursuant to 20.3.2 NMAC or 20.3.9 NMAC.

**AAA.** **"Registration"** (certificate of registration) means a registration issued by the department pursuant to 20.3.2 NMAC or 20.3.9 NMAC.

**BBB.** **"Regulation"** means any rule adopted pursuant to the act.

**CCC.** **"Regulations of the U.S. department of transportation" (DOT)** means the regulations in 49 CFR Parts 100-185.

**DDD.** "Research and development" means:

(1) theoretical analysis, exploration or experimentation; or

(2) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

**EEE.** "Sealed source" means any radioactive material that is encased in a capsule designed to prevent leakage or escape of the radioactive material.

**FFF.** "Sealed source and device registry" means the national registry that contains all the registration certificates, generated by both NRC and the agreement states that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.

**GGG.** "Secretary" means the secretary of the New Mexico environment department.

**HHH.** "SI" means the international system of units.

**III.** "Site boundary" means that line beyond which the land or property is not owned, leased or otherwise controlled by the licensee or registrant.

**JJJ.** "Source material" means:

(1) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(2) ores that contain by weight one-twentieth of one percent (0.05 percent) or more of uranium, thorium or any combination thereof; source material does not include special nuclear material.

**KKK.** "Source material milling" means any activity which results in the production of byproduct as defined in Paragraph (2) of Subsection F of this section.

**LLL.** "Source of radiation" means any radioactive material, device or equipment emitting or capable of producing radiation.

**MMM.** "Special form radioactive material" means radioactive material that satisfies the conditions in 10 CFR 71.75

**NNN.** "Special nuclear material" means:

(1) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the NRC, pursuant to the provisions of Section 51 of the Atomic Energy Act determines to be special nuclear material, but does not include source material; or

(2) any material artificially enriched by any of the foregoing but does not include source material.

**OOO. "Special nuclear material in quantities not sufficient to form a critical mass"** means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or any combination of them in accordance with the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed 1 (i.e. unity). For example, the following quantities in combination would not exceed the limitation and are within the formula:  $175 \text{ (grams contained U-235)}/350 + 50 \text{ (grams U-233)}/200 + 50 \text{ (grams Pu)}/200 = 1$ .

**PPP. "Test"** means a method for determining the characteristics of conditions of sources of radiation or components thereof.

**QQQ. "These regulations"** means all parts of 20.3 NMAC.

**RRR. "Unrefined and unprocessed ore"** means ore in its natural form prior to any processing such as grinding, roasting, beneficiating or refining.

**SSS. "Waste"** (radioactive waste) means those low-level radioactive wastes containing radioactive material which is acceptable for disposal in a land disposal facility. For the purposes of this chapter, excluded from the definition of "waste" are:

(1) high-level radioactive waste or spent nuclear fuel as defined in section 2 of the Nuclear Waste Policy Act;

(2) transuranic waste as defined in section 11.(ee) of the Atomic Energy Act;  
or

(3) byproduct material as defined in Paragraphs (2), (3), (4) and (5) of the definition of *byproduct material* set forth in this section.

[20.3.1.7 NMAC - Rp, 20.3.1.7 NMAC, 4/30/2009; A, 6/13/2017; A, 8/10/2021]

**20.3.1.8-20.3.1.106 [RESERVED]**

**20.3.1.107 EXEMPTIONS FROM THE REGULATORY REQUIREMENTS:**

**A. General Provisions.** The department may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of this chapter as it determines are authorized by law, will not endanger public health and safety or property and are otherwise in the public interest.

**B. DOE contractors and NRC contractors.** Any DOE contractor or subcontractor and any NRC contractor or subcontractor of the following categories operating within this state is exempt from these regulations to the extent that such contractor or subcontractor under his contract receives, possesses, uses, transfers or acquires sources of radiation:

(1) prime contractors performing work for the DOE at United States government-owned or controlled sites, including the transportation of sources of radiation to or from such sites and the performance of contract services during temporary interruptions of such transportation;

(2) prime contractors of the DOE performing research in, or development, manufacture, storage, testing or transportation of atomic weapons or components thereof;

(3) prime contractors of the DOE using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(4) any other prime contractor or subcontractor of the DOE or NRC when the state and the NRC jointly determine:

(a) that the exemption of the prime contractor or subcontractor is authorized by law; and

(b) that, under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

**C.** Common and contract carriers, freight forwarders, warehousemen and United States postal service are exempt from the regulations in 10 CFR parts 31 through 37 and 39 as well as the requirements for a license set forth in section 81 of the Atomic Energy Act to the extent that they transport or store byproduct material in the regular course of carriage for another or storage incident thereto.

**D.** Mining, extracting, processing, storage or transportation of radioactive ores or uranium concentrates that are regulated by the mine safety and health administration (MSHA), United States department of labor (DOL), or any other federal or state agency having authority are exempt unless the authority is ceded by such agency to the board.

[20.3.1.107 NMAC - Rp, 20.3.1.107 NMAC, 04/30/2009; A, 06/13/2017]

#### **20.3.1.108 RECORDS:**

Each licensee and registrant shall maintain records showing the receipt, transfer and disposal of all sources of radiation. Additional record requirements are specified elsewhere in these regulations.

[20.3.1.108 NMAC - Rp, 20.3.1.108 NMAC, 04/30/2009]

#### **20.3.1.109 INSPECTIONS:**

**A.** Each licensee and registrant shall afford the department at all reasonable times, opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

**B.** Each licensee and registrant shall make available to the department for inspection upon reasonable notice, records maintained pursuant to the requirements in this chapter.

[20.3.1.109 NMAC - Rp, 20.3.1.109 NMAC, 04/30/2009]

#### **20.3.1.110 TESTS:**

Each licensee and registrant shall perform, or permit the department to perform such tests as the department deems appropriate or necessary for the administration of the requirements in this chapter, including, but not limited to, tests of:

**A.** sources of radiation;

**B.** facilities wherein sources of radiation are used or stored;

**C.** radiation detection and monitoring instruments; and

**D.** other equipment and devices used in connection with utilization or storage of sources of radiation.

[20.3.1.110 NMAC - Rp, 20.3.1.110 NMAC, 04/30/2009]

#### **20.3.1.111 ADDITIONAL REQUIREMENTS:**

The department may impose upon a licensee or registrant such requirements in addition to those established in this chapter as it deems appropriate or necessary to minimize danger to public health and safety or property.

[20.3.1.111 NMAC - Rp, 20.3.1.111 NMAC, 04/30/2009]

#### **20.3.1.112 VIOLATIONS:**

**A.** Violation of any requirement of the act, this chapter or a license or registration condition may result in enforcement proceedings under Section 74-3-11.1, NMSA 1978, including, but not limited to, the following:

(1) issuing a compliance order or assessing a civil penalty of up to \$ 15,000 per day for each violation or both; or

(2) commencing a civil action in district court for appropriate relief, including injunctive relief.

**B.** A person who knowingly commits a violation of any provision of the act, this chapter or order issued thereunder may be guilty of a misdemeanor under Section 74-3-12.1, NMSA 1978. A person who knowingly makes a false statement, representation or certification in an application, record, report, plan or other document filed or required to be maintained pursuant to the act or this chapter may be guilty of a petty misdemeanor under Section 74-3-12.1, NMSA 1978.

[20.3.1.112 NMAC - Rp, 20.3.1.112 NMAC, 04/30/2009]

**20.3.1.113 IMPOUNDING:**

Sources of radiation shall be subject to impounding pursuant to the act.

[20.3.1.113 NMAC - Rp, 20.3.1.113 NMAC, 04/30/2009]

**20.3.1.114 PROHIBITED USES:**

**A.** A hand-held fluoroscopic screen shall not be used with x-ray equipment unless it has been listed in the *registry of sealed sources and devices* or accepted for certification by the FDA, or the center for devices and radiological health (CDRH).

**B.** A shoe-fitting fluoroscopic device shall not be used.

**C.** The use of a source of radiation for the purpose of screening or inspecting individuals for concealed weapons, hazardous materials, stolen property, illegal goods or contraband, is prohibited without prior written approval from the department.

**D.** The exposure of any individual to the primary beam of a radiation machine for training or demonstration purposes is prohibited.

[20.3.1.114 NMAC - Rp, 20.3.1.114 NMAC, 04/30/2009]

**20.3.1.115 INTERPRETATIONS:**

Except as specifically authorized by the department in writing, no interpretation of these regulations by an officer or employee of the department other than a written interpretation by the legal counsel will be recognized to be binding upon the department.

[20.3.1.115 NMAC - Rp, 20.3.1.115 NMAC, 04/30/2009]

#### **20.3.1.116 COMMUNICATIONS:**

All communications and reports concerning these regulations and applications filed thereunder should be addressed to the department at its office as follows: New Mexico Environment Department, Radiation Control Bureau, P.O. Box 5469, Santa Fe, NM 87502-5469.

[20.3.1.116 NMAC - Rp, 20.3.1.116 NMAC, 04/30/2009; A, 06/13/2017]

#### **20.3.1.117-20.3.1.120 [RESERVED]**

#### **20.3.1.121 DOCUMENTS AND FORMS:**

**A.** All documents referenced in these regulations are available for review at the offices of the department's radiation control bureau.

**B.** All forms referenced in these regulations may be obtained for review at the offices of the department's radiation control bureau.

[20.3.1.121 NMAC - Rp, 20.3.1. 121 NMAC, 04/30/2009]

#### **20.3.1.122 DELIBERATE MISCONDUCT:**

**A.** Any licensee, registrant, applicant for a license or registration, employee of a licensee, employee of a registrant or registration applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or registrant or applicant for a license or registration, who knowingly provides to any licensee, registrant, applicant, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, registrant's or applicant's activities in 20.3 NMAC, may not:

**(1)** engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, registrant, or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license or registration issued by the department; or

**(2)** deliberately submit to the department, a licensee, registrant, an applicant, or a licensee's, registrant's or applicant's, contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the department.

**B.** A person who violates Paragraphs (1) or (2) of Subsection A of this section may be subject to enforcement action in accordance with all applicable provisions of the act and 20.3 NMAC.

**C.** For the purposes of Paragraph (1) of Subsection A of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) would cause a licensee, registrant or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license or registration issued by the department; or

(2) constitutes a violation of a requirement, procedure, instruction, contract, purchase order or policy of a licensee, registrant, applicant, contractor or subcontractor.

[20.3.1.122 NMAC - Rp, 20.3.1.122 NMAC, 04/30/2009]

#### **20.3.1.123 COMPLETENESS AND ACCURACY OF INFORMATION:**

**A.** Information provided to the department by an applicant for a license or registration, or by a licensee or registrant or information required by statute or by the department's regulations, orders, or license or registration conditions to be maintained by the applicant or the licensee or registrant shall be complete and accurate in all material respects.

**B.** Each applicant, licensee or registrant shall notify the department of information identified by the applicant, licensee or registrant as having for the regulated activity a significant implication for public health and safety. An applicant, licensee or registrant violates this paragraph only if the applicant, licensee or registrant fails to notify the department of information that the applicant, licensee or registrant has identified as having a significant implication for public health and safety. Notification shall be provided to the department within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the department by other reporting or updating requirements.

[20.3.1.123 NMAC - N, 04/30/2009]

#### **20.3.1.124 SAVING CLAUSE:**

Amendment and supersession of this chapter shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any license or registration issued pursuant to this chapter.

[20.3.1.124 NMAC - N, 04/30/2009]

## **PART 2: REGISTRATION OF RADIATION MACHINES AND SERVICES**

**20.3.2.1 ISSUING AGENCY:**

Environmental Improvement Board.

[Recompiled 11/27/01]

**20.3.2.2 SCOPE:**

This subpart provides for the registration of:

A. radiation machines; and

B. persons providing radiation machine installation, servicing, or services as stipulated in 204 [20.3.2.204 NMAC].

C. In addition to the requirements of this subpart, all registrants are subject to the applicable provisions of other subparts of these regulations.

[5-3-95; 20.3.2.2 NMAC – Rn, 20 NMAC 3.1.2.200, Recompiled 11/27/01]

**20.3.2.3 STATUTORY AUTHORITY:**

[RESERVED]

**20.3.2.4 DURATION:**

[RESERVED]

**20.3.2.5 EFFECTIVE DATE:**

[RESERVED]

**20.3.2.6 OBJECTIVE:**

[RESERVED]

**20.3.2.7 DEFINITIONS:**

[RESERVED]

**20.3.2.8-20.3.2.200 [RESERVED]**

**20.3.2.201 EXEMPTIONS:**

A. Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of this subpart,

provided that the dose equivalent rate averaged over an area of 10 sq. cm does not exceed 0.5 mrem (5 mSv) per hour at 5 cm from an accessible surface of such equipment. The production, testing, or factory servicing of such equipment shall not be exempt.

B. Radiation machines while in transit or storage incident thereto are exempt from the requirements of this subpart.

C. Domestic television receivers are exempt from the requirements of this subpart.

D. Microwave ovens in private homes are exempt from the requirements of this subpart.

[5-3-95; 20.3.2.201 NMAC – Rn, 20 NMAC 3.1.2.201, Recompiled 11/27/01]

#### **20.3.2.202 APPLICATION FOR REGISTRATION OF RADIATION MACHINES:**

Each person having a radiation machine shall:

A. Apply for registration of such machine with the Department within 30 days following the effective date of these regulations or thereafter prior to the operation of a radiation machine on forms furnished by the Department and shall contain all the information required by the form and accompanying instructions; and

B. Designate on the application form an individual to be responsible for radiation protection.

[5-3-95; 20.3.2.202 NMAC – Rn, 20 NMAC 3.1.2.202, Recompiled 11/27/01]

#### **20.3.2.203 PROHIBITED SERVICING OF RADIATION MACHINES:**

Each registrant shall prohibit any person from furnishing radiation machine servicing or services as described in 204.D [Subsection D. of 20.3.2.204 NMAC] to their radiation machine facility until the person provides evidence that they have been registered with the Department as a provider of services in accordance with 204 [Section 204 of 20.3.2.204 NMAC].

[5-3-95; 20.3.2.203 NMAC – Rn, 20 NMAC 3.1.2.203, Recompiled 11/27/01]

#### **20.3.2.204 APPLICATION FOR REGISTRATION OF SERVICING AND SERVICES:**

A. Each person who is engaged in the business of installing or offering to install radiation machines or is engaged in the business of furnishing or offering to furnish radiation machine servicing or radiation safety related services in this State, shall apply for registration of such services with the Department prior to furnishing or offering to furnish any such services.

B. Application for registration shall be completed on a form furnished by the Department and shall contain all information required by the Department as indicated on the forms and accompanying instructions.

C. Each person applying for registration under this subpart shall specify:

- (1) that they have read and understand the requirements of these regulations; and
- (2) the services for which they are applying for registration; and
- (3) the training and experience that qualifies them to discharge the services for which they are applying for registration.

D. For the purpose of 204 [Section 204 of 20.3.2.204 NMAC], services may include, but shall not be limited to:

- (1) installation or servicing of radiation machines and associated radiation machine components;
- (2) calibration of radiation machines or radiation measurement instruments or devices;
- (3) radiation protection or health physics consultations or surveys; and
- (4) personnel dosimetry services.

E. Personnel dosimetry services shall obligate themselves to report to the Department all exposures greater than 400 millirems (4000 mSv) in any one month within 10 days of the determination.

F. No individual shall perform services which are not specifically indicated by that individual on his application for registration.

[5-3-95; 20.3.2.204 NMAC – Rn, 20 NMAC 3.1.2.204, Recompiled 11/27/01]

### **20.3.2.205 ISSUANCE OF REGISTRATION CERTIFICATES:**

A. Upon a determination that an applicant meets the requirements of these regulations, the Department shall issue a Registration Certificate.

B. The Department may incorporate in the Registration Certificate at the time of issuance or thereafter by appropriate rule or order, such additional requirements and conditions with respect to the registrant's receipt, possession, use and transfer of radiation machines as it deems appropriate or necessary to protect the health of the people of this State.

[5-3-95; 20.3.2.205 NMAC – Rn, 20 NMAC 3.1.2.205, Recompiled 11/27/01]

**20.3.2.206 EXPIRATION OF REGISTRATION CERTIFICATES:**

Except as provided by 207 [20.3.2.207 NMAC], each Registration Certificate shall expire at the end of the day on the date stated therein.

[5-3-95; 20.3.2.206 NMAC – Rn, 20 NMAC 3.1.2.206, Recompiled 11/27/01]

**20.3.2.207 RENEWAL OF NOTICE OF REGISTRATION:**

A. Application for renewal of registration shall be filed in accordance with 202 or 204 [20.3.2.202 or 204 NMAC].

B. In any case in which a registrant not less than 30 days prior to the expiration of his existing Registration Certificate has filed an application in proper form for renewal, such existing Registration Certificate shall not expire until the application status has been finally determined by the Department.

[5-3-95; 20.3.2.207 NMAC – Rn, 20 NMAC 3.1.2.207, Recompiled 11/27/01]

**20.3.2.208 REPORT OF CHANGES:**

The registrant shall notify the Department in writing before making any change which would render the information contained in the Application for Registration or the Registration Certificate no longer accurate.

[5-3-95; 20.3.2.208 NMAC – Rn, 20 NMAC 3.1.2.208, Recompiled 11/27/01]

**20.3.2.209 APPROVAL NOT IMPLIED:**

No person, in any advertisement, shall refer to the fact that they or their facility is registered with the Department pursuant to the provisions of 202 or 204 [Sections 202 or 204 of 20.3.2.202 or 204 NMAC] and no person shall state or imply that any activity under such registration has been approved by the Department.

[5-3-95; 20.3.2.209 NMAC – Rn, 20 NMAC 3.1.2.209, Recompiled 11/27/01]

**20.3.2.210 ASSEMBLER OR TRANSFER OBLIGATION:**

A. Any person who sells, leases, transfers, lends, disposes, assembles, or installs radiation machines in this State shall notify the Department within 15 days of:

- (1) the name and address of persons who have received these machines;

(2) the manufacturer, model, and serial number of each radiation machine transferred; and

(3) the date of transfer of each radiation machine.

B. No person shall make, sell, lease, transfer, lend, assemble, or install radiation machines or the supplies used in connection with such machines unless such supplies and equipment when properly placed in operation and used shall meet the requirements of these regulations.

[5-3-95; 20.3.2.210 NMAC – Rn, 20 NMAC 3.1.2.210, Recompiled 11/27/01]

#### **20.3.2.211 OUT-OF-STATE RADIATION MACHINES:**

A. Whenever any radiation machine is to be brought into the State, for any temporary use, the person proposing to bring such machine into the State shall give written notice to the Department at least two working days before such machine is to be used in the state. The notice shall include the type of radiation machines; the nature, duration, and scope of use; and the exact location(s) where the radiation, machine is to be used. If for a specific case the two-working-day period would impose an undue hardship on the person, they may, upon application to the Department, obtain permission to proceed sooner.

B. In addition, the out-of-state person shall:

(1) comply with all applicable regulations;

(2) supply the Department with such other information as the Department may reasonably request; and

(3) not operate within this state on a temporary basis, in excess of 180 calendar days per year.

[5-3-95; 20.3.2.211 NMAC – Rn, 20 NMAC 3.1.2.211, Recompiled 11/27/01]

#### **20.3.2.121-20.3.2.299 [RESERVED]**

### **PART 3: LICENSING OF RADIOACTIVE MATERIALS**

#### **20.3.3.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.3.3.1 NMAC - Rp, 20.3.3.1 NMAC, 04/30/2009]

#### **20.3.3.2 SCOPE:**

**A.** This part provides for the licensing of radioactive material. Except for persons exempt as provided in this part, no person shall manufacture, produce, receive, possess, use, own, transfer or acquire radioactive material except as authorized in a specific or general license issued pursuant to the requirements in this part.

**B.** In addition to the requirements of this part, all licensees are subject to the requirements of 20.3.1 NMAC, 20.3.4 NMAC, 20.3.10 NMAC and 20.3.16 NMAC.

**C.** The requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In any conflict between a requirement in this part and a specific requirement in another part of this chapter, the specific requirement governs.

[20.3.3.2 NMAC - Rp, 20.3.3.2 NMAC, 04/30/2009]

**20.3.3.3 STATUTORY AUTHORITY:**

Sections 74-1-9, 74-3-5 and 74-3-9 NMSA 1978.

[20.3.3.3 NMAC - Rp, 20.3.3.3 NMAC, 04/30/2009]

**20.3.3.4 DURATION:**

Permanent.

[20.3.3.4 NMAC - Rp, 20.3.3.4 NMAC, 04/30/2009]

**20.3.3.5 EFFECTIVE DATE:**

April 30, 2009, unless a later date is cited at the end of a section.

[20.3.3.5 NMAC - Rp, 20.3.3.5 NMAC, 04/30/2009]

**20.3.3.6 OBJECTIVE:**

This part sets forth rules applicable to all persons in the state of New Mexico governing licensing of radioactive material under the act, and exemptions from the licensing requirements.

[20.3.3.6 NMAC - Rp, 20.3.3.6 NMAC, 04/30/2009]

**20.3.3.7 DEFINITIONS:**

**A.** "Alert" means events that may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by offsite response organizations to protect persons offsite.

**B. "Principal activities"** means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

**C. "Site area emergency"** means events that may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by offsite response organizations to protect persons offsite.

**D. "Indian Tribe"** means an Indian or Alaska native Tribe, band, nation, pueblo, village, or community that the secretary of the interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

**E. "Tribal official"** means the highest ranking individual that represents Tribe leadership, such as the chief, president, or Tribe council leadership.

**F. "Unrefined and unprocessed ore"** means ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining. Processing does not include sieving or encapsulation of ore or preparation of samples for laboratory analysis.

[20.3.3.7 NMAC - N, 4/30/2009; A, 6/13/2017; A, 8/10/2021]

#### **20.3.3.8-20.3.3.300 [RESERVED]**

#### **20.3.3.301 EXEMPTIONS - UNIMPORTANT QUANTITIES OF SOURCE MATERIAL:**

**A.** Any person is exempt from the requirements in this part to the extent that such person receives, possesses, uses, transfers or delivers source material in any chemical mixture, compound, solution or alloy in which the source material is by weight less than one twentieth of one percent of the mixture, compound, solution or alloy. The exemption contained in this subsection does not include *byproduct material* as defined in Paragraph (2) of Subsection F of 20.3.1.7 NMAC.

**B.** Any person is exempt from the requirements in this part to the extent that such person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided that, except as authorized in a specific license, such person shall not refine or process such ore.

**C.** Any person is exempt from the requirements for a license set forth in the Radiation Protection Act, Sections 74-3-1 through 16 NMSA 1978 and from the regulations in this part and in 10 CFR Parts 19, 20, and 21 to the extent that such person receives, possesses, uses or transfers:

- (1) any quantities of thorium contained in:

**(a)** incandescent gas mantles;

**(b)** vacuum tubes;

**(c)** welding rods;

**(d)** electric lamps for illuminating purposes; provided, that each lamp does not contain more than 50 milligrams of thorium;

**(e)** germicidal lamps, sunlamps, and lamps for outdoor or industrial lighting; provided, that each lamp does not contain more than two grams of thorium;

**(f)** rare earth metals and compounds, mixtures and products containing not more than one fourth of one percent by weight, thorium, uranium or any combination of these; or

**(g)** personnel neutron dosimeters; provided, that each dosimeter does not contain more than 50 milligrams of thorium;

**(2)** source material contained in the following products:

**(a)** glazed ceramic tableware manufactured before August 27, 2013, provided that the glaze does not contain more than twenty percent by weight source material;

**(b)** glassware, containing not more than two percent by weight source material or, for glassware manufactured before August 27, 2013, ten percent by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile or other glass, glass enamel or ceramic used in construction;

**(c)** glass enamel or glass enamel frit containing not more than ten percent by weight source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983 (On July 25, 1983, the exemption of glass enamel frit was suspended. The exemption was eliminated on September 11, 1984); or

**(d)** piezoelectric ceramic containing not more than two percent by weight source material;

**(3)** photographic film, negatives and prints containing uranium or thorium;

**(4)** any finished product or part fabricated of, or containing, tungsten or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed four percent by weight and that this exemption shall not be deemed to authorize the chemical, physical or metallurgical treatment or processing of any such product or part;

**(5)** uranium contained in counterweights installed in aircraft, rockets, projectiles and missiles, or stored or handled in connection with installation or removal of such counterweights; provided, that:

**(a)** each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "depleted uranium." (the requirements specified in Subparagraphs (a) and (b) of this paragraph need not be met by counterweights manufactured prior to December 31, 1969; provided, that such counterweights are impressed with the legend, "caution - radioactive material - uranium");

**(b)** each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "unauthorized alterations prohibited"; (the requirements specified in Subparagraphs (a) and (b) of this paragraph need not be met by counterweights manufactured prior to December 31, 1969; provided, that such counterweights are impressed with the legend, "caution - radioactive material - uranium");

**(c)** the exemption contained in this paragraph shall not be deemed to authorize the chemical, physical or metallurgical treatment or processing of such counterweights other than repair or restoration of any plating or other covering; and

**(d)** consistent with 10 CFR 40.56, the counterweights are not manufactured for military purpose using Australian-obligated source material;

**(6)** natural or depleted uranium metal used as shielding constituting part of any shipping container which is conspicuously and legibly impressed with the legend, "caution - radioactive shielding - uranium" and the uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of one-eighth of an inch (3.2 millimeters);

**(7)** thorium or uranium contained in or on finished optical lenses and mirrors, provided that each lens or mirror does not contain more than ten percent by weight of thorium or uranium or, for lenses manufactured before August 27, 2013, thirty percent by weight of thorium; and that the exemption contained in this paragraph does not authorize either:

**(a)** the shaping, grinding or polishing of such lens or mirror or manufacturing processes other than the assembly of such lens or mirror into optical systems and devices without any alternation of the lens; or

**(b)** the receipt, possession, use or transfer of uranium or thorium contained in contact lenses, spectacles, eyepieces in binoculars or other optical instruments;

(8) uranium contained in detector heads for use in fire detection units, provided that each detector head contains not more than 0.005 microcurie of uranium; or

(9) thorium contained in any finished aircraft engine part containing nickel-thoria alloy, provided, that:

(a) the thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium-dioxide); and

(b) the thorium content in the nickel-thoria alloy does not exceed four percent by weight.

D. No person may initially transfer for sale or distribution a product containing source material to persons exempt in accordance with 10 CFR 40.13(c), or equivalent regulations of an agreement state, unless authorized by a license issued pursuant to 10 CFR 40.52 to initially transfer such products for sale or distribution.

(1) Persons initially distributing source material in products covered by the exemptions in this paragraph 10 CFR 40.13(c) before August 27, 2013, without specific authorization may continue such distribution for 1 year beyond this date. Initial distribution may also be continued until the NRC commission takes final action on a pending application for license or license amendment to specifically authorize distribution submitted no later than 1 year beyond this date.

(2) Persons authorized to manufacture, process, or produce these materials or products containing source material by an agreement state, and persons who import finished products of parts, for sale or distribution must be authorized by a license issued pursuant to 10 CFR 40.52 for distribution only and are exempt from the requirements of 10 CFR 19 and 10 CFR 20, and 10 CFR 40.32(b) and (c).

E. The exemptions in Subsection C of this section do not authorize the manufacture of any of the products described.

[20.3.3.301 NMAC - Rp, 20.3.3.301 NMAC, 4/30/2009; A, 8/10/2021]

### **20.3.3.302 EXEMPTIONS - RADIOACTIVE MATERIAL OTHER THAN SOURCE MATERIAL:**

#### **A. Exempt concentrations.**

(1) Except as provided in Paragraphs (3) and (4) of this subsection, any person is exempt from the license requirements in this part to the extent that such person receives, possesses, uses, transfers, owns or acquires products or materials containing radioactive material in concentrations not in excess of those listed in 20.3.3.329 NMAC.

**(2)** This subsection shall not be deemed to authorize the import of radioactive material or products containing radioactive material.

**(3)** A manufacturer, processor or producer of a product or material is exempt from the license requirements in this part to the extent that they transfer radioactive material contained in a product or material in concentrations not in excess of those specified in 20.3.3.329 NMAC and introduced into the product or material by a licensee holding a specific license issued by the NRC expressly authorizing such introduction. This exemption does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

**(4)** No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under this subsection or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued pursuant to Paragraph (1) of Subsection A of 20.3.3.315 NMAC.

#### **B. Exempt quantities.**

**(1)** Except as provided in Paragraphs (3) through (5) of this subsection, any person is exempt from the license requirements in this part to the extent that such person receives, possesses, uses, transfers, owns or acquires radioactive material in individual quantities each of which does not exceed the applicable quantity set forth in 20.3.3.330 NMAC.

**(2)** Any person who possesses byproduct material received or acquired prior to September 25, 1971 under the general license then provided in 10 CFR 31.4 or similar general license of an agreement state, is exempt from the requirements for a license set forth in this part to the extent that such person possesses, uses, transfers or owns byproduct material.

**(3)** This subsection does not authorize for the purposes of commercial distribution the production, packaging, repackaging or transfer of radioactive material or the incorporation of radioactive material into products intended for commercial distribution.

**(4)** No person may, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in 20.3.3.330 NMAC, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under this subsection or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC pursuant to 10 CFR 32.18 which license states that the radioactive material may be transferred by the licensee to persons exempt under this subsection or the equivalent regulations of the NRC or an agreement state.

**(5)** No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceed the limits set forth in 20.3.3.330 NMAC, except for radioactive material combined within a device placed in use before May 3, 1999, or as otherwise permitted by the rules in this chapter.

### **C. Exempt items.**

**(1) Certain items containing radioactive material.** Any person who desires to apply byproduct material to, or to incorporate byproduct material into, the products exempted in this paragraph, or who desires to initially transfer for sale or distribution such products containing byproduct material, shall apply for a specific license to NRC pursuant to 10 CFR 32.14, which license states that the product may be distributed by the licensee to persons exempt from the regulations pursuant to this paragraph or equivalent NRC or agreement state regulations. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into, the following products, or persons who initially transfer for sale or distribution (specifically licensed by NRC pursuant to 10 CFR 32.14) the following products containing radioactive material, any person is exempt from the license requirements in this part to the extent that such person receives, possesses, uses, transfers, owns or acquires the following products:

**(a)** timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

- (i)** 25 millicuries (925 megabecquerels) of tritium per timepiece;
- (ii)** 5 millicuries (185 megabecquerels) of tritium per hand;
- (iii)** 15 millicuries (555 megabecquerels) of tritium per dial (bezels when used shall be considered as part of the dial);
- (iv)** 100 microcuries (3.7 megabecquerels) of promethium-147 per watch hand or 200 microcuries (7.4 megabecquerels) of promethium-147 per any other timepiece;
- (v)** 20 microcuries (0.74 megabecquerel) of promethium-147 per watch hand or 40 microcuries (1.48 megabecquerels) of promethium-147 per other timepiece hand;
- (vi)** 60 microcuries (2.22 megabecquerels) of promethium-147 per watch dial or 120 microcuries (4.44 megabecquerels) of promethium-147 per other timepiece dial (bezels when used shall be considered as part of the dial);

**(vii)** the levels of radiation from hands and dials containing promethium-147 shall not exceed, when measured through 50 milligrams per square centimeter of absorber: 1) for wrist watches, 0.1 millirad (1 milligray) per hour at 10 centimeters from any surface; 2) for pocket watches, 0.1 millirad (1 milligray) per hour at 1 centimeter from any surface; or 3) for any other timepiece, 0.2 millirad (2 milligray) per hour at 10 centimeters from any surface; or

**(viii)** 1 microcurie (37 kilobecquerels) of radium-226 per timepiece in intact timepieces manufactured prior to November 30, 2007;

**(b)** Static elimination device. Devices designed for use as static eliminators which contain, as a sealed source or sources, byproduct material consisting of a total of not more than 500 microcuries (18.5 megabecquerels) of polonium-210 per device.

**(c)** Ion generating tube. Devices designed for ionization of air which contain, as a sealed source or sources, byproduct material consisting of a total of not more than 500 microcuries (18.5 megabecquerels) of polonium-210 per device or a total of not more than 50 millicuries (1.85 gigabecquerels) of hydrogen-3 (tritium) per device.

**(d)** precision balances containing not more than 1 millicurie (37 megabecquerels) of tritium per balance or not more than 0.5 millicurie (18.5 megabecquerels) of tritium per balance part manufactured before December 17, 2007;

**(e)** [Reserved];

**(f)** marine compasses containing not more than 750 millicuries (27.8 gigabecquerels) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 gigabecquerels) of tritium gas manufactured before December 17, 2007;

**(g)** ionization chamber smoke detectors containing not more than 1 microcurie (37 kilobecquerels) of americium-241 per detector in the form of a foil and designed to protect life and property from fires;

**(h)** electron tubes; provided, that each tube does not contain more than one of the following specified quantities of radioactive material (for purposes of this exemption, "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwaves tubes, indicator tubes, pick-up tubes, radiation detection tubes and any other completely sealed tube that is designed to conduct or control electrical currents):

**(i)** 150 millicuries (5.55 gigabecquerels) of tritium per microwave receiver protector tube or 10 millicuries (370 megabecquerels) of tritium per any other electron tube;

**(ii)** 1 microcurie (37 kilobecquerels) of cobalt-60;

- (iii) 5 microcuries (185 kilobecquerels) of nickel-63;
- (iv) 30 microcuries (1.11 megabecquerels) of krypton-85;
- (v) 5 microcuries (185 kilobecquerels) of cesium-137;

(vi) 30 microcuries (1.11 megabecquerels) of promethium-147; and provided further, that the levels of radiation from each electron tube containing radioactive materials do not exceed 1 millirad (10 milligray) per hour at 1 centimeter from any surface when measured through 7 milligrams per square centimeter of absorber; and

(i) ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material; provided, that:

(i) each source contains no more than one exempt quantity set forth in 20.3.3.330 NMAC;

(ii) each instrument contains no more than ten exempt quantities; for this requirement, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in 20.3.3.330 NMAC provided that the sum of such fractions shall not exceed unity; and

(iii) for purposes of this subparagraph, 0.05 microcurie (1.85 kilobecquerels) of americium-241 is considered an exempt quantity under 20.3.3.330 NMAC.

**(2) Self-luminous products containing tritium, krypton-85, promethium-147 or radium-226.**

(a) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, promethium-147 or radium-226, and except as provided in Subparagraph (c) of this paragraph, any person is exempt from the license requirements in this part to the extent that such person receives, possesses, uses, transfers, owns or acquires tritium, krypton-85, promethium-147 or radium-226 in self-luminous products manufactured, processed, produced or initially transferred in accordance with a specific license issued by the NRC pursuant to 10 CFR 32.22 which license authorizes the initial transfer of the product for use under this paragraph.

(b) Any person who desires to manufacture, process or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85 or promethium-147 for use pursuant to Subparagraph (a) of this paragraph, shall apply to

NRC for a license pursuant to 10 CFR 32.22, and for a certificate of registration in accordance with 10 CFR 32.210.

(c) The exemption in this paragraph does not apply to tritium, krypton-85, promethium-147 or radium-226 used in products primarily for frivolous purposes or in toys or adornments.

**(3) Radium-226 acquired previously.** Any person is exempt from the licensing requirements in this part to the extent that such person possesses, uses or transfers, articles containing less than 0.1 microcurie (3.7 kilobecquerels) of radium-226 which were acquired prior to May 3, 1995 (the date when these rules were codified).

**(4) Gas and aerosol detectors containing radioactive material.**

(a) Except for persons who manufacture, process, produce or initially transfer for sale or distribution gas and aerosol detectors containing byproduct material, any person is exempt from the licensing requirements in this part to the extent that such person receives, possesses, uses, transfers, owns or acquires byproduct material, in gas and aerosol detectors designed to protect life or property, and manufactured, processed, produced or initially transferred in accordance with a specific license issued by the NRC, pursuant to 10 CFR 32.26, which license authorizes the initial transfer of the product for use under this paragraph. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007 in accordance with a specific license issued by the department, agreement state or non-agreement state under comparable provisions to 10 CFR 32.26 authorizing distribution to persons exempt from regulatory requirements.

(b) Any person who desires to manufacture, process or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use pursuant to Subparagraph (a) of this paragraph, shall apply for a license to the NRC pursuant to 10 CFR 32.26 and for a certificate of registration in accordance with 10 CFR 32.210.

**(5) Certain industrial devices.**

(a) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the requirements for a license set forth in section 81 of the Atomic Energy Act of 1954, as amended and from the regulations in 10 CFR parts 19, 20, 21, 30 through 36, and 39 to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific

license issued under 10 CFR 32.30 of this chapter, which license authorizes the initial transfer of the device for use under this section. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

(b) Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material for use under subparagraph (a) of this paragraph, should apply for a license under 10 CFR 32.30 and for a certificate of registration in accordance with 10 CFR 32.210.

**D. Radioactive drug - capsules containing carbon-14 urea for "in vivo" diagnostic use for humans.**

(1) Except as provided in Paragraphs (2) and (3) of this subsection, any person is exempt from the requirements for a license set forth in this part and 20.3.7 NMAC provided that such person receives, possesses, uses, transfers, owns or acquires capsules containing 1 microcurie (37 kilobecquerels) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in vivo" diagnostic use for humans.

(2) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to 20.3.7 NMAC.

(3) Any person who desires to manufacture, prepare, process, produce, package, repackage or transfer for commercial distribution such capsules shall apply for and receive a specific license by NRC pursuant to 10 CFR 32.21.

(4) Nothing in this section relieves persons from complying with applicable FDA, other federal and state requirements governing receipt, administration and use of drugs.

[20.3.3.302 NMAC - Rp, 20.3.3.302 NMAC, 4/30/2009; A, 6/30/2011; A, 8/10/2021]

**20.3.3.303 TYPES OF LICENSES:**

Licenses for radioactive materials are of two types: general and specific.

**A. General License.** A general license is provided by regulation, grants authority to a person for certain activities involving radioactive material, and is effective without the filing of an application with the department or the issuance of a licensing document to a particular person. However, registration with the department may be required by the particular general license.

**B. Specific License.** A specific license is issued by the department to a named person who has filed an application for the license under the specific licensing provisions of 20.3.3 NMAC, 20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC, 20.3.13 NMAC, 20.3.14 NMAC and 20.3.15 NMAC.

[20.3.3.303 NMAC - Rp, 20.3.3.303 NMAC, 04/30/2009]

#### **20.3.3.304 GENERAL LICENSES - SOURCE MATERIAL:**

**A. General license to receive title to source material or byproduct material (as defined in Paragraph (2) of Subsection F of 20.3.1.7 NMAC).** A general license is hereby issued authorizing the receipt of title to source material or byproduct material (as defined in Paragraph (2) of Subsection F of 20.3.1.7 NMAC) without regard to quantity. This general license does not authorize any person to receive, possess, deliver, use or transfer source material or byproduct material (as defined in Paragraph (2) of Subsection F of 20.3.1.7 NMAC).

**B. Small quantities of source material.** A general license is hereby issued authorizing commercial and industrial firms; research, educational, and medical institutions; and federal, state, and local government agencies to receive, possess, use, and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, for research, development, educational, commercial, or operational purposes in the following forms and quantities:

**(1)** No more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms (e.g., gaseous, liquid, powder, etc.) at any one time. Any material processed by the general licensee that alters the chemical or physical form of the material containing source material must be accounted for as a dispersible form. A person authorized to possess, use, and transfer source material under Subsection B of this section may not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any one calendar year. Persons possessing source material in excess of these limits as of August 27, 2013, may continue to possess up to 7 kg (15.4 lb) of uranium and thorium at any one time for one year beyond this date, or until the department takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material and receive up to 70 kg (154 lb) of uranium or thorium in any one calendar year until December 31, 2014, or until the department takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material; and

**(2)** no more than a total of 7 kg (15.4 lb) of uranium and thorium at any one time. A person authorized to possess, use, and transfer source material under Subsection B of this section may not receive more than a total of 70 kg (154 lb) of uranium and thorium in any one calendar year. A person may not alter the chemical or physical form of the source material possessed under this paragraph unless it is accounted for under the limits of Subsection B(1) of this section; or

**(3)** no more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A person may not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under Subsection B of this section; or

**(4)** no more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material under Subsection B of this section may not receive more than a total of 70 kg (154 lb) of source material in any one calendar year.

**C.** Any person who receives, possess, uses, or transfers source material pursuant to the general license in Subsection B of this section:

**(1)** is prohibited from administering source material, or the radiation

therefrom, either externally or internally, to human beings except as may be authorized by the department in a specific license;

**(2)** shall not abandon such source material. Source material may be disposed of as follows:

**(a)** A cumulative total of 0.5 kg (1.1 lb) of source material in a solid, non-dispersible form may be transferred each calendar year, by a person authorized to receive, possess, use, and transfer source material under a general license to persons receiving the material for permanent disposal.

**(b)** The recipient of source material transferred under the provisions of this section is exempt from the requirements to obtain a license under this part to the extent the source material is permanently disposed. This provision does not apply to any person who is in possession of source material under a specific license issued under this chapter or in accordance with 20.3.4.433 NMAC.

**(3)** is subject to the provisions in accordance with 10 CFR 40.1 through 40.10, 10 CFR 40.41(a) through (e), 10 CFR 40.46, 10 CFR 40.51, 10 CFR 40.56, 10 CFR 40.60 through 40.63, 10 CFR 40.71, 10 CFR 40.81, and the equivalent regulations in 20.3.3 NMAC; and

**(4)** shall not export such source material except in accordance with 10 CFR 110.

**D.** Any person who receives, possesses, uses, or transfers source material in accordance with subsection B of this section shall conduct activities so as to minimize contamination of the facility and the environment. When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the department by an appropriate method listed in 20.3.1.116 NMAC about such contamination and may consult with the department as to the appropriateness of sampling and restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used under this general license is not likely to result in exposures that exceed the limits in 20.3.4.426.B NMAC.

**E.** Any person who receives, possesses, uses, or transfers source material in accordance with the general license granted in Subsection B of this section is exempt from the provisions of 20.3.10 NMAC, and 20.3.4 NMAC to the extent that such receipt, possession, use, and transfer are within the terms of this general license, except that such person shall comply with the provisions of 20.3.4.426.A NMAC and 20.3.4.433 NMAC to the extent necessary to meet the provisions of 20.3.3.304.B NMAC. However, this exemption does not apply to any person who also holds a specific license issued under 20.3.3 NMAC.

**F.** No person may initially transfer or distribute source material to persons generally licensed under Paragraph (1) and (2) Subsection B of this Section, or equivalent regulations of an agreement state, unless authorized by a specific license in accordance with 10 CFR 40.54 or equivalent provisions of an agreement state . This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample. Initial distribution of source material to persons generally licensed by Subsection A of this section before August 27, 2013, without specific authorization may continue for 1 year beyond this date. Distribution may also be continued until the NRC takes final action on a pending application for a license or license amendment to specifically authorize distribution submitted on or before August 27, 2014.

**G. Depleted uranium in industrial products and devices.**

**(1)** A general license is hereby issued to receive, acquire, possess, use or transfer, in accordance with the provisions in Paragraphs (2), (3), (5) and (6) of this subsection, depleted uranium contained in industrial products or devices for the purpose of providing a concentrated mass in a small volume of the product or device.

**(2)** The general license in Paragraph (1) of this subsection applies only to industrial products or devices which have been manufactured or initially transferred either in accordance with a specific license issued to the manufacturer of the products or devices pursuant to Subsection L of 20.3.3.315 NMAC or in accordance with a specific license issued by the NRC or an agreement state which authorizes manufacture of the products or devices for distribution to persons generally licensed by the NRC or an agreement state.

**(3)** Persons who receive, acquire, possess or use depleted uranium pursuant to the general license established by Paragraph (1) of this subsection shall file a form, *registration certificate - use of depleted uranium under general license*, with the department. The form shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium. The general licensee shall furnish on the registration form the following information and such other information as may be required by that form:

**(a)** name and address of the general licensee;

**(b)** a statement that the general licensee has developed and will maintain procedures designed to establish physical control over the depleted uranium described in Paragraph (1) of this subsection and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and

**(c)** name and title, address and telephone number of the individual duly authorized to act for and on behalf of the general licensee in supervising the procedures identified in Subparagraph (b) of this paragraph.

**(4)** The general licensee possessing or using depleted uranium under the general license established by Paragraph (1) of this subsection shall report in writing to the department any changes in information furnished by them in the form *registration certificate-use of depleted uranium under general license*. The report shall be submitted within 30 days after the effective date of such change.

**(5)** A person, who receives, acquires, possesses or uses depleted uranium pursuant to the general license established by Paragraph (1) of this subsection:

**(a)** shall not introduce such depleted uranium, in any form, into a chemical, physical or metallurgical treatment or process, except a treatment or process for repair or restoration of any plating or other covering of the depleted uranium;

**(b)** shall not abandon such depleted uranium;

**(c)** shall transfer or dispose of such depleted uranium only by transfer in accordance with the provisions of 20.3.3.323 NMAC; in the case where the transferee receives the depleted uranium pursuant to the general license established by Paragraph (1) of this subsection, the transferor shall furnish the transferee a copy of this subsection and a copy of the registration form; in cases where the transferee receives the depleted uranium pursuant to a general license contained in the NRC or agreement state's regulation equivalent to this subsection, Subsection C of 20.3.3.304 NMAC, the transferor shall furnish the transferee a copy of this subsection and a copy of the registration form accompanied by a note explaining that use of the product or device is regulated by the NRC or agreement state under requirements substantially the same as those in this subsection;

**(d)** shall report in writing, within 30 days of any transfer, to the department the name and address of the person receiving the depleted uranium pursuant to such transfer; and

**(e)** shall not export such depleted uranium except in accordance with a license issued by the NRC pursuant to 10 CFR 110.

**(6)** Any person receiving, acquiring, possessing, using or transferring depleted uranium pursuant to the general license established by Paragraph (1) of this

subsection is exempt from the requirements of 20.3.4 NMAC and 20.3.10 NMAC with respect to the depleted uranium covered by that general license.

[20.3.3.304 NMAC - Rp, 20.3.3.304 NMAC, 4/30/2009; A, 8/10/2021]

### **20.3.3.305 GENERAL LICENSES - RADIOACTIVE MATERIAL OTHER THAN SOURCE MATERIAL:**

#### **A. [RESERVED].**

#### **B. Certain detecting, measuring, gauging or controlling devices and certain devices for producing light or an ionized atmosphere.**

(1) A general license is hereby issued as required by Subparagraph (m) of Paragraph (3) of this Subsection to commercial and industrial firms and research, educational and medical institutions, individuals in the conduct of their business, and federal, state or local government agencies to receive, acquire, possess, use or transfer, in accordance with the provisions of Paragraphs (2), (3), and (4) of this subsection, byproduct material contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing light or an ionized atmosphere, and the device has been registered in the sealed source and device registry.

(2) The general license in Paragraph (1) of this subsection applies only to byproduct material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in:

(a) a specific license issued by the department pursuant to Subsection E of 20.3.3.315 NMAC; or

(b) an equivalent specific license issued by the NRC or an agreement state;  
or

(c) an equivalent specific license issued by a state with provisions comparable to Subsection E of 20.3.3.315 NMAC. The devices must have been received from one of the specific licensees described in this paragraph, or through a transfer made under Subparagraph (h) of Paragraph (3) of this subsection.

(3) Any person who receives, acquires, possesses, uses or transfers byproduct material in a device pursuant to the general license in Paragraph (1) of this subsection shall comply with the following.

(a) The general licensee shall assure that all labels affixed to the device at the time of receipt and bearing a statement that removal of the label is prohibited are

maintained thereon and shall comply with all instructions and precautions provided by such labels.

**(b)** The general licensee shall assure that the device is tested for leakage of radioactive material and proper operation of the on-off mechanism and indicator, if any, at no longer than six month intervals or at such other intervals as are specified in the label; however:

**(i)** devices containing only krypton need not be tested for leakage of radioactive material; and

**(ii)** devices containing only tritium or not more than 100 microcuries (3.7 megabecquerels) of other beta or gamma emitting material or 10 microcuries (0.37 megabecquerel) of alpha emitting material and devices held in storage in the original shipping container prior to initial installation need not be tested for any purpose.

**(c)** The general licensee shall assure that the test required by Subparagraph (b) of Paragraph (3) of this subsection and other testing, installation, servicing and removal from installation involving the radioactive materials, its shielding or containment are performed:

**(i)** in accordance with the instructions provided by the labels; or

**(ii)** by a person holding a specific license pursuant to this part from the department, the NRC, or an agreement state to perform such activities.

**(d)** The general licensee shall maintain records showing compliance with the requirements of Subparagraphs (b) and (c) of Paragraph (3) of this subsection. The records must show the results of tests. The records must also show the dates of performance of, and the names of persons performing, testing, installing, servicing and removing from the installation radioactive material and its shielding or containment. The licensee shall retain these records as follows:

**(i)** each record of a test for leakage or radioactive material required by Subparagraph (b) of Paragraph (3) of this subsection shall be retained for three years after the next required leak test is performed or until the sealed source is transferred or disposed of;

**(ii)** each record of a test of the on-off mechanism and indicator required by Subparagraph (b) of Paragraph (3) of this subsection shall be retained for three years after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed of; and

**(iii)** each record that is required by Subparagraph (c) of Paragraph (3) of this subsection shall be retained for 3 years from the date of the recorded event or until the device is transferred or disposed of.

(e) The general licensee shall immediately suspend operation of the device if there is a failure of, or damage to, or any indication of a possible failure of or damage to, the shielding of the radioactive material or the on-off mechanism or indicator, or upon the detection of 0.005 microcuries (185 becquerels) or more removable radioactive material. The device may not be operated until it has been repaired by the manufacturer or other person holding a specific license to repair such devices that was issued pursuant to this part by the department, the NRC or an agreement state. The device and any radioactive material from the device, shall only be disposed of by transfer to a person authorized by a specific license to receive the radioactive material in the device, or as otherwise approved by the department. A report shall be furnished to the department within 30 days containing a brief description of the event and the remedial action taken. In the case of detection of 0.005 microcurie or more removable radioactive material or failure of, or damage to, a source likely to result in contamination of the premises or the environs, the report shall include a plan for ensuring that the premises and environs are acceptable for unrestricted use. Under these circumstances, the criteria set out in Subsection B of 20.3.4.426 NMAC, *radiological criteria for unrestricted use*, shall be applicable, as determined by the department on a case-by-case basis.

(f) The general licensee shall not abandon the device containing radioactive material.

(g) The general licensee shall not export the device containing radioactive material except in accordance with 10 CFR 110.

**(h) Device transfer requirements.**

(i) The general licensee shall transfer or dispose of the device containing radioactive material only by export as provided by Subparagraph (g) of this paragraph, by transfer to another general licensee as authorized in Subparagraph (i) of this paragraph, or to a person authorized to receive the device by a specific license issued by the department pursuant under this part, or by a specific license issued by the department authorizing waste collection pursuant to this part, or equivalent provisions of the NRC or an agreement state, or as otherwise approved under Item (iii) of this subparagraph.

(ii) The general licensee shall within 30 days after the transfer of a device to a specific licensee or export, furnish a report to the department at the address indicated in 20.3.1.116 NMAC. The report shall contain the identification of the device by manufacturer's (or initial transferor's) name, model number and serial number; the name, address and license number of the person receiving the device (license number not applicable if exported); and the date of the transfer.

(iii) The general licensee shall obtain written department approval before transferring the device to any other specific licensee not specifically identified in Item (i) of this subparagraph. However, a holder of a specific license may transfer a device for possession and use under its own specific license without prior approval, if,

the holder: verifies that the specific license authorizes the possession and use, or applies for and obtains amendment to the license authorizing the possession and use; removes, alters, covers, or clearly and unambiguously augments the existing label (otherwise required by Subparagraph (a) of this paragraph) so that the device is labeled in compliance with 20.3.4.430 NMAC, however, the manufacturer, model number, and serial number must be retained; obtains the manufacturer's or initial transferor's information concerning maintenance that would be applicable under the specific license (such as leak testing procedures); and reports the transfer under Item (ii) of this subparagraph.

**(i)** The general licensee shall transfer the device to another general licensee only if:

**(i)** the device remains in use at a particular location, in which case: 1) the transferor shall give the transferee a copy of this subsection (Subsection B of 20.3.3.305 NMAC), a copy of Subsection F of 20.3.3.317 NMAC, a copy of 20.3.3.326 NMAC, a copy of 20.3.4.451 NMAC, a copy of 20.3.4.452 NMAC and any safety documents identified in the label of the device; 2) within 30 days of the transfer, the transferor shall report to the department at the address indicated in 20.3.1.116 NMAC, stating the manufacturer's (or initial transferor's) name, the model number and the serial number of the device transferred, the transferee's name and mailing address for the location of use, and the name, title and phone number of the responsible individual identified by the transferee in accordance with Subparagraph (l) of this paragraph to have knowledge of and authority to take actions to ensure compliance with the appropriate regulations and requirements; or

**(ii)** the device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee.

**(j)** The general licensee shall comply with the provisions of 20.3.4.451 NMAC and 20.3.4.452 NMAC for reporting radiation incidents, theft or loss of licensed material, but shall be exempt from the other requirements of 20.3.4 NMAC and 20.3.10 NMAC.

**(k)** The general licensee shall respond to written requests from the department to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the department with a written justification for the request.

**(l)** The general licensee shall appoint an individual responsible for having knowledge of the appropriate regulations and requirements and the authority for taking required actions to comply with appropriate regulations and requirements. The general licensee, through this individual, shall ensure the day-to-day compliance with

appropriate regulations and requirements. This appointment does not relieve the general licensee of any of its responsibility in this regard.

**(m) Registration requirements.**

**(i)** The general licensee shall register on a department registration form, in accordance with Items (ii) and (iii) of this subparagraph, devices containing at least 10 millicuries (370 megabecquerels) of cesium-137, 0.1 millicuries (3.7 megabecquerels) of strontium-90, 1 millicurie (37 megabecquerels) of cobalt-60, 0.1 millicurie (3.7 megabecquerels) of radium-226, 1 millicurie (37 megabecquerels) of americium-241 or any other transuranic (i.e., element with atomic number greater than uranium (92)), based on the activity indicated on the label. Each address of a location of use, as described under Item (iii) of this subparagraph, represents a separate general licensee and requires a separate registration.

**(ii)** If in possession of a device meeting the criteria of Item (i) of this subparagraph, the general licensee shall register these devices annually with the department. Registration shall be done by verifying, correcting or adding to the information provided in a request for registration received from the department. The registration information shall be submitted to the department within 30 days of the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of Item (i) of this Subparagraph is subject to the bankruptcy notification requirement in Subsection E of 20.3.3.317 NMAC.

**(iii)** In registering devices, the general licensee shall furnish the following information and any other information specifically requested by the department: 1) name and mailing address of the general licensee; 2) information about each device: the manufacturer (or initial transferor), model number, serial number, the radioisotope and activity (as indicated on the label); 3) name, title and telephone number of the responsible person designated as a representative of the general licensee under Subparagraph (i) of this paragraph; 4) address or location at which the device(s) are used or stored; for portable devices, the address of the primary place of storage; 5) certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and checking of label information; and 6) certification by the responsible representative of the general licensee that they are aware of the requirements of the general license.

**(iv)** Persons generally licensed by the NRC and an agreement state with respect to devices meeting the criteria in Item (i) of this Subparagraph are not subject to registration requirements if the devices are used in areas subject to department jurisdiction for a period less than 180 days in any calendar year. The department will not request registration information from such licensees.

**(n)** The general licensee shall report changes to the mailing address for the location of use (including change in name of general licensee) to the department at the address indicated in 20.3.1.116 NMAC, within 30 days of the effective date of the

change. For a portable device, a report of address change is only required for a change in the device's primary place of storage.

(o) The general licensee shall not hold devices that are not in use for longer than 2 years. If devices with shutters are not being used, the shutter shall be locked in the closed position. The testing required by Subparagraph (b) of Paragraph (3) of this Subsection need not be performed during the period of storage only. However, when devices are put back into service or transferred to another person, and have not been tested within the required test interval, they shall be tested for leakage before use or transfer and the shutter tested before use. Devices kept in standby for future use are excluded from the two-year time limit if the general licensee performs quarterly physical inventories of these devices while they are in standby.

(4) The general license in Paragraph (1) of this subsection does not authorize the manufacture or import of devices containing radioactive material.

### **C. Luminous safety devices for use in aircraft.**

(1) A general license is hereby issued to own, receive, acquire, possess and use tritium or promethium-147 contained in luminous safety devices for use in aircraft, provided:

(a) each device contains not more than 10 curies (370 gigabecquerels) of tritium or 300 millicuries (11.1 gigabecquerels) of promethium-147;

(b) each device has been manufactured, assembled or initially transferred in accordance with a license issued under the provisions 10 CFR 32.53, or manufactured or assembled in accordance with a specific license issued by the NRC;

(c) quality assurance procedures are in place that are sufficient to ensure compliance with 10 CFR 32.55; and

(d) prototypes of the device have been subjected to and have satisfactorily passed the tests required in 10 CFR 32.53(e) and outlined in Subsection C(2) of this section.

(2) The applicant shall subject at least five prototypes of the device to tests as follows:

(a) the devices are subjected to tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment of tritium or promethium-147, such as temperature, moisture, absolute pressure, water immersion, vibration, shock, and weathering;

**(b)** the devices are inspected for evidence of physical damage and for loss of tritium or promethium-147, after each stage of testing, using methods of inspection adequate for determining compliance with the criteria in subparagraph C(2) of this section; and

**(c)** the device designs are rejected for which the following has been detected for any unit; a leak resulting in a loss of one tenth of one percent or more of the original amount of tritium or promethium-147 from the device; or surface contamination of tritium or promethium-147 on the device of more than 2,200 disintegrations per minute per 100 square centimeters of surface area; or any other evidence of physical damage.

**(3)** Each person licensed under 10 CFR 32.55 or Subsection C of 20.3.3.305 NMAC shall visually inspect each device and shall reject any that has an observable physical defect that could adversely affect containment of the tritium or promethium-147.

**(4)** Each person licensed under 10 CFR 32.53 or Subsection C of 20.3.3.305 NMAC shall:

**(a)** maintain quality assurance systems in the manufacture of the luminous safety device in a manner sufficient to provide reasonable assurance that the safety-related components of the distributed devices are capable of performing their intended functions; and

**(b)** subject inspection lots to acceptance sampling procedures, by procedures specified in Subparagraph C(2) of this section and in the license issued under 10 CFR 32.53 or Subsection C of 20.3.3.305 NMAC to provide at least ninety-five percent confidence that the lot tolerance percent defective of five percent will not be exceeded.

**(5)** The licensee shall subject each inspection lot to:

**(a)** tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment of tritium or promethium-147, such as absolute pressure and water immersion; and

**(b)** inspection for evidence of physical damage, containment failure, or loss of tritium or promethium-147 after each stage of testing, using methods of inspection adequate for applying the following criteria for defective:

**(i)** a leak resulting in a loss of one tenth of one percent or more of the original amount of tritium or promethium-147 from the device;

**(ii)** levels of radiation in excess of 5 microgray (0.5 millirad) per hour at 10 centimeters from any surface when measured through 50 milligrams per square centimeter of absorber, if the device contains promethium-147; and

(iii) any other criteria specified in the license issued under 10 CFR 32.53 or Subsection C of 20.3.3.305 NMAC.

(6) No person licensed under 10 CFR 32.53 or Subsection C of 20.3.3.305 NMAC shall transfer to persons generally licensed pursuant to 10 CFR 31.7 or under an equivalent general license of an agreement state:

(a) any luminous safety device tested and found defective under any condition of a license issued under Subsection C of this section, unless the defective luminous safety device has been repaired or reworked, retested, and determined by an independent inspector to meet the applicable acceptance criteria; or

(b) any luminous safety device contained within any lot that has been sampled and rejected as a result of the procedures in Subsection C(4)(b) of this section, unless a procedure for defining sub-lot size, independence, and additional testing procedures is contained in the license issued under 10 CFR 32.53 or Subsection C of 20.3.3.305 NMAC and each individual sub-lot is sampled, tested, and accepted in accordance with Subsection C(2) of this section and any other criteria that may be required as a condition of the license issued under 10 CFR 32.53 or Subsection C of 20.3.3.305 NMAC.

(7) Persons who own, receive, acquire, possess or use luminous safety devices pursuant to this general license are exempt from the requirements of 20.3.4 NMAC and 20.3.10 NMAC except that they shall comply with the reporting and notification provisions of 20.3.4.451 NMAC and 20.3.4.452 NMAC.

(8) This general license does not authorize the manufacture, assembly, repair or import of luminous safety containing tritium or promethium-147.

(9) This general license does not authorize the export of luminous safety devices containing tritium or promethium-147.

(10) This general license does not authorize the ownership, receipt, acquisition, possession or use of promethium-147 contained in instrument dials.

#### **D. Calibration and reference sources.**

(1) A general license is hereby issued to those persons listed in this paragraph to own, receive, acquire, possess, use and transfer, in accordance with the provisions of Paragraphs (4) and (5) of this subsection americium-241 in the form of calibration or reference sources.

(a) Any person who holds a specific license issued by the department which authorizes them to receive, possess, use and transfer radioactive material.

**(b)** Any government agency, as defined in 20.3.1.7 NMAC, which holds a specific license issued pursuant to this chapter which authorizes it to receive, possess, use and transfer radioactive material.

**(2)** A general license is hereby issued to those persons listed below to receive title to, own, acquire, deliver, receive, possess, use and transfer in accordance with the provisions of Paragraph (4) and (5) plutonium in the form of calibration or reference sources.

**(a)** Any person who holds a specific license issued by the department which authorizes them to receive, possess, use and transfer radioactive material.

**(b)** Any government agency, as defined in 20.3.1.7 NMAC, which holds a specific license issued pursuant to 20.3 NMAC which authorizes it to receive, possess, use and transfer radioactive material.

**(c)** Any person who holds a specific license issued by the NRC or an agreement state which authorizes them to receive, possess, use and transfer special nuclear material.

**(3)** A general license is hereby issued to receive, possess, use and transfer radium-226 in the form of calibration or reference sources in accordance with Paragraphs (4) and (5) of this subsection to any person who holds a specific license issued by the department which authorizes them to receive, possess, use and transfer radioactive material.

**(4)** The general licenses in Paragraphs (1), (2) and (3) of this subsection apply only to calibration or reference sources which have been manufactured or initially transferred in accordance with the specifications contained in a specific license issued the department pursuant to Subsection G of 20.3.3.315 NMAC or in accordance with the specifications contained in a specific license issued by the NRC or an agreement state pursuant to equivalent licensing requirements which authorizes the manufacturer of the sources for distribution to persons generally licensed by the NRC or an agreement state.

**(5)** The general licenses provided in Paragraphs (1), (2) and (3) of this subsection are subject to the provisions of Subsection F of 20.3.3.317 NMAC. In addition, persons who receive, acquire, possess, use or transfer one or more calibration or reference sources pursuant to these general licenses:

**(a)** shall not possess at any one time, at any one location of storage or use, more than 5 microcuries (185 kilobecquerels) of americium-241, 5 microcuries (185 kilobecquerels) of plutonium and 5 microcuries (185 kilobecquerels) of radium-226 in such sources;

(b) shall not receive, possess, use or transfer such source unless the source, or the storage container, bears a label which includes the following statement or a substantially similar statement which contains the information called for in the following statement:

*The receipt, possession, use and transfer of this source, model \_\_\_\_\_, serial number \_\_\_\_\_, are subject to a general license and the regulations of the United States nuclear regulatory commission or of a state with which the commission has entered into an agreement for the exercise of regulatory authority. Do not remove this label. Caution - radioactive material - this source contains [describe one of the following radioactive materials americium-241, plutonium or radium-226 as appropriate]. Do not touch radioactive portion of this source.*

---

*(name of manufacturer or initial transferor)*

(c) shall not transfer, abandon or dispose of such source except by transfer to a person authorized by a license issued by the department, the NRC or an agreement state to receive the source;

(d) shall store such source, except when the source is being used, in a closed container adequately designated and constructed to contain americium-241, plutonium or radium-226 which might otherwise escape during storage; and

(e) shall not use such source for any purpose other than the calibration of radiation detectors or the standardization of other sources.

(6) These general licenses do not authorize the manufacture or import of calibration or reference sources containing americium-241, plutonium or radium-226.

**E. General license to install devices generally licensed in Subsection B of 20.3.3.305 NMAC.** Any person who holds a specific license issued by the NRC or an agreement state authorizing the holder to manufacture, install or service a device described in Subsection B of this section within such agreement state issuing the specific license or within a location subject to NRC jurisdiction, is hereby granted a general license to install and service such device in this state; provided, that:

(1) the device has been manufactured, labeled, installed and serviced in accordance with applicable provisions of the specific license issued to such person by the NRC or an agreement state; and

(2) such person assures that any labels required to be affixed to the device under regulations of the NRC or agreement state which licensed manufacture of the device bear a statement that removal of the label is prohibited.

**F. General license for use of radioactive material for certain in-vitro clinical or laboratory testing.**

**(1)** A general license is hereby issued to any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital to receive, acquire, possess, transfer or use, for any of the following stated tests, in accordance with the provisions of Paragraphs (2) through (6) of this subsection, the following radioactive materials in prepackaged units, each for use for in-vitro clinical or laboratory tests not involving internal or external administration of radioactive material, or the radiation therefrom, to human beings or animals:

**(a)** iodine-125, in units not exceeding 10 microcuries (370 kilobecquerels) each;

**(b)** iodine-131, in units not exceeding 10 microcuries (370 kilobecquerels) each;

**(c)** carbon-14, in units not exceeding 10 microcuries (370 kilobecquerels) each;

**(d)** hydrogen-3, in units not exceeding 50 microcuries (1.85 megabecquerels) each;

**(e)** iron-59, in units not exceeding 20 microcuries (740 kilobecquerels) each;

**(f)** cobalt-57, in units not exceeding 10 microcuries (370 kilobecquerels) each;

**(g)** selenium-75, in units not exceeding 10 microcuries (370 kilobecquerels) each; and

**(h)** mock iodine-125 for use as reference or calibration sources not to exceed 0.05 microcurie (1.85 kilobecquerels) of iodine-129 and 0.005 microcurie (1.85 becquerels) of americium-241 each.

**(2)** No person shall receive, acquire, possess, use or transfer radioactive material pursuant to the general license established by Paragraph (1) of this subsection unless that person

**(a)** has filed a form, *registration certificate-in vitro testing with radioactive material under general license*, with the department and received from the department a validated copy of the registration certificate with a registration number assigned. The physician, clinical laboratory or hospital shall furnish on the registration certificate the following information and such other information as may be required by the form:

**(i)** name and address of the physician, clinical laboratory or hospital;

**(ii)** the location of use; and

**(iii)** a statement that the physician, veterinarian, clinical laboratory or hospital has appropriate radiation measuring instruments to carry out in vitro clinical or laboratory tests with radioactive material as authorized under the general license in Paragraph (1) of this subsection and that such tests will be performed only by personnel competent in the use of such instruments and in the handling of the radioactive material; or

**(b)** has a license that authorizes the medical use of radioactive material that was issued under 20.3.7 NMAC.

**(3)** A person who receives, acquires, possesses or uses radioactive material pursuant to the general license established by Paragraph (1) of this subsection shall comply with the following:

**(a)** the general licensee shall not possess at any one time, pursuant to the general license in Paragraph (1) of this subsection at any one location of storage or use, a total amount of iodine-125, iodine-131, iron-59, cobalt-57 or selenium-75 in excess of 200 microcuries (7.4 megabecquerels);

**(b)** the general licensee shall store the radioactive material, until used, in the original shipping container or in a container providing equivalent radiation protection;

**(c)** the general licensee shall use the radioactive material only for the uses authorized by Paragraph (1) of this subsection;

**(d)** the general licensee shall neither transfer the radioactive material except by transfer to a person authorized to receive it pursuant to a license issued by the department, the NRC or an agreement state, nor transfer the radioactive material in any manner other than in the unopened, labeled shipping container as received from the supplier; and

**(e)** the general licensee shall dispose of mock iodine reference or calibration sources in accordance with 20.3.4.433 NMAC.

**(4)** The general licensee shall not receive, acquire, possess or use radioactive material pursuant to Paragraph (1) of this subsection:

**(a)** except as prepackaged units which are labeled in accordance with the provisions of a specific license issued under Subsection H of 20.3.3.315 NMAC, or in accordance with the provisions of a specific license issued by the NRC or an agreement state, or labeled before November 30, 2007 in accordance with the provisions of a specific license issued by a state with comparable provisions to Subsection H of 20.3.3.315 NMAC, which authorizes the manufacture and distribution of iodine-125, iodine-131, carbon-14, hydrogen-3 (tritium), iron-59, cobalt-57, selenium-75, or mock

iodine-125 for distribution to persons generally licensed by the NRC, the agreement state or the state with comparable provisions to Subsection H of 20.3.3.315 NMAC; and

(b) unless the following statement, or a substantially similar statement, which contains the information called for in the following statement appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

*This radioactive material shall be received, acquired, possessed and used only by physicians, veterinarians in the practice of veterinary medicine, clinical laboratories or hospitals and only for in-vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the U.S. nuclear regulatory commission or of a State with which the commission has entered into an agreement for the exercise of regulatory authority.*

---

(name of manufacturer)

(5) The general licensee possessing or using radioactive material under the general license of Paragraph (1) of this subsection shall report in writing to the department, any changes in the information furnished by them in the *certificate-in-vitro testing with radioactive material under general license* form. The report shall be furnished within 30 days after the effective date of such change.

(6) Any person using radioactive material pursuant to the general license of Paragraph (1) of this subsection is exempt from the requirements of 20.3.4 NMAC and 20.3.10 NMAC with respect to radioactive material covered by that general license except that such person using a mock iodine-125 shall comply with the provisions of 20.3.4.433 NMAC, 20.3.4.451 NMAC and 20.3.4.452 NMAC.

#### **G. General license for strontium 90 in ice detection devices.**

(1) A general license is hereby issued to own, receive, acquire, possess, use and transfer strontium-90 contained in ice detection devices, provided each device contains not more than 50 microcuries (1.85 megabecquerels) of strontium-90 and each device has been manufactured or initially transferred in accordance with a specific license issued by the department, the NRC or an agreement state, which authorizes manufacture of the ice detection devices for distribution to persons generally licensed by the department, NRC or an agreement state.

(2) Persons who own, receive, acquire, possess, use or transfer strontium-90 contained in ice detection devices pursuant to the general license in Paragraph (1) of this subsection:

(a) shall, upon occurrence of visually observable damage, such as a bend or crack or discoloration from overheating, to the device, discontinue use of the device until it has been inspected, tested for leakage and repaired by a person holding a specific license from the department, the NRC or an agreement state to manufacture or service such devices; or shall dispose of the device pursuant to the provisions of 20.3.4.433 NMAC;

(b) shall assure that all labels affixed to the device at the time of receipt, and which bear a statement which prohibits removal of the labels, are maintained thereof; and

(c) are exempt from the requirement of 20.3.4 NMAC and 20.3.10 NMAC except that such persons shall comply with the provisions of 20.3.4.433 NMAC, 20.3.4.451 NMAC and 20.3.4.452 NMAC.

(3) This general license does not authorize the manufacture, assembly, disassembly, repair or import of strontium-90 in ice detection devices.

#### **H. General license for certain items and self-luminous products containing radium-226.**

(1) A general license is hereby issued to any person to acquire, receive, possess, use or transfer, in accordance with the provisions of Paragraphs (2), (3) and (4) of this subsection, radium-226 contained in the following products manufactured prior to November 30, 2007.

(a) Antiquities originally intended for use by the general public. For the purposes of this paragraph, antiquities mean products originally intended for use by the general public and distributed in the late 19th and early 20th centuries, such as radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts and healing pads.

(b) Intact timepieces containing greater than 0.037 megabecquerel (1 microcurie), non-intact timepieces, and timepiece hands and dials no longer installed in timepieces.

(c) Luminous items installed in air, marine or land vehicles.

(d) All other luminous products, provided that no more than 100 items are used or stored at the same location at any one time.

(e) Small radium sources containing no more than 1 microcurie (0.037 megabecquerel) of radium-226. For the purposes of this paragraph, "small radium sources" means discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations (such as

cloud chambers and spinthariscopes), electron tubes, lightning rods, ionization sources, static eliminators or as designated by the department or NRC.

**(2)** Persons who acquire, receive, possess, use or transfer byproduct material under the general license issued in Paragraph (1) of this subsection are exempt from the provisions of 20.3.3.325 NMAC, 20.3.3.326 NMAC, 20.3.4 NMAC and 20.3.10 NMAC to the extent that the receipt, possession, use or transfer of radioactive material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to any such person specifically licensed under this chapter.

**(3)** Any person who acquires, receives, possesses, uses or transfers radioactive material in accordance with the general license in Paragraph (1) of this section shall:

**(a)** notify the department should there be any indication of possible damage to the product so that it appears it could result in a loss of the radioactive material. A report containing a brief description of the event, and the remedial action taken, must be furnished to the department at the address specified in 20.3.1.116 NMAC within 30 days of the event;

**(b)** not abandon products containing radium-226; the product, and any radioactive material from the product, may only be disposed of according to 20.3.4.437 NMAC or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the department;

**(c)** not export products containing radium-226 except in accordance with 10 CFR 110;

**(d)** dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with any federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act, by transfer to a person authorized to receive radium-226 by a specific license issued under this part, or equivalent regulations of the NRC, an agreement state or as otherwise approved by the department or NRC;

**(e)** respond to written requests from the department to provide information relating to the general license within 30 calendar days of the date of the request, or other time specified in the request. If the general licensee cannot provide the requested information within the allotted time, it shall, within that same time period, request a longer period to supply the information by providing the department a written justification for the request.

**(4)** The general license in Paragraph (1) of this section does not authorize the manufacture, assembly, disassembly, repair or import of products containing radium-226, except when timepieces may be disassembled and repaired.

**I. General license to own radioactive material.** A general license is hereby issued to receive title to and own radioactive material without regard to quantity. Notwithstanding any other provision of this chapter, a general licensee under this subsection is not authorized to acquire, deliver, manufacture, produce, transfer, receive, possess, use, import or export radioactive material, except as authorized in a specific license.

[20.3.3.305 NMAC - Rp, 20.3.3.305 NMAC, 4/30/2009; A, 8/10/2021]

### **20.3.3.306 TRANSPORTATION OF RADIOACTIVE MATERIAL:**

**A.** Except as specified in Subsection D of this section, the regulations of the United States NRC set forth in 10 CFR 71 are hereby incorporated by reference.

**B.** Shipment and transport of radioactive material shall be in accordance with the provisions of Subsection A of this section.

**C.** The following modifications are made to the incorporated federal regulations in this section:

**(1)** "**commission**" means the NRC except as specified in subsection (4) below;

**(2)** "**act**" means the Radiation Protection Act, Sections 74-3-1 through 74-3-16 NMSA 1978; and

**(3)** "**byproduct material**" means radioactive material as defined in 20.3.1.7 NMAC.

**(4)** all reference in 10 CFR 71 to "commission" are changed to department as follows: 71.17(a), 71.17(b), 71.21, 71.91(b), 71.91(c), 71.91(d), 71.101(c)(1), 71.106(a), 71.106(a)(1), 71.106(b) and 71.106(b)(1).

**(5)** all reference in 10 CFR 71 to "certificate holder", "applicant" and "applicant for a certificate of compliance (COC)" apply to the NRC as follows 71.91(c), 71.91(d), 71.101(a), 71.101(b), 71.103(a) and 71.135.

**D.** The following provisions contained in 10 CFR 71 are applicable to the NRC and not incorporated in this section: 71.11, 71.14(b), 71.19, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.43, 71.45, 71.51, 71.55, 71.59, 71.61, 71.63, 71.64, 71.65, 71.70, 71.71, 71.73, 71.74, 71.75, 71.77, 71.85(a)-(c), 71.91(b), 71.101(c)(2), (d), and (e), 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, and 71.125.

[20.3.3.306 NMAC - Rp, 20.3.3.306 NMAC & 20.3.3.325 NMAC, 4/30/2009; A, 6/30/2011; A, 8/10/2021]

### **20.3.3.307 FILING APPLICATION FOR SPECIFIC LICENSES:**

**A.** Except where otherwise determined by the department, applications for specific licenses shall be filed in duplicate on a form prescribed by the department (*application for a radioactive material license*) in accordance with the instructions to the form. Additional copies of the application may be required by the department. Information contained in previous application, statements or reports filed with the department may be incorporated by reference, provided that the reference is clear and specific.

**B.** The department may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the department to determine whether the application shall be granted or denied or whether a license shall be modified or revoked.

**C.** Each application shall be signed by the applicant or licensee or a person duly authorized to act for and on their behalf.

**D.** An application for a license may include a request for a license authorizing more than one activity, provided that the application specifies the additional activities for which licenses are requested and complies with the requirements in this chapter as to applications for such licenses. In such cases, annual fees for all types of activities authorized by the license may be charged as determined by 20.3.16 NMAC.

**E.** An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

(1) any reference to the commission or NRC shall be deemed a reference to the department;

(2) 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

(3) 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.27(c), 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable; and

(4) the license required report of events or notification in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 71, 10 CFR 37.77(a) through (d), and 10 CFR 37.81 shall use the following address when applicable: New Mexico Environment Department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469.

**F.** An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source must identify the source and (or) the device by manufacturer name and model number as registered with the *sealed source and device registry*.

(1) Except as provided in Paragraph (2), (3) and (4) of this Subsection, an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must either:

(a) identify the source or device by manufacturer and model number registered with the NRC pursuant to 10 CFR 32.210, with an agreement state, or for a source or a device containing radium-226 or accelerator-produced radioactive material with a state under provisions comparable to 10 CFR 32.210; or

(b) contain the information identified in 10 CFR 32.210(c).

(2) For sources or devices manufactured before October 23, 2012 that are not registered with the NRC under 10 CFR 32.210 or with an agreement state, and for which the applicant is unable to provide all categories of information specified in 10 CFR 32.210(c), the application must include:

(a) all available information identified in 10 CFR 32.210(c) concerning the source, and, if applicable, the device; and

(b) sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

(3) For sealed sources and devices allowed to be distributed without registration of safety information in accordance with 10 CFR 32.210(g)(1), the applicant may supply only the manufacturer, model number, and radionuclide and quantity.

(4) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

**G.** As provided by 20.3.3.311 NMAC, certain applications for a new or renewal specific license must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning.

**H.** An application for a license to receive and possess radioactive material for the conduct of any activity which the department has determined pursuant to Subpart A of 10 CFR 51 will significantly affect the quality of the environment shall be filed at least nine months prior to commencement of construction of the plant or facility in which the activity will be conducted and shall be accompanied by an environmental impact report required pursuant to Subpart A of 10 CFR 51.

**I.** None of the following applications shall be accepted for review unless it is accompanied by an environmental impact report, submitted by the applicant, that specifically addresses the short-term and long-term environmental, radiological and public health and safety aspects of the applications and alternatives to the proposed action:

(1) an initial application for a radioactive material license for a commercial radioactive waste disposal site license;

(2) the first renewal of any such license not previously accompanied by an environmental impact report;

(3) an application for an amendment to an existing license that may result in additional significant impacts from radiation on the environment or public health or safety beyond those impacts addressed in the existing license and accompanying documents; and

(4) any other application that the secretary determines may have significant impacts from radiation on the environment or public health or safety.

**J.** The application for a radioactive material license for a commercial radioactive waste disposal site, or for any renewal thereof, or for an amendment thereto as described in Paragraph (3) of Subsection H of this section, shall demonstrate that the activity for which such license is requested will comply with all laws and regulations enforceable by the department.

**K.** An application from a medical facility or educational institution to produce PET radioactive drugs for noncommercial transfer to licensees in its consortium authorized for medical use under 20.3.7 NMAC shall include:

(1) a request for authorization for the production of PET radionuclides or evidence of an existing license issued under 20.3.3 NMAC or under equivalent NRC or agreement state requirements for a PET radionuclide production facility within its consortium from which it receives PET radionuclides;

(2) evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in Subparagraph (b) of Paragraph (1) of Subsection J of 20.3.3.315 NMAC;

(3) identification of individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in Subparagraph (b) of Paragraph (2) of Subsection J of 20.3.3.315 NMAC; and

(4) information identified in Subparagraph (c) of Paragraph (1) of Subsection J of 20.3.3.315 NMAC on the PET drugs to be non-commercially transferred to members of its consortium.

L. An application for a specific license to transfer source material under this section.

(1) An application for a specific license to initially transfer source material for use under 20.3.3.307 NMAC, will be approved if:

(a) the applicant satisfies the general requirements specified in this section;  
and

(b) the applicant submits adequate information on, and the department approves the methods to be used for quality control, labeling, and providing safety instructions to recipients.

(2) Each person licensed under this section shall label the immediate container of each quantity of source material with the type of source material and quantity of material and the words, "radioactive material."

(3) Each person licensed under this section shall ensure that the quantities and concentrations of source material are as labeled and indicated in any transfer records.

(4) Each person licensed under this section shall provide the information specified in this paragraph to each person to whom source material is transferred for use under this section. This information must be transferred before the source material is transferred for the first time in each calendar year to the particular recipient. The required information includes:

(a) a copy of Subsection B of 20.3.3.304.B NMAC and 10 CFR 40.51 or equivalent regulations under Subsection L of 20.3.3.307 NMAC; and

(b) appropriate radiation safety precautions and instructions relating to handling, use, storage, and disposal of the material.

(5) Each person licensed under this section shall report transfers as follows:

(a) File a report with the department under 20.3.1.116 NMAC. The report shall include the following information:

(i) The name, address, and license number of the person who transferred the source material; and

(ii) For each general licensee under 10 CFR 40.22 or 20.3.3.304 NMAC to whom greater than 50 grams (0.11 lb) of source material has been transferred

in a single calendar quarter, the name and address of the general licensee to whom source material is distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(iii) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients.

(b) File a report with each responsible agreement state agency that identifies all persons, operating under the provisions equivalent to 10 CFR 40.22, to whom greater than 50 grams (0.11 lb) of source material has been transferred within a single calendar quarter. The report shall include the following information specific to those transfers made to the agreement state:

(i) The name, address, and license number of the person who transferred the source material;

(ii) The name and address of the general licensee to whom source material was distributed; a responsible agent, by name and/or position and phone number, of the general licensee to whom the material was sent; and the type, physical form, and quantity of source material transferred; and

(iii) The total quantity of each type and physical form of source material transferred in the reporting period to all such generally licensed recipients within the Agreement State.

(c) Submit each report by January 31 of each year covering all transfers for the previous calendar year. If no transfers were made to persons generally licensed under 10 CFR 40.22 or equivalent agreement state provisions during the current period, a report shall be submitted to the NRC indicating so. If no transfers have been made to general licensees in a particular agreement state during the reporting period, this information shall be reported to the responsible agreement state agency upon request of the agency.

(d) Each person licensed under 20.3.3.304 NMAC shall maintain all information that supports the reports required by this section concerning each transfer to a general licensee for a period of one year after the event is included in a report to the NRC or to an agreement state agency.

[20.3.3.307 NMAC - Rp, 20.3.3.307 NMAC, 04/30/2009; A, 02/14/2023]

### **20.3.3.308 GENERAL REQUIREMENTS FOR THE ISSUANCE OF SPECIFIC LICENSES:**

**A.** An application for a specific license shall be approved if all of the following requirements are met.

(1) The application is for a purpose authorized by the act.

(2) The applicant is qualified by training and experience to use the material for the purpose requested in accordance with the provisions in this chapter and in such a manner as to minimize the danger to public health and safety or property.

(3) The applicant's proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property.

(4) The applicant satisfies the requirements in this section, and any special requirements in 20.3.3.307 NMAC and 20.3.3.309 NMAC, 20.3.3.313 NMAC, 20.3.3.314 NMAC or 20.3.3.315 NMAC.

**B.** Upon a determination that an application meets the requirements of the act and the 20.3 NMAC, the department will issue a specific license authorizing the possession and use of radioactive material.

**C.** The secretary may deny an application if an applicant:

(1) fails to demonstrate that the requirements of the act and 20.3 NMAC have been addressed;

(2) fails to meet the requirements for completeness and accuracy of information in 20.3.1.123 NMAC;

(3) has demonstrated deliberate misconduct as described in 20.3.1.122 NMAC; and

(4) fails to respond to a request for additional information within 30 days from the date of the request, or within such other time as may be specified in the request for information.

[20.3.3.308 NMAC - Rp, 20.3.3.308 NMAC, 04/30/2009; A, 06/13/2017]

### **20.3.3.309 REQUIREMENTS FOR EMERGENCY RESPONSE PLANS FOR CERTAIN LICENSEES:**

**A.** Each application to possess radioactive materials in unsealed forms, on foils or plated sources, or sealed in glass in excess of the quantities in 20.3.3.333 NMAC (Schedule E - Quantities of Radioactive Materials Requiring Consideration of the Need for an Emergency Plan for Responding to a Release), must contain either:

(1) an evaluation showing that the maximum dose to a person offsite due to a release of radioactive materials would not exceed 1 rem effective dose equivalent or 5 rems (50 millisieverts) to the thyroid; or

(2) an emergency plan for responding to a release of radioactive material.

**B.** One or more of the following factors may be used to support an evaluation submitted under Paragraph (1) of Subsection A of this section:

(1) the radioactive material is physically separated so that only a portion could be involved in an accident;

(2) all or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(3) the release fraction in the respirable size range would be lower than the release fraction shown in 20.3.3.333 NMAC of this part due to the chemical or physical form of the material;

(4) the solubility of the radioactive material would reduce the dose received;

(5) facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in 20.3.3.333 NMAC;

(6) other factors appropriate for the specific facility; or

(7) operating restrictions or procedures would prevent a release fraction as large as that shown in 20.3.3.333 NMAC.

**C.** An emergency plan for responding to a release of radioactive material submitted under Paragraph (2) of Subsection A of this section must include the following information.

(1) **Facility description:** a brief description of the licensee's facility and area near the site.

(2) **Types of accidents:** an identification of each type of radioactive materials accident for which protective actions may be needed.

(3) **Classification of accidents:** a system for classifying each accident as "alert" or "site area emergencies".

(4) **Detection of accidents:** identification of the means of detecting each type of accident in a timely manner.

(5) **Mitigation of consequences:** a brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

**(6) Assessment of releases:** a brief description of the methods and equipment to assess releases of radioactive materials.

**(7) Responsibilities:** a brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the secretary; also responsibilities for developing, maintaining, and updating the plan.

**(8) Notification and coordination:** a commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the secretary immediately and ensure notification of other appropriate offsite response organizations "and not later than one hour after the licensee declares an emergency".

**(9) Information to be communicated:** a brief description of the types of information regarding facility status, radioactive releases and, if necessary, recommended protective actions.

**(10) Training:** a brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

**(11) Safe shutdown:** a brief description of the means of restoring the facility to a safe condition after an accident.

**(12) Exercises:** provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises, although recommended, is not required. Exercises must use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment

and training of personnel and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

**(13) Hazardous chemicals:** a certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act (title III, pub. I. 99-499), if applicable to the applicant's activities at the proposed place of use of the radioactive material.

**D.** The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it in final form to the department. The licensee shall provide any comments received within the 60 days to the department with the emergency plan.

[20.3.3.309 NMAC - Rp, 20.3.3.309 NMAC, 04/30/2009]

### **20.3.3.310 PUBLIC NOTICE, PARTICIPATION AND HEARING:**

**A.** Within 60 days following:

**(1)** initial receipt of a new license application, or each additional submission of information by the applicant, the secretary will either accept the application for a new license for a review and give notice pursuant to Subsection B of this section, or notify the applicant in writing of any deficiencies in the application that must be corrected in order for the application to be accepted for review;

**(2)** a license amendment or license renewal application requesting a change of the location where radioactive material will be stored or used, the secretary will issue notices pursuant to Subsection B of this section;

**(3)** a license amendment or license renewal application requesting a change of principal activity, the secretary will issue notices pursuant to Subsection B of this section.

**B. Notices.** The secretary shall give a notice of acceptance of a new application, license amendment or renewal license application described in Subsection A of this section:

**(1)** to the applicant, by certified mail; and

**(2)** to the public, by the publication of a notice in at least one newspaper of general circulation in the area of the proposed activity in the license application, and in other newspapers as deemed appropriate by the secretary;

**(3)** the secretary shall make a good faith effort to notify of acceptance of a new application, license amendment or renewal license application described in of Subsection A of this section by first-class mail:

(a) any local, state, Indian Tribal government or federal government agency that the secretary determines may be significantly affected or interested; and

(b) any other person who, prior to such notice, has requested in writing such notices.

C. The notice specified in Paragraph (2) of Subsection B of this section shall include:

- (1) the name and address of the applicant;
- (2) the location of the proposed activity;
- (3) a brief description of the procedures to be followed by the secretary in making a final determination;
- (4) a brief description of the proposed activity;
- (5) the time within which written comments and requests for public hearings will be accepted; and
- (6) the means by which interested persons may obtain further information;
- (7) the following sample notice satisfies the requirements of this section:

## **PUBLIC NOTICE**

The New Mexico Environment Department (the Department) has received an application for a Radioactive Material License from \_\_\_\_\_ (company name and address) for \_\_\_\_\_ (proposed activity) to be located at \_\_\_\_\_ (location).

During the early part of the evaluation period, the Department will review and comment upon the application. The NMED may, at its discretion, retain consultants to assist it in its evaluation of the application. Relevant comments and questions received by the NMED from various agencies and interested parties will be forwarded to the applicant for its response. Correspondence associated with the application will be on file with the Radiation Control Bureau and will be available for inspection by the applicant and any other interested parties.

The Department has required the applicant to provide complete plans and other materials addressing, among other things, the public health, safety and environmental aspects of the proposed activity.

The Department will analyze the license application carefully. During this analysis, the application will be reviewed to ensure that there are no deficiencies, that the application

meets all applicable requirements and that there is no reason to believe that the operation will violate any laws or regulations. If the Department is so satisfied, it will issue a Radioactive Material License, to expire in five years.

The activities of all licensees are inspected periodically to assure compliance with regulations and license conditions.

The application is available for review at NMED's offices of the Radiation Control Bureau in Santa Fe, New Mexico.

It is anticipated that the review period will require about \_\_\_\_\_ months. Written comments and requests for public hearing will be accepted for \_\_\_\_\_ days after publication of this notice.

Written comments regarding this license application should be directed to Radiation Control Bureau, Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502-5469.

**D.** The department shall maintain all licensees' administrative record, which shall be available for public inspection at the department office in Santa Fe.

**E. Public comment period.**

**(1)** Following the notice pursuant to Subsections B and C of this section and prior to ruling on any new application, or amendment request or renewal license application of the type described in Subsection A of this section, the secretary shall allow for a period of at least 30 days during which written comments or questions about the license application may be submitted by any interested person. If the secretary determines that the questions are relevant to the requirements in 20.3.3.307 NMAC, 20.3.3.308 NMAC and any specific requirements for the type of license requested, the secretary shall require the applicant to answer them.

**(2)** Following the notice of acceptance of the license application pursuant to Subsections A through C of this section and prior to ruling on any application required to be accompanied by an environmental report pursuant to Subsection H of 20.3.3.307 NMAC, the secretary shall allow a period of at least 60 days during which written comments or questions may be submitted by any interested person. If the secretary determines that the questions are relevant to the considerations enumerated in Subsection H of 20.3.3.307 NMAC or 20.3.3.308 NMAC, the secretary shall require the applicant to answer them.

The secretary may allow an additional written comment period upon submission of additional information to the license application, amendment request or renewal license application described by Subsection A of this section by the applicant, or upon request by members of the public. A written request for a hearing may be made by the members of the public within the time period specified in the public notice described in Subsection C of this section.

**F.** If the secretary determines that there is significant public interest, or that there is a need to resolve issues not resolvable in writing, the secretary shall order a public hearing be held to provide guidance on any issue relevant to the license proceeding. Notice of the public hearing shall be given at least 30 days prior to the hearing to the persons and in the manner specified in Subsection C of 20.1.4.200 NMAC. Any such public hearing shall be conducted pursuant to the hearing procedures in 20.1.4 NMAC.

[20.3.3.310 NMAC - Rp, 20.3.3.310 NMAC, 4/30/2009; A, 6/13/2017, 8/10/2021]

### **20.3.3.311 FINANCIAL ASSURANCE AND RECORD KEEPING FOR DECOMMISSIONING:**

#### **A. Decommissioning funding plan required.**

**(1)** Each applicant for a specific license authorizing the possession and use of unsealed radioactive material (except source material which is subject to Paragraph (3) of this subsection) of half-life greater than 120 days in quantities exceeding 100,000 (1E+5) times the applicable quantities set forth in 20.3.3.338 NMAC, shall submit a decommissioning funding plan as described in Subsection E of this section. The decommissioning funding plan must also be submitted when a combination of radioisotopes is involved if  $R$  divided by 100,000 (1E+5) is greater than 1 (unity rule), where  $R$  is defined here as the sum of the ratios of the quantity of each radioisotope to the applicable value in 20.3.3.338 NMAC.

**(2)** Each applicant for a specific license authorizing the possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding  $10^{12}$  (1E+12) times the applicable quantities set forth in 20.3.3.338 NMAC (or when a combination of radioisotopes is involved if  $R$ , as defined in Paragraph (1) of this subsection, divided by  $10^{12}$  is greater than 1), shall submit a decommissioning funding plan as described in Subsection E of this section.

**(3)** Each applicant for a specific license authorizing the possession and use of more than 100 (1E+2) millicuries of source material in a readily dispersible form shall submit a decommissioning funding plan as described in Subsection E of this section.

**B.** Each applicant for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Subsection D of this section shall either:

**(1)** submit a decommissioning funding plan as described in Subsection E of this section; or

**(2)** submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Subsection D of this section using one of the methods described in Subsection F of this section; for an applicant, this certification may state that the appropriate assurance will be obtained after the application has been

approved and the license issued but prior to the receipt of licensed material; if the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of Subsection F of this section must be submitted to the department before receipt of licensed material; if the applicant does not defer execution of the financial instrument, the applicant shall submit to the department, as part of the certification, a signed original of the financial instrument obtained to satisfy the requirements of Subsection F of this section.

**C. Financial assurance for holders of specific license.** Each holder of a specific license issued before the effective date of these regulations which is of a type described in Subsection A or B of this section shall provide financial assurance for decommissioning in accordance with the criteria set forth in this section.

(1) Each holder of a specific license issued before the effective date of these regulations, and of a type described in Subsection A of this section shall submit a decommissioning funding plan as described in Subsection E of this section.

(2) Each holder of a specific license issued before the effective date of these regulations, and of a type described in Subsection B of this section shall submit a decommissioning funding plan as described in Subsection E of this section, or a certification of financial assurance for decommissioning in accordance with the criteria set forth in Subsection D of this section.

(3) Any licensee who has submitted an application before the effective date of these regulations for renewal of license in accordance with 20.3.3.319 NMAC shall provide financial assurance for decommissioning in accordance with Subsections A and B of this section.

(4) Waste collectors and waste processors, as defined in 20.3.4.466 NMAC, must provide financial assurance in an amount based on a decommissioning funding plan as described in Subsection E of this section. The decommissioning funding plan must include the cost of disposal of the maximum amount (in curies) of radioactive material permitted by license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of 20.3.4.426 NMAC.

**D. Required amounts of financial assurance for decommissioning by quantity of material.** Licensees exceeding the upper bounds of this subsection must base financial assurance on a decommissioning funding plan as described in Subsection E of this section.

(1) Greater than 10,000 (1E+4) but less than or equal to 100,000 (1E+5) times the applicable quantities of 20.3.3.338 NMAC, in unsealed form. (For a combination of radioisotopes, if R as defined in Subsection A of this section, divided by

10,000 (1E+4) is greater than 1 but R divided by 100,000 (1E+5) is less than or equal to 1): at least equal to \$1,125,000.

**(2)** Greater than 1,000 (1E+3) but less than or equal to 10,000 (1E+4) times the applicable quantities of 20.3.3.338 NMAC, in unsealed form. (For a combination of radioisotopes, if R, as defined in Subsection A of this section, divided by 1,000 (1E+3) is greater than 1 but R divided by 10,000 (1E+4) is less than or equal to 1): at least equal to \$225,000.

**(3)** Greater than  $10^{10}$  (1E+10) but less than or equal to  $10^{12}$  (1E+12) times the applicable quantities of 20.3.3.338 NMAC, in sealed sources or plated foils. (For a combination of radioisotopes, if R, as defined in Subsection A of this section, divided by  $10^{10}$  is greater than 1, but R divided by  $10^{12}$  is less than or equal to 1): at least equal to \$113,000.

**(4)** For source material, greater than 10 millicuries but less than or equal to 100 millicuries: at least equal to \$225,000.

#### **E. Decommissioning funding plan.**

**(1)** Each decommissioning funding plan must be submitted for review and approval and must contain a detailed cost estimate for decommissioning in an amount reflecting:

**(a)** the cost of an independent contractor to perform all decommissioning activities;

**(b)** the cost of meeting the 20.3.4.426.B NMAC criteria for unrestricted use, provided that, if the applicant or licensee can demonstrate its ability to meet the provisions of 20.3.4.426.C NMAC, the cost estimate may be based on meeting the 20.3.4.426.C NMAC department approved criteria;

**(c)** the volume of onsite subsurface material containing residual radioactivity that will require remediation to meet the criteria for license termination;

**(d)** an adequate contingency factor with identification of and justification for using the key assumptions contained in the decommissioning cost estimate;

**(e)** a description of the method of assuring funds for decommissioning from 20.3.3.311.F NMAC including means for adjusting cost estimates and associated funding levels periodically over the life of the facility;

**(f)** a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate for decommissioning; and

(g) a signed original of the financial instrument obtained to satisfy the requirement of Subsection F of this section (unless a previously submitted and accepted financial instrument continues to cover the cost estimate for decommissioning).

(2) At the time of license renewal and at intervals not to exceed three years, the decommissioning funding plan must be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. If the amount of financial assurance will be adjusted downward, this cannot be done until the updated decommissioning funding plan is approved. The decommissioning funding plan must update the information submitted with the original or prior approved plan, and must specifically consider the effect of the following events on decommissioning costs:

(a) spills of radioactive material producing additional residual radioactivity in onsite subsurface material;

(b) waste inventory increasing above the amount previously estimated;

(c) waste disposal costs increasing above the amount previously estimated;

(d) facility modifications;

(e) changes in authorized possession limits;

(f) actual remediation costs that exceed the previous cost estimate;

(g) onsite disposal; and

(h) use of a settling pond.

**F. Methods of financial assurance.** Financial assurance for decommissioning must be provided by one or more of the following methods.

(1) **Prepayment.** Prepayment is the deposit prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control of cash or liquid assets such that the amount of funds would be sufficient to pay decommissioning costs. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit or deposit of government securities.

(2) **A surety method, insurance or other guarantee method.** These methods guarantee that decommissioning costs will be paid. A surety method may be in the form of a surety bond, letter of credit or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in 20.3.3.334 NMAC. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this section. For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be

used if the guarantee and test are as contained in 20.3.3.335 NMAC. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in 20.3.3.336 NMAC. For nonprofit entities, such as colleges, universities and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in 20.3.3.337 NMAC. A guarantee by the applicant or licensee may not be used in combination with any other financial methods to satisfy the requirements of this section or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions.

(a) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless 90 days or more prior to the renewal date, the issuer notifies the department, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also provide that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the department within 30 days after receipt of notification of cancellation.

(b) The surety method or insurance must be payable to a trust established for decommissioning costs. The trustee and trust must be acceptable to the department. An acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(c) The surety method or insurance must remain in effect until the department has terminated the license.

**(3) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund.** An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control in which the total amount of funds would be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions must be as stated in Paragraph (2) of this subsection.

(4) In the case of federal, state or local government licensees, a statement of intent containing a cost estimate for decommissioning or an amount based on Subsection D of this section, and indicating that funds for decommissioning will be obtained when necessary.

(5) When a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

**G. Record keeping requirements.** Each person licensed under this part or Parts 5, 7, 12, 13 and 15 of this chapter shall keep records of information important to the decommissioning of the facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with 20.3.3.317 NMAC, licensees shall transfer all records described in this paragraph to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated. If records important to the decommissioning of a facility are kept for other purposes, reference to these records and their locations may be used. Information the department considers important to decommissioning consists of:

(1) records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment or site; these records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete; these records must include any known information on identification of involved nuclides, quantities, forms and concentrations;

(2) as-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination; if required drawings are referenced, each relevant document need not be indexed individually; if drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations;

(3) except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or radioactive materials having only half-lives of less than 65 days, a list contained in a single document and updated every two years, of the following:

(a) all areas designated and formerly designated restricted areas as defined in 20.3.4.7 NMAC;

(b) all areas outside of restricted areas that require documentation under Paragraph (1) of this subsection;

(c) all areas outside of restricted areas where current and previous wastes have been buried as documented under 20.3.4.448 NMAC; and

(d) all areas outside of restricted areas that contain material such that, if the license expired, the licensee would be required to either decontaminate the area to

meet the criteria for decommissioning in 20.3.4.426 NMAC, or apply for approval for disposal under 20.3.4.434 NMAC; and

(4) records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

[20.3.3.311 NMAC - Rp, 20.3.3.311 NMAC, 04/30/2009; A, 06/13/2017]

### **20.3.3.312 [RESERVED]**

### **20.3.3.313 SPECIAL REQUIREMENTS FOR ISSUANCE OF CERTAIN SPECIFIC LICENSES FOR RADIOACTIVE MATERIAL:**

**A. Industrial radiographic operations.** In addition to the requirements set forth in 20.3.3.307 NMAC and 20.3.3.308 NMAC, a specific license for use of sealed sources in industrial radiography will be issued if the applicant or licensee meets the specific requirements in 20.3.5 NMAC.

**B. Medical use of radioactive materials.** In addition to the requirements set forth in 20.3.3.307 NMAC and 20.3.3.308 NMAC, a specific license for use of sealed sources and unsealed radioactive materials for medical use will be issued if the applicant or licensee meets the specific requirements in 20.3.7 NMAC.

**C. Well logging operations and subsurface tracer studies.** In addition to the requirements set forth in 20.3.3.307 NMAC and 20.3.3.308 NMAC, a specific license for use of sealed sources in wireline service operations, including mineral-logging, radioactive markers or subsurface tracer studies will be issued if the applicant or licensee meets the specific requirements in 20.3.12 NMAC.

**D. Land disposal of radioactive waste.** In addition to the requirements set forth in 20.3.3.308 NMAC, a specific license for any method of land disposal of low-level radioactive waste will be issued if the applicant or licensee meets the specific requirements in 20.3.13 NMAC.

**E. Naturally occurring radioactive materials in the oil and gas industry.** In addition to the requirements set forth in 20.3.3.308 NMAC, a specific license for use of naturally occurring radioactive materials (NORM) in the gas and oil industry will be issued if the applicant or licensee meets the specific requirements in 20.3.14 NMAC.

**F. Irradiators.** In addition to the requirements set forth in 20.3.3.307 NMAC and 20.3.3.308 NMAC, a specific license for use of sealed sources in irradiators will be issued if the applicant or licensee meets the specific requirements in 20.3.15 NMAC.

[20.3.3.313 NMAC - Rp, 20.3.3.313 NMAC, 04/30/2009; A, 06/13/2017]

### **20.3.3.314 SPECIAL REQUIREMENTS FOR SPECIFIC LICENSES OF BROAD SCOPE:**

This section prescribes requirements for the issuance of specific licenses of broad scope for radioactive material ("broad licenses") and certain regulations governing holders of such licenses.

#### **A. Types of specific licenses of broad scope.**

(1) A "*type A specific license of broad scope*" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for purposes authorized by the act. The quantities specified are usually in the multicurie range.

(2) A "*type B specific license of broad scope*" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in 20.3.3.332 NMAC, for purposes authorized by the act. The possession limit for a type B broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in column I of 20.3.3.332 NMAC. If two or more radionuclides are possessed thereunder, the possession limit for each is determined as follows: for each radionuclide determine the ratio of the quantity possessed to the applicable quantity specified in column I of 20.3.3.332 NMAC, for that radionuclide. The sum of the ratios for all radionuclides possessed under the license shall not exceed unity.

(3) A "*type C specific license of broad scope*" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in 20.3.3.332 NMAC, for any purposes authorized by the act. The possession limit for a type C broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in column II of 20.3.3.332 NMAC. If two or more radionuclides are possessed thereunder, the possession limit is determined for each as follows: 1) for each radionuclide determine the ratio of the quantity possessed to the applicable quantity specified in Column II of 20.3.3.332 NMAC, for the radionuclide; 2) the sum of the ratios for all radionuclides possessed under the license shall not exceed unity.

#### **B. Requirements for the issuance of a type A specific license of broad scope.**

An application for a type A specific license of broad scope will be approved if the following requirements are met.

(1) The applicant satisfies the general requirements specified in 20.3.3.307 NMAC and 20.3.3.308 NMAC.

(2) The applicant has engaged in a reasonable number of activities involving the use of radioactive materials.

**(3)** The applicant has established administrative controls and provisions relating to organization and management, procedures, record keeping, material control, material accounting and management review that are necessary to assure safe operations, including:

**(a)** the establishment of a radiation safety committee composed of such persons as a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive material;

**(b)** the appointment of a radiation safety officer who is qualified by training and experience in radiation protection and who is available for advice and assistance on radiation safety matters; and

**(c)** the establishment of appropriate administrative procedures to assure:

**(i)** control of procurement and use of radioactive material;

**(ii)** completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user and the operating or handling procedures; and

**(iii)** review, approval and recording by the radiation safety committee of safety evaluation of proposed uses prepared in accordance with Item (ii) of this subparagraph prior to use of the radioactive material.

**C. Requirements for the issuance of a type B specific license of broad scope.**

An application for a type B specific license of broad scope will be approved if the following requirements are met.

**(1)** The applicant satisfies the general requirements specified in 20.3.3.307 NMAC and 20.3.3.308 NMAC.

**(2)** The applicant has established administrative controls and provisions relating to organization and management, procedures, record keeping, material control, material accounting and management review that are necessary to assure safe operations, including:

**(a)** the appointment of a radiation safety officer who is qualified by training and experience in radiation protection and who is available for advice and assistance on radiation safety matters; and

**(b)** the establishment of appropriate administrative procedures to assure:

**(i)** control of procurement and use of radioactive material;

(ii) completion of safety evaluations of proposed uses of radioactive materials which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures; and

(iii) review, approval and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with Item (ii) of this subparagraph.

**D. Requirements for the issuance of a type C specific license of broad scope.**

An application for a type C specific license of broad scope will be approved if the following requirements are met.

(1) The applicant satisfies the general requirements specified in 20.3.3.307 NMAC and 20.3.3.308 NMAC.

(2) The applicant submits a statement that radioactive material will be used only by, or under the direct supervision of, individuals who have received:

(a) a college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; and

(b) at least 40 hours of training and experience in the safe handling of radioactive materials, and in the characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation and biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used.

(3) The applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, record keeping, material control, material accounting and management review necessary to assure safe operations.

**E. Conditions of specific licenses of broad scope.**

(1) Unless specifically authorized pursuant to other parts of this chapter, persons licensed under this section shall not:

(a) conduct tracer studies in the environment involving direct release of radioactive material;

(b) receive, acquire, own, possess, use, transfer or import devices containing 100,000 curies or more of radioactive material in sealed sources used for irradiation of material;

(c) conduct activities for which a specific license issued by the department under 20.3.5 NMAC, 20.3.7 NMAC or 20.3.3.315 NMAC is required; or

(d) add or cause the addition of radioactive material to any food, beverage, cosmetic, drug or other product designed for ingestion or inhalation by, or application to, a human being.

(2) Each type A specific license of broad scope issued under this section shall be subject to the condition that radioactive material possessed under the license shall only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

(3) Each type B specific license of broad scope issued under this section shall be subject to the condition that radioactive material possessed under the license shall only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

(4) Each type C specific license of broad scope issued under this section shall be subject to the condition that radioactive material possessed under the license shall only be used by, or under the direct supervision of, individuals who satisfy the requirements of Paragraph (2) of Subsection D of this section.

[20.3.3.314 NMAC - Rp, 20.3.3.314 NMAC, 04/30/2009; A, 06/13/2017]

**20.3.3.315 SPECIAL REQUIREMENTS FOR A SPECIFIC LICENSE TO MANUFACTURE, ASSEMBLE, REPAIR OR DISTRIBUTE COMMODITIES, PRODUCTS OR DEVICES WHICH CONTAIN RADIOACTIVE MATERIAL:**

**A. Introduction of radioactive material in exempt concentrations into products or materials.**

(1) **Licensing.** A specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another and the transfer of ownership or possession of the product or material containing the radioactive material to be transferred to persons exempt under Paragraph (1) of Subsection A of 20.3.3.302 NMAC will be issued by NRC pursuant to 10 CFR 32.11.

(2) **Prohibition of introduction.** No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under Subsection A of 20.3.3.302 NMAC or equivalent regulations of the NRC or an agreement state, except in accordance with a license issued by NRC pursuant to 10 CFR 32.11.

**B. Radioactive material in exempt quantities or in certain items.**

**(1) Manufacture, distribution and transfer of exempt quantities of byproduct material.** An application for a specific license to manufacture, process, produce, package, repackage or transfer exempt quantities of byproduct material for commercial distribution to persons exempt pursuant to Subsection B of 20.3.3.302 NMAC or the equivalent regulations of the NRC or an agreement state shall be issued by NRC pursuant to 10 CFR 32.18.

**(2) Certain items containing byproduct material.** An application for a specific license to apply byproduct material to, or to incorporate byproduct material into, the products specified in Paragraph (1) of Subsection C of 20.3.3.302 NMAC or to initially transfer for sale or distribution such products containing byproduct material for use pursuant to Paragraph (1) of Subsection C of 20.3.3.302 NMAC to persons exempt from 20.3 NMAC shall be submitted to NRC pursuant to 10 CFR 32.14.

(3) Except as specified in Paragraphs (1) and (2) of this subsection, in addition to the requirements set forth in 20.3.3.308 NMAC, an application for a specific license to manufacture, process, produce, package, repackage or initially transfer naturally occurring or accelerator produced radioactive material (NARM) in exempt quantities as specified in 20.3.3.330 NMAC of this part to persons exempt from licensing pursuant to Subsection B of 20.3.3.302 NMAC will be approved if:

(a) the radioactive material is not contained in any food, beverage, cosmetic, drug or other commodity designed for ingestion or inhalation by, or application to, a human being;

(b) the radioactive material is in the form of processed chemical elements, compounds, mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into any manufactured or assembled commodity, product or device intended for commercial distribution; and

(c) the applicant submits copies of prototype labels and brochures and the department approves such labels and brochures.

(4) The license issued under Paragraph (3) of Subsection B of this subsection is subject to the following conditions:

(a) no more than 10 exempt quantities shall be sold or transferred in any single transaction; however, an exempt quantity may be composed of fractional parts of one or more of the exempt quantity provided the sum of the fractions shall not exceed unity;

(b) each exempt quantity shall be separately and individually packaged; no more than 10 such packaged exempt quantities shall be contained in any outer package for transfer to persons exempt pursuant to Subsection B of 20.3.3.302 NMAC; the outer

package shall be such that the dose rate at the external surface of the package does not exceed 0.5 millirem per hour;

(c) the immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable and legible label which:

- (i) identifies the radionuclide and the quantity of radioactivity; and
- (ii) bears the words "*radioactive material*"; and

(d) in addition to the labeling information required by Subparagraph (c) of this paragraph, the label affixed to the immediate container, or an accompanying brochure shall

- (i) state that the contents are exempt from these regulations;
- (ii) bear the words "*radioactive material - not for human use - introduction into foods, beverages, cosmetics, drugs or medicinal product, or into products manufactured for commercial distribution is prohibited - exempt quantities shall not be combined*"; and
- (iii) set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage and disposal of the radioactive material.

(5) Each person licensed under Subsection B of 20.3.3.315 NMAC shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use under Subsection B of 20.3.3.302 NMAC and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the department. Each report shall cover the year ending June 30 and shall be filed within 30 days thereafter. If no transfers of radioactive material have been made pursuant to Subsection B of 20.3.3.315 NMAC, during the report period, the report shall so indicate.

### **C. Licensing of byproduct material by NRC.**

**(1) Gas and aerosol detectors.** An application for a specific license to manufacture, process or produce gas and aerosol detectors containing byproduct material and designed to protect life or property from fires and airborne hazards, or to initially transfer such products for use pursuant to Paragraph (4) of Subsection C of 20.3.3.302 NMAC or equivalent regulations of the NRC or an agreement state, shall be submitted to NRC pursuant to 10 CFR 32.26.

**(2) Self-luminous products.** An application for a specific license to manufacture, process or produce self-luminous products containing tritium, krypton-85,

promethium-147 or radium-226, or to initially transfer such products for use pursuant to Paragraph (2) of Subsection C of 20.3.3.302 NMAC or equivalent regulations of the NRC or an agreement state, shall be submitted to NRC pursuant to 10 CFR 32.22 and for distribution submit to the NRC pursuant to 10 CFR 32.53.

**(3) Capsules containing carbon-14.** An application for a specific license to manufacture, prepare, process, produce, package, repackage or transfer for commercial distribution capsules containing 1 microcurie (37 kilobecquerels) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each for in vivo diagnostic use, to persons exempt from licensing under Subsection D of 20.3.3.302 NMAC or the equivalent regulations of the NRC or an agreement state shall be submitted to NRC pursuant to 10 CFR 32.21.

#### **D. [RESERVED]**

**E. Licensing the manufacture and distribution of devices to persons generally licensed under Subsection B of 20.3.3.305 NMAC.**

**(1) Requirements for approval of a license application.** An application for a specific license to manufacture or initially transfer devices containing radioactive material to persons generally licensed under Subsection B of 20.3.3.305 NMAC or equivalent regulations of the NRC or an agreement state will be approved if:

(a) the applicant satisfies the general requirements of 20.3.3.308 NMAC;

(b) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions and potential hazards of the device to provide reasonable assurance that:

(i) the device can be safely operated by persons not having training in radiological protection;

(ii) under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in one year a dose in excess of ten percent of the limits specified in Subsection A of 20.3.4.405 NMAC; and

(iii) under accident conditions (such as fire and explosion) associated with handling, storage and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the following organ doses: 1) whole body, head and trunk, active blood-forming organs, gonads or lens of eye: 15 rems (150 millisieverts); 2) hands and forearms, feet and ankles, and localized areas of skin averaged over areas no larger than 1 square centimeter: 200 rems (2 sieverts); and 3) other organs: 50 rems (500 millisieverts);

(c) each device bears a durable, legible, clearly visible label or labels approved by the department, which contain in a clearly identified and separate statement:

(i) instructions and precautions necessary to assure safe installation, operation and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

(ii) the requirement, or lack of requirement, for leak testing, or for testing any on-off mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by isotope, quantity of radioactivity; and date of determination of the quantity; and

(iii) the information called for in the following statement in the same or substantially similar form:

*The receipt, possession, use and transfer of this device model \_\_\_\_\_, serial number \_\_\_\_\_, are subject to general license or the equivalent and the regulations of the United States nuclear regulatory commission or a state with which the nuclear regulatory commission has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited. The model, serial number, and name of manufacturer or distributor may be omitted from this label provided this information is specified elsewhere in labeling affixed.*

*Caution-radioactive material*

\_\_\_\_\_;

*(name of manufacturer or distributor)*

(d) each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words, "*caution-radioactive material*," the radiation symbol described in 20.3.4.427 NMAC, and the name of the manufacturer or initial distributor; and

(e) each device meeting the criteria of Item (i) in Subparagraph (m) of Paragraph (3) of Subsection B of 20.3.3.305 NMAC, bears a permanent (e.g., embossed, etched, stamped or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "*caution-radioactive material*," and, if practicable, the radiation symbol described in 20.3.4.427 NMAC.

(f) The device has been registered in the Sealed Source and Device Registry.

**(2) Requests for lengthening of test intervals:** In the event the applicant desires that the device be required to be tested at longer intervals than six months, either for proper operation of the on-off mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in its application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the on-off mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the department will consider information which includes, but is not limited to:

- (a) primary containment (source capsule);
- (b) protection of primary containment;
- (c) method of sealing containment;
- (d) containment construction materials;
- (e) form of contained radioactive material;
- (f) maximum temperature withstood during prototype test;
- (g) maximum pressure withstood during prototype test;
- (h) maximum quantity of contained radioactive material;
- (i) radiotoxicity of contained radioactive material; and
- (j) operating experience with identical devices or similarly designed and constructed devices.

**(3) Authorizations for general licensees to perform certain activities.** In the event the applicant desires that the general licensee under Subsection B of 20.3.3.305 NMAC, or under equivalent regulations of the NRC or an agreement state, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator or remove the device from installation, the applicant shall include in its application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities and the bases for such estimates. The submitted information must demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage and use of devices under the general license, is unlikely to cause that individual to receive a yearly dose in excess of ten percent of the limits specified in Subsection A of 20.3.4.405 NMAC.

**(4) Transfer provisions:**

(a) [Reserved]

(b) If radioactive material is to be transferred in a device for use under an equivalent general license of the NRC or an agreement state, each person that is licensed under this subsection shall provide the information specified in this subparagraph to each person to whom a device is to be transferred. This information shall be provided before the device may be transferred. In the case of a transfer through an intermediate person, the information shall also be provided to the intended user prior to initial transfer to the intermediate person. The required information includes:

(i) a copy of the NRC's or agreement state's regulations equivalent to Subsection B of 20.3.3.305 NMAC, Subsection F of 20.3.3.317 NMAC, 20.3.3.326 NMAC, 20.3.4.451 NMAC, and 20.3.4.452 NMAC or a copy of 10 CFR Sections 31.5, 31.2, 30.51, 20.2201 and 20.2202; if a copy of the NRC regulations is provided to a prospective general licensee in lieu of the agreement state's regulations, it shall be accompanied by a note explaining that use of the device is regulated by the agreement state; if certain paragraphs of the regulations do not apply to the particular device, those paragraphs may be omitted;

(ii) a list of the services that can only be performed by a specific licensee;

(iii) information on acceptable disposal options including estimated costs of disposal; and

(iv) the name or title, address and phone number of the contact at the agreement state regulatory agency from which additional information may be obtained.

(c) An alternative approach to informing customers may be proposed by the licensee for approval by the department.

(d) Each device shall meet the labeling requirements in Subparagraphs (c) through (e) of Paragraph (1) of this Subsection.

(e) If a notification of bankruptcy is submitted under Subsection E of 20.3.3.317 NMAC of this part and each specific licensee or the license is to be terminated, each person licensed under Paragraph (1) of this subsection shall provide, upon request, to the department, NRC and any agreement state, records of final disposition required under 10 CFR30.34(h).

**(5) Material transfer reports and records:** Each person licensed under 20.3.3.305 NMAC of this subsection to initially transfer devices to generally licensed persons shall comply with the requirements of this section.

(a) The person shall report to the department in accordance with 20.3.1.116 NMAC, all transfers of such devices to persons for use under the general license in Subsection B of 20.3.3.305 NMAC and all receipts of devices from persons licensed under Subsection B of 20.3.3.305 NMAC. The report shall be clear and legible, submitted on a quarterly basis containing all of the following data.

(i) The required information for transfers to general licensees includes: 1) the identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use; 2) the name, title and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements; 3) the date of transfer; 4) the type, model number, and serial number of the device transferred; and 5) the quantity and type of radioactive material contained in the device.

(ii) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report shall include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(iii) For devices received from a person licensed pursuant to Subsection B of 20.3.3.305 NMAC, the report shall include the identity of the general licensee by name and address, the type, model number, and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(iv) If the licensee makes changes to a device possessed by a person licensed pursuant to Subsection B of 20.3.3.305 NMAC, such that the label must be changed to update required information, the report shall identify the general licensee, the device and the changes to information on the device label.

(v) The report shall cover each calendar quarter, shall be filed within 30 days of the end of the calendar quarter, and shall clearly indicate the period covered by the report.

(vi) The report shall clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(vii) If no transfers have been made to or from persons generally licensed under Subsection B of 20.3.3.305 NMAC during the reporting period, the report shall so indicate.

(b) The person shall report all transfers of devices to persons for use under a general license under NRC's or an agreement state's regulations that are equivalent to Subsection B of 20.3.3.305 NMAC, and all receipts of devices from general licensees in

the NRC's or agreement state's jurisdiction, to the responsible NRC or agreement state agency. The report shall be clear and legible, containing all of the data required as described below.

(i) The required information for transfers to general licensees includes: 1) the identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use; 2) the name, title and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements; 3) the date of transfer; 4) the type, model number and serial number of the device transferred; and 5) the quantity and type of radioactive material contained in the device.

(ii) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report shall include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(iii) For devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number, serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(iv) If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report shall identify the general licensee, the device and the changes to information on the device label.

(v) The report shall cover each calendar quarter, shall be filed within 30 days of the end of the calendar quarter, and shall clearly indicate the period covered by the report.

(vi) The report shall clearly identify the specific licensee submitting the report and must include the license number of the specific licensee.

(vii) If no transfers have been made to or from NRC or a particular agreement state during the reporting period, this information shall be reported to NRC or the responsible agreement state agency upon request of the agency.

(c) The person shall maintain all information concerning transfers and receipts of devices that supports the reports required by Subparagraphs (a) and (b) of this paragraph. Records required by this paragraph shall be maintained for a period of three years following the date of the recorded event.

**F. Special requirements for the manufacture, assembly, repair or initial transfer of luminous safety devices for use in aircraft.** An application for a specific license to manufacture, assemble, repair or initially transfer luminous safety devices containing tritium or promethium-147 for use in aircraft, for distribution to persons generally licensed under Subsection C of 20.3.3.305 NMAC will be approved subject to the following conditions:

(1) the applicant satisfies the general requirements specified in 20.3.3.308 NMAC;

(2) the applicant satisfies the requirements of 10 CFR 32.53, 10 CFR 32.54, 10 CFR 32.55 and 10 CFR 32.56 or their equivalent;

(3) each person licensed under 10 CFR 32.53 shall file an annual report with the director, office of Nuclear Materials Safety and Safeguards, ATTN: document control desk/GLTS by an appropriate method listed in 10 CFR 30.6(a) which must state the total quantity of tritium or promethium-147 transferred to persons generally licensed under 10 CFR 31.7. The report must identify each general licensee by name, state the kinds and number of luminous devices transferred, and specify the quantity of tritium or promethium-147 in each kind of device. Each report must cover the year ending June 30 and must be filed within 30 days thereafter. If no transfers have been made to persons generally licensed under 10 CFR 31.7 during the reporting period, the report must so indicate; and

(4) each person licensed under 10 CFR 32.53 shall report annually all transfers of devices to persons for use under a general license in an agreement state's regulations that are equivalent to 10 CFR 31.7 of this paragraph to the responsible agreement state agency. The report must state the total quantity of tritium or promethium-147 transferred, identify each general licensee by name, state the kinds and numbers of luminous devices transferred, and specify the quantity of tritium or promethium-147 in each kind of device. If no transfers have been made to a particular agreement state during the reporting period, this information must be reported to the responsible agreement state agency upon request of the agency.

**G. Special requirements for license to manufacture or initially transfer calibration or reference sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection D of 20.3.3.305 NMAC.** An application for a specific license to manufacture or initially transfer calibration or reference sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under Subsection D of 20.3.3.305 NMAC will be approved subject to the following conditions:

(1) the applicant satisfies the general requirements of 20.3.3.307 NMAC and 20.3.3.308 NMAC, and

(2) the applicant satisfies the requirements of 10 CFR 32.57, 10 CFR 32.58, 10 CFR 32.59 and 10 CFR 70.39 or their equivalent.

**H. Manufacture and distribution of radioactive material for certain in-vitro clinical or laboratory testing under general license.** An application for a specific license to manufacture or distribute radioactive material for use under the general license of Subsection F of 20.3.3.305 NMAC will be approved if:

(1) the applicant satisfies the general requirements specified in 20.3.3.307 NMAC and 20.3.3.308 NMAC;

(2) the radioactive material is to be prepared for distribution in prepackaged units of:

(a) iodine-125 in units not exceeding 10 microcuries (370 kilobecquerels) each;

(b) iodine-131 in units not exceeding 10 microcuries (370 kilobecquerels) each;

(c) carbon-14 in units not exceeding 10 microcuries (370 kilobecquerels) each;

(d) hydrogen-3 (tritium) in units not exceeding 50 microcuries (1.85 megabecquerels) each;

(e) iron-59 in units not exceeding 20 microcuries (740 kilobecquerels) each;

(f) cobalt-57 in units not exceeding 10 microcuries (370 kilobecquerels) each;

(g) selenium-75 in units not exceeding 10 microcuries (370 kilobecquerels) each; or

(h) mock iodine-125 reference or calibration sources in units not exceeding 0.05 microcurie (1.85 kilobecquerels) of iodine-129 and 0.005 microcurie (185 becquerels) of americium-241 each;

(3) each prepackaged unit bears a durable, clearly visible label:

(a) identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 10 microcuries (370 kilobecquerels) of iodine-125, iodine-131, carbon-14, cobalt-57 or selenium-75; 50 microcuries (1.85 megabecquerels) of hydrogen-3 (tritium); 20 microcuries (740 kilobecquerels) of iron-59; or 0.05 microcurie (1.85 kilobecquerels) of iodine-129 and 0.005 microcurie (185 becquerels) of americium-241; and

(b) displaying the radiation caution symbol described in Paragraph (1) of Subsection A of 20.3.4.427 NMAC and the words, "*caution, radioactive material*" and "*not for internal or external use in humans or animals*";

(4) the following statement, or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

*This radioactive material may be received, acquired, possessed, and used only by physicians, veterinarians, clinical laboratories or hospitals and only for in-vitro clinical or laboratory tests not involving internal or external administration of the material, or the radiation therefrom, to human beings or animals. Its receipt, acquisition, possession, use, and transfer are subject to the regulations and a general license of the United States nuclear regulatory commission or of a state with which the NRC has entered into an agreement for the exercise of regulatory authority.*

---

(name of manufacturer); and

(5) the label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling, storing and disposal of such radioactive material; in the case of the mock iodine-125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements set out in 20.3.4.433 NMAC.

**I. Licensing the manufacture and distribution of ice detection devices.** An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection G of 20.3.3.305 NMAC will be approved subject to the following conditions:

(1) the applicant satisfies the general requirements of 20.3.3.307 NMAC and 20.3.3.308 NMAC; and

(2) the criteria of 10 CFR 32.61 and 32.62 are met.

**J. Manufacture, preparation or transfer for commercial distribution of radioactive drugs containing byproduct material for medical use under 20.3.7 NMAC.**

(1) An application for a specific license to manufacture, prepare or transfer for commercial distribution, radioactive material for use by persons authorized pursuant to 20.3.7 NMAC will be approved if the following conditions are met.

(a) The applicant satisfies the general requirements specified in 20.3.3.307 NMAC and 20.3.3.308 NMAC;

(b) The applicant submits evidence that the applicant is at least one of the following:

(i) registered with the FDA as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding or processing of a drug under 21 CFR 207.20(a);

(ii) registered or licensed with a state agency as a drug manufacturer;

(iii) licensed as a pharmacy by a state board of pharmacy;

(iv) operating as a nuclear pharmacy within a federal medical institution; or

(v) a PET drug production facility registered with a state agency.

(c) The applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees.

(d) The applicant commits to the following labeling requirements.

(i) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic or other material, of a radioactive drug to be transferred for commercial distribution; the label must include the radiation symbol and the words "*caution, radioactive material*" or "*danger, radioactive material*"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half-life greater than 100 days, the time may be omitted; and

(ii) A label is affixed to each syringe, vial or other container used to hold a radioactive drug to be transferred for commercial distribution; the label must include the radiation symbol and the words "*caution, radioactive material*" or "*danger, radioactive material*" and an identifier that ensures that the syringe, vial or other container can be correlated with the information on the transport radiation shield label.

(2) A licensee described by Items (iii) or (iv) of Subparagraph (b) of Paragraph (1) of this subsection:

(a) may prepare radioactive drugs for medical use, as defined in 20.3.7.7 NMAC, provided that the radioactive drug is prepared by either an authorized nuclear

pharmacist, as specified in Subparagraphs (b) and (d) of this paragraph, or an individual under the supervision of an authorized nuclear pharmacist as specified in Subsection F of 20.3.7.702 NMAC;

(b) may allow a pharmacist to work as an authorized nuclear pharmacist if:

(i) the individual qualifies as an authorized nuclear pharmacist as defined in 20.3.7.7 NMAC;

(ii) the individual meets the requirements specified in Subsection C of 20.3.7.714 NMAC, incorporating 10 CFR 35.55(b) and Subsection E of 20.3.7.714 NMAC, incorporating 10 CFR 35.59, and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(iii) the individual is designated as an authorized nuclear pharmacist in accordance with Subparagraph (d) of this paragraph;

(c) may conduct the actions authorized in Subparagraphs (a) and (b) of this paragraph in spite of more restrictive language in license conditions;

(d) may designate a pharmacist (as defined in 20.3.7.7 NMAC) as an authorized nuclear pharmacist if:

(i) the individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material, and

(ii) the individual practiced at a pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies in non-licensing states, as defined in 20.3.1.7 NMAC, before August 8, 2009, or an earlier date as noticed by the NRC;

(e) may designate a pharmacist (as defined in 20.3.7.7 NMAC) as an authorized nuclear pharmacist if the individual is identified as of May 3, 1995, as an "authorized user" in a nuclear pharmacy license issued by the department under this part; and

(f) shall provide to the commission a copy of

(i) each individual's certification by a specialty board whose certification process has been recognized by the Commission or agreement state as specified in 10 CFR 35.55(a); or

(ii) the Commission or agreement state license, or

(iii) Commission master material licensee permit, or

(iv) the permit issued by a licensee or Commission master materials permittee of broad scope, or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist, or

(v) documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies in non-licensing states, as defined in 20.3.1.7 NMAC, before August 8, 2009, or an earlier date as noticed by the NRC; and

(vi) the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, under Items (i) and (iii) of Subparagraph (b) of this paragraph, the individual to work as an authorized nuclear pharmacist.

(3) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha, beta or photon emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(a) perform tests before initial use, periodically and following repair, on each instrument for accuracy, linearity and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(b) check each instrument for constancy and proper operation at the beginning of each day of use.

(4) A licensee shall satisfy the labeling requirements in paragraph J(1)(d) of this section.

(5) Nothing in this section relieves the licensee from complying with applicable FDA, or other federal and state requirements governing radioactive drugs.

**K. Manufacture and distribution of sources or devices containing radioactive material for medical use.** An application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed pursuant to 20.3.7 NMAC for use as a calibration, transmission or reference source or for the uses listed in 20.3.7.710 NMAC, 20.3.7.711 NMAC and 20.3.7.712 NMAC will be approved if:

(1) the applicant satisfies the general requirements in 20.3.3.307 NMAC and 20.3.3.308 NMAC; and

(2) the applicant satisfies the requirements in 10 CFR 32.74.

**L. Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.**

(1) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection E of 20.3.3.304 NMAC or equivalent regulations of the NRC or an agreement state will be approved if:

(a) the applicant satisfies the general requirements specified in 20.3.3.307 NMAC and 20.3.3.308 NMAC;

(b) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling and marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in one year a radiation dose in excess of ten percent of the limits specified in Subsection A of 20.3.4.405 NMAC; and

(c) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) In the case of an industrial product or device whose unique benefits are questionable, the department will approve an application for a specific license under this subsection only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The department may deny application for a specific license under this subsection if the end use of the industrial product or device cannot be reasonably foreseen.

(4) Each person licensed pursuant to this subsection shall:

(a) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(b) label or mark each unit to:

(i) identify the manufacturer or initial transferor of the product or device and the number of the license under which the product or device was manufactured or initially transferred, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(ii) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the NRC or of an agreement state;

(c) assure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through any plating or other covering: "depleted uranium";

(d) furnish a copy of the general license contained in Subsection C of 20.3.3.304 NMAC and a copy of the department form to each person to whom they transfer depleted uranium in a product or device for use pursuant to the general license contained in Subsection C of 20.3.3.304 NMAC; or furnish a copy of the general license contained in the NRC or agreement state's regulation equivalent to Subsection C of 20.3.3.304 NMAC and a copy of the NRC or agreement state's certificate; or alternatively, furnish a copy of the general license contained in Subsection C of 20.3.3.304 NMAC and a copy of department form to each person to whom they transfer depleted uranium in a product or device for use pursuant to the general license of the NRC or an agreement state, with a note explaining that use of the product or device is regulated by the NRC or an agreement state under requirements substantially the same as those in Subsection C of 20.3.3.304 NMAC;

(e) report to the department all transfers of industrial products or devices to persons for use under the general license in Subsection C of 20.3.3.304 NMAC; such report shall identify each general licensee by name and address, an individual by name and (or) position who may constitute a point of contact between the department and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device; the report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is transferred to the generally licensed person; if no transfers have been made to persons generally licensed under Subsection C of 20.3.3.304 NMAC during the reporting period, the report shall so indicate;

(f) report to the director of the office of nuclear material safety and safeguards, by an appropriate method listed in 10 CFR 40.5 all transfers of industrial products or devices to persons for use under the U.S. nuclear regulatory commission general license in 10 CFR 40.25; the report shall contain all information described in Subparagraph (e) of this paragraph;

(g) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection L of 20.3.3.315 NMAC for use under a general license in that agreement state's regulations equivalent to Subsection C of 20.3.3.304 NMAC; the report shall contain all information described in Subparagraph (e) of this paragraph;

(h) keep records showing the name, address and point of contact for each general licensee to whom they transfer depleted uranium in industrial products or

devices for use pursuant to the general license provided in Subsection C of 20.3.3.304 NMAC or equivalent regulations of the NRC or of an agreement state; the records shall be retained for three years and show the date of each transfer, the quantity of depleted uranium in each product or device transferred and compliance with the report requirements of this subsection.

**M. Licensing the manufacture, assembly, repair or distribution of commodities, products or devices which contain radioactive material other than those enumerated above.** The department shall require substantially the same information as required for licensing of similar items by 10 CFR Part 32 not specifically named in this section.

**N. Serialization of nationally tracked sources.** Each licensee who manufactures a nationally tracked source, as defined in 20.3.4.7 NMAC, after February 6, 2007 shall assign a unique serial number to each nationally tracked source. Serial numbers must be composed only of alpha-numeric characters.

[20.3.3.315 NMAC - Rp, 20.3.3.315 NMAC, 04/30/2009; A, 02/14/2023]

#### **20.3.3.316 ISSUANCE OF SPECIFIC LICENSES:**

**A.** Upon a determination that an application meets the requirements of the act and 20.3 NMAC, the department will issue a specific license authorizing the proposed activity in such form and containing such conditions and limitations as it deems appropriate or necessary to effectuate the purposes of the act.

**B.** The department may incorporate in any license at the time of issuance, or thereafter by license amendment, rule, regulation, or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use and transfer of radioactive material subject to this part as it deems appropriate or necessary in order to:

- (1) minimize danger to public health and safety or property; or
- (2) require reports and the keeping of records, or to provide for inspections of activities under the license as may be appropriate or necessary; or
- (3) prevent loss or theft of material subject to this chapter.

**C.** The department may request, and the licensee shall provide, additional information after the license has been issued to enable the department to determine whether the license shall be modified in accordance with 20.3.3.322 NMAC.

[20.3.3.316 NMAC - Rp, 20.3.3.316 NMAC, 04/30/2009]

#### **20.3.3.317 TERMS AND CONDITIONS OF LICENSES:**

**A.** Each license issued pursuant to the requirements in this part shall be subject to all the provisions of the act, now or hereafter in effect, and to all rules, regulations and orders of the board or department.

(1) No right to the special nuclear material shall be conferred by the license except as defined by the license;

(2) Neither the license nor any right under the license shall be assigned or otherwise transferred in violation of the provisions of 20.3.3.317 NMAC;

(3) The license shall be subject to and the licensee shall observe, all applicable rules, regulations, and orders of the department.

**B.** No license issued or granted under this part nor any right under a license issued pursuant to this part shall be transferred, assigned, or in any manner disposed of, either voluntarily, or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the department shall, after securing full information, find that the transfer is in accordance with the provisions of the act, and shall give its consent in writing. An application for transfer of license must include:

(1) the identity, technical and financial qualifications of the proposed transferee; and

(2) financial assurance for decommissioning information required by 20.3.3.311 NMAC.

**C.** Each person licensed by the department pursuant to this part shall confine their use and possession of material licensed to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the rules in this part shall carry with it the right to receive, acquire, own and possess radioactive material. Preparation for shipment and transport of radioactive material shall be in accordance with the provisions of 20.3.3.306 NMAC, incorporating 10 CFR 71.

**D.** Each license issued pursuant to the regulations in this part shall be deemed to contain the applicable provisions set forth in the act and 20.3 NMAC, whether or not these provisions are expressly set forth in the license.

**E. Filing for bankruptcy.**

(1) Each general licensee that is required to register by Paragraph (m) of Subsection B of 20.3.3.305 NMAC and each specific licensee shall notify the department and appropriate NRC Regional Administrator in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of title 11 (bankruptcy) of the United States Code by or against:

(a) the licensee;

(b) an entity (as that term is defined in 11 U.S.C. 101(15)) controlling the licensee or listing the license or licensee as property of the estate; or

(c) an affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

(2) The notification must indicate:

(a) the bankruptcy court in which the petition for bankruptcy was filed; and

(b) the date of the filing of the petition.

**F.** The general licenses provided in this part are subject to the provisions in 20.3.1 NMAC, Paragraph (4) of Subsection A of 20.3.3.302 NMAC, Subsection A of 20.3.3.317 NMAC, 20.3.3.322 NMAC, 20.3.3.323 NMAC, 20.3.3.326 NMAC, 20.3.4 NMAC and 20.3.10 NMAC unless indicated otherwise by a particular provision of the general license.

**G.** Licensees required submitting emergency plans by 20.3.3.309 NMAC shall follow the emergency plan approved by the department. The licensee may change the approved plan without department approval only if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the department and to affected offsite response organizations prior to the effective date of the change. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the department.

**H. Security requirements for portable gauges.** Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

**I. Generators.** Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with 20.3.7.706 NMAC of this chapter. The licensee shall record the results of each test and retain each record for 3 years after the record is made. The licensee shall report the results of any test that exceeds the permissible concentration listed in 10 CFR 35.204(a) at the time of generator elution, in accordance with 10 CFR 35.3204.

**J. PET drugs for non-commercial distribution.**

(1) Authorization under Subsection J of 20.3.3.307 NMAC to produce PET radioactive drugs for non-commercial transfer to medical use licensees in its consortium

does not relieve the licensee from complying with applicable FDA, or other federal and state requirements governing radioactive drugs.

(2) Each licensee authorized under Subsection J of 20.3.3.307 NMAC to produce PET radioactive drugs for non-commercial transfer to medical use licensees in its consortium shall:

(a) satisfy the labeling requirements in Subparagraph (d) of Paragraph (1) of Subsection J of 20.3.3.315 NMAC for each PET radioactive drug transport radiation shield and each syringe, vial or other container used to hold a PET radioactive drug intended for non-commercial distribution to members of its consortium; and

(b) possess and use instrumentation to measure the radioactivity of the PET radioactive drugs intended for non-commercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check and instrument adjustment requirements in Paragraph (3) of Subsection J of 20.3.3.315 NMAC.

(3) A licensee that is a pharmacy authorized under Subsection J of 20.3.3.307 NMAC to produce PET radioactive drugs for non-commercial transfer to medical use licensees in its consortium shall require that any individual that prepares PET radioactive drugs shall be:

(a) an authorized nuclear pharmacist that meets the requirements in Subparagraph (b) of Paragraph (2) of Subsection J of 20.3.3.315 NMAC; or

(b) an individual under the supervision of an authorized nuclear pharmacist as specified in Subsection F of 20.3.7.702 NMAC.

(4) A pharmacy, authorized under Subsection J of 20.3.3.307 NMAC to produce PET radioactive drugs for non-commercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, shall meet the requirements of Subparagraph (e) of Paragraph (2) of Subsection J of 20.3.3.315 NMAC.

[20.3.3.317 NMAC - Rp, 20.3.3.317 NMAC, 4/30/2009; A, 6/30/2011; A, 6/13/2017; A, 02/14/2023]

### **20.3.3.318 EXPIRATION AND TERMINATION OF LICENSES AND DECOMMISSIONING OF SITES AND SEPARATE BUILDINGS OR OUTDOOR AREAS:**

**A.** The term of a specific license is five years unless the department granted a different term. Except as provided in Subsection B of this section, each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under 20.3.3.319 NMAC not less than 30

days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days before the expiration date stated in the existing license, the existing license expires at the end of the day on which the department makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

**B.** If the licensee failed to pay outstanding annual fees to the department as required by 20.3.16 NMAC, the specific license expires at the end of the day on the expiration date stated in the license. The licensee shall follow the requirements in Subsection F through L of this section for termination of the specific license, or apply for a license pursuant to 20.3.3.307 NMAC after the outstanding annual fee(s) has been paid.

**C.** Each specific license revoked by the department expires at the end of the day on the date of the department's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by department order.

**D.** Expiration of the specific license does not relieve the licensee from the requirements in 20.3 NMAC. All license provisions continue in effect, beyond the expiration date if necessary, with respect to possession of radioactive material until the department notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(1) limit actions involving radioactive material to those related to decommissioning; and

(2) continue to control entry to restricted areas until they are suitable for release in accordance with department requirements.

**E.** Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the department in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release in accordance with department requirements, or submit within 12 months of notification a decommissioning plan, if required by Subsection H of this section, and begin decommissioning upon approval of that plan if:

(1) the license has expired or has been revoked pursuant to Subsections A, B or C of this section; or

(2) the licensee has decided to permanently cease principal activities, as defined in 20.3.3.7 NMAC, at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with department requirements; or

(3) no principal activities under the license have been conducted for a period of 24 months; or

(4) no principal activities have been conducted for a period of 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with department requirements.

**F.** Coincident with the notification required by Subsection E of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to 20.3.3.311 NMAC in conjunction with a license issuance or renewal or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to Subparagraph (e) of Paragraph (4) of Subsection H of this section.

**G.** The department may grant a request to extend the time periods established in Subsection E of this section, if the department determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to Subsection E of this section. The schedule for decommissioning set forth in Subsection E of this section may not commence until the department has made a determination on the request.

#### **H. Decommissioning Plan.**

(1) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the department and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(a) procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(b) workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(c) procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(d) procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(2) The department may approve an alternate schedule for submittal of a decommissioning plan required pursuant to Subsection E of this section if the department determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(3) Procedures, such as those listed in Paragraph (1) of this subsection, with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(4) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(a) a description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(b) a description of planned decommissioning activities;

(c) a description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(d) a description of the planned final radiation survey;

(e) an updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning; and

(f) for decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in Subsection J of this section.

(5) The proposed decommissioning plan will be approved by the department if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

#### **I. Deadline for Decommissioning.**

(1) Except as provided in Subsection J of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than 24 months following the initiation of decommissioning.

(2) Except as provided in Subsection J of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than 24 months following the initiation of decommissioning.

**J.** The department may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the department determines that the alternative is warranted by consideration of the following:

- (1) whether it is technically feasible to complete decommissioning within the allotted 24-month period;
- (2) whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted 24-month period;
- (3) whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;
- (4) whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and
- (5) other site-specific factors which the department may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, ground-water treatment activities, monitored natural ground-water restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

**K.** As the final step in decommissioning, the licensee shall:

- (1) certify the disposition of all licensed material, including accumulated wastes, by submitting a completed certificate - disposition of radioactive material form or equivalent information; and
- (2) conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 20.3.4.426 NMAC; the licensee shall, as appropriate:
  - (a) report levels of gamma radiation in units of millisievert (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per 100 square centimeters, removable and fixed, for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and
  - (b) specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

L. Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the department determines that:

- (1) radioactive material has been properly disposed;
- (2) reasonable effort has been made to eliminate residual radioactive contamination, if present; and
- (3) a radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in 20.3.4.426 NMAC; or other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in 20.3.4.426 NMAC; and
- (4) records required by Subsections D and F of 20.3.3.326 NMAC, have been received by the department.

[20.3.3.318 NMAC - Rp, 20.3.3.318 NMAC, A, 02/14/2023]

#### **20.3.3.319 RENEWAL OF LICENSES:**

**A.** Applications for renewal of specific licenses shall be filed in accordance with 20.3.3.307 NMAC not less than 30 days before the expiration date stated in the existing license.

**B.** In any case in which a licensee, not less than 30 days prior to expiration of their existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until the application has been finally determined by the department.

**C.** An application for renewal of a license shall be approved if the department determines that the requirements of this part have been satisfied, and the licensee has paid any outstanding annual fee(s) pursuant to 20.3.16 NMAC.

[20.3.3.319 NMAC - Rp, 20.3.3.319 NMAC and 20.3.3.321 NMAC, 04/30/2009]

#### **20.3.3.320 AMENDMENT OF LICENSES AT REQUEST OF LICENSEE:**

**A.** An license amendment may be requested by filing a form prescribed by the department pursuant to 20.3.3.307 NMAC which shall specify the proposed amendment and the grounds for the amendment.

**B.** Supporting documentation (e.g. training records, certificates, procedures, etc.) shall be submitted with the amendment, or provided upon request by the department within 30 days from the date of the request or other time as may be specified in the

request. Failure to provide the appropriate supporting documentation within the prescribed time frame will be grounds for denial of the amendment.

**C.** A request for a license amendment shall be approved if the department determines that the requirements of this part have been satisfied, and the licensee has paid any outstanding annual fee(s) pursuant to 20.3.16 NMAC.

[20.3.3.320 NMAC - Rp, 20.3.3.320 NMAC and 20.3.3.321 NMAC, 04/30/2009]

**20.3.3.321 [RESERVED]**

**20.3.3.322 MODIFICATION, SUSPENSION AND REVOCATION OF LICENSES:**

**A.** The terms and conditions of all licenses shall be subject to amendment or modification by the department by reason of amendments to the act, or by reason of rules, regulations and orders issued by the board or department.

**B.** Any license may be modified, suspended or revoked, in whole or in part by the department, for any material false statement in the application or any statement of fact required under provisions of the act; or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means which would warrant the department to refuse to grant a license on an original application; or for violation of, or failure to observe any of the terms and conditions of the act, conditions of the license, or of any rule, regulation, or order of the board or department; or the department determines that existing conditions constitute a substantial threat to the public health and safety or the environment.

**C.** Except in cases of willfulness or those in which the public health, interest or safety requires otherwise, no license shall be modified, suspended, or revoked unless, prior to the institution of proceedings therefore, facts or conduct which may warrant such actions shall have been called to the attention of the licensee in writing and the licensee shall have been accorded an opportunity to demonstrate or achieve compliance with all lawful requirements.

[20.3.3.322 NMAC - Rp, 20.3.3.322 NMAC, 04/30/2009]

**20.3.3.323 TRANSFER OF MATERIAL:**

**A.** No licensee shall transfer radioactive material except as authorized by this section.

**B.** Except as otherwise provided in their license and subject to the provisions of Sections C and D this section any licensee may transfer radioactive material:

- (1) to the department after receiving prior approval from the department;

**(2)** to the agency in any agreement state which regulates radioactive material pursuant to an agreement under Section 274 of the Atomic Energy Act;

**(3)** to the United States department of energy;

**(4)** to any person exempt from the Radiation Protection Act to the extent permitted under such exemptions; or to any person in the NRC jurisdiction or an agreement state, subject to the jurisdiction of that state, who has been exempted from the licensing requirements and regulations of the NRC or the agreement state, to the extent permitted under such exemption;

**(5)** to any person authorized to receive such material under terms of a general license or a specific license or equivalent licensing document issued by the department, the NRC or an agreement state; or

**(6)** as otherwise authorized by the department in writing.

**C.** Before transferring radioactive material to a specific licensee of the department, the NRC or an agreement state, or to a general licensee who is required to register with the department, the NRC or an agreement state prior to receipt of the radioactive material, the licensee transferring the material shall verify that the transferee's license authorizes the receipt of the type, form and quantity of radioactive material to be transferred.

**D.** The following methods for the verification required by Subsection C of this section are acceptable:

**(1)** the transferor may have in their possession, and read, a current copy of the transferee's specific license or registration certificate;

**(2)** the transferor may have in their possession a written certification by the transferee that they are authorized by license or registration certificate to receive the type, form and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date;

**(3)** for emergency shipments, the transferor may accept oral certification by the transferee that they are authorized by license or registration certificate to receive the type, form and quantity of radioactive material to be transferred, specifying registration certificate number, issuing agency and expiration date; provided that the oral certification is confirmed in writing within 10 days;

**(4)** the transferor may obtain other sources of information compiled by a reporting service from official records of the department, the NRC or an agreement state as to the identity of licensees and the scope and expiration dates of licenses and registration; or

(5) when none of the methods of verification described in Paragraphs (1) to (4) of this subsection are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the department, the NRC or an agreement state that the transferee is licensed to receive the radioactive material.

[20.3.3.323 NMAC - Rp, 20.3.3.323 NMAC, 04/30/2009]

#### **20.3.3.324 RECIPROCAL RECOGNITION OF LICENSES:**

A. Provided that the requirements of this section have been met, any person who holds a specific license from the NRC or an agreement state, and issued by the regulatory authority having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in such licensing document within the state of New Mexico for a period not in excess of 180 days in any calendar year provided that:

(1) the licensing document does not limit the activity authorized by such document to specified installations or locations;

(2) the out-of-state licensee notifies the department in writing at least three business days prior to engaging in such activity, filing a form, *reciprocity application - proposed activities*; such notification shall indicate the location of work, period of work, and type, manufacturer name and model number of radioactive material to be brought within the state, the client's name and address, and shall be accompanied by a copy of the pertinent licensing document and application fee as determined by 20.3.16 NMAC charged once for each calendar year; if, for a specific case, the three-day period would impose an undue hardship on the out-of-state licensee, they may, upon application to the department, obtain permission to proceed sooner; the department may waive the requirements for filing additional written notifications during the calendar year following the receipt of the initial notification from a person engaging in activities under the general license provided in this section;

(3) the out-of-state licensee complies with all applicable provisions of 20.3 NMAC, all provisions of the act, now or hereafter in effect, and orders of the board or department and with all the terms and conditions of their licensing document, except any such terms and conditions which may be inconsistent with requirements in this chapter;

(4) the out-of-state licensee supplies such other information as the department may request; and

(5) the out-of-state licensee shall not transfer or dispose of radioactive material possessed or used under the general license provided in this section except by

transfer to a person specifically licensed by the department, an agreement state or by the NRC to receive such material.

**B.** Notwithstanding the provisions of Subsection A of this section, any person who holds a specific license issued by the NRC or an agreement state authorizing the holder to manufacture, transfer, install or service a device described in Paragraph (1) of Subsection B of 20.3.3.305 NMAC within areas subject to the jurisdiction of the licensing body is hereby granted a general license to install, transfer, demonstrate or service such a device in this state provided that:

(1) such person shall file a report with the department within 30 days after the end of each calendar quarter in which any device is transferred to or installed in this state; each such report shall identify each general license to whom such device is transferred by name and address, the type of device transferred, and the quantity and type of radioactive material contained in the device;

(2) the device has been manufactured, labeled, installed and serviced in accordance with applicable provisions of the specific license issued to such person by the NRC or an agreement state;

(3) such person shall assure that any labels required to be affixed in the device under regulations of the authority which licensed manufacture of the device bear a statement that *"removal of this label is prohibited"*; and

(4) the holder of the specific license shall furnish to each general licensee to whom they transfer such device or on whose premises they install such device a copy of the general license contained in Subsection B of 20.3.3.305 NMAC.

**C.** The department may withdraw, limit or qualify its acceptance of any specific license or equivalent licensing document issued by another department, or any product distributed pursuant to such licensing document, upon determining that such action is necessary in order to prevent undue hazard to public health and safety or property.

**D. Reciprocity in Areas of Exclusive Federal Jurisdiction:**

(1) Before radioactive material can be used at temporary jobsites at any federal facility, the jurisdictional status of the jobsites shall be determined. If a temporary jobsite is under exclusive federal jurisdiction, the general license authorized under Subsection A of this section is subject to all the rules, regulations, orders and fees of the NRC.

(2) Authorizations for use of radioactive materials in areas of exclusive federal jurisdiction shall be obtained from the NRC by:

(a) filing an NRC form 241 in accordance with 10 CFR 150.20(b); or

(b) applying for a specific NRC license.

**E. Reciprocity in Other States:**

(1) Before radioactive material can be used at a temporary jobsite in another state, authorization shall be obtained from the state if it is an agreement state or from NRC for any non-agreement state, either by filing for reciprocity or applying for a specific license.

(2) The general license authorized under Subsection A of this section is subject to all the rules, regulations, orders and fees of the agreement state, or those of the NRC for any non-agreement state.

[20.3.3.324 NMAC - Rp, 20.3.3.324 NMAC, 04/30/2009]

**20.3.3.325 REPORTING REQUIREMENTS:**

**A. Immediate Report.** Each licensee shall notify the department as soon as possible but not later than 4 hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

**B. Twenty-Four Hour Report.** Each licensee shall notify the department within 24 hours after the discovery of any of the following events involving licensed material.

(1) An unplanned contamination event that:

(a) requires access to the contaminated area, by workers or the public, to be restricted for more than 24 hours by imposing additional radiological controls or by prohibiting entry into the area;

(b) involves a quantity of material greater than five times the lowest annual limit on intake specified in 20.3.4.461 NMAC for the material; and

(c) has access to the area restricted for a reason other than to allow radioactive material with a half-life of less than 24 hours to decay prior to decontamination.

(2) An event in which equipment is disabled or fails to function as designed when:

(a) the equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive materials exceeding regulatory limits, or to mitigate the consequences of an accident;

(b) the equipment is required to be available and operable when it is disabled or fails to function; and

(c) no redundant equipment is available and operable to perform the required safety function.

(3) An event that requires unplanned medical treatment at a medical facility of an individual with spreadable radioactive contamination on the individual's clothing or body.

(4) An unplanned fire or explosion damaging any licensed material or any device, container or equipment containing licensed material when:

(a) the quantity of material involved is greater than five times the lowest annual limit on intake specified in 20.3.4.461 NMAC for the material; and

(b) the damage affects the integrity of the licensed material or its container.

**C. Preparation and Submission of Reports.** Reports made by licensees in response to the requirements of this section must be made as follows.

(1) Licensees shall make reports required by Subsections A and B of this section by telephone to the department. To the extent that the information is available at the time of notification, the information provided in these reports must include:

(a) the caller's name and call back telephone number;

(b) a description of the event, including date and time;

(c) the exact location of the event;

(d) the radioactive material, quantities and chemical and physical form of the licensed material involved; and

(e) any personnel radiation exposure data available;

(2) **Written report.** Each licensee who makes a report required by Subsections A and B of this section shall submit a written follow-up report within 30 days of the initial report. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the department at the address in 20.3.1.116 NMAC. The reports must include the following:

(a) a description of the event, including the probable cause and the manufacturer and model number (if applicable) of any equipment that failed or malfunctioned;

- (b) the exact location of the event;
- (c) the radioactive material, quantities and chemical and physical form of the licensed material involved;
- (d) date and time of the event;
- (e) corrective actions taken or planned and the results of any evaluations or assessments; and
- (f) the extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

[20.3.3.325 NMAC - Rp, 20.3.3.312 NMAC, 04/30/2009]

### **20.3.3.326 RECORDS:**

Each person who receives radioactive material pursuant to a license and the regulations in this part and parts 20.3.5 NMAC, 20.3.7 NMAC, 20.3.12 NMAC, 20.3.13 NMAC, 20.3.14 NMAC and 20.3.15 NMAC is subject to the requirements of this section.

**A.** The licensee shall keep records showing the receipt, transfer and disposal of the radioactive material as follows.

(1) The licensee shall retain each record of receipt of radioactive material as long as the material is possessed and for three years following transfer or disposal of the material.

(2) The licensee who transferred the material shall retain each record of transfer for three years after each transfer unless a specific requirement in another part of the regulations in this chapter dictates otherwise.

(3) The licensee who disposed of the material shall retain each record of disposal of radioactive material until the department terminates each license that authorizes disposal of the material.

**B.** The licensee shall retain each record required by applicable parts of 20.3 NMAC or by license condition for the period specified by the applicable regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, the record shall be retained until the department terminates each license that authorizes the activity that is subject to the recordkeeping requirement.

### **C. Records Format and Retention Period.**

(1) Records which must be maintained pursuant to 20.3 NMAC may be the original or a reproduced copy or microform if such reproduced copy or microform is duly

authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by 20.3 NMAC. The record may also be stored in electronic media with the capability for producing legible, accurate and complete records during the required retention period. Records such as letters, drawings, specifications, shall include all pertinent information such as stamps, initials and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

**(2)** If there is a conflict between the retention period in 20.3 NMAC, license condition or other written department approval or authorization pertaining to the retention period for the same type of record, the retention period specified in 20.3 NMAC for such records shall apply unless the department, pursuant to Subsection A of 20.3.1.107 NMAC, has granted a specific exemption from the record retention requirements specified in 20.3 NMAC.

**D.** Prior to license termination, each licensee authorized to possess radioactive material with a half-life greater than 120 days, in an unsealed form, shall forward the following records to the department:

**(1)** records of disposal of licensed material made under Sections 434 (including burials authorized before January 28, 1981), 435, 436 and 437 of 20.3.4 NMAC; and

**(2)** records required by Paragraph (4) of Subsection B of 20.3.4.442 NMAC.

**E.** If licensed activities are transferred or assigned in accordance with Subsection B of 20.3.3.317 NMAC, each licensee authorized to possess radioactive material, with a half-life greater than 120 days, in an unsealed form, shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

**(1)** records of disposal of licensed material made under Sections 434 (including burials authorized before January 28, 1981), 435, 436 and 437 of 20.3.4 NMAC;

**(2)** records required by Paragraph (4) of Subsection B of 20.3.4.442 NMAC; and

**(3)** the records required under Subsection G of 20.3.3.311 NMAC.

**F.** Prior to license termination, each licensee shall forward the records required by Subsection G of 20.3.3.311 NMAC to the department.

[20.3.3.326 NMAC - Rp, 20.3.3.300 NMAC, 04/30/2009]

**20.3.3.327 [RESERVED]**

20.3.3.328 [RESERVED]

20.3.3.329 SCHEDULE A - EXEMPT CONCENTRATIONS:

A. Table 339.1.

TABLE 329.1			
Element (Atomic Number)	Isotope	Column I Gas Concentration microcurie/milliliter <sup>1</sup>	Column II Liquid and Solid Concentration microcurie/milliliter <sup>2</sup>
Antimony (51)	Sb-122		3x10 <sup>-4</sup>
	Sb-124		2x10 <sup>-4</sup>
	Sb-125		1x10 <sup>-3</sup>
Argon (18)	Ar-37	1x10 <sup>-3</sup>	
	Ar-41	4x10 <sup>-7</sup>	
Arsenic (33)	As-73		5x10 <sup>-3</sup>
	As-74		5x10 <sup>-4</sup>
	As-76		2x10 <sup>-4</sup>
	As-77		8x10 <sup>-4</sup>
Barium (56)	Ba-131		2x10 <sup>-3</sup>
	Ba-140		3x10 <sup>-4</sup>
Beryllium (4)	Be-7		2x10 <sup>-2</sup>
Bismuth (83)	Bi-206		4x10 <sup>-4</sup>
Bromine (35)	Br-82	4x10 <sup>-7</sup>	3x10 <sup>-3</sup>
Cadmium (48)	Cd-109		2x10 <sup>-3</sup>
	Cd-115m		3x10 <sup>-4</sup>
	Cd-115		3x10 <sup>-4</sup>
Calcium (20)	Ca-45		9x10 <sup>-5</sup>
	Ca-47		5x10 <sup>-4</sup>
Carbon (6)	C-14	1x10 <sup>-6</sup>	8x10 <sup>-3</sup>
Cerium (58)	Ce-141		9x10 <sup>-4</sup>

**TABLE 329.1**

<b>Element (Atomic Number)</b>	<b>Isotope</b>	<b>Column I Gas Concentration microcurie/milliliter<sup>1</sup></b>	<b>Column II Liquid and Solid Concentration microcurie/milliliter<sup>2</sup></b>
	Ce-143		4x10 <sup>-4</sup>
	Ce-144		1x10 <sup>-4</sup>
Cesium (55)	Cs-131		2x10 <sup>-2</sup>
	Cs-134m		6x10 <sup>-2</sup>
	Cs-134		9x10 <sup>-5</sup>
Chlorine (17)	Cl-38	9x10 <sup>-7</sup>	4x10 <sup>-3</sup>
Chromium (24)	Cr-51		2x10 <sup>-2</sup>
Cobalt (27)	Co-57		5x10 <sup>-3</sup>
	Co-58		1x10 <sup>-3</sup>
	Co-60		5x10 <sup>-4</sup>
Copper (29)	Cu-64		3x10 <sup>-3</sup>
Dysprosium (66)	Dy-165		4x10 <sup>-3</sup>
	Dy-166		4x10 <sup>-4</sup>
Erbium (68)	Er-169		9x10 <sup>-4</sup>
	Er-171		1x10 <sup>-3</sup>
Europium (63)	Eu-152		6x10 <sup>-4</sup>
	(T ½ = 9.2 h)		2x10 <sup>-3</sup>
	Eu-155		
Fluorine (9)	F-18	2x10 <sup>-6</sup>	8x10 <sup>-3</sup>
Gadolinium (64)	Gd-153		2x10 <sup>-3</sup>
	Gd-159		8x10 <sup>-4</sup>
Gallium (31)	Ga-72		4x10 <sup>-4</sup>
Germanium (32)	Ge-71		2x10 <sup>-2</sup>
Gold (79)	Au-196		2x10 <sup>-3</sup>
	Au-198		5x10 <sup>-4</sup>
	Au-199		2x10 <sup>-3</sup>

**TABLE 329.1**

<b>Element (Atomic Number)</b>	<b>Isotope</b>	<b>Column I Gas Concentration microcurie/milliliter<sup>1</sup></b>	<b>Column II Liquid and Solid Concentration microcurie/milliliter<sup>2</sup></b>
Hafnium (72)	Hf-181		$7 \times 10^{-4}$
Hydrogen (1)	H-3	$5 \times 10^{-6}$	$3 \times 10^{-2}$
Indium (49)	In-113m		$1 \times 10^{-2}$
	In-114m		$2 \times 10^{-4}$
Iodine (53)	I-126	$3 \times 10^{-9}$	$2 \times 10^{-5}$
	I-131	$3 \times 10^{-9}$	$2 \times 10^{-5}$
	I-132	$8 \times 10^{-8}$	$6 \times 10^{-4}$
	I-133	$1 \times 10^{-8}$	$7 \times 10^{-5}$
	I-134	$2 \times 10^{-7}$	$1 \times 10^{-3}$
Iridium (77)	Ir-190		$2 \times 10^{-3}$
	Ir-192		$4 \times 10^{-4}$
	Ir-194		$3 \times 10^{-4}$
Iron (26)	Fe-55		$8 \times 10^{-3}$
	Fe-59		$6 \times 10^{-4}$
Krypton (36)	Kr-85m	$1 \times 10^{-6}$	
	Kr-85	$3 \times 10^{-6}$	
Lanthanum (57)	La-140		$2 \times 10^{-4}$
Lead (82)	Pb-203		$4 \times 10^{-3}$
Lutetium (71)	Lu-177		$1 \times 10^{-3}$
Manganese (25)	Mn-52		$3 \times 10^{-4}$
	Mn-54		$1 \times 10^{-3}$
	Mn-56		$1 \times 10^{-3}$
Mercury (80)	Hg-197m		$2 \times 10^{-3}$
	Hg-197		$3 \times 10^{-3}$
	Hg-203		$2 \times 10^{-4}$

**TABLE 329.1**

<b>Element (Atomic Number)</b>	<b>Isotope</b>	<b>Column I Gas Concentration microcurie/milliliter<sup>1</sup></b>	<b>Column II Liquid and Solid Concentration microcurie/milliliter<sup>2</sup></b>
Molybdenum (42)	Mo-99		$2 \times 10^{-3}$
Neodymium (60)	Nd-147		$6 \times 10^{-4}$
	Nd-149		$3 \times 10^{-3}$
Nickel (28)	Ni-65		$1 \times 10^{-3}$
Niobium (Columbium) (41)	Nb-95		$1 \times 10^{-3}$
	Nb-97		$9 \times 10^{-3}$
Osmium (76)	Os-185		$7 \times 10^{-4}$
	Os-191m		$3 \times 10^{-2}$
	Os-191		$2 \times 10^{-3}$
	Os-193		$6 \times 10^{-4}$
Palladium (46)	Pd-103		$3 \times 10^{-3}$
	Pd-109		$9 \times 10^{-4}$
Phosphorous (15)	P-32		$2 \times 10^{-4}$
Platinum (78)	Pt-191		$1 \times 10^{-3}$
	Pt-193m		$1 \times 10^{-2}$
	Pt-197m		$1 \times 10^{-2}$
	Pt-197		$1 \times 10^{-3}$
Potassium (19)	K-42		$3 \times 10^{-3}$
Praseodymium (59)	Pr-142		$3 \times 10^{-4}$
	Pr-143		$5 \times 10^{-4}$
Promethium (61)	Pm-147		$2 \times 10^{-3}$
	Pm-149		$4 \times 10^{-4}$
Rhenium (75)	Re-183		$6 \times 10^{-3}$
	Re-186		$9 \times 10^{-4}$
	Re-188		$6 \times 10^{-4}$

**TABLE 329.1**

<b>Element (Atomic Number)</b>	<b>Isotope</b>	<b>Column I Gas Concentration microcurie/milliliter<sup>1</sup></b>	<b>Column II Liquid and Solid Concentration microcurie/milliliter<sup>2</sup></b>
Rhodium (45)	Rh-103m		1x10 <sup>-1</sup>
	Rh-105		1x10 <sup>-3</sup>
Rubidium (37)	Rb-86		7x10 <sup>-4</sup>
Ruthenium (44)	Ru-97		4x10 <sup>-3</sup>
	Ru-103		8x10 <sup>-4</sup>
	Ru-105		1x10 <sup>-3</sup>
	Ru-106		1x10 <sup>-4</sup>
Samarium (62)	Sm-153		8x10 <sup>-4</sup>
Scandium (21)	Sc-46		4x10 <sup>-4</sup>
	Sc-47		9x10 <sup>-4</sup>
	Sc-48		3x10 <sup>-4</sup>
Selenium (34)	Se-75		3x10 <sup>-3</sup>
Silicon (14)	Si-31		9x10 <sup>-3</sup>
Silver (47)	Ag-102		1x10 <sup>-3</sup>
	Ag-110m		3x10 <sup>-4</sup>
	Ag-111		4x10 <sup>-4</sup>
Sodium (11)	Na-24		2x10 <sup>-3</sup>
Strontium (38)	Sr-85		1x10 <sup>-3</sup>
	Sr-89		1x10 <sup>-4</sup>
	Sr-91		7x10 <sup>-4</sup>
	Sr-92		7x10 <sup>-4</sup>
Sulfur (16)	S-35	9x10 <sup>-8</sup>	6x10 <sup>-4</sup>
Tantalum (73)	Ta-182		4x10 <sup>-4</sup>
Technetium (43)	Tc-96m		1x10 <sup>-1</sup>
	Tc-96		1x10 <sup>-3</sup>

**TABLE 329.1**

<b>Element (Atomic Number)</b>	<b>Isotope</b>	<b>Column I Gas Concentration microcurie/milliliter<sup>1</sup></b>	<b>Column II Liquid and Solid Concentration microcurie/milliliter<sup>2</sup></b>
Tellurium (52)	Te-125m		$2 \times 10^{-3}$
	Te-127m		$6 \times 10^{-4}$
	Te-127		$3 \times 10^{-3}$
	Te-129m		$3 \times 10^{-4}$
	Te-131m		$6 \times 10^{-4}$
	Te-132		$3 \times 10^{-4}$
Terbium (65)	Tb-160		$4 \times 10^{-4}$
Thallium (81)	Tl-200		$4 \times 10^{-3}$
	Tl-201		$3 \times 10^{-3}$
	Tl-202		$1 \times 10^{-3}$
	Tl-204		$1 \times 10^{-3}$
Thulium (69)	Tm-170		$5 \times 10^{-4}$
	Tm-171		$5 \times 10^{-3}$
Tin (50)	Sn-113		$9 \times 10^{-4}$
	Sn-125		$2 \times 10^{-4}$
Tungsten (Wolfram) (74)	W-181		$4 \times 10^{-3}$
	W-187		$7 \times 10^{-4}$
Vanadium (23)	V-48		$3 \times 10^{-4}$
Xenon (54)	Xe-131m	$4 \times 10^{-6}$	
	Xe-133	$3 \times 10^{-6}$	
	Xe-135	$1 \times 10^{-6}$	
Ytterbium (70)	Yb-175		$1 \times 10^{-3}$
Yttrium (39)	Y-90		$2 \times 10^{-4}$

TABLE 329.1			
Element (Atomic Number)	Isotope	Column I Gas Concentration microcurie/milliliter <sup>1</sup>	Column II Liquid and Solid Concentration microcurie/milliliter <sup>2</sup>
	Y-91m		3x10 <sup>-2</sup>
	Y-91		3x10 <sup>-4</sup>
	Y-92		6x10 <sup>-4</sup>
	Y-93		3x10 <sup>-4</sup>
Zinc (30)	Zn-65		1x10 <sup>-3</sup>
	Zn-69m		7x10 <sup>-4</sup>
	Zn-69		2x10 <sup>-2</sup>
Zirconium (40)	Zr-95		6x10 <sup>-4</sup>
	Zr-97		2x10 <sup>-4</sup>
Beta or gamma emitting radioactive material not listed above with half-life less than 3 years.		1x10 <sup>-10</sup>	1x10 <sup>-6</sup>

**Table 329.1 notes:**

<sup>1</sup> values are given in column I only for those materials normally used as gases;

<sup>2</sup> microcuries per gram for solids.

**B. Notes.**

(1) Many radioisotopes disintegrate into isotopes which are also radioactive. In expressing the concentrations in Subsection A the activity stated is that of the parent isotope and takes into account the daughters.

(2) For purposes of 20.3.3.302 NMAC where there is involved a combination of isotopes, the limit for the combination shall be derived as follows: determine for each isotope in the product the ratio between the concentration present in the product and the exempt concentration established in Subsection A of this section for the specific isotope when not in combination. The sum of such ratios may not exceed "1" (i.e., unity). Example: (concentration of isotope A in product) / (exempt concentration of

isotope A) + (concentration of isotope B in product) / (exempt concentration of isotope B) <1.

(3) The values in this table are presented in scientific notation. In this notation, a value of  $3 \times 10^{-4}$  represents a value of 3E-4 or 0.0003.

(4) To convert microcuries to SI units of kilobecquerels multiply the above values by 37. For example: Zirconium-97 of  $2 \times 10^{-4}$  microcurie multiplied by 37 is equivalent to 0.0074 kilobecquerel or 7.4 becquerels.

[20.3.3.329 NMAC - Rp, 20.3.3.329 NMAC, 04/30/2009]

**20.3.3.330 SCHEDULE B - EXEMPT QUANTITIES:**

<b>TABLE 330.1</b>		
<b>Radioactive Material</b>	<b>Acronym</b>	<b>Microcuries</b>
Antimony-122	(Sb-122)	100
Antimony-124	(Sb-124)	10
Antimony-125	(Sb-125)	10
Arsenic-73	(As-73)	100
Arsenic-74	(As-74)	10
Arsenic-76	(As-76)	10
Arsenic-77	(As-77)	100
Barium-131	(Ba-131)	10
Barium-133	(Ba-133)	10
Barium-140	(Ba-140)	10
Bismuth-210	(Bi-210)	1
Bromine-82	(Br-82)	10
Cadmium-109	(Cd-109)	10
Cadmium-115m	(Cd-115m)	10
Cadmium-115	(Cd-115)	100
Calcium-45	(Ca-45)	10
Calcium-47	(Ca-47)	10
Carbon-14	(C-14)	100
Cerium-141	(Ce-141)	100
Cerium-143	(Ce-143)	100
Cerium-144	(Ce-144)	1
Cesium-129	(Cs-129)	100
Cesium-131	(Cs-131)	1,000
Cesium-134m	(Cs-134m)	100
Cesium-134	(Cs-134)	1
Cesium-135	(Cs-135)	10
Cesium-136	(Cs-136)	10
Cesium-137	(Cs-137)	10
Chlorine-36	(Cl-36)	10

**TABLE 330.1**

<b>Radioactive Material</b>	<b>Acronym</b>	<b>Microcuries</b>
Chlorine-38	(Cl-38)	10
Chromium-51	(Cr-51)	1,000
Cobalt-57	(Co-57)	100
Cobalt-58m	(Co-58m)	10
Cobalt-58	(Co-58)	10
Cobalt-60	(Co-60)	1
Copper-64	(Cu-64)	100
Dysprosium-165	(Dy-165)	10
Dysprosium-166	(Dy-166)	100
Erbium-169	(Er-169)	100
Erbium-17	(Er-171)	100
Europium-152(9.2h)	(Eu-152)	100
Europium-152(13y)	(Eu-152)	1
Europium-154	(Eu-154)	1
Europium-155	(Eu-155)	10
Fluorine-18	(F-18)	1,000
Gadolinium-153	(Gd-153)	10
Gadolinium-159	(Gd-159)	100
Gallium-67	(Ga-67)	100
Gallium-72	(Ga-72)	10
Germanium-68	(Ge-68)	10
Germanium-71	(Ge-71)	100
Gold-195	(Au-195)	10
Gold-198	(Au-198)	100
Gold-199	(Au-199)	100
Hafnium-181	(Hf-181)	10
Holmium-166	(Ho-166)	100
Hydrogen-3	(H-3)	1,000
Indium-111	(In-111)	100
Indium-113m	(In-113m)	100
Indium-114m	(In-114m)	10
Indium-115m	(In-115m)	100
Indium-115	(In-115)	10
Iodine-123	(I-123)	100
Iodine-125	(I-125)	1
Iodine-126	(I-126)	1
Iodine-129	(I-129)	0.1
Iodine-131	(I-131)	1
Iodine-132	(I-132)	10
Iodine-133	(I-133)	1
Iodine-134	(I-134)	10
Iodine-135	(I-135)	10

**TABLE 330.1**

<b>Radioactive Material</b>	<b>Acronym</b>	<b>Microcuries</b>
Iridium-192	(Ir-192)	10
Iridium-194	(Ir-194)	100
Iron-52	(Fe-52)	10
Iron-55	(Fe-55)	100
Iron-59	(Fe-59)	10
Krypton-85	(Kr-85)	100
Krypton-87	(Kr-87)	10
Lanthanum-140	(La-140)	10
Lutetium-177	(Lu-177)	100
Manganese-52	(Mn-52)	10
Manganese-54	(Mn-54)	10
Manganese-56	(Mn-56)	10
Mercury-197m	(Hg-197m)	100
Mercury-197	(Hg-197)	100
Mercury-203	(Hg-203)	10
Molybdenum-99	(Mo-99)	100
Neodymium-147	(Nd-147)	100
Neodymium-149	(Nd-149)	100
Nickel-59	(Ni-59)	100
Nickel-63	(Ni-63)	10
Nickel-65	(Ni-65)	100
Niobium-93m	(Nb-93m)	10
Niobium-95	(Nb-95)	10
Niobium-97	(Nb-97)	10
Osmium-185	(Os-185)	10
Osmium-191m	(Os-191m)	100
Osmium-191	(Os-191)	100
Osmium-193	(Os-193)	100
Palladium-103	(Pd-103)	100
Palladium-109	(Pd-109)	100
Phosphorus-32	(P-32)	10
Platinum-191	(Pt-191)	100
Platinum-193m	(Pt-193m)	100
Platinum-193	(Pt-193)	100
Platinum-197m	(Pt-197m)	100
Platinum-197	(Pt-197)	100
Polonium-210	(Po-210)	0.1
Potassium-42	(K-42)	10
Potassium-43	(K-43)	10
Praseodymium-142	(Pr-142)	100
Praseodymium-143	(Pr-143)	100
Promethium-147	(Pm-147)	10

**TABLE 330.1**

<b>Radioactive Material</b>	<b>Acronym</b>	<b>Microcuries</b>
Promethium-149	(Pm-149)	10
Rhenium-186	(Re-186)	100
Rhenium-188	(Re-188)	100
Rhodium-103m	(Rh-103m)	100
Rhodium-105	(Rh-105)	100
Rubidium-81	(Rb-81)	10
Rubidium-86	(Rb-86)	10
Rubidium-87	(Rb-87)	10
Ruthenium-97	(Ru-97)	100
Ruthenium-103	(Ru-103)	10
Ruthenium-105	(Ru-105)	10
Ruthenium-106	(Ru-106)	1
Samarium-151	(Sm-151)	10
Samarium-153	(Sm-153)	100
Scandium-46	(Sc-46)	10
Scandium-47	(Sc-47)	100
Scandium-48	(Sc-48)	10
Selenium-75	(Se-75)	10
Silicon-31	(Si-31)	100
Silver-105	(Ag-105)	10
Silver-110m	(Ag-110m)	1
Silver-111	(Ag-111)	100
Sodium-22	(Na-22)	10
Sodium-24	(Na-24)	10
Strontium-85	(Sr-85)	10
Strontium-89	(Sr-89)	1
Strontium-90	(Sr-90)	0.1
Strontium-91	(Sr-91)	10
Strontium-92	(Sr-92)	10
Sulphur-35	(S-35)	100
Tantalum-182	(Ta-182)	10
Technetium-96	(Tc-96)	10
Technetium-97m	(Tc-97m)	100
Technetium-97	(Tc-97)	100
Technetium-99m	(Tc-99m)	100
Technetium-99	(Tc-99)	10
Tellurium-125m	(Te-125m)	10
Tellurium-127m	(Te-127m)	10
Tellurium-127	(Te-127)	100
Tellurium-129m	(Te-129m)	10
Tellurium-129	(Te-129)	100
Tellurium-131m	(Te-131m)	10

<b>TABLE 330.1</b>		
<b>Radioactive Material</b>	<b>Acronym</b>	<b>Microcuries</b>
Tellurium-132	(Te-132)	10
Terbium-160	(Tb-160)	10
Thallium-200	(Tl-200)	100
Thallium-201	(Tl-201)	100
Thallium-202	(Tl-202)	100
Thallium-204	(Tl-204)	10
Thulium-170	(Tm-170)	10
Thulium-171	(Tm-171)	10
Tin-113	(Sn-113)	10
Tin-125	(Sn-125)	10
Tungsten-181	(W-181)	10
Tungsten-185	(W-185)	10
Tungsten-187	(W-187)	100
Vanadium-48	(V-48)	10
Xenon-131m	(Xe-131m)	1,000
Xenon-133	(Xe-133)	100
Xenon-135	(Xe-135)	100
Ytterbium-175	(Yb-175)	100
Yttrium-87	(Y-87)	10
Yttrium-88	(Y-88)	10
Yttrium-90	(Y-90)	10
Yttrium-91	(Y-91)	10
Yttrium-92	(Y-92)	100
Yttrium-93	(Y-93)	100
Zinc-65	(Zn-65)	10
Zinc-69m	(Zn-69m)	100
Zinc-69	(Zn-69)	1,000
Zirconium-93	(Zr-93)	10
Zirconium-95	(Zr-95)	10
Zirconium-97	(Zr-97)	10
Any radioactive material not listed above other than alpha emitting radioactive material		0.1

**Table 330.1 note:** to convert microcuries to SI units of kilobecquerels multiply the above values by 37. For example: Zirconium-97 of 10 microcuries multiplied by 37 is equivalent to 370 kilobecquerels.

[20.3.3.330 NMAC - Rp, 20.3.3.330 NMAC, 04/30/2009]

**20.3.3.331 [RESERVED]**

[20.3.3.331 NMAC - Rp, 20.3.3.331 NMAC, 04/30/2009; Repealed, 06/30/2011]

**20.3.3.332 SCHEDULE D - RADIOACTIVE MATERIAL QUANTITIES FOR BROAD SCOPE LICENSES:**

**A. Table 332.1**

<b>TABLE 332.1</b>		
<b>Radioactive Material</b>	<b>Column I</b>	<b>Column II</b>
	<b>curies</b>	<b>curies</b>
Antimony-122	1	0.01
Antimony-124	1	0.01
Antimony-125	1	0.01
Arsenic-73	10	0.1
Arsenic-74	1	0.01
Arsenic-76	1	0.01
Arsenic-77	10	0.1
Barium-131	10	0.1
Barium-140	1	0.01
Beryllium-7	10	0.1
Bismuth-210	0.1	0.001
Bromine-82	10	0.1
Cadmium-109	1	0.01
Cadmium-115m	1	0.01
Cadmium-115	10	0.1
Calcium-45	1	0.01
Calcium-47	10	0.1
Carbon-14	100	1.0
Cerium-141	10	0.1
Cerium-143	10	0.1
Cerium-144	0.1	0.001
Cesium-131	100	1.0
Cesium-134m	100	1.0
Cesium-134	0.1	0.001
Cesium-135	1	0.01
Cesium-136	10	0.1
Cesium-137	0.1	0.001
Chlorine-36	1	0.01
Chlorine-38	100	1.0
Chromium-51	100	1.0
Cobalt-57	10	0.1
Cobalt-58m	100	1.0
Cobalt-58	1	0.01

**TABLE 332.1**

<b>Radioactive Material</b>	<b>Column I</b>	<b>Column II</b>
	<b>curies</b>	<b>curies</b>
Cobalt-60	0.1	0.001
Copper-64	10	0.1
Dysprosium-165	100	1.0
Dysprosium-166	10	0.1
Erbium-169	10	0.1
Erbium-171	10	0.1
Europium-152 (9.2 h)	10	0.1
Europium-152 (13 y)	0.1	0.001
Europium-154	0.1	0.001
Europium-155	1	0.01
Fluorine-18	100	1.0
Gadolinium-153	1	0.01
Gadolinium-159	10	0.1
Gallium-72	10	0.1
Germanium-71	100	1.0
Gold-198	10	0.1
Gold-199	10	0.1
Hafnium-181	1	0.01
Holmium-166	10	0.1
Hydrogen-3	100	1.0
Indium-113m	100	1.0
Indium-114m	1	0.01
Indium-115m	100	1.0
Indium-115	1	0.01
Iodine-125	0.1	0.001
Iodine-126	0.1	0.001
Iodine-129	0.1	0.01
Iodine-131	0.1	0.001
Iodine-132	10	0.1
Iodine-133	1	0.01
Iodine-134	10	0.1
Iodine-135	1	0.01
Iridium-192	1	0.01
Iridium-194	10	0.1
Iron-55	10	0.1
Iron-59	1	0.01
Krypton-85	100	1.0
Krypton-87	10	0.1
Lanthanum-140	1	0.01
Lutetium-177	10	0.1

**TABLE 332.1**

<b>Radioactive Material</b>	<b>Column I</b>	<b>Column II</b>
	<b>curies</b>	<b>curies</b>
Manganese-52	1	0.01
Manganese-54	1	0.01
Manganese-56	10	0.1
Mercury-197m	10	0.1
Mercury-197	10	0.1
Mercury-203	1	0.01
Molybdenum-99	10	0.1
Neodymium-147	10	0.1
Neodymium-149	10	0.1
Nickel-59	10	0.1
Nickel-63	1	0.01
Nickel-65	10	0.1
Niobium-93	1	0.01
Niobium-95	1	0.01
Niobium-97	100	1.0
Osmium-185	1	0.01
Osmium-191m	100	1.0
Osmium-191	10	0.1
Osmium-193	10	0.1
Palladium-103	10	0.1
Palladium-109	10	0.1
Phosphorus-32	1	0.01
Platinum-191	10	0.1
Platinum-193m	100	1.0
Platinum-193	10	0.1
Platinum-197m	100	1.0
Platinum-197	10	0.1
Polonium-210	0.01	0.0001
Potassium-42	1	0.01
Praseodymium-142	10	0.1
Praseodymium-143	10	0.1
Promethium-147	1	0.01
Promethium-149	10	0.1
Radium-226	0.01	0.0001
Rhenium-186	10	0.1
Rhenium-188	10	0.1
Rhodium-103m	1,000	10.0
Rhodium-105	10	0.1
Rubidium-86	1	0.01
Rubidium-87	1	0.01

**TABLE 332.1**

<b>Radioactive Material</b>	<b>Column I</b>	<b>Column II</b>
	<b>curies</b>	<b>curies</b>
Ruthenium-97	100	1.0
Ruthenium-103	1	0.01
Ruthenium-105	10	0.1
Ruthenium-106	0.1	0.001
Samarium-151	1	0.01
Samarium-153	10	0.1
Scandium-46	1	0.01
Scandium-47	10	0.1
Scandium-48	1	0.01
Selenium-75	1	0.01
Silicon-31	10	0.1
Silver-105	1	0.01
Silver-110m	0.1	0.001
Silver-111	10	0.1
Sodium-22	0.1	0.001
Sodium-24	1	0.01
Strontium-85m	1,000	10.0
Strontium-85	1	0.01
Strontium-89	1	0.01
Strontium-90	0.01	0.0001
Strontium-91	10	0.1
Strontium-92	10	0.1
Sulphur-35	10	0.1
Tantalum-182	1	0.01
Technetium-96	10	0.1
Technetium-97m	10	0.1
Technetium-97	10	0.1
Technetium-99m	100	1.0
Technetium-99	1	0.01
Tellurium-125m	1	0.01
Tellurium-127m	1	0.01
Tellurium-127	10	0.1
Tellurium-129m	1	0.01
Tellurium-129	100	1.0
Tellurium-131m	10	0.1
Tellurium-132	1	0.01
Terbium-160	1	0.01
Thallium-200	10	0.1
Thallium-201	10	0.1
Thallium-202	10	0.1

TABLE 332.1		
Radioactive Material	Column I	Column II
	curies	curies
Thallium-204	1	0.01
Thulium-170	1	0.01
Thulium-171	1	0.01
Tin-113	1	0.01
Tin-125	1	0.01
Tungsten-181	1	0.01
Tungsten-185	1	0.01
Tungsten-187	10	0.1
Vanadium-48	1	0.01
Xenon-131m	1,000	10.0
Xenon-133	100	1.0
Xenon-135	100	1.0
Ytterbium-175	10	0.1
Yttrium-90	1	0.01
Yttrium-91	1	0.01
Yttrium-92	10	0.1
Yttrium-93	1	0.01
Zinc-65	1	0.01
Zinc-69m	10	0.1
Zinc-69	100	1.0
Zirconium-93	1	0.01
Zirconium-95	1	0.01
Zirconium-97	1	0.01
Any radioactive material other than source material, special nuclear material, or alpha emitting radioactive material not listed above	0.1	0.001

**B. Note.** To convert curies to SI units of gigabecquerels, multiply the above values by 37. For example: Zirconium-97 (Column II) of 0.01 curie multiplied by 37 is equivalent to 0.37 gigabecquerel.

[20.3.3.332 NMAC - Rp, 20.3.3.332 NMAC, 04/30/2009]

**20.3.3.333 SCHEDULE E - QUANTITIES OF RADIOACTIVE MATERIALS REQUIRING CONSIDERATION OF THE NEED FOR AN EMERGENCY PLAN FOR RESPONDING TO A RELEASE:**

**A. Table 333.1**

**TABLE 333.1**

<b>Radioactive Material</b>	<b>Release</b>	<b>Quantity</b>
	<b>Fraction</b>	<b>(Curies)</b>
Actinium-228	0.001	4,000
Americium-241	0.001	2
Americium-242	0.001	2
Americium-243	0.001	2
Antimony-124	0.01	4,000
Antimony-126	0.01	6,000
Barium-133	0.01	10,000
Barium-140	0.01	30,000
Bismuth-207	0.01	5,000
Bismuth-210	0.01	600
Cadmium-109	0.01	1,000
Cadmium-113	0.01	80
Calcium-45	0.01	20,000
Californium-252	0.001	9 (20 mg)
Carbon-14 (Non CO <sub>2</sub> )	0.01	50,000
Cerium-141	0.01	10,000
Cerium-144	0.01	300
Cesium-134	0.01	2,000
Cesium-137	0.01	3,000
Chlorine-36	0.5	100
Chromium-51	0.01	300,000
Cobalt-60	0.001	5,000
Copper-64	0.01	200,000
Curium-242	0.001	60
Curium-243	0.001	3
Curium-244	0.001	4
Curium-245	0.001	2
Europium-152	0.01	500
Europium-154	0.01	400
Europium-155	0.01	3,000
Gadolinium-153	0.01	5,000
Germanium-68	0.01	2,000
Gold-198	0.01	30,000
Hafnium-172	0.01	400
Hafnium-181	0.01	7,000
Holmium-166m	0.01	100
Hydrogen-3	0.5	20,000
Iodine-125	0.5	10
Iodine-131	0.5	10
Indium-114m	0.01	1,000

**TABLE 333.1**

<b>Radioactive Material</b>	<b>Release</b>	<b>Quantity</b>
	<b>Fraction</b>	<b>(Curies)</b>
Iridium-192	0.001	40,000
Iron-55	0.01	40,000
Iron-59	0.01	7,000
Krypton-85	1.0	6,000,000
Lead-210	0.01	8
Manganese-56	0.01	60,000
Mercury-203	0.01	10,000
Molybdenum-99	0.01	30,000
Neptunium-237	0.001	2
Nickel-63	0.01	20,000
Niobium-94	0.01	300
Phosphorus-32	0.5	100
Phosphorus-33	0.5	1,000
Polonium-210	0.01	10
Potassium-42	0.01	9,000
Promethium-145	0.01	4,000
Promethium-147	0.01	4,000
Radium-226	0.001	100
Ruthenium-106	0.01	200
Samarium-151	0.01	4,000
Scandium-46	0.01	3,000
Selenium-75	0.01	10,000
Silver-110m	0.01	1,000
Sodium-22	0.01	9,000
Sodium-24	0.01	10,000
Strontium-89	0.01	3,000
Strontium-90	0.01	90
Sulfur-35	0.5	900
Technetium-99	0.01	10,000
Technetium-99m	0.01	400,000
Tellurium-127m	0.01	5,000
Tellurium-129m	0.01	5,000
Terbium-160	0.01	4,000
Thulium-170	0.01	4,000
Tin-113	0.01	10,000
Tin-123	0.01	3,000
Tin-126	0.01	1,000
Titanium-44	0.01	100
Vanadium-48	0.01	7,000
Xenon-133	1.0	900,000

<b>TABLE 333.1</b>		
<b>Radioactive Material</b>	<b>Release</b>	<b>Quantity</b>
	<b>Fraction</b>	<b>(Curies)</b>
Yttrium-91	0.01	2,000
Zinc-65	0.01	5,000
Zirconium-93	0.01	400
Zirconium-95	0.01	5,000
Any other beta-gamma emitter	.01	10,000
Mixed fission products	.01	1,000
Mixed corrosion products	.01	10,000
Contaminated equipment beta-gamma	.001	10,000
Irradiated material, any form other than solid, noncombustible	.01	1,000
Irradiated material solid, noncombustible	.001	10,000
Mixed radioactive waste, beta-gamma	.01	1,000
Packaged mixed waste, beta-gamma	.001	10,000
Any other alpha emitter	.001	2
Contaminated equipment alpha	.0001	20
Packaged waste, alpha <sup>1</sup>	.0001	20

**Table 333.1 note:**

<sup>1</sup> waste packaged in Type B containers does not require an emergency plan.

**B. Notes.**

(1) To convert curies to SI units of gigabecquerels, multiply the above values by 37. Example: Zirconium-95 of 5000 curies multiplied by 37 is equivalent to 185,000 gigabecquerels or 185 terabecquerels.

(2) For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in table 333.1 exceeds one.

[20.3.3.333 NMAC - Rp, 20.3.3.333 NMAC, 04/30/2009]

**20.3.3.334 CRITERIA RELATING TO USE OF FINANCIAL TESTS AND PARENT COMPANY GUARANTEES FOR PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING:**

**A. Introduction.** An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on obtaining a parent company guarantee that funds will be available for decommissioning costs and on a demonstration that the parent company passes a financial test. This section establishes criteria for passing the financial test and for obtaining the parent company guarantee.

**B. Financial Test.**

**(1)** To pass the financial test, the parent company must meet the criteria of either Subparagraphs (a) or (b) of this paragraph.

**(a)** The parent company must have:

**(i)** two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;

**(ii)** net working capital and tangible net worth each at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used);

**(iii)** tangible net worth of at least \$10 million; and

**(iv)** assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates (or prescribed amount if a certification is used);

**(b)** The parent company must have:

**(i)** a current rating for its most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

**(ii)** tangible net worth at least six times the current decommissioning cost estimate (or prescribed amount if a certification is used);

**(iii)** tangible net worth of at least \$10 million; and

**(iv)** assets located in the United States amounting to at least 90 percent of total assets or at least six times the current decommissioning cost estimates for the total of all facilities or parts thereof (or prescribed amount if certification is used).

**(2)** The parent company's independent certified public accountant must have compared the data used by the parent company in the financial test, which is derived from the independently audited, year end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure the

licensee shall inform the department within 90 days of any matters coming to the auditor's attention which cause the auditor to believe that the data specified in the financial test shall be adjusted and that the company no longer passes the test.

(3) After the initial financial test, the parent company must repeat the passage of the test within 90 days after the close of each succeeding fiscal year.

(4) If the parent company no longer meets the requirements of Subsection A of this section, the licensee must send notice to the department of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year end financial data show that the parent company no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

**C. Parent Company Guarantee.** The terms of a parent company guarantee which an applicant or licensee obtains must provide the following.

(1) The parent company guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the licensee and the department; cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the licensee and the department, as evidenced by the return receipts.

(2) If the licensee fails to provide alternate financial assurance as specified in the department's regulations within 90 days after receipt by the licensee and department of a notice of cancellation of the parent company guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the licensee.

(3) The parent company guarantee and financial test provisions must remain in effect until the department has terminated the license.

(4) If a trust is established for decommissioning costs, the trustee and trust must be acceptable to the department; an acceptable trustee includes an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

[20.3.3.334 NMAC - Rp, 20.3.3.334 NMAC, 04/30/2009]

**20.3.3.335 CRITERIA RELATING TO USE OF FINANCIAL TESTS AND SELF-GUARANTEES FOR PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING:**

**A. Introduction.** An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of Subsection B of this section. The terms of the self-guarantee are in Subsection C of this section. This section establishes criteria for passing the financial test for the self guarantee and establishes the terms for a self-guarantee.

**B. Financial Test.**

(1) To pass the financial test, a company must meet all of the following criteria:

(a) tangible net worth at least 10 times the total current decommissioning cost estimate for the total of all facilities or parts thereof (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(b) assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate for the total of all facilities of parts thereof (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(c) a current rating for its most recent bond issuance of AAA, AA or A as issued by Standard and Poors, or Aaa, Aa or A as issued by Moodys.

(2) To pass the financial test, a company must meet all of the following additional requirements:

(a) the company must have at least one class of equity securities registered under the Securities Exchange Act;

(b) the company's independent certified public accountant must have compared the data used by the company in the financial test which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement; in connection with that procedure, the licensee shall inform the department within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test shall be adjusted and that the company no longer passes the test; and

(c) after the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

(3) If the licensee no longer meets the requirements of Paragraph (1) of Subsection B of this section, the licensee must send immediate notice to the

department of its intent to establish alternate financial assurance as specified in the department's regulations within 120 days of such notice.

**C. Company Self-Guarantee.** The terms of a self-guarantee which an applicant or licensee furnishes must provide the following.

(1) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the department; cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the department, as evidenced by the return receipt.

(2) The licensee shall provide alternative financial assurance as specified in 20.3.3.311 NMAC within 90 days following receipt by the department of a notice of cancellation of the guarantee.

(3) The guarantee and financial test provisions must remain in effect until the department has terminated the license or until another financial assurance method acceptable to the department has been put in effect by the licensee.

(4) The licensee will promptly forward to the department and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the securities and exchange commission pursuant to the requirements of Section 13 of the Securities and Exchange Act.

(5) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poors or Moodys, the licensee will provide notice in writing of such fact to the department within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by both Standard and Poors and Moodys, the licensee no longer meets the requirements of Paragraph (1) of Subsection B of this section.

(6) The applicant or licensee must provide to the department a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the department, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

[20.3.3.335 NMAC - Rp, 20.3.3.335 NMAC, 04/30/2009]

**20.3.3.336 CRITERIA RELATING TO USE OF FINANCIAL TESTS AND SELF-GUARANTEES FOR PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING BY COMMERCIAL COMPANIES THAT HAVE NO OUTSTANDING RATED BONDS:**

**A. Introduction.** An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of Subsection B of this section. The terms of the self-guarantee are in Subsection C of this section. This section establishes criteria for passing the financial test for the self guarantee and establishes the terms for a self-guarantee.

**B. Financial Test.**

(1) To pass the financial test, a company must meet the following criteria:

(a) tangible net worth greater than \$10 million, or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor;

(b) assets located in the United States amounting to at least 90 percent of total assets or at least 10 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor; and

(c) a ratio of cash flow divided by total liabilities greater than 0.12 and a ratio of total liabilities divided by net worth less than 1.5.

(2) In addition, to pass the financial test, a company must meet all of the following requirements:

(a) the company's independent certified public accountant must have compared the data used by the company in the financial test which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement; in connection with that procedure, the licensee shall inform the department within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test shall be adjusted and that the company no longer passes the test;

(b) after the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year; and

(c) if the licensee no longer meets the requirements of Paragraph (1) of Subsection B of this section, the licensee must send immediate notice to the department of its intent to establish alternate financial assurance as specified in 20.3.3.311 NMAC; the notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show

that the licensee no longer meets the financial test requirements; the licensee must provide alternative financial assurance within 120 days after the end of such fiscal year.

**C. Company Self-Guarantee.** The terms of a self-guarantee which an applicant or licensee furnishes must provide the following.

(1) The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail to the department; cancellation may not occur until alternative financial assurance mechanism is in place.

(2) The licensee shall provide alternative financial assurance as specified in 20.3.3.311 NMAC within 90 days following receipt by the department of a notice of cancellation of the guarantee.

(3) The guarantee and financial test provisions must remain in effect until the department has terminated the license or until another financial assurance method acceptable to the department has been put in effect by the licensee.

(4) The applicant or licensee must provide to the department a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the department, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

[20.3.3.336 NMAC - N, 04/30/2009]

**20.3.3.337 CRITERIA RELATING TO USE OF FINANCIAL TESTS AND SELF-GUARANTEES FOR PROVIDING REASONABLE ASSURANCE OF FUNDS FOR DECOMMISSIONING BY NONPROFIT COLLEGES, UNIVERSITIES AND HOSPITALS:**

**A. Introduction.** An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the applicant or licensee passes the financial test of Subsection B of this section. The terms of the self-guarantee are in Subsection C of this section. This section establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

**B. Financial Test.**

(1) For colleges and universities, to pass the financial test a college or university must meet either the criteria in Subparagraph (a) or the criteria in Subparagraph (b) of this paragraph.

**(a)** For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized and unencumbered bond issuance of AAA, AA or A as issued by Standard and Poors or Aaa, Aa or A as issued by Moodys.

**(b)** For applicants or licensees that do not issue bonds, unrestricted endowment consisting of assets located in the United States of at least \$50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

**(2)** For hospitals, to pass the financial test a hospital must meet either the criteria in Subparagraph (a) or the criteria in Subparagraph (b) of this paragraph.

**(a)** For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA or A as issued by Standard and Poors or Aaa, Aa or A as issued by Moodys.

**(b)** For applicants or licensees that do not issue bonds, all the following tests must be met:

**(i)** total revenues less total expenditures divided by total revenues must be equal to or greater than 0.04;

**(ii)** long term debt divided by net fixed assets must be less than or equal to 0.67;

**(iii)** current assets and depreciation fund divided by current liabilities must be greater than or equal to 2.55; and

**(iv)** operating revenues must be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing license.

**(3)** In addition, to pass the financial test, a licensee must meet all the following requirements:

**(a)** the licensee's independent certified public accountant must have compared the data used by the licensee in the financial test, which is required to be derived from the independently audited year end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statement; in connection with that procedure, the licensee shall inform the department within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test shall be adjusted and that the licensee no longer passes the test;

(b) after the initial financial test, the licensee must repeat passage of the test within 90 days after the close of each succeeding fiscal year; and

(c) if the licensee no longer meets the requirements of Subsection B of this section, the licensee must send notice to the department of its intent to establish alternative financial assurance as specified in 20.3.3.311 NMAC; the notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year end financial data show that the licensee no longer meets the financial test requirements; the licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

**C. Self-Guarantee.** The terms of a self-guarantee which an applicant or licensee furnishes must provide the following.

(1) The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail and return receipt requested, to the department. Cancellation may not occur unless an alternative financial assurance mechanism is in place.

(2) The licensee shall provide alternative financial assurance as specified in the 20.3.3.311 NMAC within 90 days following receipt by the department of a notice of cancellation of the guarantee.

(3) The guarantee and financial test provisions must remain in effect until the department has terminated the license or until another financial assurance method acceptable to the department has been put in effect by the licensee.

(4) The applicant or licensee must provide to the department a written guarantee (a written commitment by a corporate officer or officer of the institution) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the department, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

(5) If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poors or Moodys, the licensee shall provide notice in writing of such fact to the department within 20 days after publication of the change by the rating service.

[20.3.3.337 NMAC - N, 04/30/2009]

### **20.3.3.338 QUANTITIES FOR USE WITH DECOMMISSIONING AND QUANTITIES OF LICENSED MATERIAL REQUIRING LABELING:**

#### **A. Table 338.1**

<b>TABLE 338.1</b>	
<b>Radioactive Material</b>	<b>Microcuries<sup>1</sup></b>
Americium-241	0.01
Antimony-122	100
Antimony-124	10
Antimony-125	10
Arsenic-73	100
Arsenic-74	10
Arsenic-76	10
Arsenic-77	100
Barium-131	10
Barium-133	10
Barium-140	10
Bismuth-210	1
Bromine-82	10
Cadmium-109	10
Cadmium-115m	10
Cadmium-115	100
Calcium-45	10
Calcium-47	10
Carbon-14	100
Cerium-141	100
Cerium-143	100
Cerium-144	1
Cesium-131	1,000
Cesium-134m	100
Cesium-134	1
Cesium-135	10
Cesium-136	10
Cesium-137	10
Chlorine-36	10
Chlorine-38	10
Chromium-51	1,000
Cobalt-58m	10
Cobalt-58	10
Cobalt-60	1
Copper-64	100
Dysprosium-165	10
Dysprosium-166	100
Erbium-169	100
Erbium-171	100
Europium-152 (9.2 h)	100
Europium-152 (13 yr)	1
Europium-154	1

<b>TABLE 338.1</b>	
<b>Radioactive Material</b>	<b>Microcuries<sup>1</sup></b>
Europium-155	10
Florine-18	1,000
Gadolinium-153	10
Gadolinium-159	100
Gallium-72	10
Germanium-71	100
Gold-198	100
Gold-199	100
Hafnium-181	10
Holmium-166	100
Hydrogen-3	1,000
Indium-113m	100
Indium-114m	10
Indium-115m	100
Indium-115	10
Iodine-125	1
Iodine-126	1
Iodine-129	0.1
Iodine-131	1
Iodine-132	10
Iodine-133	1
Iodine-134	10
Iodine-135	10
Iridium-192	10
Iridium-194	100
Iron-55	100
Iron-59	10
Krypton-85	100
Krypton-87	10
Lanthanum-140	10
Lutetium-177	100
Manganese-52	10
Manganese-54	10
Manganese-56	10
Mercury-197m	100
Mercury-197	100
Mercury-203	10
Molybdenum-99	100
Neodymium-147	100
Neodymium-149	100
Nickel-59	100
Nickel-63	10

<b>TABLE 338.1</b>	
<b>Radioactive Material</b>	<b>Microcuries<sup>1</sup></b>
Nickel-65	100
Niobium-93m	10
Niobium-95	10
Niobium-97	10
Osmium-185	10
Osmium-191m	100
Osmium-191	100
Osmium-193	100
Palladium-103	100
Palladium-109	100
Phosphorus-32	10
Platinum-191	100
Platinum-193m	100
Platinum-193	100
Platinum-197m	100
Platinum-197	100
Plutonium-239	0.01
Polonium-210	0.1
Potassium-42	10
Praseodymium-142	100
Praseodymium-143	100
Promethium-147	10
Promethium-149	10
Radium-226	0.01
Rhenium-186	100
Rhenium-188	100
Rhodium-103m	100
Rhodium-105	100
Rubidium-86	10
Rubidium-87	10
Ruthenium-97	100
Ruthenium-103	10
Ruthenium-105	10
Ruthenium-106	1
Samarium-151	10
Samarium-153	100
Scandium-46	10
Scandium-47	100
Scandium-48	10
Selenium-75	10
Silicon-31	100
Silver-105	10

<b>TABLE 338.1</b>	
<b>Radioactive Material</b>	<b>Microcuries<sup>1</sup></b>
Silver-110m	1
Silver-111	100
Sodium-22	1
Sodium-24	10
Strontium-89	1
Strontium-90	0.1
Strontium-91	10
Strontium-92	10
Sulfur-35	100
Tantalum-182	10
Technetium-96	10
Technetium-97m	100
Technetium-97	100
Technetium-99m	100
Technetium-99	10
Tellurium-125m	10
Tellurium-127m	10
Tellurium-127	100
Tellurium-129m	10
Tellurium-129	100
Tellurium-131m	10
Tellurium-132	10
Terbium-160	10
Thallium-200	100
Thallium-201	100
Thallium-202	100
Thallium-204	10
Thorium (natural) <sup>2</sup>	100
Thulium-170	10
Thulium-171	10
Tin-113	10
Tin-125	10
Tungsten-181	10
Tungsten-185	10
Tungsten-187	100
Uranium (natural) <sup>3</sup>	100
Uranium-233	0.01
Uranium-234	0.01
Uranium-235	0.01
Vanadium-48	10
Xenon-131m	1,000
Xenon-133	100

TABLE 338.1	
Radioactive Material	Microcuries <sup>1</sup>
Xenon-135	100
Ytterbium-175	100
Yttrium-90	10
Yttrium-91	10
Yttrium-92	100
Yttrium-93	100
Zinc-65	10
Zinc-69m	100
Zinc-69	1,000
Zirconium-93	10
Zirconium-95	10
Zirconium-97	10
Any alpha emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	0.01
Any radionuclide other than alpha emitting radionuclides, not listed above or mixtures of beta emitters of unknown composition	0.1

**Table 338.1 notes:**

<sup>1</sup> to convert microcurie to kilobecquerels, multiply the microcurie value by 37;

<sup>2</sup> based on alpha disintegration rate of Th-232, Th-230 and their daughter products;

<sup>3</sup> based on alpha disintegration rate of U-238, U-234 and U-235.

**B. Note.** Where a combination of isotopes in known amounts is involved, the limit for the combination shall be derived as follows: determine, for each isotope in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific isotope when not in combination. The sum of such ratios for all the isotopes in the combination may not exceed "1" (i.e. "unity").

[20.3.3.338 NMAC - Rp, 20.3.4.465 NMAC, 04/30/2009]

## **PART 4: STANDARDS FOR PROTECTION AGAINST RADIATION**

### **20.3.4.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.3.4.1 NMAC - Rp, 20.3.4.1 NMAC, 04/30/2009]

**20.3.4.2 SCOPE:**

Except as specifically provided in other parts of this chapter, this part applies to persons licensed or registered by the department to receive, possess, use, transfer or dispose of sources of radiation. The limits in this part do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, to exposure from individuals administered radioactive material and released under Subsection I of 20.3.7.703 NMAC or to exposure from voluntary participation in medical research programs.

[20.3.4.2 NMAC - Rp, 20.3.4.1 NMAC, 04/30/2009]

**20.3.4.3 STATUTORY AUTHORITY:**

Sections 74-1-9, 74-3-5 and 74-3-9 NMSA 1978.

[20.3.4.3 NMAC - Rp, 20.3.4.3 NMAC, 04/30/2009]

**20.3.4.4 DURATION:**

Permanent.

[20.3.4.4 NMAC - Rp, 20.3.4.4 NMAC, 04/30/2009]

**20.3.4.5 EFFECTIVE DATE:**

April 30, 2009, unless a later date is cited at the end of a section.

[20.3.4.5 NMAC - Rp, 20.3.4.5 NMAC, 04/30/2009]

**20.3.4.6 OBJECTIVE:**

**A.** The requirements of this part establish standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses or registrations issued by the department.

**B.** The requirements of this part are designed to control the receipt, possession, use, transfer and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, other than background radiation, does not exceed the standards for protection against radiation prescribed in this part. However, nothing in this part shall be construed as limiting actions that may be necessary to protect public health and safety.

[20.3.4.6 NMAC - Rp, 20.3.4.6 NMAC, 04/30/2009]

#### 20.3.4.7 DEFINITIONS:

A. "**Absorbed dose**" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

B. "**Activity**" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

C. "**Adult**" means an individual 18 or more years of age.

D. "**Airborne radioactive material**" means any radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors or gases.

E. "**Airborne radioactivity area**" means a room, enclosure or area in which airborne radioactive materials exist in concentrations:

(1) in excess of the derived air concentrations (DAC) specified in table I of 20.3.4.461 NMAC; or

(2) to such a degree that an individual in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

F. "**Air-purifying respirator**" means a respirator with an air-purifying filter, cartridge or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

G. "**ALARA**" (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits in these regulations as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

H. "**ALI**" (annual limit on intake) means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 5 rems (0.05 sievert) or a committed dose equivalent of 50 rems (0.5 sievert) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in columns 1 and 2 of table I of 20.3.4.461 NMAC.

I. "**APF**" (assigned protection factor) means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a

class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

**J. "Atmosphere-supplying respirator"** means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

**K. "Background radiation"** means radiation from cosmic sources; naturally occurring radioactive material as it occurs in nature, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. *Background radiation* does not include radiation from radioactive material regulated by the department or NRC.

**L. "Bioassay"** (radiobioassay) means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

**M. "Class"** (lung class or inhalation class) means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W or Y, which applies to a range of clearance half-times: for class D (days) of less than 10 days, for class W (weeks) from 10 to 100 days, and for class Y (years) of greater than 100 days.

**N. "Collective dose"** means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

**O. "Committed dose equivalent"** ( $H_{T,50}$ ) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

**P. "Committed effective dose equivalent"** ( $H_{E,50}$ ) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ( $H_{E,50} = \{\text{sum over T}\}w_T H_{T,50}$ ).

**Q. "Constraint"** (dose constraint) means a value above which specified licensee actions are required.

**R. "Controlled area"** means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee for any reason.

**S. "Critical Group"** means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

**T. "DAC"** means the derived air concentration.

**U. "DAC-hour"** means the derived air concentration - hour.

**V. "Declared pregnant woman"** means a woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

**W. "Deep dose equivalent" ( $H_d$ )**, which applies to external whole body exposure, means the dose equivalent at a tissue depth of 1 centimeter ( $1000 \text{ mg/cm}^2$ ).

**X. "Demand respirator"** means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

**Y. "Derived air concentration" (DAC)** means the concentration of a given radionuclide in air which, if breathed by reference man for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these regulations, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in column 3 of table I of 20.3.4.461 NMAC.

**Z. "Derived air concentration-hour" (DAC-hour)** means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 5 rems (0.05 sievert).

**AA. "Disposable respirator"** means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

**AB. "Distinguishable from background"** means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey and statistical techniques.

**AC.** "Dose" (radiation dose) is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent or total effective dose equivalent.

**AD.** "Dose equivalent" ( $H_T$ ) means the product of the absorbed dose in tissue, quality factor and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

**AE.** "Dose limits" (limits) means the permissible upper bounds of radiation doses established in accordance with these regulations.

**AF.** "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

**AG.** "Effective dose equivalent" ( $H_E$ ) means the sum of the products of the dose equivalent to each organ or tissue ( $H_T$ ), and the weighting factor ( $w_T$ ) applicable to each of the body organs or tissues (T) that are irradiated ( $H_E = \{\text{sum over } T\}w_T H_T$ ).

**AH.** "Embryo/fetus" means the developing human organism from conception until the time of birth.

**AI.** "Entrance or access point" means any opening through which an individual could gain access to radiation areas or to radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

**AJ.** "Exposure" means being exposed to ionizing radiation or to radioactive material. Exposure also means the quotient of  $dQ$  divided by  $dm$  where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped by air. The special unit of exposure is the roentgen (R). The SI unit of exposure is the coulomb per kilogram (C/kg) (see 20.3.4.8 NMAC).

**AK.** "Exposure rate" means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

**AL.** "External dose" means that portion of the dose equivalent received from any source of radiation outside the body.

**AM.** "Extremity" means hand, elbow, arm below the elbow, foot, knee and leg below the knee.

**AN.** "Eye dose equivalent" means the external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter (300 mg/cm<sup>2</sup>).

**AO. "Filtering facepiece"** (dust mask) means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

**AP. "Fit factor"** means a quantitative estimate of the fit of a particular respirator to a specific individual and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

**AQ. "Fit test"** means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

**AR. "Generally applicable environmental radiation standards"** means standards issued by the EPA under the authority of the Atomic Energy Act that impose limits on radiation exposures or levels, and concentrations or quantities of radioactive material in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

**AS. "Gray"** (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule per kilogram (1 gray=100 rads).

**AT. "Helmet"** means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

**AU. "High radiation area"** means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 millisievert) in 1 hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

**AV. "Hood"** means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

**AW. "Individual monitoring"** means the assessment of:

(1) dose equivalent by the use of individual monitoring devices designed to be worn by an individual; or

(2) committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours; or

(3) dose equivalent by the use of survey data.

**AX. "Individual monitoring devices"** (individual monitoring equipment) means devices designed to be worn by a single individual for the assessment of dose

equivalent, such as film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers and personal ("lapel") air sampling devices.

**AY.** "Inhalation class" (see "class").

**AZ.** "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

**BA.** "Lens dose equivalent" (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm<sup>2</sup>).

**BB.** "Limits" (see "dose limits").

**BC.** "Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

**BD.** "Lung class" (see "class").

**BE.** "Member of the public" means any individual except when that individual is receiving an occupational dose.

**BF.** "Minor" means an individual less than 18 years of age.

**BG.** "Monitoring" (radiation monitoring, radiation protection monitoring) means the measurement of radiation, radioactive material concentrations, surface area activities or quantities or radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

**BH.** "Negative pressure respirator" (tight fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

**BI.** "Nationally tracked source" is a sealed source containing a quantity equal to or greater than category 1 or category 2 levels of any radioactive material listed in 20.3.4.467 NMAC. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the category 2 threshold but less than the category 1 threshold.

**BJ. "Nonstochastic effect"** (deterministic effect) means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect.

**BK. "Occupational dose"** means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee, registrant or other person. Occupational dose does not include dose received from background radiation; from any medical administration the individual has received; from exposure to individuals administered radioactive materials and released under Subsection I of 20.3.7.703 NMAC; from voluntary participation in medical research programs; or as a member of the public.

**BL. "Personnel monitoring equipment"** (see "individual monitoring devices").

**BM. "Planned special exposure"** means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

**BN. "Positive pressure respirator"** means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

**BO. "Powered air-purifying respirator"** (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

**BP. "Pressure demand respirator"** means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

**BQ. "Public dose"** means the dose received by a member of the public from exposure to radiation or radioactive material released by a licensee or registrant, or to any other sources of radiation under the control of a licensee or registrant. Public dose does not include: occupational dose; dose received from background radiation; dose received from any medical administration the individual has received; dose received from exposure to individuals administered radioactive material and released under Subsection I of 20.3.7.703 NMAC; or dose received from voluntary participation in medical research programs.

**BR. "Pyrophoric material"** means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees fahrenheit (54.4 degrees celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently as

to create a serious transportation, handling or disposal hazard. Included are spontaneously combustible and water-reactive materials.

**BS.** "Qualitative fit test" (QLFT) means a pass or fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

**BT.** "Quality factor" (Q) means the modifying factor, listed in table 8.1 of Subsection C of 20.3.4.8 NMAC and table 8.2 of Subsection D of 20.3.4.8 NMAC, that is used to derive dose equivalent from absorbed dose.

**BU.** "Quantitative fit test" (QNFT) means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

**BV.** "Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

**BW.** "Radiation area" means any area, accessible to individuals in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.005 rem (0.05 millisievert) in 1 hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

**BX.** "Radiation dose" (see "dose").

**BY.** "Radiobioassay" (see "bioassay").

**BZ.** "Reference man" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health employees to standardize results of experiments and to relate biological insult to a common base. A description of reference man is contained in the international commission on radiological protection report (ICRP), publication 23, *report of the task group on reference man*.

**CA.** "Residual radioactivity" means radioactivity in structures, materials, soils, groundwater and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of this part.

**CB.** "Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

**CC. "Restricted area"** means an area, access to which is limited by the licensee or registrant for purposes of protection of individuals against undue risks from exposure to sources of radiation. Restricted area does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

**CD. "Sanitary sewerage"** means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks and leach fields owned or operated by the licensee or registrant.

**CE. "Self-contained breathing apparatus"** (SCBA) means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

**CF. "Shallow-dose equivalent"** ( $H_s$ ), which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter ( $7 \text{ mg/cm}^2$ ).

**CG. "SI"** means the international system of units.

**CH. "Site boundary"** means that line beyond which the land or property is not owned, leased or otherwise controlled by the licensee or registrant.

**CI. "Stochastic effect"** (probabilistic effect) means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects.

**CJ. "Supplied-air respirator"** (SAR) or airline respirator means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

**CK. "TEDE"** (total effective dose equivalent) means the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

**CL. "Tight-fitting facepiece"** means a respiratory inlet covering that forms a complete seal with the face.

**CM. "TODE"** (total organ dose equivalent) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in Paragraph (6) of Subsection A of 20.3.4.446 NMAC.

**CN. "Unrestricted area"** means an area, access to which is neither limited nor controlled by the licensee or registrant.

**CO.** "User seal check" (fit check) means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check or isoamyl acetate check.

**CP.** "Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 500 rads (5 grays) in 1 hour at 1 meter from a radiation source or 1 meter from any surface that the radiation penetrates.

**CQ.** "Waste disposal site operators" means persons licensed to dispose of radioactive waste.

**CR.** "Waste handling licensees" means persons licensed to receive and store radioactive wastes prior to disposal or persons licensed to dispose of radioactive waste.

**CS.** "Week" means 7 consecutive days starting on Sunday.

**CT.** "Weighting factor" ( $w_T$ ) for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of  $w_T$  are:

<b>ORGAN DOSE WEIGHTING FACTORS</b>	
Organ or Tissue	$w_T$
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 <sup>1</sup>
Whole Body	1.00 <sup>2</sup>

**table 7.1 notes:**

<sup>1</sup> 0.30 results from 0.06 for each of 5 "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

<sup>2</sup> for the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor,  $w_T = 1.0$ , has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

**CU.** "Whole body" means, for purpose of external exposure, head, trunk including male gonads, arms above the elbow or legs above the knee.

**CV.** "Worker" means an individual engaged in work under a license or registration issued by the department and controlled by a licensee or registrant, but does not include the licensee or registrant.

**CW.** "Working level" (WL) means any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of  $1.3E+5$  megaelectronvolts of potential alpha particle energy. The short-lived radon daughters are for radon-222: polonium-218, lead-214, bismuth-214 and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212 and polonium-212.

**CX.** "Working level month" (WLM) means exposure to 1 working level for 170 hours (2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month).

**CY.** "Year" means the period of time beginning in January used to determine compliance with the provisions of these regulations. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

[20.3.4.7 NMAC - Rp, 20.3.4.7 NMAC, 04/30/2009; A, 06/30/2011]

#### **20.3.4.8 UNITS OF EXPOSURE AND DOSE:**

**A.** As used in these regulations, the unit of exposure is the coulomb per kilogram (C/kg) of air. One roentgen is equal to  $2.58E-4$  coulomb per kilogram of air.

**B.** As used in these regulations, the units of dose are:

**(1)** gray (Gy) is the SI unit of absorbed dose; one gray is equal to an absorbed dose of 1 joule per kilogram (1 gray = 100 rads);

**(2)** rad is the special unit of absorbed dose; one rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram (1 rad = 0.01 gray);

(3) rem is the special unit of any of the quantities expressed as dose equivalent; the dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 sievert); and

(4) sievert is the SI unit of any of the quantities expressed as dose equivalent; the dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 sievert = 100 rems).

C. As used in these regulations, the quality factors for converting absorbed dose to dose equivalent are shown in table 8.1.

TABLE 8.1		
QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES		
Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to A Unit Dose Equivalent <sup>1</sup>
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

**Table 8.1 note:** <sup>1</sup>absorbed dose in gray equal to 1 sievert or the absorbed dose in rad equal to 1 rem.

D. If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in Subsection C of this section, 0.01 sievert (1 rem) of neutron radiation of unknown energies may, for purposes of these regulations, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from table 8.2 to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem (Note: The values in table 8.2 are presented in the "E" notation. In this notation a value of 5E-1 represents a value of  $5 \times 10^{-1}$  or 0.5. A value of 4E+2 represents  $4 \times 10^2$  or 400.)

<b>TABLE 8.2</b>			
<b>MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS</b>			
<b>Neutron Energy (megaelectronvolt)</b>	<b>Quality Factor<sup>1</sup> (Q)</b>	<b>Fluence per Unit Dose  Equivalent<sup>2</sup> (neutrons  centimeter<sup>-2</sup> rem<sup>-1</sup>)</b>	<b>Fluence per Unit Dose  Equivalent (neutrons  centimeter<sup>-2</sup> sievert<sup>-1</sup>)</b>
(thermal) 2.5E-8	2	980E+6	980E+8
1E-7	2	980E+6	980E+8
1E-6	2	810E+6	810E+8
1E-5	2	810E+6	810E+8
1E-4	2	840E+6	840E+8
1E-3	2	980E+6	980E+8
1E-2	2.5	1010E+6	1010E+8
1E-1	7.5	170E+6	170E+8
5E-1	11	39E+6	39E+8
1	11	27E+6	27E+8
2.5	9	29E+6	29E+8
5	8	23E+6	23E+8
7	7	24E+6	24E+8
10	6.5	24E+6	24E+8
14	7.5	17E+6	17E+8
20	8	16E+6	16E+8
40	7	14E+6	14E+8
60	5.5	16E+6	16E+8
1E+2	4	20E+6	20E+8
2E+2	3.5	19E+6	19E+8
3E+2	3.5	16E+6	16E+8
4E+2	3.5	14E+6	14E+8

**Table 8.2 notes:**

<sup>1</sup> value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-centimeter diameter cylinder tissue-equivalent phantom;

<sup>2</sup> monoenergetic neutrons incident normally on a 30-centimeter diameter cylinder tissue-equivalent phantom.

[20.3.4.8 NMAC - Rp, 20.3.1.117 NMAC, 04/30/2009]

#### **20.3.4.9 UNITS OF ACTIVITY:**

For purposes of these regulations, activity is expressed in the SI unit of becquerel (Bq) or in the special unit of curie (Ci), or their multiples, or disintegrations or transformations per unit of time.

**A.** One becquerel (Bq) = 1 disintegration or transformation per second (dps or tps).

**B.** One curie (Ci) =  $3.7 \times 10^{10}$  disintegration or transformation per second (dps or tps) =  $3.7 \times 10^{10}$  becquerel (Bq) =  $2.22 \times 10^{12}$  disintegration or transformation per minute (dpm or tpm).

[20.3.4.9 NMAC - Rp, 20.3.1.7 NMAC 04/30/2009]

#### **20.3.4.10-20.3.4.402 [RESERVED]**

#### **20.3.4.403 IMPLEMENTATION:**

**A.** Any existing license or registration condition or technical specification that is more restrictive than a requirement in this part remains in force until there is a technical specification change, license amendment or renewal, or registration amendment or renewal.

**B.** If a license or registration condition or technical specification exempted a licensee or registrant from a requirement in the standards for protection against radiation in effect prior to May 3, 1995 (see 20.3.4 NMAC codified as of May 3, 1995), it continues to exempt the licensee or registrant from the corresponding provision of this part.

**C.** If a license or registration condition cites provisions of this part in effect prior to the effective date of the regulations in this part, which do not correspond to any current provisions of this part, then the license or registration condition remains in force until there is a technical specification change, an amendment or renewal of the license or registration that modifies or removes that condition.

[20.3.4.403 NMAC - Rp, 20.3.4.403 NMAC, 04/30/2009]

#### **20.3.4.404 RADIATION PROTECTION PROGRAMS:**

**A.** Each licensee or registrant shall develop, document and implement a radiation protection program commensurate with the scope and extent of licensed or registered activities and sufficient to ensure compliance with the provisions of this part (see 20.3.4.441 NMAC for recordkeeping requirements related to these programs.)

**B.** The licensee or registrant shall use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are ALARA.

**C.** The licensee or registrant shall, at intervals not to exceed 12 months, review the radiation protection program content and implementation with all employees before beginning their job duties and annually thereafter.

**D.** To implement the ALARA requirements of Subsection B of this section, and notwithstanding the requirements in 20.3.4.413 NMAC, a constraint on air emissions of radioactive material to the environment, excluding Radon-222 and its daughters, shall be established by licensees such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 10 millirems (0.1 millisievert) per year from these emissions. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report the exceedance as provided in 20.3.4.453 NMAC and promptly take appropriate corrective action to ensure against recurrence.

[20.3.4.404 NMAC - Rp, 20.3.4.404 NMAC, 4/30/2009, A, 5/1/2024]

#### **20.3.4.405 OCCUPATIONAL DOSE LIMITS FOR ADULTS:**

**A. Annual limits.** The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to 20.3.4.410 NMAC, to the following dose limits:

(1) an annual limit, which is the more limiting of:

(a) the total effective dose equivalent being equal to 5 rems (0.05 sievert); or

(b) the sum of the deep dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 50 rems (0.5 sievert); and

(2) the annual limits to the lens of the eye, to the skin of the whole body, and to the skin of extremities which are:

(a) a lens dose equivalent of 15 rems (0.15 sievert); and

(b) a shallow dose equivalent of 50 rems (0.5 sievert) to the skin of the whole body or to the skin of any extremity.

**B.** Doses received in excess of the annual limits, including doses received during accidents, emergencies and planned special exposures, shall be subtracted from the limits for planned special exposures that the individual may receive during the current year and during the individual's lifetime (see Subsection E of 20.3.4.410 NMAC).

### **C. Determining, assessing and assigning dose equivalent.**

(1) When the external exposure is determined by measurement with an external personal monitoring device, the deep dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the department. The assigned shallow-dose equivalent must be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. The deep-dose equivalent, lens dose equivalent and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

(2) **Working with fluoroscopic equipment.** When a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in Paragraph (5) of Subsection A of 20.3.4.417 NMAC, the effective dose equivalent for external radiation shall be determined as follows:

(a) when only one individual monitoring device is used and it is located at the neck outside the protective apron, the reported deep dose equivalent shall be the effective dose equivalent for external radiation; or

(b) when only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in Subsection A of this section, the reported deep dose equivalent value multiplied by 0.3 shall be the effective dose equivalent for external radiation; or

(c) when individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron multiplied by 1.5 and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron multiplied by 0.04.

**D. DAC and ALI.** Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in table I of 20.3.4.461 NMAC, and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.

**E. Uranium limits.** Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity (see table note 3 of 20.3.4.461 NMAC.)

**F. Prior dose.** The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose

received while employed by any other person during the current year (see 20.3.4.409 NMAC).

[20.3.4.405 NMAC - Rp, 20.3.4.405 NMAC, 04/30/2009; A, 06/30/2011]

#### **20.3.4.406 COMPLIANCE WITH REQUIREMENTS FOR SUMMATION OF EXTERNAL AND INTERNAL DOSES:**

**A.** If the licensee or registrant is required to monitor pursuant to both Subsections A and B of 20.3.4.417 NMAC, the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee or registrant is required to monitor only pursuant to either Subsection A or Subsection B of 20.3.4.417 NMAC, then summation is not required to demonstrate compliance with the dose limits. The licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses pursuant to Subsections B, C and D of this section. The dose equivalents for the lens of the eye, the skin and the extremities are not included in the summation, but are subject to separate limits.

**B. Intake by Inhalation.** If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

- (1) the sum of the fractions of the inhalation ALI for each radionuclide; or
- (2) the total number of derived air concentration-hours (DAC-hours) for all radionuclides divided by 2,000; or
- (3) the sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit; for purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors,  $w_T$ , and the committed dose equivalent,  $H_{T,50}$ , per unit intake is greater than 10 percent of the maximum weighted value of  $H_{T,50}$ , that is,  $w_T H_{T,50}$ , per unit intake for any organ or tissue.

**C. Intake by Oral Ingestion.** If the occupationally exposed individual receives an intake of radionuclides by oral ingestion greater than 10 percent of the applicable oral ALI, the licensee or registrant shall account for this intake and include it in demonstrating compliance with the limits.

**D. Intake through Wounds or Absorption through Skin.** The licensee or registrant shall evaluate and, to the extent practical, account for intakes through wounds or skin absorption. The intake through intact skin has been included in the calculation of DAC for hydrogen-3 and does not need to be evaluated or accounted for pursuant to Subsection D of 20.3.4.406 NMAC.

[20.3.4.406 NMAC - Rp, 20.3.4.406 NMAC, 04/30/2009]

**20.3.4.407 DETERMINATION OF EXTERNAL DOSE FROM AIRBORNE RADIOACTIVE MATERIAL:**

**A.** Licensees or registrants shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, lens dose equivalent and shallow dose equivalent from external exposure to the radioactive cloud (see 20.3.4.461 NMAC, table notes 1 and 2).

**B.** Airborne radioactivity measurements and DAC values shall not be used as the primary means to assess the deep dose equivalent when the airborne radioactive material includes radionuclides other than noble gases or if the cloud of airborne radioactive material is not relatively uniform. The determination of the deep dose equivalent to an individual shall be based upon measurements using instruments or individual monitoring devices.

[20.3.4.407 NMAC - Rp, 20.3.4.407 NMAC, 04/30/2009]

**20.3.4.408 DETERMINATION OF INTERNAL EXPOSURE:**

**A.** For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee or registrant shall, when required pursuant to 20.3.4.417 NMAC, take suitable and timely measurements of:

- (1) concentrations of radioactive materials in air in work areas; or
- (2) quantities of radionuclides in the body; or
- (3) quantities of radionuclides excreted from the body; or
- (4) combinations of these measurements.

**B.** Unless respiratory protective equipment is used, as provided in 20.3.4.423 NMAC, or the assessment of intake is based on bioassays, the licensee or registrant shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

**C.** When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior of the material in an individual is known, the licensee or registrant may:

- (1) use that information to calculate the committed effective dose equivalent, and, if used, the licensee or registrant shall document that information in the individual's record;

**(2)** upon prior approval of the department, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

**(3)** separately assess the contribution of fractional intakes of class D, W or Y compounds of a given radionuclide to the committed effective dose equivalent (see 20.3.4.461 NMAC).

**D.** If the licensee or registrant chooses to assess intakes of class Y material using the measurements given in Paragraphs (2) or (3) of Subsection A of this section, the licensee or registrant may delay the recording and reporting of the assessments for periods up to 7 months, unless otherwise required by 20.3.4.452 NMAC or 20.3.4.453 NMAC. This delay permits the licensee or registrant to make additional measurements basic to the assessments.

**E.** If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

**(1)** the sum of the ratios of the concentration to the appropriate DAC value, that is, D, W or Y, from 20.3.4.461 NMAC for each radionuclide in the mixture; or

**(2)** the ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

**F.** If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

**G.** When a mixture of radionuclides in air exists, a licensee or registrant may disregard certain radionuclides in the mixture if:

**(1)** the licensee or registrant uses the total activity of the mixture in demonstrating compliance with the dose limits in 20.3.4.405 NMAC and in complying with the monitoring requirements in Subsection B of 20.3.4.417 NMAC; and

**(2)** the concentration of any radionuclide disregarded is less than 10 percent of its DAC; and

**(3)** the sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed 30 percent.

**H.** When determining the committed effective dose equivalent, the following information may be considered:

(1) in order to calculate the committed effective dose equivalent, the licensee or registrant may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 5 rems (0.05 sievert) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent;

(2) for an ALI and the associated DAC determined by the nonstochastic organ dose limit of 50 rems (0.5 sievert), the intake of radionuclides that would result in a committed effective dose equivalent of 5 rems (0.05 sievert), that is, the stochastic ALI, is listed in parentheses in table I of 20.3.4.461 NMAC; the licensee or registrant may, as a simplifying assumption, use the stochastic ALI to determine committed effective dose equivalent; however, if the licensee or registrant uses the stochastic ALI, the licensee or registrant shall also demonstrate that the limit in Paragraph (2) of Subsection A of 20.3.4.405 NMAC is met.

[20.3.4.408 NMAC - Rp, 20.3.4.408 NMAC, 04/30/2009]

#### **20.3.4.409 DETERMINATION OF PRIOR OCCUPATIONAL DOSE:**

**A.** For each individual who may enter the licensee's or registrant's restricted area and is likely to receive, in a year, an occupational dose requiring monitoring pursuant to 20.3.4.417 NMAC, the licensee or registrant shall determine the occupational radiation dose received during the current year.

**B.** Prior to permitting an individual to participate in a planned special exposure, the licensee or registrant shall determine:

(1) the internal and external doses from all previous planned special exposures; and

(2) all doses in excess of the limits, including doses received during accidents and emergencies, received during the lifetime of the individual.

**C.** In complying with the requirements of Subsections A or B of this section, a licensee or registrant may:

(1) accept, as a record of the occupational dose that the individual received during the current year, a written signed statement from the individual, or from the individual's most recent employer for work involving radiation exposure, that discloses the nature and the amount of any occupational dose that the individual received during the current year; and

(2) accept, as the record of lifetime cumulative radiation dose, a form *cumulative occupational dose history* or equivalent, signed by the individual and countersigned by an appropriate official of the most recent employer for work involving

radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant; and

(3) obtain reports of the individual's dose equivalent from the most recent employer for work involving radiation exposure, or the individual's current employer, if the individual is not employed by the licensee or registrant, by telephone, telegram, facsimile or letter; the licensee or registrant shall request a written verification of the dose data if the authenticity of the transmitted report cannot be established.

#### **D. Recording exposure history.**

(1) The licensee or registrant shall record the exposure history of each individual, as required by Subsections A and B of this section, on department form *cumulative occupational dose history*, or other clear and legible record, including all the information required by that form. The form or record shall show each period in which the individual received occupational exposure to radiation or radioactive material and shall be signed by the individual who received the exposure. For each period for which the licensee or registrant obtains reports, the licensee or registrant shall use the dose shown in the report in preparing department form *cumulative occupational dose history* or equivalent. For any period in which the licensee or registrant does not obtain a report, the licensee or registrant shall place a notation on department form *cumulative occupational dose history* or equivalent indicating the periods of time for which data are not available.

(2) Licensees or registrants are not required to partition historical dose between external dose equivalent(s) and internal committed dose equivalent(s). Further, occupational exposure histories obtained and recorded on department form *cumulative occupational dose history* or equivalent before the effective date of these regulations, might not have included effective dose equivalent, but may be used in the absence of specific information on the intake of radionuclides by the individual.

**E.** If the licensee or registrant is unable to obtain a complete record of an individual's current and previously accumulated occupational dose, the licensee or registrant shall assume:

(1) in establishing administrative controls pursuant to Subsection F of 20.3.4.405 NMAC for the current year, that the allowable dose limit for the individual is reduced by 1.25 rems (12.5 millisieverts) for each quarter for which records were unavailable and the individual was engaged in activities that could have resulted in occupational radiation exposure; and

(2) that the individual is not available for planned special exposures.

**F.** The licensee or registrant shall retain the records on department form *cumulative occupational dose history* or equivalent until the department terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain

records used in preparing department form *cumulative occupational dose history* or equivalent for 3 years after the record is made.

[20.3.4.409 NMAC - Rp, 20.3.4.409 NMAC, 04/30/2009; A, 06/30/2011]

#### **20.3.4.410 PLANNED SPECIAL EXPOSURES:**

A licensee or registrant may authorize an adult worker to receive doses in addition to and accounted for separately from the doses received under the limits specified in 20.3.4.405 NMAC provided that each of the following conditions is satisfied:

**A.** the licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the dose estimated to result from the planned special exposure are unavailable or impractical;

**B.** the licensee or registrant, and employer if the employer is not the licensee or registrant, specifically authorizes the planned special exposure, in writing, before the exposure occurs;

**C.** before a planned special exposure, the licensee or registrant ensures that each individual involved is:

**(1)** informed of the purpose of the planned operation;

**(2)** informed of the estimated doses and associated potential risks and specific radiation levels or other conditions that might be involved in performing the task; and

**(3)** instructed in the measures to be taken to keep the dose ALARA considering other risks that may be present;

**D.** prior to permitting an individual to participate in a planned special exposure, the licensee or registrant ascertains prior doses as required by Subsection B of 20.3.4.409 NMAC during the lifetime of the individual for each individual involved;

**E.** subject to Subsection B of 20.3.4.405 NMAC, the licensee or registrant shall not authorize a planned special exposure that would cause an individual to receive a dose from all planned special exposures and all doses in excess of the limits to exceed:

**(1)** the numerical values of any of the dose limits in Subsection A of 20.3.4.405 NMAC in any year; and

**(2)** five times the annual dose limits in Subsection A of 20.3.4.405 NMAC during the individual's lifetime;

**F.** the licensee or registrant maintains records of the conduct of a planned special exposure in accordance with 20.3.4.445 NMAC and submits a written report in accordance with 20.3.4.454 NMAC;

**G.** the licensee or registrant records the best estimate of the dose resulting from the planned special exposure in the individual's record and informs the individual, in writing, of the dose within 30 days from the date of the planned special exposure; the dose from planned special exposures shall not be considered in controlling future occupational dose of the individual pursuant to Subsection A of 20.3.4.405 NMAC but shall be included in evaluations required by Subsections D and E of this section.

[20.3.4.410 NMAC - Rp, 20.3.4.410 NMAC, 04/30/2009]

#### **20.3.4.411 OCCUPATIONAL DOSE LIMITS FOR MINORS:**

The annual occupational dose limits for minors are 10 percent of the annual occupational dose limits specified for adult workers in 20.3.4.405 NMAC.

[20.3.4.411 NMAC - Rp, 20.3.4.411 NMAC, 04/30/2009]

#### **20.3.4.412 DOSE EQUIVALENT TO AN EMBRYO/FETUS:**

**A.** The licensee or registrant shall ensure that the dose equivalent to the embryo/fetus during the entire pregnancy, due to the occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 millisieverts) (see 20.3.4.446 NMAC for recordkeeping requirements).

**B.** The licensee or registrant shall make efforts to avoid substantial variation above a uniform monthly exposure rate to a declared pregnant woman so as to satisfy the limit in Subsection A of this section.

**C.** The dose equivalent to the embryo/fetus is the sum of:

**(1)** the dose equivalent to the embryo/fetus resulting from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman; and

**(2)** the deep dose equivalent that is most representative of the dose to the embryo/fetus from external radiation, that is, in the mother's lower torso region:

**(a)** if multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose to the embryo/fetus, in accordance with Subsection C of 20.3.4.405 NMAC; or

**(b)** if multiple measurements have been made, assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device which is most representative of the dose to the embryo/fetus shall be the dose to the

embryo/fetus; assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo/fetus is not required unless that dose is also the most representative deep dose equivalent for the region of the embryo/fetus.

**D.** If the dose equivalent to the embryo/fetus is found to have exceeded 0.5 rem (5 millisieverts), or is within 0.05 rem (0.5 millisievert) of this dose, by the time the woman declares the pregnancy to the licensee or registrant, the licensee or registrant shall be deemed to be in compliance with Subsection A of this section if the additional dose equivalent to the embryo/fetus does not exceed 0.05 rem (0.5 millisievert) during the remainder of the pregnancy.

[20.3.4.412 NMAC - Rp, 20.3.4.412 NMAC, 04/30/2009]

#### **20.3.4.413 DOSE LIMITS FOR INDIVIDUAL MEMBERS OF THE PUBLIC:**

**A.** Each licensee or registrant shall conduct operations so that:

**(1)** the total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed 0.1 rem (1 millisievert) in a year, exclusive of the dose contributions from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under Subsection I of 20.3.7.703 NMAC, from voluntary participation in medical research programs, and from the licensee's disposal of radioactive material into sanitary sewerage in accordance with 20.3.4.435 NMAC; and

**(2)** the dose in any unrestricted area from external sources, exclusive of dose contributions from patients administered radioactive material and released under Subsection I of 20.3.7.703 NMAC, does not exceed 0.002 rem (0.02 millisievert) in any one hour.

**B.** If the licensee or registrant permits members of the public to have access to controlled areas, the limits for members of the public continue to apply to those individuals.

**C.** A licensee, registrant, or an applicant for a license or registration may apply for prior department authorization to operate up to an annual dose limit for an individual member of the public of 0.5 rem (5 millisieverts). This application shall include the following information:

**(1)** demonstration of the need for and the expected duration of operations in excess of the limit in Subsection A of this section;

**(2)** the licensee's or registrant's program to assess and control dose within the 0.5 rem (5 millisieverts) annual limit;

(3) the procedures to be followed to maintain the dose ALARA.

D. In addition to the requirements of this part, a licensee or registrant subject to the provisions of the EPA's generally applicable environmental radiation standards in 40 CFR 190 shall comply with those standards.

E. The department may impose additional restrictions on radiation levels in unrestricted areas and on the total quantity of radionuclides that a licensee or registrant may release in effluents in order to restrict the collective dose.

F. Notwithstanding Paragraph (1) of Subsection A of this section, a licensee may permit visitors to an individual who cannot be released, under Subsection I of 20.3.7.703 NMAC, to receive a radiation dose greater than 0.1 rem (1 millisievert) if:

(1) the radiation dose received does not exceed 0.5 rem (5 millisieverts); and

(2) the authorized user, as defined in 20.3.7 NMAC, has determined before the visit that it is appropriate.

[20.3.4.413 NMAC - Rp, 20.3.4.413 NMAC, 04/30/2009]

**20.3.4.414 COMPLIANCE WITH DOSE LIMITS FOR INDIVIDUAL MEMBERS OF THE PUBLIC:**

A. The licensee or registrant shall make or cause to be made surveys of radiation levels in unrestricted and controlled areas and radioactive materials in effluents released to unrestricted and controlled areas to demonstrate compliance with the dose limits in 20.3.4.413 NMAC for individual members of the public.

B. A licensee or registrant shall show compliance with the annual dose limit in 20.3.4.413 NMAC by:

(1) demonstrating by measurement or calculation that the total effective dose equivalent to the individual likely to receive the highest dose from the licensed or registered operation does not exceed the annual dose limit; or

(2) demonstrating that:

(a) the annual average concentrations of radioactive material released in gaseous and liquid effluents at the boundary of the unrestricted area do not exceed the values specified in table II of 20.3.4.461 NMAC; and

(b) if an individual were continuously present in an unrestricted area, the dose from external sources would not exceed 0.002 rem (0.02 millisievert) in an hour and 0.05 rem (0.5 millisievert) in a year.

C. Upon approval from the department, the licensee or registrant may adjust the effluent concentration values in table II of 20.3.4.461 NMAC for members of the public, to take into account the actual physical and chemical characteristics of the effluents, such as, aerosol size distribution, solubility, density, radioactive decay equilibrium and chemical form.

[20.3.4.414 NMAC - Rp, 20.3.4.414 NMAC, 04/30/2009]

#### **20.3.4.415 TESTING FOR LEAKAGE OR CONTAMINATION OF SEALED SOURCES:**

A. The licensee in possession of any sealed source shall assure that:

(1) each sealed source, except as specified in Subsection B of this section, is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee has a certificate from the transferor indicating that the sealed source was tested within the frequencies specified in Paragraphs (2) and (3) of this subsection, before transfer to the licensee;

(2) each sealed source that is not designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed 6 months, or at alternative intervals specified by the source manufacturer and as approved by the department, NRC or an agreement state;

(3) each sealed source that is designed to emit alpha particles is tested for leakage or contamination at intervals not to exceed 3 months, or at alternative intervals specified by the source manufacturer and as approved by the department, NRC or an agreement state;

(4) for each sealed source that is required to be tested for leakage or contamination, at any other time there is reason to suspect that the sealed source might have been damaged or might be leaking, the licensee shall assure that the sealed source is tested for leakage or contamination before further use;

(5) tests for leakage for all sealed sources, except brachytherapy sources manufactured to contain radium, shall be capable of detecting the presence of 0.005 microcuries (185 becquerels) of radioactive material on a test sample; test samples shall be taken from the sealed source or from the surfaces of the container in which the sealed source is stored or mounted on which one might expect contamination to accumulate; for a sealed source contained in a device, test samples are obtained when the source is in the "off" position;

(6) the test for leakage for brachytherapy sources manufactured to contain radium shall be capable of detecting an absolute leakage rate of 0.001 microcuries (37 becquerels) of radon-222 in a 24 hour period when the collection efficiency for radon-

222 and its daughters has been determined with respect to collection method, volume and time; and

(7) tests for contamination from radium daughters shall be taken on the interior surface of brachytherapy source storage containers and shall be capable of detecting the presence of 0.005 microcuries (185 becquerels) of a radium daughter which has a half-life greater than 4 days.

**B.** A licensee need not perform tests for leakage or contamination on the following sealed sources:

(1) sealed sources containing only radioactive material with a half-life of less than 30 days;

(2) sealed sources containing only radioactive material as a gas;

(3) sealed sources containing 100 microcuries (3.7 megabecquerels) or less of beta or photon-emitting material or 10 microcuries (370 kilobecquerels) or less of alpha-emitting material;

(4) sealed sources containing only hydrogen-3;

(5) seeds of iridium-192 encased in nylon ribbon; and

(6) sealed sources, except teletherapy and brachytherapy sources, which are not being used and identified as in storage; however, the licensee shall test each such sealed source for leakage or contamination and receive the test results before any use or transfer of the source unless it has been tested for leakage or contamination within such frequency as specified in Paragraphs (2) and (3) of Subsection A of this section before the date of use or transfer.

**C.** Tests for leakage or contamination from sealed sources shall be performed by persons specifically authorized by the department.

**D.** Test results shall be kept in units of becquerel or microcurie and maintained for inspection by the department. Records of test results for sealed sources shall be made pursuant to 20.3.4.443 NMAC.

**E.** The following shall be considered evidence that a sealed source is leaking:

(1) the presence of 0.005 microcuries (185 becquerels) or more of removable contamination on any test sample;

(2) leakage of 0.001 microcuries (37 becquerels) of radon-222 per 24 hours for brachytherapy sources manufactured to contain radium; and

(3) the presence of removable contamination resulting from the decay of 0.005 microcuries (185 becquerels) or more of radium.

F. The licensee shall immediately withdraw a leaking sealed source from use and shall take action to prevent the spread of contamination. The leaking sealed source shall be repaired or disposed of in accordance with this part.

G. Reports of test results for leaking or contaminated sealed sources shall be made pursuant to 20.3.4.458 NMAC.

[20.3.4.415 NMAC - Rp, 20.3.4.415 NMAC, 04/30/2009]

#### **20.3.4.416 GENERAL REQUIREMENTS FOR SURVEY AND MONITORING:**

A. Each licensee or registrant shall make, or cause to be made, surveys of areas, including the subsurface, that:

(1) may be necessary to demonstrate compliance with this part; and

(2) are necessary under the circumstances to evaluate:

(a) the magnitude and extent of radiation levels;

(b) concentrations or quantities of radioactive material and residual radioactivity;

(c) the potential radiological hazards of the radiation levels and residual radioactivity detected; and

(d) notwithstanding 10 CFR 20 or equivalent state regulations of this part, records from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning, and such records must be retained in accordance with the applicable regulations in 10 CFR parts 30, 40, 50, 70, or 72.30 or equivalent state regulations.

B. The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements (e.g. dose rate and effluent monitoring) are calibrated at intervals not to exceed 12 months, except when a more frequent interval is specified in another applicable part of this chapter or in a license condition.

C. All personnel dosimeters (except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremity) that require processing to determine the radiation dose and that are used by licensees and registrants to comply with 20.3.4.405 NMAC, with other applicable provisions of this chapter or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

(1) holding current personnel dosimetry accreditation from the national voluntary laboratory accreditation program (NVLAP) of the national institute of standards and technology (NIST); and

(2) approved in this accreditation process for the type of radiation or radiations included in the national voluntary laboratory accreditation program (NVLAP) program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored.

**D.** The licensee or registrant shall ensure that adequate precautions are taken to prevent a deceptive exposure of an individual monitoring device.

[20.3.4.416 NMAC - Rp, 20.3.4.416 NMAC, 04/30/2009; A, 06/13/2017]

#### **20.3.4.417 CONDITIONS REQUIRING INDIVIDUAL MONITORING OF EXTERNAL AND INTERNAL OCCUPATIONAL DOSE:**

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of this part. As a minimum the following requirements shall be met.

**A.** Each licensee or registrant shall monitor occupational exposure to radiation from licensed and unlicensed radiation sources under the control of the licensee or registrant and shall supply and require the use of individual monitoring devices by:

(1) adults likely to receive, in 1 year from sources external to the body, a dose in excess of 10 percent of the limits in Subsection A of 20.3.4.405 NMAC;

(2) minors likely to receive, in 1 year, from radiation sources external to the body, a deep dose equivalent in excess of 0.1 rem (1 millisievert), a lens dose equivalent in excess of 0.15 rem (1.5 millisieverts), or a shallow dose equivalent to the skin or to the extremities in excess of 0.5 rem (5 millisieverts);

(3) declared pregnant women likely to receive during the entire pregnancy, from radiation sources external to the body, a deep dose equivalent in excess of 0.1 rem (1 millisievert) (note: all of the occupational doses in Subsection A of 20.3.4.405 NMAC continue to be applicable to the declared pregnant worker as long as the embryo/fetus dose limit is not exceeded);

(4) individuals entering a high or very high radiation area; and

(5) individuals working with medical fluoroscopic equipment:

(a) an individual monitoring device used for the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection A of 20.3.4.412 NMAC, shall be located under the protective apron at the waist;

**(b)** an individual monitoring device used for eye dose equivalent shall be located at the neck, or an unshielded location closer to the eye, outside the protective apron; and

**(c)** when only one individual monitoring device is used to determine the effective dose equivalent for external radiation pursuant to Paragraph (2) of Subsection C of 20.3.4.405 NMAC, it shall be located at the neck outside the protective apron; when a second individual monitoring device is used, for the same purpose, it shall be located under the protective apron at the waist; the second individual monitoring device is required for a declared pregnant woman.

**B.** Each licensee or registrant shall monitor (see 20.3.4.408 NMAC) the occupational intake of radioactive material by and assess the committed effective dose equivalent to:

**(1)** adults likely to receive, in 1 year, an intake in excess of 10 percent of the applicable ALI(s) in columns 1 and 2 of table I of 20.3.4.461 NMAC;

**(2)** minors likely to receive, in 1 year, a committed effective dose equivalent in excess of 0.1 rem (1 millisievert); and

**(3)** declared pregnant women likely to receive, during the entire pregnancy, a committed effective dose equivalent in excess of 0.1 rem (1 millisievert).

**C.** Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with Subsection A of this section wear individual monitoring devices as follows:

**(1)** an individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded location of the whole body likely to receive the highest exposure; when a protective apron is worn, the location of the individual monitoring device is typically at the neck (collar); or

**(2)** an individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman, pursuant to Subsection A of 20.3.4.412 NMAC, shall be located at the waist under any protective apron being worn by the woman; or

**(3)** an individual monitoring device used for monitoring the eye dose equivalent, to demonstrate compliance with Subparagraph (a) of Paragraph (2) of Subsection A of 20.3.4.405 NMAC, shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye; or

**(4)** an individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with Subparagraph (b) of Paragraph (2) of

Subsection A of 20.3.4.405 NMAC, shall be worn on the extremity likely to receive the highest exposure; each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

[20.3.4.417 NMAC - Rp, 20.3.4.417 NMAC, 04/30/2009]

**20.3.4.418 CONTROL OF ACCESS TO HIGH RADIATION AREAS:**

**A.** The licensee or registrant shall ensure that each entrance or access point to a high radiation area has one or more of the following features:

(1) a control device that, upon entry into the area, causes the level of radiation to be reduced below that level at which an individual might receive a deep dose equivalent of 0.1 rem (1 millisievert) in 1 hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates; or

(2) a control device that energizes a conspicuous visible or audible alarm signal so that the individual entering the high radiation area and the supervisor of the activity are made aware of the entry; or

(3) entryways that are locked, except during periods when access to the areas is required, with positive control over each individual entry.

**B.** In place of the controls required by Subsection A of this section for a high radiation area, the licensee or registrant may substitute continuous direct or electronic surveillance that is capable of preventing unauthorized entry.

**C.** The licensee or registrant may apply to the department for approval of alternative methods for controlling access to high radiation areas.

**D.** The licensee or registrant shall establish the controls required by Subsections A and C of this section in a way that does not prevent individuals from leaving a high radiation area.

**E.** The licensee or registrant is not required to control each entrance or access point to a room or other area that is a high radiation area solely because of the presence of radioactive materials prepared for transport, and packaged and labeled in accordance with the regulations of the DOT provided that:

(1) the packages do not remain in the area longer than 3 days; and

(2) the dose rate at 1 meter from the external surface of any package does not exceed 0.01 rem (0.1 millisievert) per hour.

**F.** The licensee or registrant is not required to control entrance or access to rooms or other areas in hospitals solely because of the presence of patients containing

radioactive material, provided that there are personnel in attendance who are taking the necessary precautions to prevent the exposure of individuals to radiation or radioactive material in excess of the established limits in this part and to operate within the ALARA provisions of the licensee's or registrant's radiation protection program.

[20.3.4.418 NMAC - Rp, 20.3.4.418 NMAC, 04/30/2009]

#### **20.3.4.419 CONTROL OF ACCESS TO VERY HIGH RADIATION AREAS:**

In addition to the requirements in 20.3.4.418 NMAC, the licensee or registrant shall institute measures to ensure that an individual is not able to gain unauthorized or inadvertent access to areas in which radiation levels could be encountered at 500 rads (5 grays) or more in 1 hour at 1 meter from a source of radiation or any surface through which the radiation penetrates.

[20.3.4.419 NMAC - Rp, 20.3.4.419 NMAC, 04/30/2009]

#### **20.3.4.420 CONTROL OF ACCESS TO VERY HIGH RADIATION AREAS - IRRADIATORS:**

In addition to the requirements in 20.3.4.419 NMAC, the licensee shall comply with the requirements specified in 20.3.15 NMAC for access control.

[20.3.4.420 NMAC - Rp, 20.3.4.420 NMAC, 04/30/2009]

#### **20.3.4.421 USE OF PROCESS OR OTHER ENGINEERING CONTROLS:**

The licensee or registrant shall use, to the extent practicable, process or other engineering controls, such as, containment, decontamination or ventilation, to control the concentrations of radioactive material in air.

[20.3.4.421 NMAC - Rp, 20.3.4.421 NMAC, 04/30/2009]

#### **20.3.4.422 USE OF OTHER CONTROLS:**

**A.** When it is not practical to apply process or other engineering controls to control the concentrations of radioactive material in the air to values below those that define an airborne radioactivity area, the licensee or registrant shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

- (1) control of access;
- (2) limitation of exposure times;
- (3) use of respiratory protection equipment; or

- (4) other controls.

**B.** If the licensee or registrant performs an ALARA analysis to determine whether or not respirators should be used, the licensee or registrant may consider safety factors other than radiological factors. The licensee or registrant should also consider the impact of respirator use on workers' industrial health and safety.

[20.3.4.422 NMAC - Rp, 20.3.4.422 NMAC, 04/30/2009]

#### **20.3.4.423 USE OF INDIVIDUAL RESPIRATORY PROTECTION EQUIPMENT:**

The requirements of this section apply to licensees and registrants who assign or permit the use of respiratory protection equipment to limit the intake of radioactive material.

**A.** The licensee or registrant shall use only respiratory protection equipment that is tested and certified by the national institute for occupational safety and health (NIOSH) except as otherwise noted in this part.

**B.** If the licensee or registrant wishes to use equipment that has not been tested or certified by national institute for occupational safety and health (NIOSH), or for which there is no schedule for testing or certification, the licensee or registrant shall submit an application to the department for authorized use of this equipment except as provided in this part. The application shall include evidence that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use. This shall be demonstrated either by testing made by the licensee or registrant, or on the basis of reliable test information.

**C.** The licensee or registrant shall implement and maintain a respiratory protection program that includes:

- (1) air sampling sufficient to identify the potential hazard, permit proper equipment selection and estimate doses;
- (2) surveys and bioassays, as necessary, to evaluate actual intakes;
- (3) testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use;
- (4) written procedures regarding:
  - (a) monitoring, including air sampling and bioassays;
  - (b) supervision and training of respirator users;
  - (c) fit testing;

- (d) respirator selection;
  - (e) breathing air quality;
  - (f) inventory and control;
  - (g) storage, issuance, maintenance, repair, testing and quality assurance of respiratory protection equipment;
  - (h) recordkeeping; and
  - (i) relief from respirator use and limitations on periods of respirator use;
- (5) determination by a physician that the individual user is medically fit to use respiratory protection equipment; before:
- (a) the initial fitting of a face sealing respirator;
  - (b) before the first field use of non-face sealing respirators; and
  - (c) either every 12 months thereafter, or periodically at a frequency determined by a physician;
- (6) fit testing, with fit factor greater than or equal to 10 times the APF for negative pressure devices, and a fit factor that is greater than or equal to 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed 1 year; fit testing shall be performed with the facepiece operating in the negative pressure mode.

**D.** The licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions or any other conditions that might require such relief.

**E.** The licensee or registrant shall also consider limitations appropriate to the type and mode of use. When selecting respiratory devices the licensee or registrant shall provide for vision correction, adequate communication, low temperature work environments and the concurrent use of other safety or radiological protection equipment. The licensee or registrant shall use equipment in such a way as not to interfere with the proper operation of the respirator.

**F.** Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty

extricating himself or herself. The standby persons shall be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons shall be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

**G.** Atmosphere-supplying respirators shall be supplied with respirable air of grade D quality or better as defined by the compressed gas association in publication G-7.1, *commodity specification for air*, 1997, and included in the regulations of the occupational safety and health administration at 29 CFR 1910.134(i)(1)(ii)(A) through (E). Grade D quality air criteria include:

- (1) oxygen content (v/v) of 19.5-23.5 percent;
- (2) hydrocarbon (condensed) content of 5 milligrams per cubic meter of air or less;
- (3) carbon monoxide content of 10 parts per million (ppm) or less;
- (4) carbon dioxide content of 1,000 parts per million (ppm) or less; and
- (5) lack of noticeable odor.

**H.** The licensee or registrant shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face-facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

**I.** In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value shall be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

**J. Application for Use of Higher Assigned Protection Factors.** The licensee or registrant shall obtain authorization from the department before using assigned protection factors in excess of those specified in 20.3.4.460 NMAC. The department may authorize a licensee or registrant to use higher assigned protection factors on receipt of an application that:

(1) describes the situation for which a need exists for higher protection factors; and

(2) demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

[20.3.4.423 NMAC - Rp, 20.3.4.423 NMAC, 04/30/2009]

#### **20.3.4.424 FURTHER RESTRICTIONS ON THE USE OF RESPIRATORY PROTECTION EQUIPMENT:**

The department may impose restrictions in addition to those in sections 20.3.4.422 NMAC, 20.3.4.423 NMAC and 20.3.4.460 NMAC, in order to:

A. ensure that the respiratory protection program of the licensee or registrant is adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

B. limit the extent to which a licensee or registrant may use respiratory protection equipment instead of process or other engineering controls.

[20.3.4.424 NMAC - Rp, 20.3.4.424 NMAC, 04/30/2009]

#### **20.3.4.425 SECURITY AND CONTROL OF LICENSED OR REGISTERED SOURCES OF RADIATION:**

A. The licensee shall secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. The licensee possessing category 1 and category 2 quantities of radioactive materials shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

(1) any reference to the commission or NRC shall be deemed a reference to the department;

(2) 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

(3) 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.27(c), 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable; and

(4) for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), and 10 CFR 37.81, the licensee shall use the following address when applicable: New Mexico environment department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

**B.** The licensee shall control and maintain constant surveillance, and use devices or administrative procedures to prevent unauthorized access to licensed radioactive material that is in a controlled or unrestricted area and that is not in storage.

**C.** The registrant shall secure registered radiation machines from unauthorized removal.

**D.** The registrant shall use devices or administrative procedures to prevent unauthorized use of registered radiation machines.

[20.3.4.425 NMAC - Rp, 20.3.4.425 NMAC, 4/30/2009; A, 8/10/2021]

#### **20.3.4.426 RADIOLOGICAL CRITERIA FOR LICENSE TERMINATION:**

##### **A. General provisions and scope.**

**(1)** The criteria in this part apply to the decommissioning of any facility licensed under this chapter as well as other facilities subject to the department's jurisdiction under the Act. For low-level waste disposal facilities licensed under 20.3.13 NMAC, the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities.

**(2)** The criteria in this section do not apply to sites which:

**(a)** have been decommissioned prior to the effective date of the rule; or,

**(b)** have previously submitted and received department approval on a license termination plan or decommissioning plan that is compatible with applicable department criteria.

**(3)** After a site has been decommissioned and the license terminated in accordance with the criteria in this section, the department will require additional cleanup only if, based on new information, it determines that the criteria of this section were not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

**(4)** When calculating TEDE to the average member of the critical group the licensee shall determine the peak annual TEDE dose expected within the first 1000 years after decommissioning.

**B. Radiological criteria for unrestricted use.** A site will be considered acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 millirems (0.25 millisievert) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are ALARA. Determination of the levels which are ALARA must take into account

consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

**C. Criteria for License Termination under Restricted Conditions.** A site will be considered acceptable for license termination under restricted conditions if:

**(1)** the licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of Subsection B of this section would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA; determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal;

**(2)** the licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 millirems (0.25 millisievert) per year;

**(3)** the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site; acceptable financial assurance mechanisms are:

**(a)** funds placed into a trust segregated from the licensee's assets and outside the licensee's administrative control, and in which the adequacy of the trust funds is to be assessed based on an assumed annual one percent real rate of return on investment;

**(b)** surety method, insurance, or other guarantee method as described in Paragraph (2) of Subsection F of 20.3.3.311 NMAC;

**(c)** a statement of intent in the case of federal, state, or local government licensees, as described in Paragraph (4) of Subsection F of 20.3.3.311 NMAC; or

**(d)** when a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity;

**(4)** the licensee has submitted a decommissioning plan or license termination plan to the department indicating the licensee's intent to decommission in accordance with Subsection E of 20.3.3.318 NMAC, and specifying that the licensee intends to decommission by restricting use of the site; the licensee shall document in the license termination plan or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice:

**(a)** licensees proposing to decommission by restricting use of the site shall seek advice from such affected parties regarding the following matters concerning the proposed decommissioning:

**(i)** whether provisions for institutional controls proposed by the licensee: **1)** will provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 millirems (0.25 millisievert) TEDE per year; **2)** will be enforceable; and **3)** will not impose undue burdens on the local community or other affected parties;

**(ii)** whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site;

**(b)** in seeking advice on the issues identified in Subparagraph (a) of this paragraph, the licensee shall provide for:

**(i)** participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

**(ii)** an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

**(iii)** a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues; and

**(5)** residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is ALARA and would not exceed either:

**(a)** 100 millirems (1 millisievert) per year; or

**(b)** 500 millirems (5 millisieverts) per year provided the licensee:

**(i)** demonstrates that further reductions in residual radioactivity necessary to comply with the 100 millirems per year (1 millisievert per year) value of Subparagraph (a) of this paragraph are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

**(ii)** makes provisions for durable institutional controls; and

**(iii)** provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a

site, both to carry out periodic rechecks of the site no less frequently than every five years to assure that the institutional controls remain in place as necessary to meet the criteria of Paragraph (2) of this subsection and to assume and carry out responsibilities for any necessary control and maintenance of those controls; acceptable financial assurance mechanisms are those in Paragraph (3) of this subsection.

#### **D. Alternate Criteria for License Termination.**

**(1)** The department may terminate a license using alternate criteria greater than the dose criterion of Subsection B of this section, Paragraph (2) of Subsection C of this section, and Item (i) of Subparagraph (a) of Paragraph (4) of Subsection C of this section, if the licensee:

**(a)** provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the 100 millirems per year (1 millisievert per year) limit of 20.3.4.413 NMAC, by submitting an analysis of possible sources of exposure;

**(b)** has employed to the extent practical restrictions on site use according to the provisions of Subsection C of this section in minimizing exposures at the site;

**(c)** reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal; and

**(d)** has submitted a decommissioning plan or license termination plan to the department indicating the licensee's intent to decommission in accordance with Subsection E of 20.3.3.318 NMAC, and specifying that the licensee proposes to decommission by use of alternate criteria; the licensee shall document in the decommissioning plan or license termination plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice; in seeking such advice, the licensee shall provide for:

**(i)** participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

**(ii)** an opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

**(iii)** a publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues.

(e) Has provided sufficient financial assurance in the form of a trust fund to enable

an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site.

(2) The use of alternate criteria to terminate a license requires the approval of the department after consideration of the department staff's recommendations that will address any comments provided by state and federal agencies and any public comments submitted pursuant to Subsection E of this section.

**E. Public Notification and Public Participation.** Upon the receipt of a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site pursuant to Subsection C or D of this section, or whenever the department deems such notice to be in the public interest, the department shall:

(1) notify and solicit comments from:

(a) local governments in the vicinity of the site and any Indian nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(b) the EPA for cases where the licensee proposes to release a site pursuant to Subsection D of this section; and

(2) publish a notice in the state register and in a forum, such as local newspapers, letters to state or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from the public and affected parties; further, that the public notice may be published in any language when appropriate.

**F. Minimization of contamination.** Licensee shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface, in accordance with the existing radiation protection requirements in 20.3.4.404 NMAC and the radiological criteria for license termination in 20.3.4.426 NMAC.

[20.3.4.426 NMAC - Rp, 20.3.4.426 NMAC, 04/30/2009; A, 06/13/2017]

#### **20.3.4.427 CAUTION SIGNS:**

**A. Standard Radiation Symbol.** Unless otherwise authorized by the department, the symbol prescribed by this section shall use the colors magenta, purple or black on yellow background. The symbol prescribed is the three-bladed design as follows:

(1) cross-hatched area is to be magenta, purple or black; and

(2) the background is to be yellow.

**B. Exception to Color Requirements for Standard Radiation Symbol.**

Notwithstanding the requirements of Subsection A of this section, licensees or registrants are authorized to label sources, source holders or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

**C. Additional Information on Signs and Labels.** In addition to the contents of signs and labels prescribed in this part, the licensee or registrant shall provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

[20.3.4.427 NMAC - Rp, 20.3.4.427 NMAC, 04/30/2009]

**20.3.4.428 POSTING REQUIREMENTS:**

**A. Posting of Radiation Areas.** The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "Caution, Radiation Area."

**B. Posting of High Radiation Areas.** The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "Caution, High Radiation Area" or "Danger, High Radiation Area."

**C. Posting of Very High Radiation Areas.** The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "Grave Danger, Very High Radiation Area."

**D. Posting of Airborne Radioactivity Areas.** The licensee or registrant shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "Caution, Airborne Radioactivity Area" or "Danger, Airborne Radioactivity Area."

**E. Posting of Areas or Rooms in Which Licensed or Registered Material is Used or Stored.** The licensee or registrant shall post each area or room in which there is used or stored an amount of licensed or registered material exceeding 10 times the quantity of such material specified in 20.3.4.462 NMAC with a conspicuous sign or signs bearing the radiation symbol and the words "Caution, Radioactive Material" or "Danger, Radioactive Material."

[20.3.4.428 NMAC - Rp, 20.3.4.428 NMAC, 04/30/2009]

**20.3.4.429 EXCEPTIONS TO POSTING REQUIREMENTS:**

**A.** A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than 8 hours, if each of the following conditions is met:

(1) the sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in this part; and

(2) the area or room is subject to the licensee's or registrant's control.

**B.** Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to 20.3.4.428 NMAC provided that the patient could be released from licensee control pursuant to Subsection I of 20.3.7.703 NMAC.

**C.** A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.005 rem (0.05 millisievert) per hour.

**D.** A room or area is not required to be posted with a caution sign because of the presence of radiation machines provided the radiation level at 30 centimeters from the radiation machine housing does not exceed 0.005 rem (0.05 millisievert) per hour.

**E.** Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under 20.3.4.428 NMAC if:

(1) access to the room is controlled pursuant to Subsection E of 20.3.7.711 NMAC; and

(2) personnel in attendance take necessary precautions to prevent the inadvertent exposure of workers, other patients and members of the public to radiation in excess of the limits established in this part.

[20.3.4.429 NMAC - Rp, 20.3.4.429 NMAC, 04/30/2009]

#### **20.3.4.430 LABELING CONTAINERS AND RADIATION MACHINES:**

**A.** The licensee or registrant shall ensure that each container of licensed or registered material bears a durable, clearly visible label bearing the radiation symbol and the words "Caution, Radioactive Material" or "Danger, Radioactive Material." The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

**B.** Each licensee or registrant shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

**C.** Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is energized.

[20.3.4.430 NMAC - Rp, 20.3.4.430 NMAC, 04/30/2009]

#### **20.3.4.431 EXEMPTIONS TO LABELING REQUIREMENTS:**

A licensee is not required to label:

**A.** containers holding licensed material in quantities less than the quantities listed in 20.3.4.462 NMAC;

**B.** containers holding licensed material in concentrations less than those specified in table III of 20.3.4.461 NMAC;

**C.** containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by this part;

**D.** containers when they are in transport and packaged and labeled in accordance with the regulations of the DOT (labeling of packages containing radioactive materials is required by the DOT if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by DOT regulations 49 CFR 173.403 (m) and (w) and 173.421-424);

**E.** containers that are accessible only to individuals authorized to handle or use them, or to work in the vicinity of the containers, if the contents are identified to these individuals by a readily available written record; examples of containers of this type are containers in locations such as water-filled canals, storage vaults or hot cells; the record shall be retained as long as the containers are in use for the purpose indicated on the record; or

**F.** installed manufacturing or process equipment, such as piping and tanks.

[20.3.4.431 NMAC - Rp, 20.3.4.431 NMAC, 04/30/2009]

#### **20.3.4.432 PROCEDURES FOR RECEIVING AND OPENING PACKAGES:**

**A.** Each licensee who expects to receive a package containing quantities of radioactive material in excess of a type A quantity, as defined in Subsection A of

20.3.3.306 NMAC, incorporating 10 CFR 71.4 and Appendix A of 10 CFR 71, shall make arrangements to receive:

- (1) the package when the carrier offers it for delivery; or
- (2) the notification of the arrival of the package at the carrier's terminal and to take possession of the package expeditiously.

**B.** Each licensee shall:

- (1) monitor the external surfaces of a labeled (with a radioactive white I, yellow II or yellow III label as specified in DOT regulations 49 CFR 172.403 and 172.436-440) package for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in 10 CFR 71.4;
- (2) monitor the external surfaces of a labeled package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the type A quantity, as defined in Subsection A of 20.3.3.306 NMAC, incorporating 10 CFR 71.4 and Appendix A to 10 CFR 71; and
- (3) monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet or damaged.

**C.** The licensee shall perform the monitoring required by Subsection B of this section as soon as practicable after receipt of the package, but not later than 3 hours after the package is received at the licensee's facility if it is received during the licensee's normal working hours. If a package is received after working hours, the package shall be monitored no later than three hours from the beginning of the next working day.

**D.** The licensee shall immediately notify the final delivery carrier and, by telephone and written communication which can include e-mail, telegram, mailgram or facsimile, the department when:

- (1) removable radioactive surface contamination exceeds the limits of 20.3.3.306 NMAC, incorporating 10 CFR 71.87(i); or
- (2) external radiation levels exceed the limits of 20.3.3.306 NMAC, incorporating 10 CFR 71.47.

**E.** Each licensee shall:

- (1) establish, maintain and retain written procedures for safely opening packages in which radioactive material is received; and

(2) ensure that the procedures are followed and that due consideration is given to special instructions for the type of package being opened.

F. Licensees transferring special form sources in vehicles owned or operated by the licensee to and from a work site are exempt from the contamination monitoring requirements of Subsection B of this section, but are not exempt from the survey requirement in Subsection B of this section for measuring radiation levels that ensures that the source is still properly lodged in its shield.

[20.3.4.432 NMAC - Rp, 20.3.4.432 NMAC, 04/30/2009]

#### **20.3.4.433 WASTE DISPOSAL - GENERAL REQUIREMENTS:**

A. A licensee shall dispose of licensed material only:

(1) by transfer to an authorized recipient as provided in 20.3.4.438 NMAC or 20.3.3 NMAC, or to the DOE;

(2) by decay in storage;

(3) by release in effluents within the limits in 20.3.4.413 NMAC; or

(4) as authorized pursuant to 20.3.4.434 NMAC, 20.3.4.435 NMAC, 20.3.4.436 NMAC or 20.3.4.437 NMAC and in accordance with 20.3.4.439 NMAC.

B. A person shall be specifically licensed to receive waste containing licensed material from other persons for:

(1) treatment prior to disposal;

(2) treatment or disposal by incineration;

(3) decay in storage;

(4) disposal at a land disposal facility licensed pursuant to 20.3.13 NMAC;

(5) storage until transferred to a storage or disposal facility authorized to receive the waste; or

(6) disposal at a geologic repository under 10 CFR 60 or 10 CFR 63, specifically licensed by NRC.

[20.3.4.433 NMAC - Rp, 20.3.4.433 NMAC, 04/30/2009]

#### **20.3.4.434 METHOD FOR OBTAINING APPROVAL OF PROPOSED DISPOSAL PROCEDURES:**

A licensee or applicant for a license may apply to the department for approval of proposed procedures, not otherwise authorized in these regulations, to dispose of licensed material generated in the licensee's activities. Each application shall include:

**A.** a description of the waste containing licensed material to be disposed of, including the physical and chemical properties important to risk evaluation, and the proposed manner and conditions of waste disposal;

**B.** an analysis and evaluation of pertinent information on the nature of the environment;

**C.** the nature and location of other potentially affected licensed and unlicensed facilities; and

**D.** analyses and procedures to ensure that doses are maintained ALARA and within the dose limits in this part.

[20.3.4.434 NMAC - Rp, 20.3.4.434 NMAC, 04/30/2009]

#### **20.3.4.435 DISPOSAL BY RELEASE INTO SANITARY SEWAGE:**

**A.** A licensee may discharge licensed material into sanitary sewerage if each of the following conditions is satisfied:

**(1)** the material is readily soluble, or is readily dispersible biological material, in water;

**(2)** the quantity of licensed or other radioactive material that the licensee releases into the sewer in 1 month divided by the average monthly volume of water released into the sewer by the licensee does not exceed the concentration listed in table III of 20.3.4.461 NMAC;

**(3)** if more than one radionuclide is released, the following conditions must also be satisfied:

**(a)** the licensee shall determine the fraction of the limit in table III of 20.3.4.461 NMAC represented by discharges into sanitary sewerage by dividing the actual monthly average concentration of each radionuclide released by the licensee or registrant into the sewer by the concentration of that radionuclide listed in table III of 20.3.4.461 NMAC; and

**(b)** the sum of the fractions for each radionuclide required by Subparagraph (a) of Paragraph (3) of this subsection does not exceed unity; and

**(4)** the total quantity of licensed or other radioactive material that the licensee releases into the sanitary sewerage in a year does not exceed 5 curies (185

gigabecquerels) of hydrogen-3, 1 curie (37 gigabecquerels) of carbon-14, and 1 curie (37 gigabecquerels) of all other radioactive materials combined.

**B.** Excreta from individuals undergoing medical diagnosis or therapy with radioactive material are not subject to the limitations contained in Subsection A of this section.

[20.3.4.435 NMAC - Rp, 20.3.4.435 NMAC, 04/30/2009]

#### **20.3.4.436 TREATMENT OR DISPOSAL BY INCINERATION:**

A licensee may treat or dispose of licensed material by incineration only in the form and concentration specified in 20.3.4.437 NMAC or as specifically approved by the department pursuant to 20.3.4.434 NMAC.

[20.3.4.436 NMAC - Rp, 20.3.4.436 NMAC, 04/30/2009]

#### **20.3.4.437 DISPOSAL OF SPECIFIC WASTES:**

**A.** A licensee may dispose of the following licensed material as if it were not radioactive:

(1) 0.05 microcurie (1.85 kilobecquerels), or less, of hydrogen-3 or carbon-14 per gram of medium used for liquid scintillation counting; and

(2) 0.05 microcurie (1.85 kilobecquerels), or less, of hydrogen-3 or carbon-14 per gram of animal tissue, averaged over the weight of the entire animal.

**B.** A licensee shall not dispose of tissue pursuant to Paragraph (2) of Subsection A of this section in a manner that would permit its use either as food for humans or as animal feed.

#### **C. Disposal of Certain Byproduct Material.**

(1) Licensed material as defined in Paragraphs (3), (4) and (5) of the definition of *byproduct material* set forth in 20.3.1.7 NMAC may be disposed of in accordance with 20.3.13 NMAC even though it is not defined as low-level radioactive waste. Therefore, any licensed radioactive material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed under 20.3.13 NMAC, must meet the requirements of 20.3.4.438 NMAC.

(2) A licensee may dispose of byproduct material as defined in Paragraphs (3), (4) and (5) of the definition of *byproduct material* set forth in 20.3.1.7 NMAC, at a disposal facility authorize to dispose of such material in accordance with any federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act.

**D.** The licensee shall maintain records of disposal in accordance with 20.3.4.448 NMAC.

[20.3.4.437 NMAC - Rp, 20.3.4.437 NMAC, 04/30/2009]

**20.3.4.438 TRANSFER FOR DISPOSAL AND MANIFESTS:**

**A.** The requirements of this section and 20.3.4.466 NMAC are designed to:

**(1)** control transfers of low-level radioactive waste by any waste generator, waste collector or waste processor licensee, as defined in 20.3.4.466 NMAC (appendix G), who ships low-level waste either directly or indirectly through a waste collector, waste broker or waste processor, to a licensed low-level waste land disposal facility (as defined in 20.3.13 NMAC);

**(2)** establish a manifest tracking system; and

**(3)** supplement existing requirements concerning transfers and record keeping for those wastes.

**B.** Each shipment of radioactive waste intended for disposal at a licensed land disposal facility must be accompanied by a shipment manifest, which contains all the information on the NRC's *uniform low-level radioactive waste manifest* (see 20.3.4.466 NMAC).

**C.** Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on NRC's *uniform low-level radioactive waste manifest* and transfer this recorded manifest information to the intended consignee in accordance with 20.3.4.466 NMAC.

**D.** Each shipment manifest must include a certification by the waste generator as specified in Subsection B of 20.3.4.466 NMAC.

**E.** Each person involved in the transfer for disposal and disposal of waste, including the waste generator, waste collector, waste processor and disposal facility operator, shall comply with the requirements specified in Subsection C of 20.3.4.466 NMAC.

**F.** Any licensee shipping byproduct material as defined in Paragraphs (3), (4) and (5) of the definition of *byproduct material* set forth in 20.3.4.7 NMAC intended for ultimate disposal at a land disposal facility licensed under 20.3.13 NMAC must document the information required on the NRC's *uniform low-level radioactive waste manifest* and transfer this recorded manifest information to the intended consignee in accordance with 20.3.4.466 NMAC.

[20.3.4.438 NMAC - Rp, 20.3.4.438 NMAC, 04/30/2009]

#### **20.3.4.439 COMPLIANCE WITH ENVIRONMENTAL AND HEALTH PROTECTION REGULATIONS:**

Nothing in sections 20.3.4.433 NMAC, 20.3.4.434 NMAC, 20.3.4.435 NMAC, 20.3.4.436 NMAC, 20.3.4.437 NMAC or 20.3.4.438 NMAC relieves the licensee from complying with other applicable federal, state and local regulations governing any other toxic or hazardous properties of materials that may be disposed of under these sections.

[20.3.4.439 NMAC - Rp, 20.3.4.439 NMAC, 04/30/2009]

#### **20.3.4.440 RECORDS - GENERAL PROVISIONS:**

**A.** Each licensee or registrant shall use the units: curie, rad, rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this part.

**B.** In the records required by this part, the licensee or registrant may record quantities in SI units in parentheses following each of the units specified in Subsection A of this section. However, all quantities must be recorded as stated in Subsection A of this section.

**C.** Notwithstanding the requirements of Subsection A of this section, when recording information on shipment manifests, as required in Subsection B of 20.3.4.438 NMAC, information must be recorded in the international system of units (SI) or in SI and the units as specified in Subsection A of this section.

**D.** The licensee or registrant shall make a clear distinction among the quantities entered on the records required by this part (e.g., total effective dose equivalent, shallow-dose equivalent, lens dose equivalent, deep-dose equivalent, committed effective dose equivalent).

[20.3.4.440 NMAC - Rp, 20.3.4.440 NMAC, 04/30/2009; A, 06/30/2011]

#### **20.3.4.441 RECORDS OF RADIATION PROTECTION PROGRAMS:**

**A.** Each licensee or registrant shall maintain records of the radiation protection program, including:

- (1)** the provisions of the program; and
- (2)** audits and other reviews of program content and implementation.

**B.** The licensee or registrant shall retain the records required by Paragraph (1) of Subsection A of this section until the department terminates each pertinent license or registration requiring the record. The licensee or registrant shall retain the records

required by Paragraph (2) of Subsection A of this section for 3 years after the record is made.

[20.3.4.441 NMAC - Rp, 20.3.4.441 NMAC, 04/30/2009]

#### **20.3.4.442 RECORDS OF SURVEYS:**

**A.** Each licensee or registrant shall maintain records showing the results of surveys and calibrations required by 20.3.4.416 NMAC and Subsection B of 20.3.4.432 NMAC. The licensee or registrant shall retain these records for 3 years after the record is made.

**B.** The licensee or registrant shall retain each of the following records until the department terminates each pertinent license or registration requiring the record:

(1) records of the results of surveys to determine the dose from external sources of radiation and used, in the absence of or in combination with individual monitoring data, in the assessment of individual dose equivalents;

(2) records of the results of measurements and calculations used to determine individual intakes of radioactive material and used in the assessment of internal dose;

(3) records showing the results of air sampling, surveys and bioassays required pursuant to Subparagraphs (a) and (b) of Paragraph (3) of Subsection A of 20.3.4.423 NMAC;

(4) records of the results of measurements and calculations used to evaluate the release of radioactive effluents to the environment; and

(5) records from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning, and such records must be retained in accordance with 20.3.3 NMAC as applicable.

[20.3.4.442 NMAC - Rp, 20.3.4.442 NMAC, 04/30/2009; A, 06/13/2017]

#### **20.3.4.443 RECORDS OF TESTS FOR LEAKAGE OR CONTAMINATION OF SEALED SOURCES:**

Records of tests for leakage or contamination of sealed sources required by 20.3.4.415 NMAC shall be kept in units of microcurie or becquerel, and maintained for inspection by the department for 5 years after the records are made.

[20.3.4.443 NMAC - Rp, 20.3.4.443 NMAC, 04/30/2009]

#### **20.3.4.444 RECORDS OF PRIOR OCCUPATIONAL DOSE:**

**A.** The licensee or registrant shall retain the records of prior occupational dose and exposure history as specified in 20.3.4.409 NMAC on department form *cumulative occupational dose history* or equivalent until the department terminates each pertinent license or registration requiring this record. The licensee or registrant shall retain records used in preparing department form *cumulative occupational dose history* or equivalent for 3 years after the record is made.

**B.** Upon termination of the license or registration, the licensee or registrant shall permanently store records on department form *cumulative occupational dose history* or equivalent, or shall make provision with the department for transfer to the department.

[20.3.4.444 NMAC - Rp, 20.3.4.444 NMAC, 04/30/2009]

#### **20.3.4.445 RECORDS OF PLANNED SPECIAL EXPOSURES:**

**A.** For each use of the provisions of 20.3.4.410 NMAC for planned special exposures, the licensee or registrant shall maintain records that describe:

(1) the exceptional circumstances requiring the use of a planned special exposure;

(2) the name of the management official who authorized the planned special exposure and a copy of the signed authorization;

(3) what actions were necessary;

(4) why the actions were necessary;

(5) what precautions were taken to assure that doses were maintained ALARA;

(6) what individual and collective doses were expected to result; and

(7) the doses actually received in the planned special exposure.

**B.** The licensee or registrant shall retain the records until the department terminates each pertinent license or registration requiring these records.

**C.** Upon termination of the license or registration, the licensee or registrant shall permanently store records on department form *cumulative occupational dose history* or equivalent, or shall make provision with the department for transfer to the department.

[20.3.4.445 NMAC - Rp, 20.3.4.445 NMAC, 04/30/2009]

#### **20.3.4.446 RECORDS OF INDIVIDUAL MONITORING RESULTS:**

**A. Record Keeping Requirement.** Each licensee or registrant shall maintain records of doses received by all individuals for whom monitoring was required pursuant to 20.3.4.417 NMAC, and records of doses received during planned special exposures, accidents and emergency conditions. Assessments of dose equivalent and records made using units in effect before May 3, 1995 (see 20.3.4 NMAC codified as of May 3, 1995) need not be changed. These records shall include, when applicable:

(1) the deep dose equivalent to the whole body, lens dose equivalent, shallow dose equivalent to the skin and shallow dose equivalent to the extremities;

(2) the estimated intake of radionuclides (see 20.3.4.406 NMAC);

(3) the committed effective dose equivalent assigned to the intake of radionuclides;

(4) the specific information used to assess the committed effective dose equivalent pursuant to Subsections A and C of 20.3.4.408 NMAC, and when required by 20.3.4.417 NMAC;

(5) the total effective dose equivalent when required by 20.3.4.406 NMAC;  
and

(6) the total of the deep dose equivalent and the committed dose to the organ receiving the highest total dose.

**B. Record Keeping Frequency.** The licensee or registrant shall make entries of the records specified in Subsection A of this section at intervals not to exceed 1 year.

**C. Record Keeping Format.** The licensee or registrant shall maintain the records specified in Subsection A of this section on department form *occupational dose record for a monitoring period*, in accordance with the instructions to the form, or in clear and legible records containing all the information required by the form.

**D.** The licensee or registrant shall maintain the records of dose to an embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

**E.** The licensee or registrant shall retain each required form or record until the department terminates each pertinent license or registration requiring the record.

**F.** Upon termination of the license or registration, the licensee or registrant shall permanently store records on department form *cumulative occupational dose history* or equivalent, or shall make provision with the department for transfer to the department.

**G. Privacy Protection.** The records required under this section should be protected from public disclosure because of their personal and private nature.

[20.3.4.446 NMAC - Rp, 20.3.4.446 NMAC, 04/30/2009]

**20.3.4.447 RECORDS OF DOSE TO INDIVIDUAL MEMBERS OF THE PUBLIC:**

**A.** Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public (see 20.3.4.413 NMAC).

**B.** The licensee or registrant shall retain the records required by Subsection A of this section until the department terminates each pertinent license or registration requiring the record.

[20.3.4.447 NMAC - Rp, 20.3.4.447 NMAC, 04/30/2009]

**20.3.4.448 RECORDS OF WASTE DISPOSAL:**

**A.** Each licensee shall maintain records of the disposal of licensed materials made pursuant to 20.3.4.434 NMAC, 20.3.4.435 NMAC, 20.3.4.436 NMAC, 20.3.4.437 NMAC and 20.3.3 NMAC.

**B.** Each registrant shall maintain records of the disposal of radiation machines.

**C.** The licensee or registrant shall retain the records required by Subsections A and B of this section until the department terminates each pertinent license or registration requiring the record.

[20.3.4.448 NMAC - Rp, 20.3.4.448 NMAC, 04/30/2009]

**20.3.4.449 [RESERVED]**

**20.3.4.450 FORM OF RECORDS:**

Each record required by this part shall be legible throughout the specified retention period. The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period or the record may also be stored in electronic media with the capability for producing legible, accurate and complete records during the required retention period. Records, such as letters, drawings and specifications, shall include all pertinent information, such as stamps, initials and signatures. The licensee or registrant shall maintain adequate safeguards against tampering with and loss of records.

[20.3.4.450 NMAC - Rp, 20.3.4.450 NMAC, 04/30/2009]

#### **20.3.4.451 REPORTS OF STOLEN, LOST OR MISSING LICENSED OR REGISTERED SOURCES OF RADIATION:**

**A. Telephone Reports.** Each licensee shall report to the department by telephone as follows:

(1) immediately after its occurrence becomes known to the licensee, stolen, lost or missing licensed radioactive material in an aggregate quantity equal to or greater than 1,000 times the quantity specified in 20.3.4.462 NMAC under such circumstances that it appears to the licensee that an exposure could result to individuals in unrestricted areas; or

(2) within 30 days after its occurrence becomes known to the licensee, lost, stolen or missing licensed radioactive material in an aggregate quantity greater than 10 times the quantity 20.3.4.462 NMAC that is still missing;

(3) each registrant shall report immediately after its occurrence becomes known to the registrant, a stolen, lost or missing radiation machine.

**B. Written Reports.** Each licensee or registrant required to make a report pursuant to Subsection A of this section shall, within 30 days after making the telephone report, make a written report to the department setting forth the following information:

(1) a description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted;

(2) a description of the circumstances under which the loss or theft occurred;

(3) a statement of disposition, or probable disposition, of the licensed or registered source of radiation involved;

(4) exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas;

(5) actions that have been taken, or will be taken, to recover the source of radiation; and

(6) procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

**C.** Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of such information.

**D.** The licensee or registrant shall prepare any report filed with the department pursuant to this section so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

[20.3.4.451 NMAC - Rp, 20.3.4.451 NMAC, 04/30/2009]

#### **20.3.4.452 NOTIFICATION OF INCIDENTS:**

**A. Immediate Notification.** Notwithstanding other requirements for notification, each licensee or registrant shall immediately report each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause any of the following conditions:

(1) an individual to receive:

(a) a total effective dose equivalent of 25 rems (0.25 sievert) or more; or

(b) a lens dose equivalent of 75 rems (0.75 sievert) or more; or

(c) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 250 rads (2.5 grays) or more; or

(2) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake five times the occupational ALI; this provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

**B. Twenty-Four Hour Notification.** Each licensee or registrant shall, within 24 hours of discovery of the event, report to the department each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

(1) an individual to receive, in a period of 24 hours:

(a) a total effective dose equivalent exceeding 5 rems (0.05 sievert); or

(b) a lens dose equivalent exceeding 15 rems (0.15 sievert); or

(c) a shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 50 rems (0.5 sievert); or

(2) the release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for 24 hours, the individual could have received an intake in excess of one occupational ALI; this provision does not apply to locations

where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures.

**C.** The licensee or registrant shall prepare each report filed with the department pursuant to this section so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

**D.** Licensees and registrants shall make the reports required by Subsections A and B of this section to the department by telephone, and shall confirm the initial contact by e-mail, telegram, mailgram or facsimile to the department.

**E.** The provisions of this section do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to 20.3.4.454 NMAC.

[20.3.4.452 NMAC - Rp, 20.3.4.452 NMAC, 04/30/2009]

**20.3.4.453 REPORTS OF EXPOSURES, RADIATION LEVELS AND CONCENTRATIONS OF RADIOACTIVE MATERIAL EXCEEDING THE CONSTRAINTS OR LIMITS:**

**A. Reportable Events.** In addition to the notification required by 20.3.4.452 NMAC, each licensee or registrant shall submit a written report within 30 days after learning of any of the following occurrences:

- (1) incidents for which notification is required by 20.3.4.452 NMAC; or
- (2) doses in excess of any of the following:
  - (a) the occupational dose limits for adults in 20.3.4.452 NMAC;
  - (b) the occupational dose limits for a minor in 20.3.4.411 NMAC;
  - (c) the limits for an embryo/fetus of a declared pregnant woman in 20.3.4.412 NMAC;
  - (d) the limits for an individual member of the public in 20.3.4.413 NMAC;
  - (e) the limit in the license or registration; or
  - (f) the ALARA constraints for air emissions established under Subsection D of 20.3.4.404 NMAC; or
- (3) levels of radiation or concentrations of radioactive material in:

(a) a restricted area in excess of applicable limits in the license or registration;  
or

(b) an unrestricted area in excess of 10 times the applicable limit set forth in this part (20.3.4 NMAC) or in the license or registration, whether or not involving exposure of any individual in excess of the limits in 20.3.4.413 NMAC; or

(4) for licensees subject to the provisions of EPA generally applicable environmental radiation standards in 40 CFR 190, levels of radiation or releases of radioactive material in excess of those standards, or of license conditions related to those standards.

#### **B. Content of Report.**

(1) Each report required by Subsection A of this section shall describe the extent of exposure of individuals to radiation and radioactive material, including, as appropriate:

(a) estimates of each individual's dose;

(b) the levels of radiation and concentrations of radioactive material involved;

(c) the cause of the elevated exposures, dose rates or concentrations; and

(d) corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards and associated license or registration conditions.

(2) Each report filed pursuant to Subsection A of this section shall include for each occupationally overexposed individual: the name, social security account number and date of birth. With respect to the limit for the embryo/fetus set forth in 20.3.4.412 NMAC, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable part of the report.

**C.** All licensees or registrants who make reports pursuant to Subsection A of this section shall submit the report in writing to the department.

[20.3.4.453 NMAC - Rp, 20.3.4.453 NMAC, 04/30/2009]

#### **20.3.4.454 REPORTS OF PLANNED SPECIAL EXPOSURES:**

The licensee or registrant shall submit a written report to the department within 30 days following any planned special exposure conducted in accordance with 20.3.4.410 NMAC, informing the department that a planned special exposure was conducted and

indicating the date the planned special exposure occurred and the information required by 20.3.4.445 NMAC.

[20.3.4.454 NMAC - Rp, 20.3.4.454 NMAC, 04/30/2009]

**20.3.4.455 REPORTS OF TRANSACTIONS INVOLVING NATIONALLY TRACKED SOURCES:**

The regulations of the U. S. Nuclear Regulatory Commission set forth in 10 CFR 20.2207 are hereby incorporated by reference.

[20.3.4.455 NMAC - N, 4/30/2009, A, 5/1/2024]

**20.3.4.456 REPORTS OF INDIVIDUAL MONITORING:**

**A.** This section applies to each person licensed or registered by the department to:

(1) possess or use sources of radiation for purposes of industrial radiography pursuant to 20.3.3 NMAC and 20.3.5 NMAC; or

(2) receive radioactive waste from other persons for disposal pursuant to 20.3.13 NMAC; or

(3) possess or use at any time, for processing or manufacturing for distribution pursuant to 20.3.3 NMAC or 20.3.7 NMAC, radioactive material in quantities exceeding any one of the following quantities:

TABLE 456.1		
Radionuclide	Activity <sup>1</sup>	Gigabecquerels
	Curies	
Cesium-137	1	37
Cobalt-60	1	37
Gold-198	100	3,700
Iodine-131	1	37
Iridium-192	10	370
Krypton-85	1,000	37,000
Promethium-147	10	370
Technetium-99m	1,000	37,000

**Table 456.1 note:** <sup>1</sup>the department may require as a license condition, or by rule, regulation or order pursuant to 20.3.1.111 NMAC, reports from licensees who are licensed to use radionuclides not on this list, in quantities sufficient to cause comparable radiation levels.

**B.** Each licensee or registrant in a category listed in Subsection A of this section shall submit an annual report of the results of individual monitoring carried out by the licensee or registrant for each individual for whom monitoring was required by 20.3.4.417 NMAC during that year. The licensee or registrant may include additional data for individuals for whom monitoring was provided but not required. The licensee or registrant shall use department form *occupational dose record for a monitoring period* or equivalent, or electronic media containing all the information required by department form *occupational dose record for a monitoring period*.

**C.** The licensee or registrant shall file the report required by Subsection B of this section, covering the preceding year, on or before April 30 of each year. The licensee or registrant shall submit the report to the department.

[20.3.4.456 NMAC - Rp, 20.3.4.456 NMAC, 04/30/2009]

#### **20.3.4.457 NOTIFICATIONS AND REPORTS TO INDIVIDUALS OF EXCEEDING DOSE LIMITS:**

**A.** Requirements for notification and reports to individuals of exposure to radiation or radioactive material are specified in 20.3.10.1003 NMAC.

**B.** When a licensee or registrant is required pursuant to the provisions of 20.3.4.453 NMAC or 20.3.4.454 NMAC to report to the department any exposure of an identified occupationally exposed individual, or an identified member of the public, to radiation or radioactive material, the licensee or registrant shall also provide a copy of the report submitted to the department to the individual. This report must be transmitted at a time not later than the transmittal to the department, and shall comply with the provisions of 20.3.10.1003 NMAC.

[20.3.4.457 NMAC - Rp, 20.3.4.457 NMAC, 04/30/2009; A, 06/30/2011]

#### **20.3.4.458 REPORTS OF LEAKING OR CONTAMINATED SEALED SOURCES:**

The licensee shall file a report within 5 days with the department if the test for leakage or contamination required pursuant to 20.3.4.415 NMAC indicates a sealed source is leaking or contaminated. The report shall include the equipment involved, the test results and the corrective action taken.

[20.3.4.458 NMAC - Rp, 20.3.4.458 NMAC, 04/30/2009]

#### **20.3.4.459 VACATING PREMISES:**

Each specific licensee shall, no less than 30 days before vacating or relinquishing possession or control of premises which may have been contaminated with radioactive material as a result of his activities, notify the department in writing of intent to vacate.

When deemed necessary by the department, the licensee shall decontaminate the premises in such a manner as the department may specify.

[20.3.4.459 NMAC - Rp, 20.3.4.459 NMAC, 04/30/2009]

**20.3.4.460 APPENDIX A - PROTECTION FACTORS FOR RESPIRATORS:**

The assigned protection factors specified in this section apply only in a respiratory protection program that meets the requirements of this part. They are applicable only to airborne radiological hazards and may not be appropriate to circumstances when chemical or other respiratory hazards exist instead of, or in addition to, radioactive hazards. Selection and use of respirators for such circumstances shall also comply with department of labor regulations. Radioactive contaminants for which the concentration values in column 3 of table I of 20.3.4.461 NMAC are based on internal dose due to inhalation may, in addition, present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.

**A. Air Purifying Respirators.**

<b>Configuration (air purifying respirators only)</b>	<b>Operating Mode</b>	<b>Assigned Protection Factors</b>
Filtering facepiece disposable.  (Refer to Paragraph (4) of this subsection.)	Negative Pressure	(Refer to Paragraph (4) of this subsection.)
Facepiece, half  (Refer to paragraph (5) of this subsection.)	Negative Pressure	10
Facepiece, full	Negative Pressure	100
Facepiece, half	Power air-purifying respirators	50
Facepiece, full	Power air-purifying respirators	1000
Helmet/hood	Power air-purifying respirators	1000

<b>Configuration (air purifying respirators only)</b>	<b>Operating Mode</b>	<b>Assigned Protection Factors</b>
Facepiece, loose-fitting	Power air-purifying respirators	25

(1) The assigned protection factors apply for protection against particulate only.

(2) Air purifying respirators with APF <100 shall be equipped with particulate filters that are at least 95 percent efficient. Air purifying respirators with APF = 100 shall be equipped with particulate filters that are at least 99 percent efficient. Air purifying respirators with APFs >100 shall be equipped with particulate filters that are at least 99.97 percent efficient.

(3) The licensee may apply to the department for the use of an APF greater than 1 for sorbent cartridges as protection against airborne radioactive gases and vapors (e.g., radioiodine).

(4) **Special requirements and indications for filtering facepiece disposable respirators.** Licensees may permit individuals to use this type of respirator who have not been medically screened or fit tested on the device provided that no credit is taken for their use in estimating intake or dose. It is also recognized that it is difficult to perform an effective positive or negative pressure pre-use user seal check on this type of device. All other respiratory protection program requirements listed in 20.3.4.423 NMAC apply. An assigned protection factor has not been assigned for these devices. However, an APF equal to 10 may be used if the licensee can demonstrate a fit factor of at least 100 by use of a validated or evaluated, qualitative or quantitative fit test.

(5) **Special requirements and indications for half facepiece, negative pressure respirators.** The requirements in this paragraph apply to the under-chin configuration only. No distinction is made in this section between elastomeric half-masks with replaceable cartridges and those designed with the filter medium as an integral part of the facepiece (e.g., disposable or reusable disposable). Both types are acceptable so long as the seal area of the latter contains some substantial type of seal-enhancing material such as rubber or plastic, the two or more suspension straps are adjustable, the filter medium is at least 95 percent efficient and all other requirements of this part are met.

## **B. Air-Line Respirators (Atmosphere Supplying).**

<b>Configuration (air-line respirators only)</b>	<b>Operating Mode</b>	<b>Assigned Protection Factors</b>
Facepiece, half	Demand	10
Facepiece, half	Continuous Flow	50
Facepiece, half	Pressure Demand	50
Facepiece, full	Demand	100
Facepiece, full	Continuous Flow	1000
Facepiece, full	Pressure Demand	1000
Helmet/hood	Continuous	1000
Facepiece, loose-fitting	Continuous	25
Suit	Continuous	(Refer to Paragraph (3) of this subsection.)

**(1)** The assigned protection factors apply for protection against particulate, gases and vapors.

**(2)** The assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard. For tritium oxide vapor, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of 3 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. Exposure to radioactive noble gases is not considered a significant respiratory hazard, and protective actions for these contaminants should be based on external (submersion) dose considerations.

**(3) Special requirements and indications for suits.** No national institute for occupational safety and health (NIOSH) approval schedule is currently available for atmosphere supplying suits. This equipment may be used in an acceptable respiratory protection program as long as all the other minimum program requirements, with the exception of fit testing, are met (see 20.3.4.423 NMAC).

**C. Self-Contained Breathing Apparatus "SCBA" (Atmosphere Supplying).**

<b>Configuration</b>	<b>Operating Mode</b>	<b>Assigned Protection Factors</b>
----------------------	-----------------------	--

<b>(SCBA respirators only)</b>		
Facepiece, full	Demand	100 (Refer to Paragraph (3) of this subsection.)
Facepiece, full	Pressure Demand	10,000 (Refer to Paragraph (4) of this subsection.)
Facepiece, full	Demand-Recirculating	100 (Refer to Paragraph (3) of this subsection.)
Facepiece, full	Positive Pressure Recirculating	10,000 (Refer to Paragraph (4) of this subsection.)

(1) The assigned protection factors apply for protection against particulate, gases and vapors.

(2) The assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard. For tritium oxide vapor, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of 3 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. Exposure to radioactive noble gases is not considered a significant respiratory hazard, and protective actions for these contaminants should be based on external (submersion) dose considerations.

(3) **Special requirements and indications for demand and demand-recirculating self-contained breathing apparatus (SCBA).** The licensee should implement institutional controls to assure that these devices are not used in areas immediately dangerous to life or health (IDLH).

(4) **Special requirements and indications for pressure demand and positive pressure recirculating self-contained breathing apparatus (SCBA).** This type of respirator may be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure such as skin absorption shall be taken into account in these circumstances. This device may not be used by any individual who experiences perceptible outward leakage of breathing gas while wearing the device.

#### D. Combination Respirators.

<b>Configuration (combination respirators only)</b>	<b>Operating Mode and Assigned Protection Factors</b>
---	---

Any combination of air-purifying and atmosphere-supplying respirators	Assigned protection factor for type and mode of operation as listed above.
---	--

[20.3.4.460 NMAC - Rp, 20.3.4.460 NMAC, 04/30/2009]

**20.3.4.461 APPENDIX B - ANNUAL LIMITS ON INTAKE (ALI) AND DERIVED AIR CONCENTRATIONS (DAC) OF RADIONUCLIDES FOR OCCUPATIONAL EXPOSURE; EFFLUENT CONCENTRATIONS; CONCENTRATIONS FOR RELEASE TO SANITARY SEWERAGE:**

**A. Introduction.** For each radionuclide, table I of this section indicates the chemical form which is to be used for selecting the appropriate ALI or DAC value. The ALIs and DACs for inhalation are given for an aerosol with an activity median aerodynamic diameter (AMAD) of 1 micrometer, and for three classes (D,W and Y) of radioactive material, which refer to their retention (approximately days, weeks or years) in the pulmonary region of the lung. This classification applies to a range of clearance half-times for D if less than 10 days, for W from 10 to 100 days and for Y greater than 100 days. The class (D,W or Y) given in the column headed "Class" applies only to the inhalation ALIs and DACs given in columns 2 and 3 of table I of this section. Table II of this section provides concentration limits for airborne and liquid effluents released to the general environment. Table III of this section provides concentration limits for discharges to sanitary sewerage.

**B. Note.** The values in tables I, II and III of this section are presented in the E-notation. In this notation a value of 6E-02 represents a value of  $6 \times 10^{-2}$  or 0.06, 6E+2 represents  $6 \times 10^2$  or 600, and 6E+0 represents  $6 \times 10^0$  or 6.

**C. Table I "Occupational Values".**

(1) Note that the columns in table I of this section titled "Oral Ingestion ALI," "Inhalation ALI" and "DAC," are applicable to occupational exposure to radioactive material.

(2) The ALI's in this section are the annual intakes of given radionuclide by "reference man" which would result in either a committed effective dose equivalent of 5 rems (0.05 sievert) (stochastic ALI), or a committed dose equivalent of 50 rems (0.5 sievert) to an organ or tissue (non-stochastic ALI). The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep dose equivalent to the whole body of 5 rems (0.05 sievert). The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor,  $w_T$ . This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of  $w_T$  are listed under the definition of weighting factor in 20.3.4.7 NMAC. The non-stochastic ALI's were

derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

**(3)** A value of  $w_T = 0.06$  is applicable to each of the five organs or tissues in the "remainder" category receiving the highest dose equivalents, and the dose equivalents of all other remaining tissues may be disregarded. The following portions of the gastro-intestinal (GI) tract - stomach, small intestine, upper large intestine and lower large intestine - are to be treated as four separate organs.

**(4)** Note that the dose equivalents for an extremity, skin and lens of the eye are not considered in computing the committed effective dose equivalent, but are subject to limits that must be met separately.

**(5)** When an ALI is defined by the stochastic dose limit, this value alone is given. When an ALI is determined by the non-stochastic dose limit to an organ, the organ or tissue to which the limit applies is shown, and the ALI for the stochastic limit is shown in parentheses. Abbreviated organ or tissue designations are used:

**(a)** LLI wall = lower large intestine wall;

**(b)** St wall = stomach wall;

**(c)** Blad wall = bladder wall; and

**(d)** Bone surf = bone surface.

**(6)** The use of the ALI's listed first, the more limiting of the stochastic and non-stochastic ALI's, will ensure that non-stochastic effects are avoided and that the risk of stochastic effects is limited to an acceptably low value. If, in a particular situation involving a radionuclide for which the non-stochastic ALI is limiting, use of that non-stochastic ALI is considered unduly conservative, the licensee may use the stochastic ALI to determine the committed effective dose equivalent. However, the licensee shall also ensure that the 50 rems (0.5 sievert) dose equivalent limit for any organ or tissue is not exceeded by the sum of the external deep dose equivalent plus the internal committed dose equivalent to that organ, not the effective dose. For the case where there is no external dose contribution, this would be demonstrated if the sum of the fractions of the non-stochastic ALI's ( $ALI_{ns}$ ) that contribute to the committed dose equivalent to the organ receiving the highest dose does not exceed unity, that is, the sum (intake in microcuries of each radionuclide/ $ALI_{ns}$ ) is less than or equal to 1.0. If there is an external deep dose equivalent contribution of  $H_d$ , then this sum must be less than  $1 - (H_d/50)$ , instead of less than or equal to 1.0. Note that the dose equivalents for an extremity, skin and lens of the eye are not considered in computing the committed effective dose equivalent, but are subject to limits that must be met separately.

**(7)** The derived air concentration (DAC) values are derived limits intended to control chronic occupational exposures. The relationship between the DAC and the ALI

is given by:  $DAC = ALI \text{ (in microcuries)} / (2000 \text{ hours per working year} \times 60 \text{ minutes/hour} \times 20000 \text{ milliliter per minute}) = (ALI / 2.4 \times 10^9 \text{ ml}) \text{ microcuries/milliliter}$ , where 20000 milliliter is the volume of air breathed per minute at work by reference man under working conditions of light work.

(8) The DAC values relate to one of two modes of exposure: either external submersion or the internal committed dose equivalents resulting from inhalation of radioactive materials. DACs based upon submersion are for immersion in a semi-infinite cloud of uniform concentration and apply to each radionuclide separately.

(9) The ALI and DAC values include contributions to exposure by the single radionuclide named and any in-growth of daughter radionuclides produced in the body by decay of the parent. However, intakes that include both the parent and daughter radionuclides should be treated by the general method appropriate for mixtures.

(10) The values of ALI and DAC do not apply directly when the individual both ingests and inhales a radionuclide, when the individual is exposed to a mixture of radionuclides by either inhalation or ingestion or both, or when the individual is exposed to both internal and external irradiation (see 20.3.4.406 NMAC). When an individual is exposed to radioactive materials which fall under several of the translocation classifications of the same radionuclide, such as class D, class W or class Y, the exposure may be evaluated as if it were a mixture of different radionuclides.

(11) It should be noted that the classification of a compound as class D, W or Y is based on the chemical form of the compound and does not take into account the radiological half-life of different radionuclides. For this reason, values are given for class D, W and Y compounds, even for very short-lived radionuclides.

#### **D. Table II "Effluent Concentrations".**

(1) The columns in table II of this section titled "effluents," "air" and "water" are applicable to the assessment and control of dose to the public, particularly in the implementation of the provisions of 20.3.4.414 NMAC. The concentration values given in columns 1 and 2 of table II are equivalent to the radionuclide concentrations which, if inhaled or ingested continuously over the course of a year, would produce a total effective dose equivalent of 0.05 rem (0.5 millisievert).

(2) Consideration of non-stochastic limits has not been included in deriving the air and water effluent concentration limits because non-stochastic effects are presumed not to occur at or below the dose levels established for individual members of the public. For radionuclides, where the non-stochastic limit was governing in deriving the occupational DAC, the stochastic ALI was used in deriving the corresponding airborne effluent limit in table II of this subsection. For this reason, the DAC and airborne effluent limits are not always proportional as was the case in appendix A of part D of the eighth edition of volume I of the *suggested state regulations for control of radiation*.

(3) The air concentration values listed in column 1 of table II of this subsection were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by  $2.4 \times 10^9$  milliliter, relating the inhalation ALI to the DAC, as explained above, and then divided by a factor of 300. The factor of 300 includes the following components: a factor of 50 to relate the 5 rems (0.05 sievert) annual occupational dose limit to the 0.1 rem (1 millisievert) limit for members of the public, a factor of 3 to adjust for the difference in exposure time and the inhalation rate for a worker and that for members of the public; and a factor of 2 to adjust the occupational values, derived for adults, so that they are applicable to other age groups.

(4) For those radionuclides for which submersion, that is external dose, is limiting, the occupational DAC in column 3 of table I was divided by 219. The factor of 219 is composed of a factor of 50, as described above, and a factor of 4.38 relating occupational exposure for 2,000 hours per year to full-time exposure (8,760 hours per year). Note that an additional factor of 2 for age considerations is not warranted in the submersion case.

(5) The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by  $7.3 \times 10^7$ . The factor of  $7.3 \times 10^7$  milliliter includes the following components: the factors of 50 and 2 described above and a factor of  $7.3 \times 10^5$  milliliter which is the annual water intake of reference man.

(6) Note 2 of Subsection F of this section provides groupings of radionuclides which are applicable to unknown mixtures of radionuclides. These groupings, including occupational inhalation ALIs and DACs, air and water effluent concentrations and releases to sewer, require demonstrating that the most limiting radionuclides in successive classes are absent. The limit for the unknown mixture is defined when the presence of one of the listed radionuclides cannot be definitely excluded as being present either from knowledge of the radionuclide composition of the source or from actual measurements.

**E. Table III "Releases to Sewers".** The monthly average concentrations for release to sanitary sewerage are applicable to the provisions in 20.3.4.435 NMAC. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by  $7.3 \times 10^6$  milliliter. The factor of  $7.3 \times 10^6$  milliliter is composed of a factor of  $7.3 \times 10^5$  milliliter, the annual water intake by reference man, and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by reference man during a year, would result in a committed effective dose equivalent of 0.05 rem (5 millisieverts).

List of Elements and their Corresponding Atomic Numbers		
Element	Atomic Symbol	Atomic Number
Actinium	Ac	89

List of Elements and their Corresponding Atomic Numbers		
Element	Atomic Symbol	Atomic Number
Aluminum	Al	13
Americium	Am	95
Antimony	Sb	51
Argon	Ar	18
Arsenic	As	33
Astatine	At	85
Barium	Ba	56
Berkelium	Bk	97
Beryllium	Be	4
Bismuth	Bi	83
Bromine	Br	35
Cadmium	Cd	48
Calcium	Ca	20
Californium	Cf	98
Carbon	C	6
Cerium	Ce	58
Cesium	Cs	55
Chlorine	Cl	17
Chromium	Cr	24
Cobalt	Co	27
Copper	Cu	29
Curium	Cm	96
Dysprosium	Dy	66
Einsteinium	Es	99
Erbium	Er	68
Europium	Eu	63
Fermium	Fm	100
Fluorine	F	9
Francium	Fr	87
Gadolinium	Gd	64
Gallium	Ga	31
Germanium	Ge	32
Gold	Au	79
Hafnium	Hf	72
Holmium	Ho	67
Hydrogen	H	1
Indium	In	49
Iodine	I	53
Iridium	Ir	77
Iron	Fe	26
Krypton	Kr	36
Lanthanum	La	57
Lead	Pb	82
Lutetium	Lu	71
Magnesium	Mg	12
Manganese	Mn	25
Mendelevium	Md	101

List of Elements and their Corresponding Atomic Numbers		
Element	Atomic Symbol	Atomic Number
Mercury	Hg	80
Molybdenum	Mo	42
Neodymium	Nd	60
Neptunium	Np	93
Nickel	Ni	28
Niobium	Nb	41
Nitrogen	N	7
Osmium	Os	76
Oxygen	O	8
Palladium	Pd	46
Phosphorus	P	15
Platinum	Pt	78
Plutonium	Pu	94
Polonium	Po	84
Potassium	K	19
Praseodymium	Pr	59
Promethium	Pm	61
Protactinium	Pa	91
Radium	Ra	88
Radon	Rn	86
Rhenium	Re	75
Rhodium	Rh	45
Rubidium	Rb	37
Ruthenium	Ru	44
Samarium	Sm	62
Scandium	Sc	21
Selenium	Se	34
Silicon	Si	14
Silver	Ag	47
Sodium	Na	11
Strontium	Sr	38
Sulfur	S	16
Tantalum	Ta	73
Technetium	Tc	43
Tellurium	Te	52
Terbium	Tb	65
Thallium	Tl	81
Thorium	Th	90
Thulium	Tm	69
Tin	Sn	50
Titanium	Ti	22
Tungsten	W	74
Uranium	U	92
Vanadium	V	23
Xenon	Xe	54

List of Elements and their Corresponding Atomic Numbers		
Element	Atomic Symbol	Atomic Number
Ytterbium	Yb	70
Yttrium	Y	39
Zinc	Zn	30
Zirconium	Zr	40

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
1	Hydrogen-3	Water, DAC includes skin absorption	8E+4	8E+4	2E-5	1E-7	1E-3	1E-2
		Gas (HT or T <sub>2</sub> ) Submersion <sup>1</sup> : Use above values as HT and T <sub>2</sub> oxidize in air and in the body to HTO.						

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
4	Beryllium-7	W, all compounds except those given for Y  Y, oxides, halides, and nitrates	4E+4 -	2E+4 2E+4	9E-6 8E-6	3E-8 3E-8	6E-4 -	6E-3 -
4	Beryllium-10	W, see $^7\text{Be}$  Y, see $^7\text{Be}$	1E+3 LLI wall (1E+3) -	2E+2 - 1E+1	6E-8 - 6E-9	2E-10 - 2E-11	- 2E-5 -	- 2E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
6	Carbon-11 <sup>2</sup>	Monoxide	-	1E+6	5E-4	2E-6	-	-
		Dioxide	-	6E+5	3E-4	9E-7	-	-
		Compounds	4E+5	4E+5	2E-4	6E-7	6E-3	6E-2
6	Carbon-14	Monoxide	-	2E+6	7E-4	2E-6	-	-
		Dioxide	-	2E+5	9E-5	3E-7	-	-
		Compounds	2E+3	2E+3	1E-6	3E-9	3E-5	3E-4
7	Nitrogen-13 <sup>2</sup>	Submersion <sup>1</sup>	-	-	4E-6	2E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
8	Oxygen-15 <sup>2</sup>	Submersion <sup>1</sup>	-	-	4E-6	2E-8	-	-

9	Fluorine-18 <sup>2</sup>	D, fluorides of H, Li, Na, K, Rb, Cs, and Fr	5E+4 St wall (5E+4)	7E+4 -	3E-5 -	1E-7 -	- 7E-4	- 7E-3
		W, fluorides of Be, Mg,		9E+4	4E-5	1E-7	-	-
		Ca, Sr, Ba, Ra, Al, Ga,  In, Tl, As, Sb, Bi, Fe,  Ru, Os, Co, Ni, Pd, Pt,  Cu, Ag, Au, Zn, Cd, Hg, Sc, Y, Ti, Zr, V, Nb, Ta, Mn, Tc, and Re  Y, lanthanum fluoride	- -	8E+4	3E-5	1E-7	-	-
11	Sodium-22	D, all compounds	4E+2	6E+2	3E-7	9E-10	6E-6	6E-5
11	Sodium-24	D, all compounds	4E+3	5E+3	2E-6	7E-9	5E-5	5E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
12	Magnesium-28	D, all compounds except those given for W  W, oxides, hydroxides, carbides, halides, and nitrates	7E+2  -	2E+3  1E+3	7E-7  5E-7	2E-9  2E-9	9E-6  -	9E-5  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
13	Aluminum-26	D, all compounds except those given for W W, oxides, hydroxides, carbides, halides and nitrates	4E+2  -	6E+1  9E+1	3E-8  4E-8	9E-11  1E-10	6E-6  -	6E-5  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
14	Silicon-31	D, all compounds except those given for W and Y  W, oxides, hydroxides, carbides, and nitrates  Y, aluminosilicate glass	9E+3 - -	3E+4 3E+4 3E+4	1E-5 1E-5 1E-5	4E-8 5E-8 4E-8	1E-4 - -	1E-3 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
14	Silicon-32	D, see <sup>31</sup> Si	2E+3	2E+2	1E-7	3E-10	-	-
		W, see <sup>31</sup> Si	LLI wall (3E+3)	-	-	-	4E-5	4E-4
		Y, see <sup>31</sup> Si	-	1E+2	5E-8	2E-10	-	-
			-	5E+0	2E-9	7E-12	-	-
			-					

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
15	Phosphorus-32	D, all compounds except phosphates given for W, phosphates of $\text{Zn}^{2+}$ , $\text{S}^{3+}$ , $\text{Mg}^{2+}$ , $\text{Fe}^{3+}$ , $\text{Bi}^{3+}$ , and Lanthanides	6E+2 -	9E+2 4E+2	4E-7 2E-7	1E-9 5E-10	9E-6 -	9E-5 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
15	Phosphorus-33	D, see $^{32}\text{p}$	6E+3	8E+3	4E-6	1E-8	8E-5	8E-4
		W, see $^{32}\text{p}$	-	3E+3	1E-6	4E-9	-	-

16	Sulfur-35	Vapor	-	1E+4	6E-6	2E-8	-	-
		D, sulfides and sulfates	1E+4	2E+4	7E-6	2E-8	-	-
		except those given for W	LLI wall (8E+3)	-	-	-	1E-4	1E-3
		W, elemental sulfur, sulfides of Sr, Ba, Ge, Sn, Pb, As, Sb, Bi, Cu, Ag, Au, Zn, Cd, Hg, W, and Mo. Sulfates of Ca, Sr, Ba, Ra, As, Sb, and Bi	6E+3	2E+3	9E-7	3E-9	-	-
17	Chlorine-36	D, chlorides of H, Li, Na,	2E+3	2E+3	1E-6	3E-9	2E-5	2E-4



Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
17	Chlorine-39 <sup>2</sup>	D, see <sup>36</sup> Cl	2E+4	5E+4	2E-5	7E-8	-	-
			St wall	-	-	-	5E-4	5E-3
		W, see <sup>36</sup> Cl	(4E+4)	6E+4	2E-5	8E-8	-	-
			-					
18	Argon-37	Submersion <sup>1</sup>	-	-	1E+0	6E-3	-	-
18	Argon-39	Submersion <sup>1</sup>	-	-	2E-4	8E-7	-	-
18	Argon-41	Submersion <sup>1</sup>	-	-	3E-6	1E-8	-	-

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
19	Potassium-40	D, all compounds	3E+2	4E+2	2E-7	6E-10	4E-6	4E-5
19	Potassium-42	D, all compounds	5E+3	5E+3	2E-6	7E-9	6E-5	6E-4
19	Potassium-43	D, all compounds	6E+3	9E+3	4E-6	1E-8	9E-5	9E-4
19	Potassium-44 <sup>2</sup>	D, all compounds	2E+4 St wall (4E+4)	7E+4 -	3E-5 -	9E-8 -	- 5E-4	- 5E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
19	Potassium-45 <sup>2</sup>	D, all compounds	3E+4	1E+5	5E-5	2E-7	-	-
			St wall (5E+4)	-	-	-	7E-4	7E-3
20	Calcium-41	W, all compounds	3E+3	4E+3	2E-6	-	-	-
			Bone surf (4E+3)	Bone surf (4E+3)	-	5E-9	6E-5	6E-4
20	Calcium-45	W, all compounds	2E+3	8E+2	4E-7	1E-9	2E-5	2E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
20	Calcium-47	W, all compounds	8E+2	9E+2	4E-7	1E-9	1E-5	1E-4
21	Scandium-43	Y, all compounds	7E+3	2E+4	9E-6	3E-8	1E-4	1E-3
21	Scandium-44m	Y, all compounds	5E+2	7E+2	3E-7	1E-9	7E-6	7E-5
21	Scandium-44	Y, all compounds	4E+3	1E+4	5E-6	2E-8	5E-5	5E-4
21	Scandium-46	Y, all compounds	9E+2	2E+2	1E-7	3E-10	1E-5	1E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
21	Scandium-47	Y, all compounds	2E+3 LLI wall (3E+3)	3E+3 -	1E-6 -	4E-9 -	- 4E-5	- 4E-4
21	Scandium-48	Y, all compounds	8E+2	1E+3	6E-7	2E-9	1E-5	1E-4
21	Scandium-49 <sup>2</sup>	Y, all compounds	2E+4	5E+4	2E-5	8E-8	3E-4	3E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
22	Titanium-44	D, all compounds except those given for W and Y  W, oxides, hydroxides, carbides, halides, and nitrates  Y, SrTiO	3E+2  -  -	1E+1  3E+1  6E+0	5E-9  1E-8  2E-9	2E-11  4E-11  8E-12	4E-6  -  -	4E-5  -  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
22	Titanium-45	D, see $^{44}\text{Ti}$	9E+3	3E+4	1E-5	3E-8	1E-4	1E-3
		W, see $^{44}\text{Ti}$	-	4E+4	1E-5	5E-8	-	-
		Y, see $^{44}\text{Ti}$	-	3E+4	1E-5	4E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
23	Vanadium-47 <sup>2</sup>	D, all compounds except those given for W  W, oxides, hydroxides, carbides, and halides	3E+4	8E+4	3E-5	1E-7	-	-
			St wall	-	-	-	4E-4	4E-3
			(3E+4)	1E+5	4E-5	1E-7	-	-
23	Vanadium-48	D, see <sup>47</sup> V W, see <sup>47</sup> V	6E+2	1E+3	5E-7	2E-9	9E-6	9E-5
			-	6E+2	3E-7	9E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
23	Vandium-49	D, see $^{47}\text{V}$  W, see $^{47}\text{V}$	7E+4  LLI wall (9E+4)  -	3E+4  Bone surf (3E+4)  2E+4	1E-5  - 8E-6	-  5E-8 2E-8	-  1E-3 -	-  1E-2 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
24	Chromium-48	D, all compounds except	6E+3	1E+4	5E-6	2E-8	8E-5	8E-4
		those given for W and Y	-	7E+3	3E-6	1E-8	-	-
		W, halides and nitrates	-	7E+3	3E-6	1E-8	-	-
		Y, oxides and hydroxides						

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
24	Chromium-49 <sup>2</sup>	D, see <sup>48</sup> Cr	3E+4	8E+4	4E-5	1E-7	4E-4	4E-3
		W, see <sup>48</sup> Cr	-	1E+5	4E-5	1E-7	-	-
		Y, see <sup>48</sup> Cr	-	9E+4	4E-5	1E-7	-	-
24	Chromium-51	D, see <sup>48</sup> Cr	4E+4	5E+4	2E-5	6E-8	5E-4	5E-3
		W, see <sup>48</sup> Cr	-	2E+4	1E-5	3E-8	-	-
		Y, see <sup>48</sup> Cr	-	2E+4	8E-6	3E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
25	Manganese- $^{51}\text{Mn}$	D, all compounds except those given for W W, oxides, hydroxides, halides, and nitrates	2E+4 -	5E+4 6E+4	2E-5 3E-5	7E-8 8E-8	3E-4 -	3E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
25	Manganese- $^{52}\text{Mn}$	D, see $^{51}\text{Mn}$	3E+4	9E+4	4E-5	1E-7	-	-
			St Wall (4E+4)	-	-	-	5E-4	5E-3
		W, see $^{51}\text{Mn}$	-	1E+5	4E-5	1E-7	-	-
25	Manganese- 52	D, see $^{51}\text{Mn}$	7E+2	1E+3	5E-7	2E-9	1E-5	1E-4
			-	9E+2	4E-7	1E-9	-	-
		W, see $^{51}\text{Mn}$						

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
25	Manganese-53	D, see $^{51}\text{Mn}$  W, see $^{51}\text{Mn}$	5E+4  -	1E+4  Bone surf (2E+4) 1E+4)	5E-6  -	-  3E-8 2E-8	7E-4  -	7E-3  -
25	Manganese-54	D, see $^{51}\text{Mn}$  W, see $^{51}\text{Mn}$	2E+3  -	9E+2  8E+2	4E-7  3E-7	1E-9  1E-9	3E-5  -	3E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
25	Manganese-56	D, see $^{51}\text{Mn}$  W, see $^{51}\text{Mn}$	5E+3  -	2E+4  2E+4	6E-6  9E-6	2E-8  3E-8	7E-5  -	7E-4  -
26	Iron-52	D, all compounds except those given for W  W, oxides, hydroxides, and halides	9E+2  -	3E+3  2E+3	1E-6  1E-6	4E-9  3E-9	1E-5  -	1E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
26	Iron-55	D, see $^{52}\text{Fe}$	9E+3	2E+3	8E-7	3E-9	1E-4	1E-3
		W, see $^{52}\text{Fe}$	-	4E+3	2E-6	6E-9	-	-
26	Iron-59	D, see $^{52}\text{Fe}$	8E+2	3E+2	1E-7	5E-10	1E-5	1E-4
		W, see $^{52}\text{Fe}$	-	5E+2	2E-7	7E-10	-	-
26	Iron-60	D, see $^{52}\text{Fe}$	3E+1	6E+0	3E-9	9E-12	4E-7	4E-6
		W, see $^{52}\text{Fe}$	-	2E+1	8E-9	3E-11	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
27	Cobalt-55	W, all compounds except those given for Y Y, oxides, hydroxides, halides, and nitrates	1E+3	3E+3	1E-6	4E-9	2E-5	2E-4
			-	3E+3	1E-6	4E-9	-	-
27	Cobalt-56	W, see $^{55}\text{Co}$ Y, see $^{55}\text{Co}$	5E+2	3E+2	1E-7	4E-10	6E-6	6E-5
			4E+2	2E+2	8E-8	3E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
27	Cobalt-57	W, see $^{55}\text{Co}$	8E+3	3E+3	1E-6	4E-9	6E-5	6E-4
		Y, see $^{55}\text{Co}$	4E+3	7E+2	3E-7	9E-10	-	-
27	Cobalt-58m	W, see $^{55}\text{Co}$	6E+4	9E+4	4E-5	1E-7	8E-4	8E-3
		Y, see $^{55}\text{Co}$	-	6E+4	3E-5	9E-8	-	-
27	Cobalt-58	W, see $^{55}\text{Co}$	2E+3	1E+3	5E-7	2E-9	2E-5	2E-4
		Y, see $^{55}\text{Co}$	1E+3	7E+2	3E-7	1E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
27	Cobalt-60m <sup>2</sup>	W, see <sup>55</sup> Co  Y, see <sup>55</sup> Co	1E+6 St wall (1E+6) -	4E+6 - 3E+6	2E-3 - 1E-3	6E-6 - 4E-6	- 2E-2 -	- 2E-1 -
27	Cobalt-60	W, see <sup>55</sup> Co  Y, see <sup>55</sup> Co	5E+2 2E+2	2E+2 3E+1	7E-8 1E-8	2E-10 5E-11	3E-6 -	3E-5 -
27	Cobalt-61 <sup>2</sup>	W, see <sup>55</sup> Co  Y, see <sup>55</sup> Co	2E+4 2E+4	6E+4 6E+4	3E-5 2E-5	9E-8 8E-8	3E-4 -	3E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
27	Cobalt-62m <sup>2</sup>	W, see <sup>55</sup> Co  Y, see <sup>55</sup> Co	4E+4 St wall (5E+4) -	2E+5 - 2E+5	7E-5 - 6E-5	2E-7 - 2E-7	- 7E-4 -	- 7E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
28	Nickel-56	D, all compounds except those given for W  W, oxides, hydroxides, and carbides  Vapor	1E+3 - -	2E+3 1E+3 1E+3	8E-7 5E-7 5E-7	3E-9 2E-9 2E-9	2E-5 - -	2E-4 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
28	Nickel-57	D, see $^{56}\text{Ni}$	2E+3	5E+3	2E-6	7E-9	2E-5	2E-4
		W, see $^{56}\text{Ni}$	-	3E+3	1E-6	4E-9	-	-
		Vapor	-	6E+3	3E-6	9E-9	-	-
28	Nickel-59	D, see $^{56}\text{Ni}$	2E+4	4E+3	2E-6	5E-9	3E-4	3E-3
		W, see $^{56}\text{Ni}$	-	7E+3	3E-6	1E-8	-	-
		Vapor	-	2E+3	8E-7	3E-9	-	-
28	Nickel-63	D, see $^{56}\text{Ni}$	9E+3	2E+3	7E-7	2E-9	1E-4	1E-3
		W, see $^{56}\text{Ni}$	-	3E+3	1E-6	4E-9	-	-
		Vapor	-	8E+2	3E-7	1E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
28	Nickel-65	D, see $^{56}\text{Ni}$	8E+3	2E+4	1E-5	3E-8	1E-4	1E-3
		W, see $^{56}\text{Ni}$	-	3E+4	1E-5	4E-8	-	-
		Vapor	-	2E+4	7E-6	2E-8	-	-
28	Nickel-66	D, see $^{56}\text{Ni}$	4E+2	2E+3	7E-7	2E-9	-	-
		LLI Wall	-	-	-	6E-6	6E-5	
		W, see $^{56}\text{Ni}$	(5E+2)	6E+2	3E-7	9E-10	-	-
		Vapor	-	3E+3	1E-6	4E-9	-	-
			-					

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
29	Copper-60 <sup>2</sup>	D, all compounds except those given for W and Y  W, sulfides, halides, and nitrates  Y, oxides and hydroxides	3E+4 St wall (3E+4) - -	9E+4 - 1E+5 1E+5 -	4E-5 - 5E-5 4E-5	1E-7 - 2E-7 1E-7	- 4E-4 - -	- 4E-3 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
29	Copper-61	D, see $^{60}\text{Cu}$	1E+4	3E+4	1E-5	4E-8	2E-4	2E-3
		W, see $^{60}\text{Cu}$	-	4E+4	2E-5	6E-8	-	-
		Y, see $^{60}\text{Cu}$	-	4E+4	1E-5	5E-8	-	-
29	Copper-64	D, see $^{60}\text{Cu}$	1E+4	3E+4	1E-5	4E-8	2E-4	2E-3
		W, see $^{60}\text{Cu}$	-	2E+4	1E-5	3E-8	-	-
		Y, see $^{60}\text{Cu}$	-	2E+4	9E-6	3E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
29	Copper-67	D, see $^{60}\text{Cu}$	5E+3	8E+3	3E-6	1E-8	6E-5	6E-4
		W, see $^{60}\text{Cu}$	-	5E+3	2E-6	7E-9	-	-
		Y, see $^{60}\text{Cu}$	-	5E+3	2E-6	6E-9	-	-
30	Zinc-62	Y, all compounds	1E+3	3E+3	1E-6	4E-9	2E-5	2E-4
30	Zinc-63 <sup>2</sup>	Y, all compounds	2E+4	7E+4	3E-5	9E-8	-	-
			St wall (3E+4)	-	-	-	3E-4	3E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
30	Zinc-65	Y, all compounds	4E+2	3E+2	1E-7	4E-10	5E-6	5E-5
30	Zinc-69m	Y, all compounds	4E+3	7E+3	3E-6	1E-8	6E-5	6E-4
30	Zinc-69 <sup>2</sup>	Y, all compounds	6E+4	1E+5	6E-5	2E-7	8E-4	8E-3
30	Zinc-71m	Y, all compounds	6E+3	2E+4	7E-6	2E-8	8E-5	8E-4
30	Zinc-72	Y, all compounds	1E+3	1E+3	5E-7	2E-9	1E-5	1E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
31	Gallium-65 <sup>2</sup>	D, all compounds except those given for W W, oxides, hydroxides, carbides, halides, and nitrates	5E+4 St wall (6E+4)	2E+5 - 2E+5	7E-5 - 8E-5	2E-7 - 3E-7	- 9E-4 -	- 9E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
31	Gallium-66	D, see $^{65}\text{Ga}$	1E+3	4E+3	1E-6	5E-9	1E-5	1E-4
		W, see $^{65}\text{Ga}$	-	3E+3	1E-6	4E-9	-	-
31	Gallium-67	D, see $^{65}\text{Ga}$	7E+3	1E+4	6E-6	2E-8	1E-4	1E-3
		W, see $^{65}\text{Ga}$	-	1E+4	4E-6	1E-8	-	-
31	Gallium-68 <sup>2</sup>	D, see $^{65}\text{Ga}$	2E+4	4E+4	2E-5	6E-8	2E-4	2E-3
		W, see $^{65}\text{Ga}$	-	5E+4	2E-5	7E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
31	Gallium-70 <sup>2</sup>	D, see <sup>65</sup> Ga	5E+4	2E-5	7E-5	2E-7	-	-
			St wall	-	-	-	1E-3	1E-2
		W, see <sup>65</sup> Ga	(7E+4)	2E+5	8E-5	3E-7	-	-
31	Gallium-72	D, see <sup>65</sup> Ga	1E+3	4E+3	1E-6	5E-9	2E-5	2E-4
		W, see <sup>65</sup> Ga	-	3E+3	1E-6	4E-9	-	-
31	Gallium-73	D, see <sup>65</sup> Ga	5E+3	2E+4	6E-6	2E-8	7E-5	7E-4
		W, see <sup>65</sup> Ga	-	2E+4	6E-6	2E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
32	Germanium-66	D, all compounds except those given for W, oxides, sulfides and halides	2E+4 -	3E+4 2E+4	1E-5 8E-6	4E-8 3E-8	3E-4 -	3E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
32	Germanium-67 <sup>2</sup>	D, see <sup>66</sup> Ge	3E+4	9E+4	4E-5	1E-7	-	-
		St wall	-	-	-	6E-4	6E-3	
32	Germanium-68	W, see <sup>66</sup> Ge	(4E+4)	1E+5	4E-5	1E-7	-	-
		-	-	-	-	-	-	
32	Germanium-69	D, see <sup>66</sup> Ge	5E+3	4E+3	2E-6	5E-9	6E-5	6E-4
		W, see <sup>66</sup> Ge	-	1E+2	4E-8	1E-10	-	-
32	Germanium-69	D, see <sup>66</sup> Ge	1E+4	2E+4	6E-6	2E-8	2E-4	2E-3
		W, see <sup>66</sup> Ge	-	8E+3	3E-6	1E-8	-	-

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
32	Germanium- 71	D, see $^{66}\text{Ge}$	5E+5	4E+5	2E-4	6E-7	7E-3	7E-2
		W, see $^{66}\text{Ge}$	-	4E+4	2E-5	6E-8	-	-
32	Germanium- 75 <sup>2</sup>	D, see $^{66}\text{Ge}$	4E+4	8E+4	3E-5	1E-7	-	-
			St wall	-	-	-	9E-4	9E-3
		W, see $^{66}\text{Ge}$	(7E+4)	8E+4	4E-5	1E-7	-	-
32	Germanium- 77	D, see $^{66}\text{Ge}$	9E+3	1E+4	4E-6	1E-8	1E-4	1E-3
		W, see $^{66}\text{Ge}$	-	6E+3	2E-6	8E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
32	Germanium-78 <sup>2</sup>	D, see <sup>66</sup> Ge	2E+4	2E+4	9E-6	3E-8	-	-
			St wall	-	-	-	3E-4	3E-3
		W, see <sup>66</sup> Ge	(2E+4)	2E+4	9E-6	3E-8	-	-
33	Arsenic-69 <sup>2</sup>	W, all compounds	3E+4	1E+5	5E-5	2E-7	-	-
			St wall	-	-	-	6E-4	6E-3
			(4E+4)					
33	Arsenic-70 <sup>2</sup>	W, all compounds	1E+4	5E+4	2E-5	7E-8	2E-4	2E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
33	Arsenic-71	W, all compounds	4E+3	5E+3	2E-6	6E-9	5E-5	5E-4
33	Arsenic-72	W, all compounds	9E+2	1E+3	6E-7	2E-9	1E-5	1E-4
33	Arsenic-73	W, all compounds	8E+3	2E+3	7E-7	2E-9	1E-4	1E-3
33	Arsenic-74	W, all compounds	1E+3	8E+2	3E-7	1E-9	2E-5	2E-4
33	Arsenic-76	W, all compounds	1E+3	1E+3	6E-7	2E-9	1E-5	1E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
33	Arsenic-77	W, all compounds	4E+3 LLI wall (5E+3)	5E+3 -	2E-6 -	7E-9 -	- 6E-5	- 6E-4
33	Arsenic-78 <sup>2</sup>	W, all compounds	8E+3	2E+4	9E-6	3E-8	1E-4	1E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
34	Selenium-70 <sup>2</sup>	D, all compounds except	2E+4	4E+4	2E-5	5E-8	1E-4	1E-3
		those given for W W, oxides, hydroxides, carbides and elemental Se	1E+4	4E+4	2E-5	6E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
34	Selenium-73m <sup>2</sup>	D, see <sup>70</sup> Se	6E+4	2E+5	6E-5	2E-7	4E-4	4E-3
		W, see <sup>70</sup> Se	3E+4	1E+5	6E-5	2E-7	-	-
34	Selenium-73	D, see <sup>70</sup> Se	3E+3	1E+4	5E-6	2E-8	4E-5	4E-4
		W, see <sup>70</sup> Se	-	2E+4	7E-6	2E-8	-	-
34	Selenium-75	D, see <sup>70</sup> Se	5E+2	7E+2	3E-7	1E-9	7E-6	7E-5
		W, see <sup>70</sup> Se	-	6E+2	3E-7	8E-10	-	-

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
34	Selenium-79	D, see $^{70}\text{Se}$  W, see $^{70}\text{Se}$	6E+2  -	8E+2  6E+2	3E-7  2E-7	1E-9  8E-10	8E-6  -	8E-5  -
34	Selenium- 81m <sup>2</sup>	D, see $^{70}\text{Se}$  W, see $^{70}\text{Se}$	4E+4  2E+4	7E+4  7E+4	3E-5  3E-5	9E-8  1E-7	3E-4  -	3E-3  -
34	Selenium- 81 <sup>2</sup>	D, see $^{70}\text{Se}$  W, see $^{70}\text{Se}$	6E+4  St wall (8E+4)  -	2E+5  -  2E+5	9E-5  -  1E-4	3E-7  -  3E-7	-  1E-3  -	-  1E-2  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
34	Selenium-83 <sup>2</sup>	D, see <sup>70</sup> Se	4E+4	1E+5	5E-5	2E-7	4E-4	4E-3
		W, see <sup>70</sup> Se	3E+4	1E+5	5E-5	2E-7	-	-



Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation ALI ( $\mu\text{Ci}$ )		DAC ( $\mu\text{Ci/ml}$ )	Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )
		W, see $^{74m}\text{Br}$		St wall ( $4\text{E}+4$ ) -	- $8\text{E}+4$			
35	Bromine-75 <sup>2</sup>	D, see $^{74m}\text{Br}$  W, see $^{74m}\text{Br}$	$3\text{E}+4$ St wall ( $4\text{E}+4$ ) -	$5\text{E}+4$ - $5\text{E}+4$	$2\text{E}-5$ - $2\text{E}-5$	$7\text{E}-8$ - $7\text{E}-8$	- $5\text{E}-4$ -	- $5\text{E}-3$ -
35	Bromine-76	D, see $^{74m}\text{Br}$  W, see $^{74m}\text{Br}$	$4\text{E}+3$ -	$5\text{E}+3$ $4\text{E}+3$	$2\text{E}-6$ $2\text{E}-6$	$7\text{E}-9$ $6\text{E}-9$	$5\text{E}-5$ -	$5\text{E}-4$ -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
35	Bromine-77	D, see $^{74\text{m}}\text{Br}$  W, see $^{74\text{m}}\text{Br}$	2E+4  -	2E+4  2E+4	1E-5  8E-6	3E-8  3E-8	2E-4  -	2E-3  -
35	Bromine- 80m	D, see $^{74\text{m}}\text{Br}$  W, see $^{74\text{m}}\text{Br}$	2E+4  -	2E+4  1E+4	7E-6  6E-6	2E-8  2E-8	3E-4  -	3E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
35	Bromine-80 <sup>2</sup>	D, see <sup>74m</sup> Br	5E+4	2E+5	8E-5	3E-7	-	-
			St wall (9E+4)	-	-	-	1E-3	1E-2
		W, see <sup>74m</sup> Br	-	2E+5	9E-5	3E-7	-	-
35	Bromine-82	D, see <sup>74m</sup> Br	3E+3	4E+3	2E-6	6E-9	4E-5	4E-4
			-	4E+3	2E-6	5E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
35	Bromine-83	D, see $^{74\text{m}}\text{Br}$	5E+4	6E+4	3E-5	9E-8	-	-
			St wall (7E+4)	-	-	-	9E-4	9E-3
		W, see $^{74\text{m}}\text{Br}$	-	6E+4	3E-5	9E-8	-	-
35	Bromine-84 <sup>2</sup>	D, see $^{74\text{m}}\text{Br}$	2E+4	6E+4	2E-5	8E-8	-	-
			St wall (3E+4)	-	-	-	4E-4	4E-3
		W, see $^{74\text{m}}\text{Br}$	-	6E+4	3E-5	9E-8	-	-

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
36	Krypton-74 <sup>2</sup>	Submersio n <sup>1</sup>	-	-	3E-6	1E-8	-	-
36	Krypton-76	Submersio n <sup>1</sup>	-	-	9E-6	4E-8	-	-
36	Krypton-77 <sup>2</sup>	Submersio n <sup>1</sup>	-	-	4E-6	2E-8	-	-
36	Krypton-79	Submersio n <sup>1</sup>	-	-	2E-5	7E-8	-	-
36	Krypton-81	Submersio n <sup>1</sup>	-	-	7E-4	3E-6	-	-

Atom ic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion  ALI ( $\mu$ Ci)	Inhalation		Air ( $\mu$ Ci/ ml)	Water ( $\mu$ Ci/ ml)	Monthly Average  Concentration ( $\mu$ Ci/ml)
ALI ( $\mu$ Ci)	DAC ( $\mu$ Ci/ ml)							
36	Krypton-83m <sup>2</sup>	Submersion <sup>1</sup>	-	-	1E-2	5E-5	-	-
36	Krypton-85m	Submersion <sup>1</sup>	-	-	2E-5	1E-7	-	-
36	Krypton-85	Submersion <sup>1</sup>	-	-	1E-4	7E-7	-	-
36	Krypton-87 <sup>2</sup>	Submersion <sup>1</sup>	-	-	5E-6	2E-8	-	-
36	Krypton-88	Submersion <sup>1</sup>	-	-	2E-6	9E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
37	Rubidium-79 <sup>2</sup>	D, all compounds	4E+4 St wall (6E+4)	1E+5 -	5E-5 -	2E-7 -	- 8E-4	- 8E-3
37	Rubidium-81m <sup>2</sup>	D, all compounds	2E+5 St wall (3E+5)	3E+5 -	1E-4 -	5E-7 -	- 4E-3	- 4E-2
37	Rubidium-81	D, all compounds	4E+4	5E+4	2E-5	7E-8	5E-4	5E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
37	Rubidium-82m	D, all compounds	1E+4	2E+4	7E-6	2E-8	2E-4	2E-3
37	Rubidium-83	D, all compounds	6E+2	1E+3	4E-7	1E-9	9E-6	9E-5
37	Rubidium-84	D, all compounds	5E+2	8E+2	3E-7	1E-9	7E-6	7E-5
37	Rubidium-86	D, all compounds	5E+2	8E+2	3E-7	1E-9	7E-6	7E-5
37	Rubidium-87	D, all compounds	1E+3	2E+3	6E-7	2E-9	1E-5	1E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
37	Rubidium-88 <sup>2</sup>	D, all compounds	2E+4 St wall (3E+4)	6E+4 -	3E-5 -	9E-8 -	- 4E-4	- 4E-3
37	Rubidium-89 <sup>2</sup>	D, all compounds	4E+4 St wall (6E+4)	1E+5 -	6E-5 -	2E-7 -	- 9E-4	- 9E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
38	Strontium- $^{80}\text{Sr}$	D, all soluble compounds  except $\text{SrTiO}_3$  Y, all insoluble  compounds and $\text{SrTiO}_3$	4E+3	1E+4	5E-6	2E-8	6E-5	6E-4
			-	1E+4	5E-6	2E-8	-	-
38	Strontium- $^{81}\text{Sr}$	D, see $^{80}\text{Sr}$  Y, see $^{80}\text{Sr}$	3E+4	8E+4	3E-5	1E-7	3E-4	3E-3
			2E+4	8E+4	3E-5	1E-7	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
38	Strontium-82	D, see $^{80}\text{Sr}$	3E+2	4E+2	2E-7	6E-10	-	-
		Y, see $^{80}\text{Sr}$	LLI wall (2E+2)	-	-	-	3E-6	3E-5
			2E+2	9E+1	4E-8	1E-10	-	-
38	Strontium-83	D, see $^{80}\text{Sr}$	3E+3	7E+3	3E-6	1E-8	3E-5	3E-4
		Y, see $^{80}\text{Sr}$	2E+3	4E+3	1E-6	5E-9	-	-
38	Strontium-85m <sup>2</sup>	D, see $^{80}\text{Sr}$	2E+5	6E+5	3E-4	9E-7	3E-3	3E-2
		Y, see $^{80}\text{Sr}$	-	8E+5	4E-4	1E-6	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
38	Strontium-85	D, see $^{80}\text{Sr}$	3E+3	3E+3	1E-6	4E-9	4E-5	4E-4
		Y, see $^{80}\text{Sr}$	-	2E+3	6E-7	2E-9	-	-
38	Strontium-87m	D, see $^{80}\text{Sr}$	5E+4	1E+5	5E-5	2E-7	6E-4	6E-3
		Y, see $^{80}\text{Sr}$	4E+4	2E+5	6E-5	2E-7	-	-
38	Strontium-89	D, see $^{80}\text{Sr}$	6E+2	8E+2	4E-7	1E-9	-	-
		Y, see $^{80}\text{Sr}$	LLI Wall	-	-	-	8E-6	8E-5
			(6E+2)	1E+2	6E-8	2E-10	-	-
			5E+2					

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
38	Strontium-90	D, see $^{80}\text{Sr}$	3E+1	2E+1	8E-9	-	-	-
		Y, see $^{80}\text{Sr}$	Bone surf (4E+1) -	Bone surf (2E+1) 4E+0	- 2E-9	3E-11 6E-12	5E-7 -	5E-6 -
38	Strontium-91	D, see $^{80}\text{Sr}$	2E+3	6E+3	2E-6	8E-9	2E-5	2E-4
		Y, see $^{80}\text{Sr}$	-	4E+3	1E-6	5E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
38	Strontium-92	D, see $^{80}\text{Sr}$	3E+3	9E+3	4E-6	1E-8	4E-5	4E-4
		Y, see $^{80}\text{Sr}$	-	7E+3	3E-6	9E-9	-	-
39	Yttrium-86m <sup>2</sup>	W, all compounds except	2E+4	6E+4	2E-5	8E-8	3E-4	3E-3
		those given for Y  Y, oxides and hydroxides	-	5E+4	2E-5	8E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
39	Yttrium-86	W, see $^{86m}\text{Y}$	1E+3	3E+3	1E-6	5E-9	2E-5	2E-4
		Y, see $^{86m}\text{Y}$	-	3E+3	1E-6	5E-9	-	-
39	Yttrium-87	W, see $^{86m}\text{Y}$	2E+3	3E+3	1E-6	5E-9	3E-5	3E-4
		Y, see $^{86m}\text{Y}$	-	3E+3	1E-6	5E-9	-	-
39	Yttrium-88	W, see $^{86m}\text{Y}$	1E+3	3E+2	1E-7	3E-10	1E-5	1E-4
		Y, see $^{86m}\text{Y}$	-	2E+2	1E-7	3E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
39	Yttrium-90m	W, see $^{86m}\text{Y}$ Y, see $^{86m}\text{Y}$	8E+3 -	1E+4 1E+4	5E-6 5E-6	2E-8 2E-8	1E-4 -	1E-3 -
39	Yttrium-90	W, see $^{86m}\text{Y}$ Y, see $^{86m}\text{Y}$	4E+2 LLI wall (5E+2) -	7E+2 - 6E+2	3E-7 - 3E-7	9E-10 - 9E-10	- 7E-6 -	- 7E-5 -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
39	Yttrium- 91m <sup>2</sup>	W, see <sup>86m</sup> Y  Y, see <sup>86m</sup> Y	1E+5  -	2E+5  2E+5	1E-4  7E-5	3E-7  2E-7	2E-3  -	2E-2  -
39	Yttrium-91	W, see <sup>86m</sup> Y  Y, see <sup>86m</sup> Y	5E+2  LLI wall (6E+2)  -	2E+2  -  1E+2	7E-8  -  5E-8	2E-10  -  2E-10	-  8E-6  -	-  8E-5  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
39	Yttrium-92	W, see $^{86m}\text{Y}$ Y, see $^{86m}\text{Y}$	3E+3 -	9E+3 8E+3	4E-6 3E-6	1E-8 1E-8	4E-5 -	4E-4 -
39	Yttrium-93	W, See $^{86m}\text{Y}$ Y, see $^{86m}\text{Y}$	1E+3 -	3E+3 2E+3	1E-6 1E-6	4E-9 3E-9	2E-5 -	2E-4 -
39	Yttrium-94 <sup>2</sup>	W, see $^{86m}\text{Y}$ Y, see $^{86m}\text{Y}$	2E+4 St wall (3E+4) -	8E+4 - 8E+4	3E-5 - 3E-5	1E-7 - 1E-7	- 4E-4 -	- 4E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
39	Yttrium-95 <sup>2</sup>	W, see <sup>86m</sup> Y  Y, see <sup>86m</sup> Y	4E+4 St wall (5E+4) -	2E+5 - 1E+5	6E-5 - 6E-5	2E-7 - 2E-7	- 7E-4 -	- 7E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
40	Zirconium-86	D, all compounds except those given for W and Y  W, oxides, hydroxides, halides, and nitrates  Y, carbide	1E+3  -  -	4E+3  3E+3  2E+3	2E-6  1E-6  1E-6	6E-9  4E-9  3E-9	2E-5  -  -	2E-4  -  -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
40	Zirconium- 88	D, see $^{86}\text{Zr}$	4E+3	2E+2	9E-8	3E-10	5E-5	5E-4
		W, see $^{86}\text{Zr}$	-	5E+2	2E-7	7E-10	-	-
		Y, see $^{86}\text{Zr}$	-	3E+2	1E-7	4E-10	-	-
40	Zirconium- 89	D, see $^{86}\text{Zr}$	2E+3	4E+3	1E-6	5E-9	2E-5	2E-4
		W, see $^{86}\text{Zr}$	-	2E+3	1E-6	3E-9	-	-
		Y, see $^{86}\text{Zr}$	-	2E+3	1E-6	3E-9	-	-

40	Zirconium-93	D, see <sup>86</sup> Zr	1E+3	6E+0	3E-9	-	-	-	
		W, see <sup>86</sup> Zr	Bone surf	Bone surf	-	2E-11	4E-5	4E-4	
			(3E+3)	(2E+1)	1E-8	-	-	-	
		Y, see <sup>86</sup> Zr	-	2E+1	2E-8	-	9E-11	-	-
			-	Bone surf	-	9E-11	-	-	-
-	(6E+1)	6E+1	Bone surf	(7E+1)					
40	Zirconium-95	D, see <sup>86</sup> Zr	1E+3	1E+2	5E-8	-	2E-5	2E-4	
		W, see <sup>86</sup> Zr	-	Bone surf	-	4E-10	-	-	
			-	(3E+2)	2E-7	5E-10	-	-	
Y, see <sup>86</sup> Zr	-	4E+2	1E-7	4E-10	-	-			
			3E+2						
40	Zirconium-97	D, see <sup>86</sup> Zr	6E+2	2E+3	8E-7	3E-9	9E-6	9E-5	
		W, see <sup>86</sup> Zr	-	1E+3	6E-7	2E-9	-	-	
		Y, see <sup>86</sup> Zr	-	1E+3	5E-7	2E-9	-	-	

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
41	Niobium-88 <sup>2</sup>	W, all compounds except those given for Y  Y, oxides and hydroxides	5E+4 St wall (7E+4) -	2E+5 - 2E+5	9E-5 - 9E-5	3E-7 - 3E-7	- 1E-3 -	- 1E-2 -
41	Niobium-89 <sup>2</sup> (66 min)	W, see <sup>88</sup> Nb  Y, see <sup>88</sup> Nb	1E+4 -	4E+4 4E+4	2E-5 2E-5	6E-8 5E-8	1E-4 -	1E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
41	Niobium-89 (122 min)	W, see $^{88}\text{Nb}$ Y, see $^{88}\text{Nb}$	5E+3 -	2E+4 2E+4	8E-6 6E-6	3E-8 2E-8	7E-5 -	7E-4 -
41	Niobium-90	W, see $^{88}\text{Nb}$ Y, see $^{88}\text{Nb}$	1E+3 -	3E+3 2E+3	1E-6 1E-6	4E-9 3E-9	1E-5 -	1E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
41	Niobium-93m	W, see $^{88}\text{Nb}$	9E+3	2E+3	8E-7	3E-9	-	-
		Y, see $^{88}\text{Nb}$	LLI wall (1E+4)	- 2E+2	- 7E-8	- 2E-10	2E-4	2E-3
41	Niobium-94	W, see $^{88}\text{Nb}$	9E+2	2E+2	8E-8	3E-10	1E-5	1E-4
		Y, see $^{88}\text{Nb}$	-	2E+1	6E-9	2E-11	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
41	Niobium-95m	W, see $^{88}\text{Nb}$  Y, see $^{88}\text{Nb}$	2E+3  LLI wall (2E+3)  -	3E+3  - 2E+3	1E-6  - 9E-7	4E-9  - 3E-9	- 3E-5 -	- 3E-4 -
41	Niobium-95	W, see $^{88}\text{Nb}$  Y, see $^{88}\text{Nb}$	2E+3  -	1E+3 1E+3	5E-7 5E-7	2E-9 2E-9	3E-5 -	3E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
41	Niobium-96	W, see $^{88}\text{Nb}$ Y, see $^{88}\text{Nb}$	1E+3 -	3E+3 2E+3	1E-6 1E-6	4E-9 3E-9	2E-5 -	2E-4 -
41	Niobium-97 <sup>2</sup>	W, see $^{88}\text{Nb}$ Y, see $^{88}\text{Nb}$	2E+4 -	8E+4 7E+4	3E-5 3E-5	1E-7 1E-7	3E-4 -	3E-3 -
41	Niobium-98 <sup>2</sup>	W, see $^{88}\text{Nb}$ Y, see $^{88}\text{Nb}$	1E+4 -	5E+4 5E+4	2E-5 2E-5	8E-8 7E-8	2E-4 -	2E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
42	Molybdenum-90	D, all compounds except those given for Y  Y, oxides, hydroxides, and $\text{MoS}_2$	4E+3	7E+3	3E-6	1E-8	3E-5	3E-4
			2E+3	5E+3	2E-6	6E-9	-	-
42	Molybdenum-93m	D, see $^{90}\text{Mo}$  Y, see $^{90}\text{Mo}$	9E+3	2E+4	7E-6	2E-8	6E-5	6E-4
			4E+3	1E+4	6E-6	2E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
42	Molybdenum-93	D, see $^{90}\text{Mo}$	4E+3	5E+3	2E-6	8E-9	5E-5	5E-4
		Y, see $^{90}\text{Mo}$	2E+4	2E+2	8E-8	2E-10	-	-
42	Molybdenum-99	D, see $^{90}\text{Mo}$	2E+3	3E+3	1E-6	4E-9	-	-
		Y, see $^{90}\text{Mo}$	LLI wall (1E+3)	-	-	-	2E-5	2E-4
			1E+3	1E+3	6E-7	2E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
42	Molybdenum-101 <sup>2</sup>	D, see <sup>90</sup> Mo	4E+4	1E+5	6E-5	2E-7	-	-
			St wall (5E+4)	-	-	-	7E-4	7E-3
		Y, see <sup>90</sup> Mo	-	1E+5	6E-5	2E-7	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
43	Technetium- $^{93m}\text{Tc}$	D, all compounds except those given for W  W, oxides, hydroxides, halides, and nitrates	7E+4 -	2E+5 3E+5	6E-5 1E-4	2E-7 4E-7	1E-3 -	1E-2 -
43	Technetium-93	D, see $^{93m}\text{Tc}$  W, see $^{93m}\text{Tc}$	3E+4 -	7E+4 1E+5	3E-5 4E-5	1E-7 1E-7	4E-4 -	4E-3 -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
43	Technetium- 94m <sup>2</sup>	D, see <sup>93m</sup> Tc  W, see <sup>93m</sup> Tc	2E+4  -	4E+4  6E+4	2E-5  2E-5	6E-8  8E-8	3E-4  -	3E-3  -
43	Technetium- 94	D, see <sup>93m</sup> Tc  W, see <sup>93m</sup> Tc	9E+3  -	2E+4  2E+4	8E-6  1E-5	3E-8  3E-8	1E-4  -	1E-3  -
43	Technetium- 95m	D, see <sup>93m</sup> Tc  W, see <sup>93m</sup> Tc	4E+3  -	5E+3  2E+3	2E-6  8E-7	8E-9  3E-9	5E-5  -	5E-4  -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
43	Technetium-95	D, see $^{93m}\text{Tc}$  W, see $^{93m}\text{Tc}$	1E+4  -	2E+4  2E+4	9E-6  8E-6	3E-8  3E-8	1E-4  -	1E-3  -
43	Technetium-96m <sup>2</sup>	D, see $^{93m}\text{Tc}$  W, see $^{93m}\text{Tc}$	2E+5  -	3E+5  2E+5	1E-4  1E-4	4E-7  3E-7	2E-3  -	2E-2  -
43	Technetium-96	D, see $^{93m}\text{Tc}$  W, see $^{93m}\text{Tc}$	2E+3  -	3E+3  2E+3	1E-6  9E-7	5E-9  3E-9	3E-5  -	3E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
43	Technetium-97m	D, see $^{93\text{m}}\text{Tc}$  W, see $^{93\text{m}}\text{Tc}$	5E+3 - -	7E+3 St wall (7E+3) 1E+3	3E-6 - 5E-7	- 1E-8 2E-9	6E-5 - -	6E-4 - -
43	Technetium-97	D, see $^{93\text{m}}\text{Tc}$  W, see $^{93\text{m}}\text{Tc}$	4E+4 -	5E+4 6E+3	2E-5 2E-6	7E-8 8E-9	5E-4 -	5E-3 -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
43	Technetium- 98	D, see $^{93m}\text{Tc}$  W, see $^{93m}\text{Tc}$	1E+3  -	2E+3  3E+2	7E-7  1E-7	2E-9  4E-10	1E-5  -	1E-4  -
43	Technetium- 99m	D, see $^{93m}\text{Tc}$  W, see $^{93m}\text{Tc}$	8E+4  -	2E+5  2E+5	6E-5  1E-4	2E-7  3E-7	1E-3  -	1E-2  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
43	Technetium-99	D, see $^{93m}\text{Tc}$  W, see $^{93m}\text{Tc}$	4E+3  -  -	5E+3  St wall  (6E+3)  7E+2	2E-6  -  3E-7	-  8E-9  9E-10	6E-5  -  -	6E-4  -  -
43	Technetium-101 <sup>2</sup>	D, see $^{93m}\text{Tc}$  W, see $^{93m}\text{Tc}$	9E+4  St wall  (1E+5)  -	3E+5  -  4E+5	1E-4  -  2E-4	5E-7  -  5E-7	-  2E-3  -	-  2E-2  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
43	Technetium-104 <sup>2</sup>	D, see <sup>93m</sup> Tc	2E+4	7E+4	3E-5	1E-7	-	-
			St wall (3E+4)	-	-	-	4E-4	4E-3
		W, see <sup>93m</sup> Tc	-	9E+4	4E-5	1E-7	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
44	Ruthenium-94 <sup>2</sup>	D, all compounds except those given for W and Y  W, halides  Y, oxides and hydroxides	2E+4 - -	4E+4 6E+4 6E+4	2E-5 3E-5 2E-5	6E-8 9E-8 8E-8	2E-4 - -	2E-3 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
44	Ruthenium-97	D, see $^{94}\text{Ru}$	8E+3	2E+4	8E-6	3E-8	1E-4	1E-3
		W, see $^{94}\text{Ru}$	-	1E+4	5E-6	2E-8	-	-
		Y, see $^{94}\text{Ru}$	-	1E+4	5E-6	2E-8	-	-
44	Ruthenium-103	D, see $^{94}\text{Ru}$	2E+3	2E+3	7E-7	2E-9	3E-5	3E-4
		W, see $^{94}\text{Ru}$	-	1E+3	4E-7	1E-9	-	-
		Y, see $^{94}\text{Ru}$	-	6E+2	3E-7	9E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
44	Ruthenium-105	D, see $^{94}\text{Ru}$	5E+3	1E+4	6E-6	2E-8	7E-5	7E-4
		W, see $^{94}\text{Ru}$	-	1E+4	6E-6	2E-8	-	-
		Y, see $^{94}\text{Ru}$	-	1E+4	5E-6	2E-8	-	-
44	Ruthenium-106	D, see $^{94}\text{Ru}$	2E+2	9E+1	4E-8	1E-10	-	-
		LLI wall	-	-	-	-	3E-6	3E-5
		W, see $^{94}\text{Ru}$	(2E+2)	5E+1	2E-8	8E-11	-	-
		Y, see $^{94}\text{Ru}$	-	1E+1	5E-9	2E-11	-	-
			-					

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
45	Rhodium-99m	D, all compounds except	2E+4	6E+4	2E-5	8E-8	2E-4	2E-3
		those given for W and Y	-	8E+4	3E-5	1E-7	-	-
		W, halides Y, oxides and hydroxides	-	7E+4	3E-5	9E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
45	Rhodium-99	D, see $^{99\text{m}}\text{Rh}$	2E+3	3E+3	1E-6	4E-9	3E-5	3E-4
		W, see $^{99\text{m}}\text{Rh}$	-	2E+3	9E-7	3E-9	-	-
		Y, see $^{99\text{m}}\text{Rh}$	-	2E+3	8E-7	3E-9	-	-
45	Rhodium-100	D, see $^{99\text{m}}\text{Rh}$	2E+3	5E+3	2E-6	7E-9	2E-5	2E-4
		W, see $^{99\text{m}}\text{Rh}$	-	4E+3	2E-6	6E-9	-	-
		Y, see $^{99\text{m}}\text{Rh}$	-	4E+3	2E-6	5E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
45	Rhodium-101m	D, see $^{99\text{m}}\text{Rh}$	6E+3	1E+4	5E-6	2E-8	8E-5	8E-4
		W, see $^{99\text{m}}\text{Rh}$	-	8E+3	4E-6	1E-8	-	-
		Y, see $^{99\text{m}}\text{Rh}$	-	8E+3	3E-6	1E-8	-	-
45	Rhodium-101	D, see $^{99\text{m}}\text{Rh}$	2E+3	5E+2	2E-7	7E-10	3E-5	3E-4
		W, see $^{99\text{m}}\text{Rh}$	-	8E+2	3E-7	1E-9	-	-
		Y, see $^{99\text{m}}\text{Rh}$	-	2E+2	6E-8	2E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
45	Rhodium 102m	D, see $^{99\text{m}}\text{Rh}$	1E+3	5E+2	2E-7	7E-10	-	-
			LLI wall	-	-	-	2E-5	2E-4
		W, see $^{99\text{m}}\text{Rh}$	(1E+3)	4E+2	2E-7	5E-10	-	-
		Y, see $^{99\text{m}}\text{Rh}$	-	1E+2	5E-8	2E-10	-	-
45	Rhodium-102	D, see $^{99\text{m}}\text{Rh}$	6E+2	9E+1	4E-8	1E-10	8E-6	8E-5
			-	2E+2	7E-8	2E-10	-	-
		W, see $^{99\text{m}}\text{Rh}$	-	6E+1	2E-8	8E-11	-	-
		Y, see $^{99\text{M}}\text{Rh}$						

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
45	Rhodium-103m <sup>2</sup>	D, see <sup>99m</sup> Rh	4E+5	1E+6	5E-4	2E-6	6E-3	6E-2
		W, see <sup>99m</sup> Rh	-	1E+6	5E-4	2E-6	-	-
		Y, see <sup>99M</sup> Rh	-	1E+6	5E-4	2E-6	-	-
45	Rhodium-105	D, see <sup>99m</sup> Rh	4E+3	1E+4	5E-6	2E-8	-	-
		W, see <sup>99m</sup> Rh	LLI wall (4E+3)	-	-	-	5E-5	5E-4
			6E+3	3E-6	9E-9	-	-	
			6E+3	2E-6	8E-9	-	-	
		Y, see <sup>99M</sup> Rh	-	-	-	-	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
45	Rhodium-106m	D, see $^{99\text{m}}\text{Rh}$	8E+3	3E+4	1E-5	4E-8	1E-4	1E-3
		W, see $^{99\text{m}}\text{Rh}$	-	4E+4	2E-5	5E-8	-	-
		Y, see $^{99\text{M}}\text{Rh}$	-	4E+4	1E-5	5E-8	-	-
45	Rhodium-107 <sup>2</sup>	D, see $^{99\text{m}}\text{Rh}$	7E+4	2E+5	1E-4	3E-7	-	-
		St wall	-	-	-	1E-3	1E-2	
		(9E+4)	3E+5	1E-4	4E-7	-	-	
		W, see $^{99\text{m}}\text{Rh}$	-	3E+5	1E-4	3E-7	-	-
		Y, see $^{99\text{M}}\text{Rh}$	-					

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
46	Palladium-100	D, all compounds except	1E+3	1E+3	6E-7	2E-9	2E-5	2E-4
		those given for W and Y	-	1E+3	5E-7	2E-9	-	-
		W, nitrates Y, oxides and hydroxides	-	1E+3	6E-7	2E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
46	Palladium-101	D, see $^{100}\text{Pd}$	1E+4	3E+4	1E-5	5E-8	2E-4	2E-3
		W, see $^{100}\text{Pd}$	-	3E+4	1E-5	5E-8	-	-
		Y, see $^{100}\text{Pd}$	-	3E+4	1E-5	4E-8	-	-
46	Palladium-103	D, see $^{100}\text{Pd}$	6E+3	6E+3	3E-6	9E-9	-	-
		LLI wall	-	-	-	-	1E-4	-
		W, see $^{100}\text{Pd}$	(7E+3)	4E+3	2E-6	6E-9	-	1E-3
		Y, see $^{100}\text{Pd}$	-	4E+3	1E-6	5E-9	-	-
		-	-	-	-	-	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
46	Palladium-107	D, see $^{100}\text{Pd}$  W, see $^{100}\text{Pd}$  Y, see $^{100}\text{Pd}$	3E+4  LLI wall  (4E+4)  -	2E+4  Kidneys  (2E+4)  7E+3  4E+2	9E-6  -  3E-6  2E-7	-  3E-8  1E-8  6E-10	-  -  5E-4  -	-  -  3E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
46	Palladium-109	D, see $^{100}\text{Pd}$	2E+3	6E+3	3E-6	9E-9	3E-5	3E-4
		W, see $^{100}\text{Pd}$	-	5E+3	2E-6	8E-9	-	-
		Y, see $^{100}\text{Pd}$	-	5E+3	2E-6	6E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
47	Silver-102 <sup>2</sup>	D, all compounds except those given for W and Y  W, nitrates and sulfides  Y, oxides and hydroxides	5E+4 St wall (6E+4) - -	2E+5 - 2E+5 2E+5	8E-5 - 9E-5 8E-5	2E-7 - 3E-7 3E-7	- 9E-4 - -	- 9E-3 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
47	Silver-103 <sup>2</sup>	D, see <sup>102</sup> Ag	4E+4	1E+5	4E-5	1E-7	5E-4	5E-3
		W, see <sup>102</sup> Ag	-	1E+5	5E-5	2E-7	-	-
		Y, see <sup>102</sup> Ag	-	1E+5	5E-5	2E-7	-	-
47	Silver-104m <sup>2</sup>	D, see <sup>102</sup> Ag	3E+4	9E+4	4E-5	1E-7	4E-4	4E-3
		W, see <sup>102</sup> Ag	-	1E+5	5E-5	2E-7	-	-
		Y, see <sup>102</sup> Ag	-	1E+5	5E-5	2E-7	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
47	Silver-104 <sup>2</sup>	D, see <sup>102</sup> Ag	2E+4	7E+4	3E-5	1E-7	3E-4	3E-3
		W, see <sup>102</sup> Ag	-	1E+5	6E-5	2E-7	-	-
		Y, see <sup>102</sup> Ag	-	1E+5	6E-5	2E-7	-	-
47	Silver-105	D, see <sup>102</sup> Ag	3E+3	1E+3	4E-7	1E-9	4E-5	4E-4
		W, see <sup>102</sup> Ag	-	2E+3	7E-7	2E-9	-	-
		Y, see <sup>102</sup> Ag	-	2E+3	7E-7	2E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
47	Silver-106m	D, see $^{102}\text{Ag}$	8E+2	7E+2	3E-7	1E-9	1E-5	1E-4
		W, see $^{102}\text{Ag}$	-	9E+2	4E-7	1E-9	-	-
		Y, see $^{102}\text{Ag}$	-	9E+2	4E-7	1E-9	-	-
47	Silver-106 <sup>2</sup>	D, see $^{102}\text{Ag}$	6E+4	2E+5	8E-5	3E-7	-	-
		St wall	-	-	-	-	9E-4	9E-3
		(6E+4)	2E+5	9E-5	3E-7	-	-	
		W, see $^{102}\text{Ag}$	-	2E+5	8E-5	3E-7	-	-
		Y, see $^{102}\text{Ag}$	-					

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
47	Silver-108m	D, see $^{102}\text{Ag}$	6E+2	2E+2	8E-8	3E-10	9E-6	9E-5
		W, see $^{102}\text{Ag}$	-	3E+2	1E-7	4E-10	-	-
		Y, see $^{102}\text{Ag}$	-	2E+1	1E-8	3E-11	-	-
47	Silver-110m	D, see $^{102}\text{Ag}$	5E+2	1E+2	5E-8	2E-10	6E-6	6E-5
		W, see $^{102}\text{Ag}$	-	2E+2	8E-8	3E-10	-	-
		Y, see $^{102}\text{Ag}$	-	9E+1	4E-8	1E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
47	Silver-111	D, see $^{102}\text{Ag}$  W, see $^{102}\text{Ag}$  Y, see $^{102}\text{Ag}$	9E+2  LLI wall (1E+3)  -	2E+3  Liver (2E+3)  9E+2  9E+2	6E-7  -  4E-7  4E-7	-  2E-9  1E-9  1E-9	-  2E-5  -	-  2E-4  -
47	Silver-112	D, see $^{102}\text{Ag}$  W, see $^{102}\text{Ag}$  Y, see $^{102}\text{Ag}$	3E+3  -  -	8E+3  1E+4  9E+3	3E-6  4E-6  4E-6	1E-8  1E-8  1E-8	4E-5  -	4E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
47	Silver-115 <sup>2</sup>	D, see <sup>102</sup> Ag	3E+4	9E+4	4E-5	1E-7	-	-
		St wall	-	-	-	-	4E-4	4E-3
		(3E+4)	9E+4	4E-5	1E-7	-	-	-
		W, see <sup>102</sup> Ag	-	8E+4	3E-5	1E-7	-	-
		Y, see <sup>102</sup> Ag	-					

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
48	Cadmium-104 <sup>2</sup>	D, all compounds except those given for W and Y  W, sulfides, halides, and nitrates  Y, oxides and hydroxides	2E+4 - -	7E+4 1E+5 1E+5	3E-5 5E-5 5E-5	9E-8 2E-7 2E-7	3E-4 - -	3E-3 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
48	Cadmium-107	D, see $^{104}\text{Cd}$	2E+4	5E+4	2E-5	8E-8	3E-4	3E-3
		W, see $^{104}\text{Cd}$	-	6E+4	2E-5	8E-8	-	-
		Y, see $^{104}\text{Cd}$	-	5E+4	2E-5	7E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
48	Cadmium-109	D, see $^{104}\text{Cd}$	3E+2	4E+1	1E-8	-	-	-
		W, see $^{104}\text{Cd}$	Kidneys (4E+2)	Kidneys (5E+1)	- 5E-8	7E-11	6E-6	6E-5
		Y, see $^{104}\text{Cd}$	-	1E+2	5E-8	2E-10	-	-
			-	Kidneys (1E+2)		2E-10	-	-
			-	1E+2				

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
48	Cadmium-113m	D, see $^{104}\text{Cd}$	2E+1	2E+0	1E-9	-	-	-
		W, see $^{104}\text{Cd}$	Kidneys (4E+1)	Kidneys (4E+0)	-	5E-12	5E-7	5E-6
			-	8E+0	4E-9	-	-	-
		Y, see $^{104}\text{Cd}$	-	Kidneys (1E+1)	-	2E-11	-	-
			-	1E+1	5E-9	2E-11	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
48	Cadmium-113	D, see $^{104}\text{Cd}$	2E+1 Kidneys	2E+0 Kidneys	9E-10	-	-	-
		W, see $^{104}\text{Cd}$	(3E+1)	(3E+0)	3E-9	5E-12	4E-7	4E-6
			-	8E+0	6E-9	-	-	-
		Y, see $^{104}\text{Cd}$	-	Kidneys (1E+1)		2E-11	-	-
				1E+1		2E-11	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
48	Cadmium-115m	D, see $^{104}\text{Cd}$  W, see $^{104}\text{Cd}$  Y, see $^{104}\text{Cd}$	3E+2  -  -  -	5E+1  Kidneys  (8E+1)  1E+2  1E+2	2E-8  -  5E-8  6E-8	-  1E-10  2E-10  2E-10	4E-6  -  -  -	4E-5  -  -  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
48	Cadmium-115	D, see $^{104}\text{Cd}$  W, see $^{104}\text{Cd}$  Y, see $^{104}\text{Cd}$	9E+2  LLI wall (1E+3)  -	1E+3  - 1E+3 1E+3	6E-7  - 5E-7 6E-7	2E-9  - 2E-9 2E-9	-  1E-5 -	-  1E-4 -
48	Cadmium-117m <sup>2</sup>	D, see $^{104}\text{Cd}$  W, see $^{104}\text{Cd}$  Y, see $^{104}\text{Cd}$	5E+3  - -	1E+4  2E+4 1E+4	5E-6  7E-6 6E-6	2E-8  2E-8 2E-8	6E-5  - -	6E-4  - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
48	Cadmium-117	D, see $^{104}\text{Cd}$	5E+3	1E+4	5E-6	2E-8	6E-5	6E-4
		W, see $^{104}\text{Cd}$	-	2E+4	7E-6	2E-8	-	-
		Y, see $^{104}\text{Cd}$	-	1E+4	6E-6	2E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
49	Indium-109	D, all compounds except those given for W  W, oxides, hydroxides, halides, and nitrates	2E+4	4E+4	2E-5	6E-8	3E-4	3E-3
			-	6E+4	3E-5	9E-8	-	-
49	Indium-110 <sup>2</sup> (69.1 min)	D, see <sup>109</sup> In	2E+4	4E+4	2E-5	6E-8	2E-4	2E-3
		W, see <sup>109</sup> In	-	6E+4	2E-5	8E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
49	Indium-110 (4.9 h)	D, see $^{109}\text{In}$	5E+3	2E+4	7E-6	2E-8	7E-5	7E-4
		W, see $^{109}\text{In}$	-	2E+4	8E-6	3E-8	-	-
49	Indium-111	D, see $^{109}\text{In}$	4E+3	6E+3	3E-6	9E-9	6E-5	6E-4
		W, see $^{109}\text{In}$	-	6E+3	3E-6	9E-9	-	-
49	Indium-112 <sup>2</sup>	D, see $^{109}\text{In}$	2E+5	6E+5	3E-4	9E-7	2E-3	2E-2
		W, see $^{109}\text{In}$	-	7E+5	3E-4	1E-6	-	-

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
49	Indium- 113m <sup>2</sup>	D, see <sup>109</sup> In  W, see <sup>109</sup> In	5E+4  -	1E+5  2E+5	6E-5  8E-5	2E-7  3E-7	7E-4  -	7E-3  -
49	Indium- 114m	D, see <sup>109</sup> In  W, see <sup>109</sup> In	3E+2  LLI wall (4E+2)  -	6E+1  -  1E+2	3E-8  -  4E-8	9E-11  -  1E-10	-  5E-6  -	-  5E-5  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
49	Indium-115m	D, see $^{109}\text{In}$	1E+4	4E+4	2E-5	6E-8	2E-4	2E-3
		W, see $^{109}\text{In}$	-	5E+4	2E-5	7E-8	-	-
49	Indium-115	D, see $^{109}\text{In}$	4E+1	1E+0	6E-10	2E-12	5E-7	5E-6
		W, see $^{109}\text{In}$	-	5E+0	2E-9	8E-12	-	-
49	Indium-116m <sup>2</sup>	D, see $^{109}\text{In}$	2E+4	8E+4	3E-5	1E-7	3E-4	3E-3
		W, see $^{109}\text{In}$	-	1E+5	5E-5	2E-7	-	-

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
49	Indium- 117m <sup>2</sup>	D, see <sup>109</sup> In	1E+4	3E+4	1E-5	5E-8	2E-4	2E-3
		W, see <sup>109</sup> In	-	4E+4	2E-5	6E-8	-	-
49	Indium-117 <sup>2</sup>	D, see <sup>109</sup> In	6E+4	2E+5	7E-5	2E-7	8E-4	8E-3
		W, see <sup>109</sup> In	-	2E+5	9E-5	3E-7	-	-
49	Indium- 119m <sup>2</sup>	D, see <sup>109</sup> In	4E+4	1E+5	5E-5	2E-7	-	-
		St wall	-	-	-	-	7E-4	7E-3
		W, see <sup>109</sup> In	(5E+4)	1E+5	6E-5	2E-7	-	-
			-					

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
50	Tin-110	D, all compounds except those given for W W, sulfides, oxides, hydroxides, halides, nitrates, and stannic phosphate	4E+3 -	1E+4 1E+4	5E-6 5E-6	2E-8 2E-8	5E-5 -	5E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
50	Tin-111 <sup>2</sup>	D, see <sup>110</sup> Sn  W, see <sup>110</sup> Sn	7E+4  -	2E+5  3E+5	9E-5  1E-4	3E-7  4E-7	1E-3  -	1E-2  -
50	Tin-113	D, see <sup>110</sup> Sn  W, see <sup>110</sup> Sn	2E+3  LLI wall (2E+3)  -	1E+3  -  5E+2	5E-7  -  2E-7	2E-9  -  8E-10	-  3E-5  -	-  3E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
50	Tin-117m	D, see $^{110}\text{Sn}$	2E+3	1E+3	5E-7	-	-	-
		W, see $^{110}\text{Sn}$	LLI wall (2E+3) -	Bone surf (2E+3) 1E+3	- 6E-7	3E-9 2E-9	3E-5 -	3E-4 -
50	Tin-119m	D, see $^{110}\text{Sn}$	3E+3	2E+3	1E-6	3E-9	-	-
		W, see $^{110}\text{Sn}$	LLI wall (4E+3) -	- 1E+3	- 4E-7	- 1E-9	6E-5 -	6E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
50	Tin-121m	D, see $^{110}\text{Sn}$  W, see $^{110}\text{Sn}$	3E+3  LLI wall (4E+3)  -	9E+2  - 5E+2	4E-7  - 2E-7	1E-9  - 8E-10	-  5E-5  -	-  5E-4  -
50	Tin-121	D, see $^{110}\text{Sn}$  W, see $^{110}\text{Sn}$	6E+3  LLI wall (6E+3)  -	2E+4  - 1E+4	6E-6  - 5E-6	2E-8  - 2E-8	-  8E-5  -	-  8E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
50	Tin-123m <sup>2</sup>	D, see <sup>110</sup> Sn  W, see <sup>110</sup> Sn	5E+4  -	1E+5  1E+5	5E-5  6E-5	2E-7  2E-7	7E-4  -	7E-3  -
50	Tin-123	D, see <sup>110</sup> Sn  W, see <sup>110</sup> Sn	5E+2  LLI wall (6E+2)  -	6E+2  -  2E+2	3E-7  -  7E-8	9E-10  -  2E-10	-  9E-6  -	-  9E-5  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
50	Tin-125	D, see $^{110}\text{Sn}$  W, see $^{110}\text{Sn}$	4E+2  LLI wall (5E+2)  -	9E+2  - 4E+2	4E-7  - 1E-7	1E-9  - 5E-10	-  6E-6  -	-  6E-5  -
50	Tin-126	D, see $^{110}\text{Sn}$  W, see $^{110}\text{Sn}$	3E+2  -	6E+1  7E+1	2E-8  3E-8	8E-11  9E-11	4E-6  -	4E-5  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
50	Tin-127	D, see $^{110}\text{Sn}$	7E+3	2E+4	8E-6	3E-8	9E-5	9E-4
		W, see $^{110}\text{Sn}$	-	2E+4	8E-6	3E-8	-	-
50	Tin-128 <sup>2</sup>	D, see $^{110}\text{Sn}$	9E+3	3E+4	1E-5	4E-8	1E-4	1E-3
		W, see $^{110}\text{Sn}$	-	4E+4	1E-5	5E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
51	Antimony-115 <sup>2</sup>	D, all compounds except those given for W W, oxides, hydroxides, halides, sulfides, sulfates, and nitrates	8E+4 -	2E+5 3E+5	1E-4 1E-4	3E-7 4E-7	1E-3 -	1E-2 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation ALI ( $\mu\text{Ci}$ )		DAC ( $\mu\text{Ci}/\text{ml}$ )	Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )
51	Antimony-116m <sup>2</sup>	D, see <sup>115</sup> Sb  W, see <sup>115</sup> Sb		2E+4  -	7E+4  1E+5			
51	Antimony-116 <sup>2</sup>	D, see <sup>115</sup> Sb  W, see <sup>115</sup> Sb	7E+4  St wall (9E+4)  -	3E+5  -  3E+5	1E-4  -  1E-4	4E-7  -  5E-7	-  1E-3  -	-  1E-2  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
51	Antimony-117	D, see $^{115}\text{Sb}$  W, see $^{115}\text{Sb}$	7E+4  -	2E+5  3E+5	9E-5  1E-4	3E-7  4E-7	9E-4  -	9E-3  -
51	Antimony-118m	D, see $^{115}\text{Sb}$  W, see $^{115}\text{Sb}$	6E+3  5E+3	2E+4  2E+4	8E-6  9E-6	3E-8  3E-8	7E-5  -	7E-4  -
51	Antimony-119	D, see $^{115}\text{Sb}$  W, see $^{115}\text{Sb}$	2E+4  2E+4	5E+4  3E+4	2E-5  1E-5	6E-8  4E-8	2E-4  -	2E-3  -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
51	Antimony- 120 <sup>2</sup>  (16 min)	D, see <sup>115</sup> Sb  W, see <sup>115</sup> Sb	1E+5	4E+5	2E-4	6E-7	-	-
			St wall (2E+5)	-	-	-	2E-3	2E-2
			-	5E+5	2E-4	7E-7	-	-
51	Antimony- 120  (5.76 d)	D, see <sup>115</sup> Sb  W, see <sup>115</sup> Sb	1E+3	2E+3	9E-7	3E-9	1E-5	1E-4
			9E+2	1E+3	5E-7	2E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
51	Antimony-122	D, see $^{115}\text{Sb}$  W, see $^{115}\text{Sb}$	8E+2  LLI wall (8E+2)  7E+2	2E+3  - 1E+3	1E-6  - 4E-7	3E-9  - 2E-9	-  1E-5  -	-  1E-4  -
51	Antimony-124m <sup>2</sup>	D, see $^{115}\text{Sb}$  W, see $^{115}\text{Sb}$	3E+5  2E+5	8E+5  6E+5	4E-4  2E-4	1E-6  8E-7	3E-3  -	3E-2  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
51	Antimony-124	D, see $^{115}\text{Sb}$  W, see $^{115}\text{Sb}$	6E+2	9E+2	4E-7	1E-9	7E-6	7E-5
			5E+2	2E+2	1E-7	3E-10	-	-
51	Antimony-125	D, see $^{115}\text{Sb}$  W, see $^{115}\text{Sb}$	2E+3	2E+3	1E-6	3E-9	3E-5	3E-4
			-	5E+2	2E-7	7E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
51	Antimony- 126m <sup>2</sup>	D, see <sup>115</sup> Sb	5E+4	2E+5	8E-5	3E-7	-	-
			St wall (7E+4)	-	-	-	9E-4	9E-3
		W, see <sup>115</sup> Sb	-	2E+5	8E-5	3E-7	-	-
51	Antimony- 126	D, see <sup>115</sup> Sb	6E+2	1E+3	5E-7	2E-9	7E-6	7E-5
			5E+2	5E+2	2E-7	7E-10	-	-

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
51	Antimony- 127	D, see $^{115}\text{Sb}$  W, see $^{115}\text{Sb}$	8E+2  LLI wall (8E+2)  7E+2	2E+3  -  9E+2	9E-7  -  4E-7	3E-9  -  1E-9	-  1E-5  -	-  1E-4  -
51	Antimony- 128 <sup>2</sup>  (10.4 min)	D, see $^{115}\text{Sb}$  W, see $^{115}\text{Sb}$	8E+4  St wall (1E+5)  -	4E+5  -  4E+5	2E-4  -  2E-4	5E-7  -  6E-7	-  1E-3  -	-  1E-2  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
51	Antimony-128 (9.01 h)	D, see $^{115}\text{Sb}$ W, see $^{115}\text{Sb}$	1E+3 -	4E+3 3E+3	2E-6 1E-6	6E-9 5E-9	2E-5 -	2E-4 -
51	Antimony-129	D, see $^{115}\text{Sb}$ W, see $^{115}\text{Sb}$	3E+3 -	9E+3 9E+3	4E-6 4E-6	1E-8 1E-8	4E-5 -	4E-4 -
51	Antimony-130 <sup>2</sup>	D, see $^{115}\text{Sb}$ W, see $^{115}\text{Sb}$	2E+4 -	6E+4 8E+4	3E-5 3E-5	9E-8 1E-7	3E-4 -	3E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
51	Antimony-131 <sup>2</sup>	D, see <sup>115</sup> Sb  W, see <sup>115</sup> Sb	1E+4 Thyroid (2E+4) - -	2E+4 Thyroid (4E+4) 2E+4 Thyroid (4E+4)	1E-5 - 1E-5 -	- 6E-8 - 6E-8	- 2E-4 - -	- 2E-3 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
52	Tellurium-116	D, all compounds except those given for W  W, oxides, hydroxides, and nitrates	8E+3 -	2E+4 3E+4	9E-6 1E-5	3E-8 4E-8	1E-4 -	1E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
52	Tellurium-121m	D, see $^{116}\text{Te}$  W, see $^{116}\text{Te}$	5E+2  Bone surf (7E+2) -	2E+2  Bone surf (4E+2) 4E+2	8E-8  - 2E-7	-  5E-10 6E-10	-  1E-5 -	-  1E-4 -
52	Tellurium-121	D, see $^{116}\text{Te}$  W, see $^{116}\text{Te}$	3E+3  -	4E+3  3E+3	2E-6  1E-6	6E-9  4E-9	4E-5  -	4E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
52	Tellurium-123m	D, see $^{116}\text{Te}$  W, see $^{116}\text{Te}$	6E+2  Bone surf (1E+3)  -	2E+2  Bone surf (5E+2)  5E+2	9E-8  - 2E-7	-  8E-10 8E-10	-  1E-5 -	-  1E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
52	Tellurium-123	D, see $^{116}\text{Te}$  W, see $^{116}\text{Te}$	5E+2  Bone surf  (1E+3)  -	2E+2  Bone surf  (5E+2)  4E+2  Bone surf  (1E+3)	8E-8  -  2E-7  -	-  7E-10  -	-  2E-5  -	-  2E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
52	Tellurium-125m	D, see $^{116}\text{Te}$  W, see $^{116}\text{Te}$	1E+3  Bone surf (1E+3) -	4E+2  Bone surf (1E+3) 7E+2	2E-7  - 3E-7	-  1E-9 1E-9	-  2E-5 -	-  2E-4 -
52	Tellurium-127m	D, see $^{116}\text{Te}$  W, see $^{116}\text{Te}$	6E+2  - -	3E+2  Bone surf (4E+2) 3E+2	1E-7  - 1E-7	-  6E-10 4E-10	9E-6  - -	9E-5  - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
52	Tellurium-127	D, see $^{116}\text{Te}$  W, see $^{116}\text{Te}$	7E+3  -	2E+4  2E+4	9E-6  7E-6	3E-8  2E-8	1E-4  -	1E-3  -
52	Tellurium-129m	D, see $^{116}\text{Te}$  W, see $^{116}\text{Te}$	5E+2  -	6E+2  2E+2	3E-7  1E-7	9E-10  3E-10	7E-6  -	7E-5  -
52	Tellurium-129 <sup>2</sup>	D, see $^{116}\text{Te}$  W, see $^{116}\text{Te}$	3E+4  -	6E+4  7E+4	3E-5  3E-5	9E-8  1E-7	4E-4  -	4E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
52	Tellurium-131m	D, see $^{116}\text{Te}$  W, see $^{116}\text{Te}$	3E+2  Thyroid (6E+2)  -  -	4E+2  Thyroid (1E+3)  4E+2  Thyroid (9E+2)	2E-7  - 2E-7  -  -	-  2E-9  - 1E-9	-  8E-6  -  -	-  -  8E-5  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
52	Tellurium-131 <sup>2</sup>	D, see <sup>116</sup> Te  W, see <sup>116</sup> Te	3E+3 Thyroid (6E+3) - -	5E+3 Thyroid (1E+4) 5E+3 Thyroid (1E+4)	2E-6 - 2E-6 - -	- 2E-8 - 2E-8	- 8E-5 - -	- - 8E-4 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
52	Tellurium-132	D, see $^{116}\text{Te}$  W, see $^{116}\text{Te}$	2E+2  Thyroid (7E+2)  -	2E+2  Thyroid (8E+2)  2E+2  Thyroid (6E+2)	9E-8  - 9E-8  -	-  1E-9  -	-  9E-6  -	-  - 9E-5  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
52	Tellurium-133m <sup>2</sup>	D, see <sup>116</sup> Te  W, see <sup>116</sup> Te	3E+3  Thyroid (6E+3)  -	5E+3  Thyroid (1E+4)  5E+3  Thyroid (1E+4)	2E-6  - 2E-6  -	-  2E-8  -	-  9E-5  -	-  9E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
52	Tellurium-133 <sup>2</sup>	D, see <sup>116</sup> Te  W, see <sup>116</sup> Te	1E+4 Thyroid (3E+4) - -	2E+4 Thyroid (6E+4) 2E+4 Thyroid (6E+4)	9E-6 - 9E-6 -	- 8E-8 - 8E-8	- 4E-4 - -	- 4E-3 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
52	Tellurium-134 <sup>2</sup>	D, see <sup>116</sup> Te	2E+4	2E+4	1E-5	-	-	-
		W, see <sup>116</sup> Te	Thyroid (2E+4)	Thyroid (5E+4)	-	7E-8	3E-4	3E-3
			-	2E+4	1E-5	-	-	-
			-	Thyroid (5E+4)	-	7E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
53	Iodine-120m <sup>2</sup>	D, all compounds	1E+4 Thyroid (1E+4)	2E+4 -	9E-6 -	3E-8 -	- 2E-4	- 2E-3
53	Iodine-120 <sup>2</sup>	D, all compounds	4E+3 Thyroid (8E+3)	9E+3 Thyroid (1E+4)	4E-6 -	- 2E-8	- 1E-4	- 1E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
53	Iodine-121	D, all compounds	1E+4 Thyroid (3E+4)	2E+4 Thyroid (5E+4)	8E-6 -	- 7E-8	- 4E-4	- 4E-3
53	Iodine-123	D, all compounds	3E+3 Thyroid (1E+4)	6E+3 Thyroid (2E+4)	3E-6 -	- 2E-8	- 1E-4	- 1E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
53	Iodine-124	D, all compounds	5E+1 Thyroid (2E+2)	8E+1 Thyroid (3E+2)	3E-8 -	- 4E-10	- 2E-6	- 2E-5
53	Iodine-125	D, all compounds	4E+1 Thyroid (1E+2)	6E+1 Thyroid (2E+2)	3E-8 -	- 3E-10	- 2E-6	- 2E-5

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
53	Iodine-126	D, all compounds	2E+1 Thyroid (7E+1)	4E+1 Thyroid (1E+2)	1E-8 -	- 2E-10	- 1E-6	- 1E-5
53	Iodine-128 <sup>2</sup>	D, all compounds	4E+4 St wall (6E+4)	1E+5 -	5E-5 -	2E-7 -	- 8E-4	- 8E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
53	Iodine-129	D, all compounds	5E+0 Thyroid (2E+1)	9E+0 Thyroid (3E+1)	4E-9 -	- 4E-11	- 2E-7	- 2E-6
53	Iodine-130	D, all compounds	4E+2 Thyroid (1E+3)	7E+2 Thyroid (2E+3)	3E-7 -	- 3E-9	- 2E-5	- 2E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
53	Iodine-131	D, all compounds	3E+1 Thyroid (9E+1)	5E+1 Thyroid (2E+2)	2E-8 -	- 2E-10	- 1E-6	- 1E-5
53	Iodine-132m <sup>2</sup>	D, all compounds	4E+3 Thyroid (1E+4)	8E+3 Thyroid (2E+4)	4E-6 -	- 3E-8	- 1E-4	- 1E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
53	Iodine-132	D, all compounds	4E+3 Thyroid (9E+3)	8E+3 Thyroid (1E+4)	3E-6 -	- 2E-8	- 1E-4	- 1E-3
53	Iodine-133	D, all compounds	1E+2 Thyroid (5E+2)	3E+2 Thyroid (9E+2)	1E-7 -	- 1E-9	- 7E-6	- 7E-5

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
53	Iodine-134 <sup>2</sup>	D, all compounds	2E+4 Thyroid (3E+4)	5E+4 -	2E-5 -	6E-8 -	- 4E-4	- 4E-3
53	Iodine-135	D, all compounds	8E+2 Thyroid (3E+3)	2E+3 Thyroid (4E+3)	7E-7 -	- 6E-9	- 3E-5	- 3E-4
54	Xenon-120 <sup>2</sup>	Submersion <sup>1</sup>	-	-	1E-5	4E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
54	Xenon-121 <sup>2</sup>	Submersion <sup>1</sup>	-	-	2E-6	1E-8	-	-
54	Xenon-122	Submersion <sup>1</sup>	-	-	7E-5	3E-7	-	-
54	Xenon-123	Submersion <sup>1</sup>	-	-	6E-6	3E-8	-	-
54	Xenon-125	Submersion <sup>1</sup>	-	-	2E-5	7E-8	-	-
54	Xenon-127	Submersion <sup>1</sup>	-	-	1E-5	6E-8	-	-

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
54	Xenon-129m	Submersio n <sup>1</sup>	-	-	2E-4	9E-7	-	-
54	Xenon-131m	Submersio n <sup>1</sup>	-	-	4E-4	2E-6	-	-
54	Xenon-133m	Submersio n <sup>1</sup>	-	-	1E-4	6E-7	-	-
54	Xenon-133	Submersio n <sup>1</sup>	-	-	1E-4	5E-7	-	-
54	Xenon-135m <sup>2</sup>	Submersio n <sup>1</sup>	-	-	9E-6	4E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
54	Xenon-135	Submersion <sup>1</sup>	-	-	1E-5	7E-8	-	-
54	Xenon-138 <sup>2</sup>	Submersion <sup>1</sup>	-	-	4E-6	2E-8	-	-
55	Cesium-125 <sup>2</sup>	D, all compounds	5E+4	1E+5	6E-5	2E-7	-	-
			St wall (9E+4)	-	-	-	1E-3	1E-2
55	Cesium-127	D, all compounds	6E+4	9E+4	4E-5	1E-7	9E-4	9E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
55	Cesium-129	D, all compounds	2E+4	3E+4	1E-5	5E-8	3E-4	3E-3
55	Cesium-130 <sup>2</sup>	D, all compounds	6E+4 St wall (1E+5)	2E+5 -	8E-5 -	3E-7 -	- 1E-3	- 1E-2
55	Cesium-131	D, all compounds	2E+4	3E+4	1E-5	4E-8	3E-4	3E-3
55	Cesium-132	D, all compounds	3E+3	4E+3	2E-6	6E-9	4E-5	4E-4

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
55	Cesium-134m	D, all compounds	1E+5 St wall (1E+5)	1E+5 -	6E-5 -	2E-7 -	- 2E-3	- 2E-2
55	Cesium-134	D, all compounds	7E+1	1E+2	4E-8	2E-10	9E-7	9E-6
55	Cesium-135m <sup>2</sup>	D, all compounds	1E+5	2E+5	8E-5	3E-7	1E-3	1E-2
55	Cesium-135	D, all compounds	7E+2	1E+3	5E-7	2E-9	1E-5	1E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
55	Cesium-136	D, all compounds	4E+2	7E+2	3E-7	9E-10	6E-6	6E-5
55	Cesium-137	D, all compounds	1E+2	2E+2	6E-8	2E-10	1E-6	1E-5
55	Cesium-138 <sup>2</sup>	D, all compounds	2E+4 St wall (3E+4)	6E+4 -	2E-5 -	8E-8 -	- 4E-4	- 4E-3
56	Barium-126 <sup>2</sup>	D, all compounds	6E+3	2E+4	6E-6	2E-8	8E-5	8E-4

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
56	Barium-128	D, all compounds	5E+2	2E+3	7E-7	2E-9	7E-6	7E-5
56	Barium- 131m <sup>2</sup>	D, all compounds	4E+5 St wall (5E+5)	1E+6 -	6E-4 -	2E-6 -	- 7E-3	- 7E-2
56	Barium-131	D, all compounds	3E+3	8E+3	3E-6	1E-8	4E-5	4E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
56	Barium-133m	D, all compounds	2E+3 LLI wall (3E+3)	9E+3 -	4E-6 -	1E-8 -	- 4E-5	- 4E-4
56	Barium-133	D, all compounds	2E+3	7E+2	3E-7	9E-10	2E-5	2E-4
56	Barium-135m	D, all compounds	3E+3	1E+4	5E-6	2E-8	4E-5	4E-4
56	Barium-139 <sup>2</sup>	D, all compounds	1E+4	3E+4	1E-5	4E-8	2E-4	2E-3

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
56	Barium-140	D, all compounds	5E+2  LLI wall  (6E+2)	1E+3  -	6E-7  -	2E-9  -	-  8E-6	-  8E-5
56	Barium-141 <sup>2</sup>	D, all compounds	2E+4	7E+4	3E-5	1E-7	3E-4	3E-3
56	Barium-142 <sup>2</sup>	D, all compounds	5E+4	1E+5	6E-5	2E-7	7E-4	7E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
57	Lanthanum-131 <sup>2</sup>	D, all compounds except those given for W  W, oxides and hydroxides	5E+4 -	1E+5 2E+5	5E-5 7E-5	2E-7 2E-7	6E-4 -	6E-3 -
57	Lanthanum-132	D, see <sup>131</sup> La  W, see <sup>131</sup> La	3E+3 -	1E+4 1E+4	4E-6 5E-6	1E-8 2E-8	4E-5 -	4E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
57	Lanthanum-135	D, see $^{131}\text{La}$  W, see $^{131}\text{La}$	4E+4  -	1E+5  9E+4	4E-5  4E-5	1E-7  1E-7	5E-4  -	5E-3  -
57	Lanthanum-137	D, see $^{131}\text{La}$  W, see $^{131}\text{La}$	1E+4  -  -  -	6E+1 Liver (7E+1) 3E+2 Liver (3E+2)	3E-8  - 1E-7  -	-  1E-10  - 4E-10	2E-4  -  -	2E-3  -  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
57	Lanthanum-138	D, see $^{131}\text{La}$  W, see $^{131}\text{La}$	9E+2  -	4E+0  1E+1	1E-9  6E-9	5E-12  2E-11	1E-5  -	1E-4  -
57	Lanthanum-140	D, see $^{131}\text{La}$  W, see $^{131}\text{La}$	6E+2  -	1E+3  1E+3	6E-7  5E-7	2E-9  2E-9	9E-6  -	9E-5  -
57	Lanthanum-141	D, see $^{131}\text{La}$  W, see $^{131}\text{La}$	4E+3  -	9E+3  1E+4	4E-6  5E-6	1E-8  2E-8	5E-5  -	5E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
57	Lanthanum-142 <sup>2</sup>	D, see <sup>131</sup> La  W, see <sup>131</sup> La	8E+3  -	2E+4  3E+4	9E-6  1E-5	3E-8  5E-8	1E-4  -	1E-3  -
57	Lanthanum-143 <sup>2</sup>	D, see <sup>131</sup> La  W, see <sup>131</sup> La	4E+4  St wall (4E+4)  -	1E+5  -  9E+4	4E-5  -  4E-5	1E-7  -  1E-7	-  5E-4  -	-  5E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
58	Cerium-134	W, all compounds except those given for Y  Y, oxides, hydroxides, and fluorides	5E+2 LLI wall (6E+2) -	7E+2 - 7E+2	3E-7 - 3E-7	1E-9 - 9E-10	- 8E-6 -	- 8E-5 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
58	Cerium-135	W, see $^{134}\text{Ce}$  Y, see $^{134}\text{Ce}$	2E+3  -	4E+3  4E+3	2E-6  1E-6	5E-9  5E-9	2E-5  -	2E-4  -
58	Cerium-137m	W, see $^{134}\text{Ce}$  Y, see $^{134}\text{Ce}$	2E+3  LLI wall (2E+3)  -	4E+3  -  4E+3	2E-6  -  2E-6	6E-9  -  5E-9	-  3E-5  -	-  3E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
58	Cerium-137	W, see $^{134}\text{Ce}$	5E+4	1E+5	6E-5	2E-7	7E-4	7E-3
		Y, see $^{134}\text{Ce}$	-	1E+5	5E-5	2E-7	-	-
58	Cerium-139	W, see $^{134}\text{Ce}$	5E+3	8E+2	3E-7	1E-9	7E-5	7E-4
		Y, see $^{134}\text{Ce}$	-	7E+2	3E-7	9E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
58	Cerium-141	W, see $^{134}\text{Ce}$	2E+3	7E+2	3E-7	1E-9	-	-
		Y, see $^{134}\text{Ce}$	LLI wall (2E+3)	- 6E+2	- 2E-7	- 8E-10	3E-5	3E-4
58	Cerium-143	W, see $^{134}\text{Ce}$	1E+3	2E+3	8E-7	3E-9	-	-
		Y, see $^{134}\text{Ce}$	LLI wall (1E+3)	- 2E+3	- 7E-7	- 2E-9	2E-5	2E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
58	Cerium-144	W, see $^{134}\text{Ce}$  Y, see $^{134}\text{Ce}$	2E+2  LLI wall (3E+2)  -	3E+1  - 1E+1	1E-8  - 6E-9	4E-11  - 2E-11	- 3E-6 -	- 3E-5 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
59	Praseodymium-136 <sup>2</sup>	W, all compounds except those given for Y  Y, oxides, hydroxides, carbides, and fluorides	5E+4 St wall (7E+4) -	2E+5 - 2E+5	1E-4 - 9E-5	3E-7 - 3E-7	- 1E-3 -	- 1E-2 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
59	Praseodymium-137 <sup>2</sup>	W, see <sup>136</sup> Pr	4E+4	2E+5	6E-5	2E-7	5E-4	5E-3
		Y, see <sup>136</sup> Pr	-	1E+5	6E-5	2E-7	-	-
59	Praseodymium-138m	W, see <sup>136</sup> Pr	1E+4	5E+4	2E-5	8E-8	1E-4	1E-3
		Y, see <sup>136</sup> Pr	-	4E+4	2E-5	6E-8	-	-
59	Praseodymium-139	W, see <sup>136</sup> Pr	4E+4	1E+5	5E-5	2E-7	6E-4	6E-3
		Y, see <sup>136</sup> Pr	-	1E+5	5E-5	2E-7	-	-

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
59	Praseodymi um-142m <sup>2</sup>	W, see <sup>136</sup> Pr  Y, see <sup>136</sup> Pr	8E+4  -	2E+5  1E+5	7E-5  6E-5	2E-7  2E-7	1E-3  -	1E-2  -
59	Praseodymi um-142	W, see <sup>136</sup> Pr  Y, see <sup>136</sup> Pr	1E+3  -	2E+3  2E+3	9E-7  8E-7	3E-9  3E-9	1E-5  -	1E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
59	Praseodymium-143	W, see $^{136}\text{Pr}$	9E+2	8E+2	3E-7	1E-9	-	-
			LLI wall	-	-	-	2E-5	2E-4
		Y, see $^{136}\text{Pr}$	(1E+3)	7E+2	3E-7	9E-10	-	-
			-					
59	Praseodymium-144 <sup>2</sup>	W, see $^{136}\text{Pr}$	3E+4	1E+5	5E-5	2E-7	-	-
			St wall	-	-	-	6E-4	6E-3
		Y, see $^{136}\text{Pr}$	(4E+4)	1E+5	5E-5	2E-7	-	-
			-					

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
59	Praseodymium-145	W, see $^{136}\text{Pr}$	3E+3	9E+3	4E-6	1E-8	4E-5	4E-4
		Y, see $^{136}\text{Pr}$	-	8E+3	3E-6	1E-8	-	-
59	Praseodymium-147 <sup>2</sup>	W, see $^{136}\text{Pr}$	5E+4	2E+5	8E-5	3E-7	-	-
		Y, see $^{136}\text{Pr}$	St wall (8E+4)	-	-	-	1E-3	1E-2
			-	2E+5	8E-5	3E-7	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air	Water	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )		( $\mu\text{Ci/ml}$ )	( $\mu\text{Ci/ml}$ )			
60	Neodymium-144 <sup>2</sup>	W, all compounds except those given for Y  Y, oxides, hydroxides, carbides, and fluorides	1E+4 -	6E+4 5E+4	2E-5 2E-5	8E-8 8E-8	2E-4 -	2E-3 -
60	Neodymium-138	W, see <sup>136</sup> Nd  Y, see <sup>136</sup> Nd	2E+3 -	6E+3 5E+3	3E-6 2E-6	9E-9 7E-9	3E-5 -	3E-4 -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
60	Neodymium -139m	W, see $^{136}\text{Nd}$  Y, see $^{136}\text{Nd}$	5E+3  -	2E+4  1E+4	7E-6  6E-6	2E-8  2E-8	7E-5  -	7E-4  -
60	Neodymium -139 <sup>2</sup>	W, see $^{136}\text{Nd}$  Y, see $^{136}\text{Nd}$	9E+4  -	3E+5  3E+5	1E-4  1E-4	5E-7  4E-7	1E-3  -	1E-2  -
60	Neodymium -141	W, see $^{136}\text{Nd}$  Y, see $^{136}\text{Nd}$	2E+5  -	7E+5  6E+5	3E-4  3E-4	1E-6  9E-7	2E-3  -	2E-2  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
60	Neodymium-147	W, see $^{136}\text{Nd}$  Y, see $^{136}\text{Nd}$	1E+3  LLI wall (1E+3)  -	9E+2  - 8E+2	4E-7  - 4E-7	1E-9  - 1E-9	-  2E-5  -	-  2E-4  -
60	Neodymium-149 <sup>2</sup>	W, see $^{136}\text{Nd}$  Y, see $^{136}\text{Nd}$	1E+4  -	3E+4  2E+4	1E-5  1E-5	4E-8  3E-8	1E-4  -	1E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
60	Neodymium-151 <sup>2</sup>	W, see <sup>136</sup> Nd  Y, see <sup>136</sup> Nd	7E+4  -	2E+5  2E+5	8E-5  8E-5	3E-7  3E-7	9E-4  -	9E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
61	Promethium-141 <sup>2</sup>	W, all compounds except those for Y  Y, oxides, hydroxides, carbides, and fluorides	5E+4 St wall (6E+4) -	2E+5 - 2E+5	8E-5 - 7E-5	3E-7 - 2E-7	- 8E-4 -	- 8E-3 -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
61	Promethium -143	W, see $^{141}\text{Pm}$  Y, see $^{141}\text{Pm}$	5E+3  -	6E+2  7E+2	2E-7  3E-7	8E-10  1E-9	7E-5  -	7E-4  -
61	Promethium -144	W, see $^{141}\text{Pm}$  Y, see $^{141}\text{Pm}$	1E+3  -	1E+2  1E+2	5E-8  5E-8	2E-10  2E-10	2E-5  -	2E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
61	Promethium-145	W, see $^{141}\text{Pm}$  Y, see $^{141}\text{Pm}$	1E+4  -	2E+2  Bone surf (2E+2) 2E+2	7E-8  -	-  3E-10 3E-10	1E-4  -	1E-3  -
61	Promethium-146	W, see $^{141}\text{Pm}$  Y, see $^{141}\text{Pm}$	2E+3  -	5E+1  4E+1	2E-8  2E-8	7E-11  6E-11	2E-5  -	2E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
61	Promethium-147	W, see $^{141}\text{Pm}$  Y, see $^{141}\text{Pm}$	4E+3  LLI wall  (5E+3)  -	1E+2  Bone surf  (2E+2)  1E+2)	5E-8  -  6E-8	-  3E-10  2E-10	-  7E-5  -	-  7E-4  -
61	Promethium-148m	W, see $^{141}\text{Pm}$  Y, see $^{141}\text{Pm}$	7E+2  -	3E+2  3E+2	1E-7  1E-7	4E-10  5E-10	1E-5  -	1E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
61	Promethium-148	W, see $^{141}\text{Pm}$  Y, see $^{141}\text{Pm}$	4E+2  LLI wall (5E+2)  -	5E+2  - 5E+2	2E-7  - 2E-7	8E-10  - 7E-10	-  7E-6 -	-  7E-5 -
61	Promethium-149	W, see $^{141}\text{Pm}$  Y, see $^{141}\text{Pm}$	1E+3  LLI wall (1E+3)  -	2E+3  - 2E+3	8E-7  - 8E-7	3E-9  - 2E-9	-  2E-5 -	-  2E-4 -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
61	Promethium -150	W, see $^{141}\text{Pm}$  Y, see $^{141}\text{Pm}$	5E+3  -	2E+4  2E+4	8E-6  7E-6	3E-8  2E-8	7E-5  -	7E-4  -
61	Promethium -151	W, see $^{141}\text{Pm}$  Y, see $^{141}\text{Pm}$	2E+3  -	4E+3  3E+3	1E-6  1E-6	5E-9  4E-9	2E-5  -	2E-4  -
62	Samarium- 141m <sup>2</sup>	W, all compounds	3E+4	1E+5	4E-5	1E-7	4E-4	4E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
62	Samarium-141 <sup>2</sup>	W, all compounds	5E+4 St wall (6E+4)	2E+5 -	8E-5 -	2E-7 -	- 8E-4	- 8E-3
62	Samarium-142 <sup>2</sup>	W, all compounds	8E+3	3E+4	1E-5	4E-8	1E-4	1E-3
62	Samarium-145	W, all compounds	6E+3	5E+2	2E-7	7E-10	8E-5	8E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation ALI ( $\mu\text{Ci}$ )    DAC ( $\mu\text{Ci/ml}$ )		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
62	Samarium-146	W, all compounds		1E+1 Bone surf (3E+1)	4E-2 Bone surf (6E-2)			
62	Samarium-147	W, all compounds	2E+1 Bone surf (3E+1)	4E-2 Bone surf (7E-2)	2E-11 -	- 1E-13	- 4E-7	- 4E-6

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
62	Samarium-151	W, all compounds	1E+4 LLI wall (1E+4)	1E+2 Bone surf (2E+2)	4E-8 -	- 2E-10	- 2E-4	- 2E-3
62	Samarium-153	W, all compounds	2E+3 LLI wall (2E+3)	3E+3 -	1E-6 -	4E-9 -	- 3E-5	- 3E-4

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
62	Samarium- 155 <sup>2</sup>	W, all compounds	6E+4  St wall (8E+4)	2E+5  -	9E-5  -	3E-7  -	-  1E-3	-  1E-2
62	Samarium- 156	W, all compounds	5E+3	9E+3	4E-6	1E-8	7E-5	7E-4
63	Europium- 145	W, all compounds	2E+3	2E+3	8E-7	3E-9	2E-5	2E-4
63	Europium- 146	W, all compounds	1E+3	1E+3	5E-7	2E-9	1E-5	1E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
63	Europium-147	W, all compounds	3E+3	2E+3	7E-7	2E-9	4E-5	4E-4
63	Europium-148	W, all compounds	1E+3	4E+2	1E-7	5E-10	1E-5	1E-4
63	Europium-149	W, all compounds	1E+4	3E+3	1E-6	4E-9	2E-4	2E-3
63	Europium-150 (12.62 h)	W, all compounds	3E+3	8E+3	4E-6	1E-8	4E-5	4E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
63	Europium-150 (34.2 y)	W, all compounds	8E+2	2E+1	8E-9	3E-11	1E-5	1E-4
63	Europium-152m	W, all compounds	3E+3	6E+3	3E-6	9E-9	4E-5	4E-4
63	Europium-152	W, all compounds	8E+2	2E+1	1E-8	3E-11	1E-5	1E-4
63	Europium-154	W, all compounds	5E+2	2E+1	8E-9	3E-11	7E-6	7E-5

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
63	Europium-155	W, all compounds	4E+3	9E+1 Bone surf (1E+2)	4E-8	- 2E-10	5E-5 -	5E-4 -
63	Europium-156	W, all compounds	6E+2	5E+2	2E-7	6E-10	8E-6	8E-5
63	Europium-157	W, all compounds	2E+3	5E+3	2E-6	7E-9	3E-5	3E-4
63	Europium-158 <sup>2</sup>	W, all compounds	2E+4	6E+4	2E-5	8E-8	3E-4	3E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
64	Gadolinium-145 <sup>2</sup>	D, all compounds except those given for W  W, oxides, hydroxides, and fluorides	5E+4 St wall (5E+4) -	2E+5 - 2E+5	6E-5 - 7E-5	2E-7 - 2E-7	- 6E-4 -	- 6E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
64	Gadolinium-146	D, see $^{145}\text{Gd}$  W, see $^{145}\text{Gd}$	1E+3  -	1E+2  3E+2	5E-8  1E-7	2E-10  4E-10	2E-5  -	2E-4  -
64	Gadolinium-147	D, see $^{145}\text{Gd}$  W, see $^{145}\text{Gd}$	2E+3  -	4E+3  4E+3	2E-6  1E-6	6E-9  5E-9	3E-5  -	3E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
64	Gadolinium-148	D, see $^{145}\text{Gd}$  W, see $^{145}\text{Gd}$	1E+1  Bone surf  (2E+1)  -	8E+3  Bone surf  (2E-2)  3E-2  Bone surf  (6E-2)	3E-12  -  1E-11  -	-  2E-14  -	-  3E-7  -	-  3E-6  -
64	Gadolinium-149	D, see $^{145}\text{Gd}$  W, see $^{145}\text{Gd}$	3E+3  -	2E+3  2E+3	9E-7  1E-6	3E-9  3E-9	4E-5  -	4E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
64	Gadolinium-151	D, see $^{145}\text{Gd}$  W, see $^{145}\text{Gd}$	6E+3  -	4E+2  Bone surf (6E+2)  1E+3	2E-7  -  5E-7	-  9E-10  2E-9	9E-5  -  -	9E-4  -  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
64	Gadolinium-152	D, see $^{145}\text{Gd}$  W, see $^{145}\text{Gd}$	2E+1  Bone surf  (3E+1)  -	1E-2  Bone surf  (2E-2)  4E-2  Bone surf  (8E-2)	4E-12  -  2E-11  -	-  3E-14  -	-  4E-7  -	-  4E-6  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
64	Gadolinium-153	D, see $^{145}\text{Gd}$  W, see $^{145}\text{Gd}$	5E+3  -  -	1E+2  Bone surf  (2E+2)  6E+2	6E-8  -  2E-7	-  3E-10  8E-10	6E-5  -  -	6E-4  -  -
64	Gadolinium-159	D, see $^{145}\text{Gd}$  W, see $^{145}\text{Gd}$	3E+3  -	8E+3  6E+3	3E-6  2E-6	1E-8  8E-9	4E-5  -	4E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
65	Terbium-147 <sup>2</sup>	W, all compounds	9E+3	3E+4	1E-5	5E-8	1E-4	1E-3
65	Terbium-149	W, all compounds	5E+3	7E+2	3E-7	1E-9	7E-5	7E-4
65	Terbium-150	W, all compounds	5E+3	2E+4	9E-6	3E-8	7E-5	7E-4
65	Terbium-151	W, all compounds	4E+3	9E+3	4E-6	1E-8	5E-5	5E-4
65	Terbium-153	W, all compounds	5E+3	7E+3	3E-6	1E-8	7E-5	7E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
65	Terbium-154	W, all compounds	2E+3	4E+3	2E-6	6E-9	2E-5	2E-4
65	Terbium-155	W, all compounds	6E+3	8E+3	3E-6	1E-8	8E-5	8E-4
65	Terbium-156m (5.0 h)	W, all compounds	2E+4	3E+4	1E-5	4E-8	2E-4	2E-3
65	Terbium-156m (24.4 h)	W, all compounds	7E+3	8E+3	3E-6	1E-8	1E-4	1E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation				Monthly Average
			ALI (μCi)	ALI (μCi)	DAC (μCi/ml)	Air (μCi/ml)	Water (μCi/ml)	Concentration (μCi/ml)
65	Terbium-156	W, all compounds	1E+3	1E+3	6E-7	2E-9	1E-5	1E-4
65	Terbium-157	W, all compounds	5E+4 LLI wall (5E+4)	3E+2 Bone surf (6E+2)	1E-7 -	- 8E-10	- 7E-4	- 7E-3
65	Terbium-158	W, all compounds	1E+3	2E+1	8E-9	3E-11	2E-5	2E-4
65	Terbium-160	W, all compounds	8E+2	2E+2	9E-8	3E-10	1E-5	1E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
65	Terbium-161	W, all compounds	2E+3	2E+3	7E-7	2E-9	-	-
			LLI wall (2E+3)	-	-	-	3E-5	3E-4
66	Dysprosium-155	W, all compounds	9E+3	3E+4	1E-5	4E-8	1E-4	1E-3
66	Dysprosium-157	W, all compounds	2E+4	6E+4	3E-5	9E-8	3E-4	3E-3
66	Dysprosium-159	W, all compounds	1E+4	2E+3	1E-6	3E-9	2E-4	2E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
66	Dysprosium-165	W, all compounds	1E+4	5E+4	2E-5	6E-8	2E-4	2E-3
66	Dysprosium-166	W, all compounds	6E+2	7E+2	3E-7	1E-9	-	-
			LLI wall (8E+2)	-	-	-	1E-5	1E-4
67	Holmium-155 <sup>2</sup>	W, all compounds	4E+4	2E+5	6E-5	2E-7	6E-4	6E-3
67	Holmium-157 <sup>2</sup>	W, all compounds	3E+5	1E+6	6E-4	2E-6	4E-3	4E-2

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
67	Holmium- 159 <sup>2</sup>	W, all compounds	2E+5	1E+6	4E-4	1E-6	3E-3	3E-2
67	Holmium- 161	W, all compounds	1E+5	4E+5	2E-4	6E-7	1E-3	1E-2
67	Holmium- 162m <sup>2</sup>	W, all compounds	5E+4	3E+5	1E-4	4E-7	7E-4	7E-3
67	Holmium- 162 <sup>2</sup>	W, all compounds	5E+5 St wall (8E+5)	2E+6 -	1E-3 -	3E-6 -	- 1E-2	- 1E-1

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
67	Holmium-164m <sup>2</sup>	W, all compounds	1E+5	3E+5	1E-4	4E-7	1E-3	1E-2
67	Holmium-164 <sup>2</sup>	W, all compounds	2E+5 St wall (2E+5)	6E+5 -	3E-4 -	9E-7 -	- 3E-3	- 3E-2
67	Holmium-166m	W, all compounds	6E+2	7E+0	3E-9	9E-12	9E-6	9E-5

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
67	Holmium-166	W, all compounds	9E+2 LLI wall (9E+2)	2E+3 -	7E-7 -	2E-9 -	- 1E-5	- 1E-4
67	Holmium-167	W, all compounds	2E+4	6E+4	2E-5	8E-8	2E-4	2E-3
67	Erbium-161	W, all compounds	2E+4	6E+4	3E-5	9E-8	2E-4	2E-3
68	Erbium-165	W, all compounds	6E+4	2E+5	8E-5	3E-7	9E-4	9E-3

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
68	Erbium-169	W, all compounds	3E+3 LLI wall (4E+3)	3E+3 -	1E-6 -	4E-9 -	- 5E-5	- 5E-4
68	Erbium-171	W, all compounds	4E+3	1E+4	4E-6	1E-8	5E-5	5E-4
68	Erbium-172	W, all compounds	1E+3 LLI wall (1E+2)	1E+3 -	6E-7 -	2E-9 -	- 2E-5	- 2E-4

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
69	Thulium- 162 <sup>2</sup>	W, all compounds	7E+4  St wall (7E+4)	3E+5  -	1E-4  -	4E-7  -	-  1E-3	-  1E-2
69	Thulium-166	W, all compounds	4E+3	1E+4	6E-6	2E-8	6E-5	6E-4
69	Thulium-167	W, all compounds	2E+3  LLI wall (2E+3)	2E+3  -	8E-7  -	3E-9  -	-  3E-5	-  3E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
69	Thulium-170	W, all compounds	8E+2 LLI wall (1E+3)	2E+2 -	9E-8 -	3E-10 -	- 1E-5	- 1E-4
69	Thulium-171	W, all compounds	1E+4 LLI wall (1E+4)	3E+2 Bone surf (6E+2)	1E-7 -	- 8E-10	- 2E-4	- 2E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
69	Thulium-172	W, all compounds	7E+2 LLI wall (8E+2)	1E+3 -	5E-7 -	2E-9 -	- 1E-5	- 1E-4
69	Thulium-173	W, all compounds	4E+3	1E+4	5E-6	2E-8	6E-5	6E-4
69	Thulium-175 <sup>2</sup>	W, all compounds	7E+4 St wall (9E+4)	3E+5 -	1E-4 -	4E-7 -	- 1E-3	- 1E-2

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
70	Ytterbium-162 <sup>2</sup>	W, all compounds except those given for Y  Y, oxides, hydroxides, and fluorides	7E+4 -	3E+5 3E+5	1E-4 1E-4	4E-7 4E-7	1E-3 -	1E-2 -
70	Ytterbium-166	W, see <sup>162</sup> Yb  Y, see <sup>162</sup> Yb	1E+3 -	2E+3 2E+3	9E-7 8E-7	3E-9 3E-9	2E-5 -	2E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
70	Ytterbium-167 <sup>2</sup>	W, see <sup>162</sup> Yb  Y, see <sup>162</sup> Yb	3E+5  -	8E+5  7E+5	3E-4  3E-4	1E-6  1E-6	4E-3  -	4E-2
70	Ytterbium-169	W, see <sup>162</sup> Yb  Y, see <sup>162</sup> Yb	2E+3  -	8E+2  7E+2	4E-7  3E-7	1E-9  1E-9	2E-5  -	2E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
70	Ytterbium-175	W, see $^{162}\text{Yb}$  Y, see $^{162}\text{Yb}$	3E+3  LLI wall (3E+3)  -	4E+3  - 3E+3	1E-6  - 1E-6	5E-9  - 5E-9	- 4E-5 -	- 4E-4 -
70	Ytterbium-177 <sup>2</sup>	W, see $^{162}\text{Yb}$  Y, see $^{162}\text{Yb}$	2E+4  -	5E+4 5E+4	2E-5 2E-5	7E-8 6E-8	2E-4 -	2E-3 -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
70	Ytterbium- 178 <sup>2</sup>	W, see <sup>162</sup> Yb  Y, see <sup>162</sup> Yb	1E+4  -	4E+4  4E+4	2E-5  2E-5	6E-8  5E-8	2E-4  -	2E-3  -
71	Lutetium- 169	W, all compounds except  those given for Y  Y, oxides, hydroxides, and  fluorides	3E+3  -	4E+3  4E+3	2E-6  2E-6	6E-9  6E-9	3E-5  -	3E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
71	Lutetium-170	W, see $^{169}\text{Lu}$  Y, see $^{169}\text{Lu}$	1E+3 -	2E+3 2E+3	9E-7 8E-7	3E-9 3E-9	2E-5 -	2E-4 -
71	Lutetium-171	W, see $^{169}\text{Lu}$  Y, see $^{169}\text{Lu}$	2E+3 -	2E+3 2E+3	8E-7 8E-7	3E-9 3E-9	3E-5 -	3E-4 -
71	Lutetium-172	W, see $^{169}\text{Lu}$  Y, see $^{169}\text{Lu}$	1E+3 -	1E+3 1E+3	5E-7 5E-7	2E-9 2E-9	1E-5 -	1E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
71	Lutetium-173	W, see $^{169}\text{Lu}$  Y, see $^{169}\text{Lu}$	5E+3  -  -	3E+2  bone surf  (5E+2)  3E+2	1E-7  -  1E-7	-  6E-10  4E-10	7E-5  -  -	7E-4  -  -
71	Lutetium-174m	W, see $^{169}\text{Lu}$  Y, see $^{169}\text{Lu}$	2E+3  LLI wall  (3E+3)  -	2E+2  Bone surf  (3E+2)  2E+2	1E-7  -  9E-8	-  5E-10  3E-10	-  4E-5  -	-  4E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
71	Lutetium-174	W, see $^{169}\text{Lu}$  Y, see $^{169}\text{Lu}$	5E+3  -  -	1E+2  Bone surf  (2E+2)  2E+2	5E-8  -  6E-8	-  3E-10  2E-10	7E-5  -  -	7E-4  -  -
71	Lutetium-176m	W, see $^{169}\text{Lu}$  Y, see $^{169}\text{Lu}$	8E+3  -	3E+4  2E+4	1E-5  9E-6	3E-8  3E-8	1E-4  -	1E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
71	Lutetium-176	W, see $^{169}\text{Lu}$  Y, see $^{169}\text{Lu}$	7E+2 - -	5E+0 Bone surf (1E+1) 8E+0	2E-9 - 3E-9	- 2E-11 1E-11	1E-5 - -	1E-4 - -
71	Lutetium-177m	W, see $^{169}\text{Lu}$  Y, see $^{169}\text{Lu}$	7E+2 - -	1E+2 Bone surf (1E+2) 8E+1	5E-8 - 3E-8	- 2E-10 1E-10	1E-5 - -	1E-4 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
71	Lutetium-177	W, see $^{169}\text{Lu}$  Y, see $^{169}\text{Lu}$	2E+3  LLI wall (3E+3)  -	2E+3  - 2E+3	9E-7  - 9E-7	3E-9  - 3E-9	-  4E-5  -	-  4E-4  -
71	Lutetium-178m <sup>2</sup>	W, see $^{169}\text{Lu}$  Y, see $^{169}\text{Lu}$	5E+4  St. wall (6E+4)  -	2E+5  - 2E+5	8E-5  - 7E-5	3E-7  - 2E-7	-  8E-4  -	-  8E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
71	Lutetium-178 <sup>2</sup>	W, see <sup>169</sup> Lu	4E+4	1E+5	5E-5	2E-7	-	-
			St wall (4E+4)	-	-	-	6E-4	6E-3
			Y, see <sup>169</sup> Lu	-	1E+5	5E-5	2E-7	-
71	Lutetium-179	W, see <sup>169</sup> Lu	6E+3	2E+4	8E-6	3E-8	9E-5	9E-4
			-	2E+4	6E-6	3E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
72	Hafnium-170	D, all compounds except those given for W W, oxides, hydroxides, carbides, and nitrates	3E+3 -	6E+3 5E+3	2E-6 2E-6	8E-9 6E-9	4E-5 -	4E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
72	Hafnium-172	D, see $^{170}\text{Hf}$	1E+3	9E+0	4E-9	-	2E-5	2E-4
			-	Bone surf	-	3E-11	-	-
		W, see $^{170}\text{Hf}$	-	(2E+1	2E-8	-	-	-
			-	4E+1 Bone surf (6E+1	-	8E-11	-	-
72	Hafnium-173	D, see $^{170}\text{Hf}$	5E+3	1E+4	5E-6	2E-8	7E-5	7E-4
			-	1E+4	5E-6	2E-8	-	-
		W, see $^{170}\text{Hf}$						

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
72	Hafnium-175	D, see $^{170}\text{Hf}$  W, see $^{170}\text{Hf}$	3E+3  -  -	9E+2  Bone surf  (1E+3)  1E+3	4E-7  -  5E-7	-  1E-9  2E-9	4E-5  -  -	4E-4  -  -
72	Hafnium-177m <sup>2</sup>	D, see $^{170}\text{Hf}$  W, see $^{170}\text{Hf}$	2E+4  -	6E+4  9E+4	2E-5  4E-5	8E-8  1E-7	3E-4  -	3E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
72	Hafnium-178m	D, see $^{170}\text{Hf}$  W, see $^{170}\text{Hf}$	3E+2  -  -  -	1E+0  Bone surf  (2E+0)  5E+0  Bone surf  (9E+0)	5E-10  -  2E-9  -	-  3E-12  -  1E-11	3E-6  -  -  -	3E-5  -  -  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
72	Hafnium-179m	D, see $^{170}\text{Hf}$  W, see $^{170}\text{Hf}$	1E+3  -  -	3E+2  Bone surf (6E+2)  6E+2	1E-7  -  3E-7	-  8E-10  8E-10	1E-5  -  -	1E-4  -  -
72	Hafnium-180m	D, see $^{170}\text{Hf}$  W, see $^{170}\text{Hf}$	7E+3  -	2E+4  3E+4	9E-6  1E-5	3E-8  4E-8	1E-4  -	1E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
72	Hafnium-181	D, see $^{170}\text{Hf}$  W, see $^{170}\text{Hf}$	1E+3  -  -	2E+2  Bone surf (4E+2)  4E+2	7E-8  -  2E-7	-  6E-10  6E-10	2E-5  -  -	2E-4  -  -
72	Hafnium-182m <sup>2</sup>	D, see $^{170}\text{Hf}$  W, see $^{170}\text{Hf}$	4E+4  -	9E+4  1E+5	4E-5  6E-5	1E-7  2E-7	5E-4  -	5E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
72	Hafnium-182	D, see $^{170}\text{Hf}$  W, see $^{170}\text{Hf}$	2E+2  Bone surf (4E+2)  -	8E-1  Bone surf (2E+0)  3E+0  Bone surf (7E+0)	3E-10  - 1E-9  -	-  2E-12  -	-  5E-6  -	-  5E-5  -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
72	Hafnium- 183 <sup>2</sup>	D, see <sup>170</sup> Hf  W, see <sup>170</sup> Hf	2E+4  -	5E+4  6E+4	2E-5  2E-5	6E-8  8E-8	3E-4  -	3E-3  -
72	Hafnium- 184	D, see <sup>170</sup> Hf  W, see <sup>170</sup> Hf	2E+3  -	8E+3  6E+3	3E-6  3E-6	1E-8  9E-9	3E-5  -	3E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
73	Tantalum-172 <sup>2</sup>	W, all compounds except those given for Y  Y, elemental Ta, oxides, hydroxides, halides, carbides, nitrates, and nitrides	4E+4  -	1E+5  1E+5	5E-5  4E-5	2E-7  1E-7	5E-4  -	5E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
73	Tantalum-173	W, see $^{172}\text{Ta}$  Y, see $^{172}\text{Ta}$	7E+3  -	2E+4  2E+4	8E-6  7E-6	3E-8  2E-8	9E-5  -	9E-4  -
73	Tantalum-174 <sup>2</sup>	W, see $^{172}\text{Ta}$  Y, see $^{172}\text{Ta}$	3E+4  -	1E+5  9E+4	4E-5  4E-5	1E-7  1E-7	4E-4  -	4E-3  -
73	Tantalum-175	W, see $^{172}\text{Ta}$  Y, see $^{172}\text{Ta}$	6E+3  -	2E+4  1E+4	7E-6  6E-6	2E-8  2E-8	8E-5  -	8E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
73	Tantalum-176	W, see $^{172}\text{Ta}$  Y, see $^{172}\text{Ta}$	4E+3  -	1E+4  1E+4	5E-6  5E-6	2E-8  2E-8	5E-5  -	5E-4  -
73	Tantalum-177	W, see $^{172}\text{Ta}$  Y, see $^{172}\text{Ta}$	1E+4  -	2E+4  2E+4	8E-6  7E-6	3E-8  2E-8	2E-4  -	2E-3  -
73	Tantalum-178	W, see $^{172}\text{Ta}$  Y, see $^{172}\text{Ta}$	2E+4  -	9E+4  7E+4	4E-5  3E-5	1E-7  1E-7	2E-4  -	2E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
73	Tantalum-179	W, see $^{172}\text{Ta}$  Y, see $^{172}\text{Ta}$	2E+4  -	5E+3  9E+2	2E-6  4E-7	8E-9  1E-9	3E-4  -	3E-3  -
73	Tantalum-180m	W, see $^{172}\text{Ta}$  Y, see $^{172}\text{Ta}$	2E+4  -	7E+4  6E+4	3E-5  2E-5	9E-8  8E-8	3E-4  -	3E-3  -
73	Tantalum-180	W, see $^{172}\text{Ta}$  Y, see $^{172}\text{Ta}$	1E+3  -	4E+2  2E+1	2E-7  1E-8	6E-10  3E-11	2E-5  -	2E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
73	Tantalum-182m <sup>2</sup>	W, see <sup>172</sup> Ta	2E+5	5E+5	2E-4	8E-7	-	-
			St wall (2E+5)	-	-	-	3E-3	3E-2
		Y, see <sup>172</sup> Ta	-	4E+5	2E-4	6E-7	-	-
73	Tantalum-182	W, see <sup>172</sup> Ta	8E+2	3E+2	1E-7	5E-10	1E-5	1E-4
			-	1E+2	6E-8	2E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
73	Tantalum-183	W, see $^{172}\text{Ta}$  Y, see $^{172}\text{Ta}$	9E+2  LLI wall (1E+3)  -	1E+3  - 1E+3	5E-7  - 4E-7	2E-9  - 1E-9	-  2E-5  -	-  2E-4  -
73	Tantalum-184	W, see $^{172}\text{Ta}$  Y, see $^{172}\text{Ta}$	2E+3  -	5E+3  5E+3	2E-6  2E-6	8E-9  7E-9	3E-5  -	3E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
73	Tantalum-185 <sup>2</sup>	W, see <sup>172</sup> Ta	3E+4	7E+4	3E-5	1E-7	4E-4	4E-3
		Y, see <sup>172</sup> Ta	-	6E+4	3E-5	9E-8	-	-
73	Tantalum-186 <sup>2</sup>	W, see <sup>172</sup> Ta	5E+4	2E+5	1E-4	3E-7	-	-
		Y, see <sup>172</sup> Ta	St wall	-	-	-	1E-3	1E-2
			(7E+4)	2E+5	9E-5	3E-7	-	-
74	Tungsten-176	D, all compounds	1E+4	5E+4	2E-5	7E-8	1E-4	1E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
74	Tungsten-177	D, all compounds	2E+4	9E+4	4E-5	1E-7	3E-4	3E-3
74	Tungsten-178	D, all compounds	5E+3	2E+4	8E-6	3E-8	7E-5	7E-4
74	Tungsten-179 <sup>2</sup>	D, all compounds	5E+5	2E+6	7E-4	2E-6	7E-3	7E-2
74	Tungsten-181	D, all compounds	2E+4	3E+4	1E-5	5E-8	2E-4	2E-3

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
74	Tungsten-185	D, all compounds	2E+3 LLI wall (3E+3)	7E+3 -	3E-6 -	9E-9 -	- 4E-5	- 4E-4
74	Tungsten-187	D, all compounds	2E+3	9E+3	4E-6	1E-8	3E-5	3E-4
74	Tungsten-188	D, all compounds	4E+2 LLI wall (5E+2)	1E+3 -	5E-7 -	2E-9 -	- 7E-6	- 7E-5

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
75	Rhenium-177 <sup>2</sup>	D, all compounds except those given for W  W, oxides, hydroxides, and nitrates	9E+4 St wall (1E+5) -	3E+5 - 4E+5	1E-4 - 1E-4	4E-7 - 5E-7	- 2E-3 -	- 2E-2 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
75	Rhenium-178 <sup>2</sup>	D, see <sup>177</sup> Re	7E+4	3E+5	1E-4	4E-7	-	-
			St wall (1E+5)	-	-	-	1E-3	1E-2
		W, see <sup>177</sup> Re	-	3E+5	1E-4	4E-7	-	-
75	Rhenium-181	D, see <sup>177</sup> Re	5E+3	9E+3	4E-6	1E-8	7E-5	7E-4
			-	9E+3	4E-6	1E-8	-	-
		W, see <sup>177</sup> Re						

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
75	Rhenium-182 (12.7 h)	D, see $^{177}\text{Re}$ W, see $^{177}\text{Re}$	7E+3 -	1E+4 2E+4	5E-6 6E-6	2E-8 2E-8	9E-5 -	9E-4 -
75	Rhenium-182 (64.0 h)	D, see $^{177}\text{Re}$ W, see $^{177}\text{Re}$	1E+3 -	2E+3 2E+3	1E-6 9E-7	3E-9 3E-9	2E-5 -	2E-4 -
75	Rhenium-184m	D, see $^{177}\text{Re}$ W, see $^{177}\text{Re}$	2E+3 -	3E+3 4E+2	1E-6 2E-7	4E-9 6E-10	3E-5 -	3E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
75	Rhenium-184	D, see $^{177}\text{Re}$  W, see $^{177}\text{Re}$	2E+3  -	4E+3  1E+3	1E-6  6E-7	5E-9  2E-9	3E-5  -	3E-4  -
75	Rhenium-186m	D, see $^{177}\text{Re}$  W, see $^{177}\text{Re}$	1E+3  St wall (2E+3)  -	2E+3  St wall (2E+3)  2E+2	7E-7  -  6E-8	-  3E-9  2E-10	-  2E-5  -	-  2E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
75	Rhenium-186	D, see $^{177}\text{Re}$  W, see $^{177}\text{Re}$	2E+3  -	3E+3  2E+3	1E-6  7E-7	4E-9  2E-9	3E-5  -	3E-4  -
75	Rhenium-187	D, see $^{177}\text{Re}$  W, see $^{177}\text{Re}$	6E+5  -  -	8E+5  St wall (9E+5)  1E+5	4E-4  -  4E-5	-  1E-6  1E-7	8E-3  -  -	8E-2  -  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
75	Rhenium-188m <sup>2</sup>	D, see <sup>177</sup> Re  W, see <sup>177</sup> Re	8E+4  -	1E+5  1E+5	6E-5  6E-5	2E-7  2E-7	1E-3  -	1E-2  -
75	Rhenium-188	D, see <sup>177</sup> Re  W, see <sup>177</sup> Re	2E+3  -	3E+3  3E+3	1E-6  1E-6	4E-9  4E-9	2E-5  -	2E-4  -
75	Rhenium-189	D, see <sup>177</sup> Re  W, see <sup>177</sup> Re	3E+3  -	5E+3  4E+3	2E-6  2E-6	7E-9  6E-9	4E-5  -	4E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
76	Osmium-180 <sup>2</sup>	D, all compounds except those given for W and Y  W, halides and nitrates  Y, oxides and hydroxides	1E+5 - -	4E+5 5E+5 5E+5	2E-4 2E-4 2E-4	5E-7 7E-7 6E-7	1E-3 - -	1E-2 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
76	Osmium-181 <sup>2</sup>	D, see <sup>180</sup> Os W, see <sup>180</sup> Os Y, see <sup>180</sup> Os	1E+4 - -	4E+4 5E+4 4E+4	2E-5 2E-5 2E-5	6E-8 6E-8 6E-8	2E-4 - -	2E-3 - -
76	Osmium-182	D, see <sup>180</sup> Os W, see <sup>180</sup> Os Y, see <sup>180</sup> Os	2E+3 - -	6E+3 4E+3 4E+3	2E-6 2E-6 2E-6	8E-9 6E-9 6E-9	3E-5 - -	3E-4 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
76	Osmium-185	D, see $^{180}\text{Os}$	2E+3	5E+2	2E-7	7E-10	3E-5	3E-4
		W, see $^{180}\text{Os}$	-	8E+2	3E-7	1E-9	-	-
		Y, see $^{180}\text{Os}$	-	8E+2	3E-7	1E-9	-	-
76	Osmium-189m	D, see $^{180}\text{Os}$	8E+4	2E+5	1E-4	3E-7	1E-3	1E-2
		W, see $^{180}\text{Os}$	-	2E+5	9E-5	3E-7	-	-
		Y, see $^{180}\text{Os}$	-	2E+5	7E-5	2E-7	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
76	Osmium-191m	D, see $^{180}\text{Os}$	1E+4	3E+4	1E-5	4E-8	2E-4	2E-3
		W, see $^{180}\text{Os}$	-	2E+4	8E-6	3E-8	-	-
		Y, see $^{180}\text{Os}$	-	2E+4	7E-6	2E-8	-	-
76	Osmium-191	D, see $^{180}\text{Os}$	2E+3	2E+3	9E-7	3E-9	-	-
		LLI wall	-	-	-	-	3E-5	3E-4
		W, see $^{180}\text{Os}$	(3E+3)	2E+3	7E-7	2E-9	-	-
		Y, see $^{180}\text{Os}$	-	1E+3	6E-7	2E-9	-	-
		-	-	-	-	-	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
76	Osmium-193	D, see $^{180}\text{Os}$	2E+3	5E+3	2E-6	6E-9	-	-
			LLI wall	-	-	-	2E-5	2E-4
		W, see $^{180}\text{Os}$	(2E+3)	3E+3	1E-6	4E-9	-	-
		Y, see $^{180}\text{Os}$	-	3E+3	1E-6	4E-9	-	-
			-					

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
76	Osmium-194	D, see $^{180}\text{Os}$  W, see $^{180}\text{Os}$  Y, see $^{180}\text{Os}$	4E+2  LLI wall (6E+2)  -	4E+1  - 6E+1 8E+0	2E-8  - 2E-8 3E-9	6E-11  - 8E-11 1E-11	-  8E-6 -	-  8E-5 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
77	Iridium-182 <sup>2</sup>	D, all compounds except those given for W and Y  W, halides, nitrates, and metallic iridium  Y, oxides and hydroxides	4E+4 St wall (4E+4) - -	1E+5 - 2E+5 1E+5	6E-5 - 6E-5 5E-5	2E-7 - 2E-7 2E-7	- 6E-4 - -	- 6E-3 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
77	Iridium-184	D, see $^{182}\text{Ir}$	8E+3	2E+4	1E-5	3E-8	1E-4	1E-3
		W, see $^{182}\text{Ir}$	-	3E+4	1E-5	5E-8	-	-
		Y, see $^{182}\text{Ir}$	-	3E+4	1E-5	4E-8	-	-
77	Iridium-185	D, see $^{182}\text{Ir}$	5E+3	1E+4	5E-6	2E-8	7E-5	7E-4
		W, see $^{182}\text{Ir}$	-	1E+4	5E-6	2E-8	-	-
		Y, see $^{182}\text{Ir}$	-	1E+4	4E-6	1E-8	-	-
77	Iridium-186	D, see $^{182}\text{Ir}$	2E+3	8E+3	3E-6	1E-8	3E-5	3E-4
		W, see $^{182}\text{Ir}$	-	6E+3	3E-6	9E-9	-	-
		Y, see $^{182}\text{Ir}$	-	6E+3	2E-6	8E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
77	Iridium-187	D, see $^{182}\text{Ir}$	1E+4	3E+4	1E-5	5E-8	1E-4	1E-3
		W, see $^{182}\text{Ir}$	-	3E+4	1E-5	4E-8	-	-
		Y, see $^{182}\text{Ir}$	-	3E+4	1E-5	4E-8	-	-
77	Iridium-188	D, see $^{182}\text{Ir}$	2E+3	5E+3	2E-6	6E-9	3E-5	3E-4
		W, see $^{182}\text{Ir}$	-	4E+3	1E-6	5E-9	-	-
		Y, see $^{182}\text{Ir}$	-	3E+3	1E-6	5E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
77	Iridium-189	D, see $^{182}\text{Ir}$	5E+3	5E+3	2E-6	7E-9	-	-
		LLI wall	-	-	-	-	7E-5	7E-4
		W, see $^{182}\text{Ir}$	(5E+3)	4E+3	2E-6	5E-9	-	-
		Y, see $^{182}\text{Ir}$	-	4E+3	1E-6	5E-9	-	-
77	Iridium-190m <sup>2</sup>	D, see $^{182}\text{Ir}$	2E+5	2E+5	8E-5	3E-7	2E-3	2E-2
		W, see $^{182}\text{Ir}$	-	2E+5	9E-5	3E-7	-	-
		Y, see $^{182}\text{Ir}$	-	2E+5	8E-5	3E-7	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
77	Iridium-190	D, see $^{182}\text{Ir}$	1E+3	9E+2	4E-7	1E-9	1E-5	1E-4
		W, see $^{182}\text{Ir}$	-	1E+3	4E-7	1E-9	-	-
		Y, see $^{182}\text{Ir}$	-	9E+2	4E-7	1E-9	-	-
77	Iridium-192m	D, see $^{182}\text{Ir}$	3E+3	9E+1	4E-8	1E-10	4E-5	4E-4
		W, see $^{182}\text{Ir}$	-	2E+2	9E-8	3E-10	-	-
		Y, see $^{182}\text{Ir}$	-	2E+1	6E-9	2E-11	-	-
77	Iridium-192	D, see $^{182}\text{Ir}$	9E+2	3E+2	1E-7	4E-10	1E-5	1E-4
		W, see $^{182}\text{Ir}$	-	4E+2	2E-7	6E-10	-	-
		Y, see $^{182}\text{Ir}$	-	2E+2	9E-8	3E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
77	Iridium-194m	D, see $^{182}\text{Ir}$	6E+2	9E+1	4E-8	1E-10	9E-6	9E-5
		W, see $^{182}\text{Ir}$	-	2E+2	7E-8	2E-10	-	-
		Y, see $^{182}\text{Ir}$	-	1E+2	4E-8	1E-10	-	-
77	Iridium-194	D, see $^{182}\text{Ir}$	1E+3	3E+3	1E-6	4E-9	1E-5	1E-4
		W, see $^{182}\text{Ir}$	-	2E+3	9E-7	3E-9	-	-
		Y, see $^{182}\text{Ir}$	-	2E+3	8E-7	3E-9	-	-
77	Iridium-195m	D, see $^{182}\text{Ir}$	8E+3	2E+4	1E-5	3E-8	1E-4	1E-3
		W, see $^{182}\text{Ir}$	-	3E+4	1E-5	4E-8	-	-
		Y, see $^{182}\text{Ir}$	-	2E+4	9E-6	3E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
77	Iridium-195	D, see $^{182}\text{Ir}$	1E+4	4E+4	2E-5	6E-8	2E-4	2E-3
		W, see $^{182}\text{Ir}$	-	5E+4	2E-5	7E-8	-	-
		Y, see $^{182}\text{Ir}$	-	4E+4	2E-5	6E-8	-	-
78	Platinum-186	D, all compounds	1E+4	4E+4	2E-5	5E-8	2E-4	2E-3
78	Platinum-188	D, all compounds	2E+3	2E+3	7E-7	2E-9	2E-5	2E-4
78	Platinum-189	D, all compounds	1E+4	3E+4	1E-5	4E-8	1E-4	1E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
78	Platinum-191	D, all compounds	4E+3	8E+3	4E-6	1E-8	5E-5	5E-4
78	Platinum-193m	D, all compounds	3E+3 LLI wall (3E+4)	6E+3 -	3E-6 -	8E-9 -	- 4E-5	- 4E-4
78	Platinum-193	D, all compounds	4E+4 LLI wall (5E+4)	2E+4 -	1E-5 -	3E-8 -	- 6E-4	- 6E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
78	Platinum-195m	D, all compounds	2E+3 LLI wall (2E+3)	4E+3 -	2E-6 -	6E-9 -	- 3E-5	- 3E-4
78	Platinum-197m <sup>2</sup>	D, all compounds	2E+4	4E+4	2E-5	6E-8	2E-4	2E-3
78	Platinum-197	D, all compounds	3E+3	1E+4	4E-6	1E-8	4E-5	4E-4
78	Platinum-199 <sup>2</sup>	D, all compounds	5E+4	1E+5	6E-5	2E-7	7E-4	7E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
78	Platinum-200	D, all compounds	1E+3	3E+3	1E-6	5E-9	2E-5	2E-4
79	Gold-193	D, all compounds except	9E+3	3E+4	1E-5	4E-8	1E-4	1E-3
		those given for W and Y	-	2E+4	9E-6	3E-8	-	-
		W, halides and nitrates	-	2E+4	8E-6	3E-8	-	-
		Y, oxides and hydroxides						

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
79	Gold-194	D, see $^{193}\text{Au}$	3E+3	8E+3	3E-6	1E-8	4E-5	4E-4
		W, see $^{193}\text{Au}$	-	5E+3	2E-6	8E-9	-	-
		Y, see $^{193}\text{Au}$	-	5E+3	2E-6	7E-9	-	-
79	Gold-195	D, see $^{193}\text{Au}$	5E+3	1E+4	5E-6	2E-8	7E-5	7E-4
		W, see $^{193}\text{Au}$	-	1E+3	6E-7	2E-9	-	-
		Y, see $^{193}\text{Au}$	-	4E+2	2E-7	6E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
79	Gold-198m	D, see $^{193}\text{Au}$	1E+3	3E+3	1E-6	4E-9	1E-5	1E-4
		W, see $^{193}\text{Au}$	-	1E+3	5E-7	2E-9	-	-
		Y, see $^{193}\text{Au}$	-	1E+3	5E-7	2E-9	-	-
79	Gold-198	D, see $^{193}\text{Au}$	1E+3	4E+3	2E-6	5E-9	2E-5	2E-4
		W, see $^{193}\text{Au}$	-	2E+3	8E-7	3E-9	-	-
		Y, see $^{193}\text{Au}$	-	2E+3	7E-7	2E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
79	Gold-199	D, see $^{193}\text{Au}$	3E+3	9E+3	4E-6	1E-8	-	-
			LLI wall	-	-	-	4E-5	4E-4
		W, see $^{193}\text{Au}$	(3E+3)	4E+3	2E-6	6E-9	-	-
		Y, see $^{193}\text{Au}$	-	4E+3	2E-6	5E-9	-	-
79	Gold-200m	D, see $^{193}\text{Au}$	1E+3	4E+3	1E-6	5E-9	2E-5	2E-4
			-	3E+3	1E-6	4E-9	-	-
		W, see $^{193}\text{Au}$	-	2E+4	1E-6	3E-9	-	-
		Y, see $^{193}\text{Au}$						

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
79	Gold-200 <sup>2</sup>	D, see <sup>193</sup> Au	3E+4	6E+4	3E-5	9E-8	4E-4	4E-3
		W, see <sup>193</sup> Au	-	8E+4	3E-5	1E-7	-	-
		Y, see <sup>193</sup> Au	-	7E+4	3E-5	1E-7	-	-
79	Gold-201 <sup>2</sup>	D, see <sup>193</sup> Au	7E+4	2E+5	9E-5	3E-7	-	-
		St wall	-	-	-	1E-3	1E-2	
		(9E+4)	2E+5	1E-4	3E-7	-	-	
		W, see <sup>193</sup> Au	-	2E+5	9E-5	3E-7	-	-
		Y, see <sup>193</sup> Au	-					

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
80	Mercury-193m	Vapor	-	8E+3	4E-6	1E-8	-	-
		Organic D	4E+3	1E+4	5E-6	2E-8	6E-5	6E-4
		D, sulfates	3E+3	9E+3	4E-6	1E-8	4E-5	4E-4
		W, oxides, hydroxides, halides, nitrates, and sulfides	-	8E+3	3E-6	1E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation ALI ( $\mu\text{Ci}$ )		DAC ( $\mu\text{Ci/ml}$ )	Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )
80	Mercury-193	Vapor		-	3E+4			
		Organic D	2E+4	6E+4	3E-5	9E-8	3E-4	3E-3
		D, see $^{193\text{m}}\text{Hg}$	2E+4	4E+4	2E-5	6E-8	2E-4	2E-3
		W, see $^{193\text{m}}\text{Hg}$	-	4E+4	2E-5	6E-8	-	-
80	Mercury-194	Vapor	-	3E+1	1E-8	4E-11	-	-
		Organic D	2E+1	3E+1	1E-8	4E-11	2E-7	2E-6
		D, see $^{193\text{m}}\text{Hg}$	8E+2	4E+1	2E-8	6E-11	1E-5	1E-4
		W, see $^{193\text{m}}\text{Hg}$	-	1E+2	5E-8	2E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
80	Mercury-195m	Vapor	-	4E+3	2E-6	6E-9	-	-
		Organic D	3E+3	6E+3	3E-6	8E-9	4E-5	4E-4
		D, see $^{193\text{m}}\text{Hg}$	2E+3	5E+3	2E-6	7E-9	3E-5	3E-4
		W, see $^{193\text{m}}\text{Hg}$	-	4E+3	2E-6	5E-9	-	-
80	Mercury-195	Vapor	-	3E+4	1E-5	4E-8	-	-
		Organic D	2E+4	5E+4	2E-5	6E-8	2E-4	2E-3
		D, see $^{193\text{m}}\text{Hg}$	1E+4	4E+4	1E-5	5E-8	2E-4	2E-3
		W, see $^{193\text{m}}\text{Hg}$	-	3E+4	1E-5	5E-8	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation ALI ( $\mu\text{Ci}$ )    DAC ( $\mu\text{Ci}/\text{ml}$ )		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
80	Mercury-197m	Vapor		-	5E+3			
		Organic D	4E+3	9E+3	4E-6	1E-8	5E-5	5E-4
		D, see $^{193\text{m}}\text{Hg}$	3E+3	7E+3	3E-6	1E-8	4E-5	4E-4
		W, see $^{193\text{m}}\text{Hg}$	-	5E+3	2E-6	7E-9	-	-
80	Mercury-197	Vapor	-	8E+3	4E-6	1E-8	-	-
		Organic D	7E+3	1E+4	6E-6	2E-8	9E-5	9E-4
		D, see $^{193\text{m}}\text{Hg}$	6E+3	1E+4	5E-6	2E-8	8E-5	8E-4
		W, see $^{193\text{m}}\text{Hg}$	-	9E+3	4E-6	1E-8	-	-

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
80	Mercury- $^{199}\text{m}^2$	Vapor	-	8E+4	3E-5	1E-7	-	-
		Organic D	6E+4	2E+5	7E-5	2E-7	-	-
		St wall	-	-	-	-	1E-3	1E-2
		D, see $^{193}\text{mHg}$	(1E+5)	1E+5	6E-5	2E-7	8E-4	8E-3
		W, see $^{193}\text{mHg}$	6E+4	2E+5	7E-5	2E-7	-	-
			-					

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
80	Mercury-203	Vapor	-	8E+2	4E-7	1E-9	-	-
		Organic D	5E+2	8E+2	3E-7	1E-9	7E-6	7E-5
		D, see $^{193\text{m}}\text{Hg}$	2E+3	1E+3	5E-7	2E-9	3E-5	3E-4
		W, see $^{193\text{m}}\text{Hg}$		1E+3	5E-7	2E-9	-	-
81	Thallium- $^{194\text{m}2}$	D, all compounds	5E+4	2E+5	6E-5	2E-7	-	-
			St wall (7E+4)	-	-	-	1E-3	1E-2

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
81	Thallium-194 <sup>2</sup>	D, all compounds	3E+5 St wall (3E+5)	6E+5 -	2E-4 -	8E-7 -	- 4E-3	- 4E-2
81	Thallium-195 <sup>2</sup>	D, all compounds	6E+4	1E+5	5E-5	2E-7	9E-4	9E-3
81	Thallium-197	D, all compounds	7E+4	1E+5	5E-5	2E-7	1E-3	1E-2
81	Thallium-198m <sup>2</sup>	D, all compounds	3E+4	5E+4	2E-5	8E-8	4E-4	4E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
81	Thallium-198	D, all compounds	2E+4	3E+4	1E-5	5E-8	3E-4	3E-3
81	Thallium-199	D, all compounds	6E+4	8E+4	4E-5	1E-7	9E-4	9E-3
81	Thallium-200	D, all compounds	8E+3	1E+4	5E-6	2E-8	1E-4	1E-3
81	Thallium-201	D, all compounds	2E+4	2E+4	9E-6	3E-8	2E-4	2E-3
81	Thallium-202	D, all compounds	4E+3	5E+3	2E-6	7E-9	5E-5	5E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
81	Thallium-204	D, all compounds	2E+3	2E+3	9E-7	3E-9	2E-5	2E-4
82	Lead-195m <sup>2</sup>	D, all compounds	6E+4	2E+5	8E-5	3E-7	8E-4	8E-3
82	Lead-198	D, all compounds	3E+4	6E+4	3E-5	9E-8	4E-4	4E-3
82	Lead-199 <sup>2</sup>	D, all compounds	2E+4	7E+4	3E-5	1E-7	3E-4	3E-3
82	Lead-200	D, all compounds	3E+3	6E+3	3E-6	9E-9	4E-5	4E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
82	Lead-201	D, all compounds	7E+3	2E+4	8E-6	3E-8	1E-4	1E-3
82	Lead-202m	D, all compounds	9E+3	3E+4	1E-5	4E-8	1E-4	1E-3
82	Lead-202	D, all compounds	1E+2	5E+1	2E-8	7E-11	2E-6	2E-5
82	Lead-203	D, all compounds	5E+3	9E+3	4E-6	1E-8	7E-5	7E-4
82	Lead-205	D, all compounds	4E+3	1E+3	6E-7	2E-9	5E-5	5E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
82	Lead-209	D, all compounds	2E+4	6E+4	2E-5	8E-8	3E-4	3E-3
82	Lead-210	D, all compounds	6E-1 Bone surf (1E+0)	2E-1 Bone surf (4E-1)	1E-10 -	- 6E-13	- 1E-8	- 1E-7
82	Lead-211 <sup>2</sup>	D, all compounds	1E+4	6E+2	3E-7	9E-10	2E-4	2E-3

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
82	Lead-212	D, all compounds	8E+1  Bone surf (1E+2)	3E+1  -	1E-8  -	5E-11  -	-  2E-6	-  2E-5
82	Lead-214 <sup>2</sup>	D, all compounds	9E+3	8E+2	3E-7	1E-9	1E-4	1E-3
83	Bismuth- 200 <sup>2</sup>	D, nitrates  W, all other compounds	3E+4  -	8E+4  1E+5	4E-5  4E-5	1E-7  1E-7	4E-4  -	4E-3  -

Atom ic No.	Radionuclid e	Class	Table I Occupational Values			Table II Effluent Concentration s		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingesti on	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average  Concentrat ion ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )						
83	Bismuth- 201 <sup>2</sup>	D, see <sup>200</sup> Bi  W, see <sup>200</sup> Bi	1E+4  -	3E+4  4E+4	1E-5  2E-5	4E-8  5E-8	2E-4  -	2E-3  -
83	Bismuth- 202 <sup>2</sup>	D, see <sup>200</sup> Bi  W, see <sup>200</sup> Bi	1E+4  -	4E+4  8E+4	2E-5  3E-5	6E-8  1E-7	2E-4  -	2E-3  -
83	Bismuth-203	D, see <sup>200</sup> Bi  W, see <sup>200</sup> Bi	2E+3  -	7E+3  6E+3	3E-6  3E-6	9E-9  9E-9	3E-5  -	3E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
83	Bismuth-205	D, see $^{200}\text{Bi}$ W, see $^{200}\text{Bi}$	1E+3 -	3E+3 1E+3	1E-6 5E-7	3E-9 2E-9	2E-5 -	2E-4 -
83	Bismuth-206	D, see $^{200}\text{Bi}$ W, see $^{200}\text{Bi}$	6E+2 -	1E+3 9E+2	6E-7 4E-7	2E-9 1E-9	9E-6 -	9E-5 -
83	Bismuth-207	D, see $^{200}\text{Bi}$ W, see $^{200}\text{Bi}$	1E+3 -	2E+3 4E+2	7E-7 1E-7	2E-9 5E-10	1E-5 -	1E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
83	Bismuth-210m	D, see $^{200}\text{Bi}$  W, see $^{200}\text{Bi}$	4E+1  Kidneys (6E+1)  -	5E+0  Kidneys (6E+0)  7E-1	2E-9  - 3E-10	-  9E-12 9E-13	-  8E-7 -	-  8E-6 -
83	Bismuth-210	D, see $^{200}\text{Bi}$  W, see $^{200}\text{Bi}$	8E+2  - - -	2E+2  Kidneys (4E+2)  3E+1	1E-7  - 1E-8	-  5E-10 4E-11	1E-5  - -	1E-4  - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
83	Bismuth-212 <sup>2</sup>	D, see <sup>200</sup> Bi W, see <sup>200</sup> Bi	5E+3 -	2E+2 3E+2	1E-7 1E-7	3E-10 4E-10	7E-5 -	7E-4 -
83	Bismuth-213 <sup>2</sup>	D, see <sup>200</sup> Bi W, see <sup>200</sup> Bi	7E+3 -	3E+2 4E+2	1E-7 1E-7	4E-10 5E-10	1E-4 -	1E-3 -
83	Bismuth-214 <sup>2</sup>	D, see <sup>200</sup> Bi W, see <sup>200</sup> Bi	2E+4 St wall (2E+4) -	8E+2 - 9E-2	3E-7 - 4E-7	1E-9 - 1E-9	- 3E-4 -	- 3E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
84	Polonium-203 <sup>2</sup>	D, all compounds except those given for W W, oxides, hydroxides, and nitrates	3E+4 -	6E+4 9E+4	3E-5 4E-5	9E-8 1E-7	3E-4 -	3E-3 -
84	Polonium-205 <sup>2</sup>	D, see <sup>203</sup> Po W, see <sup>203</sup> Po	2E+4 -	4E+4 7E+4	2E-5 3E-5	5E-8 1E-7	3E-4 -	3E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
84	Polonium-207	D, see $^{203}\text{Po}$  W, see $^{203}\text{Po}$	8E+3  -	3E+4  3E+4	1E-5  1E-5	3E-8  4E-8	1E-4  -	1E-3  -
84	Polonium-210	D, see $^{203}\text{Po}$  W, see $^{203}\text{Po}$	3E+0  -	6E-1  6E-1	3E-10  3E-10	9E-13  9E-13	4E-8  -	4E-7  -
85	Astatine-207 <sup>2</sup>	D, Halides  W	6E+3  -	3E+3  2E+3	1E-6  9E-7	4E-9  3E-9	8E-5  -	8E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
85	Astatine-211	D, halides	1E+2	8E+1	3E-8	1E-10	2E-6	2E-5
		W	-	5E+1	2E-8	8E-11	-	-
86	Radon-220	With daughters removed	-	2E+4	7E-6	2E-8	-	-
		With daughters present	-	2E+1 (or 12 WLM)	9E-9 (or 1.0 WL)	3E-11	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
86	Radon-222	With daughters removed	-	1E+4	4E-6	1E-8	-	-
		With daughters present	-	1E+2 (or 4 WLM)	3E-8 (or 0.33 WL)	1E-10	-	-
87	Francium-222 <sup>2</sup>	D, all compounds	2E+3	5E+2	2E-7	6E-10	3E-5	3E-4
87	Francium-223 <sup>2</sup>	D, all compounds	6E+2	8E+2	3E-7	1E-9	8E-6	8E-5

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
88	Radium-223	W, all compounds	5E+0 Bone surf (9E+0)	7E-1 -	3E-10 -	9E-13 -	- 1E-7	- 1E-6
88	Radium-224	W, all compounds	8E+0 Bone surf (2E+1)	2E+0 -	7E-10 -	2E-12 -	- 2E-7	- 2E-6

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
88	Radium-225	W, all compounds	8E+0 Bone surf (2E+1)	7E-1 -	3E-10 -	9E-13 -	- 2E-7	- 2E-6
88	Radium-226	W, all compounds	2E+0 Bone surf (5E+0)	6E-1 -	3E-10 -	9E-13 -	- 6E-8	- 6E-7

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
88	Radium-227 <sup>2</sup>	W, all compounds	2E+4 Bone surf (2E+4)	1E+4 Bone surf (2E+4)	6E-6 -	- 3E-8	- 3E-4	- 3E-3
88	Radium-228	W, all compounds	2E+0 Bone surf (4E+0)	1E+0 -	5E-10 -	2E-12 -	- 6E-8	- 6E-7

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
89	Actinium-224	D, all compounds except those given for W and Y  W, halides and nitrates  Y, oxides and hydroxides	2E+3 LLI wall (2E+3) - -	3E+1 Bone surf (4E+1) 5E+1 5E+1	1E-8 - 2E-8 2E-8	- 5E-11 7E-11 6E-11	- 3E-5 - -	- 3E-4 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
89	Actinium-225	D, see $^{224}\text{Ac}$	5E+1	3E-1	1E-10	-	-	-
		W, see $^{224}\text{Ac}$	LLI wall	Bone surf	-	7E-13	7E-7	7E-6
		Y, see $^{224}\text{Ac}$	(5E+1)	(5E-1)	3E-10	9E-13	-	-
			-	6E-1	3E-10	9E-13	-	-
			-	6E-1				

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
89	Actinium-226	D, see $^{224}\text{Ac}$	1E+2	3E+0	1E-9	-	-	-
			LLI wall	Bone surf	-	5E-12	2E-6	2E-5
		W, see $^{224}\text{Ac}$	(1E+2)	(4E+0)	2E-9	7E-12	-	-
		Y, see $^{224}\text{Ac}$	-	5E+0	2E-9	6E-12	-	-
			-	5E+0				

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
89	Actinium-227	D, see $^{224}\text{Ac}$	2E-1	4E-4	2E-13	-	-	-
			Bone surf (4E-1)	Bone surf (8E-4)	-	1E-15	5E-9	5E-8
		W, see $^{224}\text{Ac}$	-	2E-3	7E-13	-	-	-
			-	Bone surf (3E-3)	-	4E-15	-	-
		Y, see $^{224}\text{Ac}$	-	-	2E-12	6E-15	-	-
			-	4E-3				

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
89	Actinium-228	D, see $^{224}\text{Ac}$	2E+3	9E+0	4E-9	-	3E-5	3E-4
			-	Bone surf	-	2E-11	-	-
		W, see $^{224}\text{Ac}$	-	(2E+1)	2E-8	-	-	-
			-	4E+1	2E-8	8E-11	-	-
		Y, see $^{224}\text{Ac}$	-	Bone surf	2E-8	6E-11	-	-
				(6E+1)				
				4E+1				

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
90	Thorium-226 <sup>2</sup>	W, all compounds except those given for Y  Y, oxides and hydroxides	5E+3	2E+2	6E-8	2E-10	-	-
			St wall	-	-	-	7E-5	7E-4
			(5E+3)	1E+2	6E-8	2E-10	-	-
90	Thorium-227	W, see <sup>226</sup> Th  Y, see <sup>226</sup> Th	1E+2	3E-1	1E-10	5E-13	2E-6	2E-5
			-	3E-1	1E-10	5E-13	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
90	Thorium-228	W, see $^{226}\text{Th}$  Y, see $^{226}\text{Th}$	6E+0  Bone surf  (1E+1)  -	1E-2  Bone surf  (2E-2)  2E-2	4E-12  -  7E-12	-  3E-14  2E-14	-  2E-7  -	-  2E-6  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
90	Thorium-229	W, see $^{226}\text{Th}$	6E-1	9E-4	4E-13	-	-	-
		Y, see $^{226}\text{Th}$	Bone surf (1E+0)	Bone surf (2E-3)	- 1E-12	3E-15	2E-8	2E-7
			-	2E-3	-	4E-15	-	-
			-	Bone surf (3E-3)				

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
90	Thorium-230	W, see $^{226}\text{Th}$	4E+0	6E-3	3E-12	-	-	-
			Bone surf (9E+0)	Bone surf (2E-2)	-	2E-14	1E-7	1E-6
		Y, see $^{226}\text{Th}$	-	2E-2	6E-12	-	-	-
			-	Bone surf (2E-2)	-	3E-14	-	-
90	Thorium-231	W, see $^{226}\text{Th}$	4E+3	6E+3	3E-6	9E-9	5E-5	5E-4
			-	6E+3	3E-6	9E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
90	Thorium-232	W, see $^{226}\text{Th}$  Y, see $^{226}\text{Th}$	7E-1  Bone surf (2E+0)  -	1E-3  Bone surf (3E-3)  3E-3  Bone surf (4E-3)	5E-13  -  1E-12  -	-  4E-15  -	-  3E-8  -	-  3E-7  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
90	Thorium-234	W, see $^{226}\text{Th}$	3E+2	2E+2	8E-8	3E-10	-	-
		Y, see $^{226}\text{Th}$	LLI wall (4E+2)	- 2E+2	- 6E-8	- 2E-10	5E-6	5E-5
91	Protactinium-227 <sup>2</sup>	W, all compounds except those given for Y	4E+3	1E+2	5E-8	2E-10	5E-5	5E-4
		Y, oxides and hydroxides	-	1E+2	4E-8	1E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
91	Protactinium-228	W, see $^{227}\text{Pa}$  Y, see $^{227}\text{Pa}$	1E+3  -  -	1E+1  Bone surf  (2E+1)  1E+1	5E-9  -  5E-9	-  3E-11  2E-11	2E-5  -  -	2E-4  -  -
91	Protactinium-230	W, see $^{227}\text{Pa}$  Y, see $^{227}\text{Pa}$	6E+2  Bone surf  (9E+2)  -	5E+0  -  4E+0	2E-9  -  1E-9	7E-12  -  5E-12	-  1E-5  -	-  1E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
91	Protactinium-231	W, see $^{227}\text{Pa}$  Y, see $^{227}\text{Pa}$	2E-1 Bone surf (5E-1) - -	2E-3 Bone surf (4E-3) 4E-3 Bone surf (6E-3)	6E-13 - 2E-12 -	- 6E-15 - 8E-15	- 6E-9 - -	- 6E-8 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
91	Protactinium-232	W, see $^{227}\text{Pa}$  Y, see $^{227}\text{Pa}$	1E+3 - - -	2E+1 Bone surf (6E+1) 6E+1 Bone surf (7E+1)	9E-9 - 2E-8 -	- 8E-11 - 1E-10	2E-5 - - -	2E-4 - - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
91	Protactinium-233	W, see $^{227}\text{Pa}$  Y, see $^{227}\text{Pa}$	1E+3  LLI wall (2E+3)  -	7E+2  - 6E+2	3E-7  - 2E-7	1E-9  - 8E-10	- 2E-5 -	- 2E-4 -
91	Protactinium-234	W, see $^{227}\text{Pa}$  Y, see $^{227}\text{Pa}$	2E+3  -	8E+3 7E+3	3E-6 3E-6	1E-8 9E-9	3E-5 -	3E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
92	Uranium-230	D, UF, UO <sub>2</sub> F <sub>2</sub> , UO <sub>2</sub> (NO <sub>3</sub> ) <sub>2</sub>	4E+0	4E-1	2E-10	-	-	-
		W, UO <sub>3</sub> , UF <sub>4</sub> , UC <sub>14</sub>	Bone surf (6E+0)	Bone surf (6E-1)	- 1E-10	8E-13 5E-13	8E-8 -	8E-7 -
		Y, UO <sub>2</sub> , U <sub>3</sub> O <sub>8</sub>	-	4E-1	1E-10	4E-13	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
92	Uranium-231	D, see $^{230}\text{U}$	5E+3	8E+3	3E-6	1E-8	-	-
		LLI wall	-	-	-	-	6E-5	6E-4
		W, see $^{230}\text{U}$	(4E+3)	6E+3	2E-6	8E-9	-	-
		Y, see $^{230}\text{U}$	5E+3	2E-6	6E-9	-	-	
		-	-	-	-	-	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
92	Uranium-232	D, see $^{230}\text{U}$  W, see $^{230}\text{U}$ Y, see $^{230}\text{U}$	2E+0  Bone surf (4E+0) - -	2E-1  Bone surf (4E-1) 4E-1 8E-3	9E-11  - 2E-10 3E-12	-  6E-13 5E-13 1E-14	-  6E-8 - -	-  6E-7 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
92	Uranium-233	D, see $^{230}\text{U}$  W, see $^{230}\text{U}$ Y, see $^{230}\text{U}$	1E+1  Bone surf (2E+1)  -	1E+0  Bone surf (2E+0)  7E-1  4E-2	5E-10  - 3E-10 2E-11	-  3E-12 1E-12 5E-14	-  3E-7 -	-  3E-6 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
92	Uranium-234 <sup>3</sup>	D, see <sup>230</sup> U	1E+1	1E+0	5E-10	-	-	-
		W, see <sup>230</sup> U Y, see <sup>230</sup> U	Bone surf	Bone surf	-	3E-12	3E-7	3E-6
			(2E+1)	(2E+0)	3E-10	1E-12	-	-
			-	7E-1	2E-11	5E-14	-	-
-			4E-2					

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
92	Uranium-235 <sup>3</sup>	D, see <sup>230</sup> U  W, see <sup>230</sup> U Y, see <sup>230</sup> U	1E+1  Bone surf (2E+1) - -	1E+0  Bone surf (2E+0) ) 8E-1 4E-2	6E-10  - 3E-10 2E-11	-  3E-12 1E-12 6E-14	-  3E-7 - -	-  3E-6 - -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
92	Uranium-236	D, see $^{230}\text{U}$  W, see $^{230}\text{U}$ Y, see $^{230}\text{U}$	1E+1  Bone surf (2E+1)  -	1E+0  Bone surf (2E+0)  8E-1 4E-2	5E-10  - 3E-10 2E-11	-  3E-12 1E-12 6E-14	-  3E-7 -	-  3E-6 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
92	Uranium-237	D, see $^{230}\text{U}$	2E+3	3E+3	1E-6	4E-9	-	-
		W, see $^{230}\text{U}$	LLI wall (2E+3)	-	-	-	3E-5	3E-4
		Y, see $^{230}\text{U}$	-	2E+3	7E-7	2E-9	-	-
		-	-	2E+3	6E-7	2E-9	-	-
		-	-	-	-	-	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
92	Uranium-238 <sup>3</sup>	D, see <sup>230</sup> U	1E+1	1E+0	6E-10	-	-	-
		W, see <sup>230</sup> U	Bone surf (2E+1)	Bone surf (2E+0)	-	3E-12	3E-7	3E-6
		Y, see <sup>230</sup> U	-	8E-1	3E-10	1E-12	-	-
		-	-	4E-2	2E-11	6E-14	-	-
92	Uranium-239 <sup>2</sup>	D, see <sup>230</sup> U	7E+4	2E+5	8E-5	3E-7	9E-4	9E-3
		W, see <sup>230</sup> U	-	2E+5	7E-5	2E-7	-	-
		Y, see <sup>230</sup> U	-	2E+5	6E-5	2E-7	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
29	Uranium-240	D, see $^{230}\text{U}$	1E+3	4E+3	2E-6	5E-9	2E-5	2E-4
		W, see $^{230}\text{U}$	-	3E+3	1E-6	4E-9	-	-
		Y, see $^{230}\text{U}$	-	2E+3	1E-6	3E-9	-	-
92	Uranium-natural <sup>3</sup>	D, see $^{230}\text{U}$	1E+1	1E+0	5E-10	-	-	-
		W, see $^{230}\text{U}$	Bone surf	Bone surf	-	3E-12	3E-7	3E-6
			(2E+1)	(2E+0)	3E-10	9E-13	-	-
		Y, see $^{230}\text{U}$	-	-	2E-11	9E-14	-	-
			-	8E-1	-	-	-	-
-	5E-2	-	-	-	-	-		

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
93	Neptunium-232 <sup>2</sup>	W, all compounds	1E+5 -	2E+3 Bone surf (5E+2)	7E-7 -	- 6E-9	2E-3 -	2E-2 -
93	Neptunium-233 <sup>2</sup>	W, all compounds	8E+5	3E+6	1E-3	4E-6	1E-2	1E-1
93	Neptunium-234	W, all compounds	2E+3	3E+3	1E-6	4E-9	3E-5	3E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
93	Neptunium-235	W, all compounds	2E+4 LLI wall (2E+4)	8E+2 Bone surf (1E+3)	3E-7 -	- 2E-9	- 3E-4	- 3E-3
93	Neptunium-236 (1.15E+5 y)	W, all compounds	3E+0 Bone surf (6E+0)	2E-2 Bone surf (5E-2)	9E-12 -	- 8E-14	- 9E-8	- 9E-7

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
93	Neptunium-236 (22.5 h)	W, all compounds	3E+3 Bone surf (4E+3)	3E+1 Bone surf (7E+1)	1E-8 -	- 1E-10	- 5E-5	- 5E-4
93	Neptunium-237	W, all compounds	5E-1 Bone surf (1E+0)	4E-3 Bone surf (1E-2)	2E-12 -	- 1E-14	- 2E-8	- 2E-7

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
93	Neptunium-238	W, all compounds	1E+3 -	6E+1 Bone surf (2E+2)	3E-8 -	- 2E-10	2E-5 -	2E-4 -
93	Neptunium-239	W, all compounds	2E+3 LLI wall (2E+3)	2E+3 -	9E-7 -	3E-9 -	- 2E-5	- 2E-4
93	Neptunium-240 <sup>2</sup>	W, all compounds	2E+4	8E+4	3E-5	1E-7	3E-4	3E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
94	Plutonium-234	W, all compounds  except $\text{PuO}_2$  Y, $\text{PuO}_2$	8E+3  -	2E_2  2E+2	9E-8  8E-8	3E-10  3E-10	1E-4  -	1E-3  -
94	Plutonium-235 <sup>2</sup>	W, see $^{234}\text{Pu}$  Y, see $^{234}\text{Pu}$	9E+5  -	3E+6  3E+6	1E-3  1E-3	4E-6  3E-6	1E-2  -	1E-1  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
94	Plutonium-236	W, see $^{234}\text{Pu}$  Y, see $^{234}\text{Pu}$	2E+0  Bone surf (4E+0)  -	2E-2  Bone surf (4E-2)  4E-2	8E-12  - 2E-11	-  5E-14 6E-14	-  6E-8 -	-  6E-7 -
94	Plutonium-237	W, see $^{234}\text{Pu}$  Y, see $^{234}\text{Pu}$	1E+4  -	3E+3  3E+3	1E-6  1E-6	5E-9  4E-9	2E-4  -	2E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
94	Plutonium-238	W, see $^{234}\text{Pu}$  Y, see $^{234}\text{Pu}$	9E-1  Bone surf (2E+0)  -	7E-3  Bone surf (1E-2)  2E-2	3E-12  - 8E-12	-  2E-14 2E-14	-  2E-8 -	-  2E-7 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
94	Plutonium-239	W, see $^{234}\text{Pu}$  Y, see $^{234}\text{Pu}$	8E-1  Bone surf  (1E+0)  -	6E-3  Bone surf  (1E-2)  2E-2  Bone surf  (2E-2)	3E-12  -  7E-12  -	-  2E-14  -	-  2E-8  -	-  2E-7  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
94	Plutonium-240	W, see $^{234}\text{Pu}$  Y, see $^{234}\text{Pu}$	8E-1  Bone surf  (1E+0)  -  -	6E-3  Bone surf  (1E-2)  2E-2  Bone surf  (2E-2)	3E-12  -  7E-12  -	-  2E-14  -  2E-14	-  2E-8  -  -	-  2E-7  -  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
94	Plutonium-241	W, see $^{234}\text{Pu}$  Y, see $^{234}\text{Pu}$	4E+1  Bone surf  (7E+1)  -	3E-1  Bone surf  (6E-1)  8E-1  Bone surf  (1E+0)	1E-10  -  3E-10  -	-  8E-13  -	-  1E-6  -	-  1E-5  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
94	Plutonium-242	W, see $^{234}\text{Pu}$  Y, see $^{234}\text{Pu}$	8E-1  Bone surf  (1E+0)  -	7E-3  Bone surf  (1E-2)  2E-2  Bone surf  (2E-2)	3E-12  -  7E-12  -	-  2E-14  -	-  2E-8  -	-  2E-7  -
94	Plutonium-243	W, see $^{234}\text{Pu}$  Y, see $^{234}\text{Pu}$	2E+4  -	4E+4  4E+4	2E-5  2E-5	5E-8  5E-8	2E-4  -	2E-3  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
94	Plutonium-244	W, see $^{234}\text{Pu}$  Y, see $^{234}\text{Pu}$	8E-1  Bone surf (2E+0)  -	7E-3  Bone surf (1E-2)  2E-2  Bone surf (2E-2)	3E-12  -  7E-12  -	-  2E-14  -	-  2E-8  -	-  2E-7  -
94	Plutonium-245	W, see $^{234}\text{Pu}$  Y, see $^{234}\text{Pu}$	2E+3  -	5E+3  4E+3	2E-6  2E-6	6E-9  6E-9	3E-5  -	3E-4  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
94	Plutonium-246	W, see $^{234}\text{Pu}$  Y, see $^{234}\text{Pu}$	4E+2  LLI wall (4E+2)  -	3E+2  - 3E+2	1E-7  - 1E-7	4E-10  - 4E-10	-  6E-6 -	-  6E-5 -
95	Americium-237 <sup>2</sup>	W, all compounds	8E+4	3E+5	1E-4	4E-7	1E-3	1E-2

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
95	Americium-238 <sup>2</sup>	W, all compounds	4E+4 -	3E+3 Bone surf (6E+3)	1E-6 -	- 9E-9	5E-4 -	5E-3 -
95	Americium-239	W, all compounds	5E+3	1E+4	5E-6	2E-8	7E-5	7E-4
95	Americium-240	W, all compounds	2E+3	3E+3	1E-6	4E-9	3E-5	3E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation ALI ( $\mu\text{Ci}$ )		DAC ( $\mu\text{Ci}/\text{ml}$ )	Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )
95	Americium-241	W, all compounds		8E-1 Bone surf (1E+0)	6E-3 Bone surf (1E-2)			
95	Americium-242m	W, all compounds	8E-1 Bone surf (1E+0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
95	Americium-242	W, all compounds	4E+3 -	8E+1 Bone surf (9E+1)	4E-8 -	- 1E-10	5E-5 -	5E-4 -
95	Americium-243	W, all compounds	8E-1 Bone surf (1E+0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
95	Americium-244m <sup>2</sup>	W, all compounds	6E+4 St wall (8E+4)	4E+3 Bone surf (7E+3)	2E-6 -	- 1E-8	- 1E-3	- 1E-2
95	Americium-244	W, all compounds	3E+3 -	2E+2 Bone surf (3E+2)	8E-8	- 4E-10	4E-5 -	4E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
95	Americium-245	W, all compounds	3E+4	8E+4	3E-5	1E-7	4E-4	4E-3
95	Americium-246 <sup>m2</sup>	W, all compounds	5E+4 St wall (6E+4)	2E+5 -	8E-5 -	3E-7 -	- 8E-4	- 8E-3
95	Americium-246 <sup>2</sup>	W, all compounds	3E+4	1E+5	4E-5	1E-7	4E-4	4E-3
96	Curium-238	W, all compounds	2E+4	1E+3	5E-7	2E-9	2E-4	2E-3

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
96	Curium-240	W, all compounds	6E+1 Bone surf (8E+1)	6E-1 Bone surf (6E-1)	2E-10 -	- 9E-13	- 1E-6	- 1E-5
96	Curium-241	W, all compounds	1E+3 -	3E+1 Bone surf (4E+1)	1E-8 -	- 5E-11	2E-5 -	2E-4 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
96	Curium-242	W, all compounds	3E+1 Bone surf (5E+1)	3E-1 Bone surf (3E-1)	1E-10 -	- 4E-13	- 7E-7	- 7E-6
96	Curium-243	W, all compounds	1E+0 Bone surf (2E+0)	9E-3 Bone surf (2E-2)	4E-12 -	- 2E-14	- 3E-8	- 3E-7

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
96	Curium-244	W, all compounds	1E+0 Bone surf (3E+0)	1E-2 Bone surf (2E-2)	5E-12 -	- 3E-14	- 3E-8	- 3E-7
96	Curium-245	W, all compounds	7E-1 Bone surf (1E+0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
96	Curium-246	W, all compounds	7E-1 Bone surf (1E+0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7
96	Curium-247	W, all compounds	8E-1 Bone surf (1E+0)	6E-3 Bone surf (1E-2)	3E-12 -	- 2E-14	- 2E-8	- 2E-7

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
96	Curium-248	W, all compounds	2E-1 Bone surf (4E-1)	2E-3 Bone surf (3E-3)	7E-13 -	- 4E-15	- 5E-9	- 5E-8
96	Curium-249 <sup>2</sup>	W, all compounds	5E+4 -	2E+4 Bone surf (3E+4)	7E-6 -	- 4E-8	7E-4 -	7E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
96	Curium-250	W, all compounds	4E-2 Bone surf (6E-2)	3E-4 Bone surf (5E-4)	1E-13 -	- 8E-16	- 9E-10	- 9E-9
97	Berkelium-245	W, all compounds	2E+3	1E+3	5E-7	2E-9	3E-5	3E-4
97	Berkelium-246	W, all compounds	3E+3	3E+3	1E-6	4E-9	4E-5	4E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
97	Berkelium-247	W, all compounds	5E-1 Bone surf (1E+0)	4E-3 Bone surf (9E-3)	2E-12 -	- 1E-14	- 2E-8	- 2E-7
97	Berkelium-249	W, all compounds	2E+2 Bone surf (5E+2)	2E+0 Bone surf (4E+0)	7E-10 -	- 5E-12	- 6E-6	6E-5

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
97	Berkelium-250	W, all compounds	9E+3 -	3E+2 Bone surf (7E+2)	1E-7 -	- 1E-9	1E-4 -	1E-3 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
98	Californium-244 <sup>2</sup>	W, all compounds except those given for Y  Y, oxides and hydroxides	3E+4	6E+2	2E-7	8E-10	-	-
			St wall	-	-	-	4E-4	4E-3
			(3E+4)	6E+2	2E-7	8E-10	-	-
98	Californium-246	W, see <sup>244</sup> Cf  Y, see <sup>244</sup> Cf	4E+2	9E+0	4E-9	1E-11	5E-6	5E-5
			-	9E+0	4E-9	1E-11	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
98	Californium-248	W, see $^{244}\text{Cf}$  Y, see $^{244}\text{Cf}$	8E+0  Bone surf (2E+1)  -	6E-2  Bone surf (1E-1)  1E-1	3E-11  - 4E-11	-  2E-13 1E-13	-  2E-7 -	-  2E-6 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
98	Californium-249	W, see $^{244}\text{Cf}$  Y, see $^{244}\text{Cf}$	5E-1  Bone surf (1E+0)  -	4E-3  Bone surf (9E-3)  1E-2  Bone surf (1E-2)	2E-12  - 4E-12  -	-  1E-14  -	-  2E-8  -	-  2E-7  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
98	Californium-250	W, see $^{244}\text{Cf}$  Y, see $^{244}\text{Cf}$	1E+0  Bone surf (2E+0)  -	9E-3  Bone surf (2E-2)  3E-2	4E-12  - 1E-11	-  3E-14 4E-14	-  3E-8 -	-  3E-7 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
98	Californium-251	W, see $^{244}\text{Cf}$  Y, see $^{244}\text{Cf}$	5E-1  Bone surf  (1E+0)  -	4E-3  Bone surf  (9E-3)  1E-2  Bone surf  (1E-2)	2E-12  -  4E-12  -	-  1E-14  -	-  2E-8  -	-  2E-7  -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
98	Californium-252	W, see $^{244}\text{Cf}$  Y, see $^{244}\text{Cf}$	2E+0  Bone surf (5E+0)  -	2E-2  Bone surf (4E-2)  3E-2	8E-12  - 1E-11	-  5E-14 5E-14	-  7E-8 -	-  7E-7 -
98	Californium-253	W, see $^{244}\text{Cf}$  Y, see $^{244}\text{Cf}$	2E+2  Bone surf (4E+2)  -	2E+0  - 2E+0	8E-10  - 7E-10	3E-12  - 2E-12	-  5E-6 -	-  5E-5 -

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
98	Californium-254	W, see $^{244}\text{Cf}$	2E+0	2E-2	9E-12	3E-14	3E-8	3E-7
		Y, see $^{244}\text{Cf}$	-	2E-2	7E-12	2E-14	-	-
99	Einsteinium-250	W, all compounds	4E+4	5E+2	2E-7	-	6E-4	6E-3
			-	Bone surf (1E+3)	-	2E-9	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )						
99	Einsteinium-251	W, all compounds	7E+3 -	9E+2 Bone surf (1E+3)	4E-7 -	- 2E-9	1E-4 -	1E-3 -
99	Einsteinium-253	W, all compounds	2E+2	1E+0	6E-10	2E-12	2E-6	2E-5
99	Einsteinium-254m	W, all compounds	3E+2 LLI wall (3E+2)	1E+1 -	4E-9 -	1E-11 -	- 4E-6	- 4E-5

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
99	Einsteinium-254	W, all compounds	8E+0 Bone surf (2E+1)	7E-2 Bone surf (1E-1)	3E-11 -	- 2E-13	- 2E-7	- 2E-6
100	Fermium-252	W, all compounds	5E+2	1E+1	5E-9	2E-11	6E-6	6E-5
100	Fermium-253	W, all compounds	1E+3	1E+1	4E-9	1E-11	1E-5	1E-4
100	Fermium-254	W, all compounds	3E+3	9E+1	4E-8	1E-10	4E-5	4E-4

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci/ml}$ )	Water ( $\mu\text{Ci/ml}$ )	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )							
100	Fermium-255	W, all compounds	5E+2	2E+1	9E-9	3E-11	7E-6	7E-5
100	Fermium-257	W, all compounds	2E+1	2E-1	7E-11	-	-	-
			Bone surf (4E+1)	Bone surf (2E-1)	-	3E-13	5E-7	5E-6
101	Mendelevium-257	W, all compounds	7E+3	8E+1	4E-8	-	1E-4	1E-3
			-	Bone surf (9E+1)	-	1E-10	-	-

Atomic No.	Radionuclide	Class	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion ALI ( $\mu\text{Ci}$ )	Inhalation		Air ( $\mu\text{Ci}/\text{ml}$ )	Water ( $\mu\text{Ci}/\text{ml}$ )	Monthly Average Concentration ( $\mu\text{Ci}/\text{ml}$ )
ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci}/\text{ml}$ )							
101	Mendelevium-258	W, all compounds	3E+1 Bone surf (5E+1)	2E-1 Bone surf (3E-1)	1E-10 -	- 5E-13	- 6E-7	- 6E-6

<p>- Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life less than 2 hours; Submersion<sup>1</sup></p>	-	2E+2	1E-7	1E-9	-	-
<p>- Any single radionuclide not listed above with decay mode other than alpha emission or spontaneous fission and with radioactive half-life greater than 2 hours.</p>	-	2E-1	1E-10	1E-12	1E-8	1E-7
<p>- Any single radionuclide not listed above that decays by alpha emission or spontaneous fission, or any mixture for which either the identity or the concentration of any radionuclide in the mixture is not known.</p>	-	4E-4	2E-13	1E-15	2E-9	2E-8

### Tables I, II and III notes:

<sup>1</sup> "submersion" means that values given are for submersion in a hemispherical semi-infinite cloud of airborne material;

<sup>2</sup> these radionuclides have radiological half-lives of less than 2 hours. The total effective dose equivalent received during operations with these radionuclides might include a significant contribution from external exposure. The DAC values for all radionuclides, other than those designated class "Submersion," are based upon the committed effective dose equivalent due to the intake of the radionuclide into the body and do not include potentially significant contributions to dose equivalent from external exposures. The licensee may substitute 1E-7 microcurie per milliliter ( $\mu\text{Ci/ml}$ ) for the listed DAC to account for the submersion dose prospectively, but should use individual monitoring devices or other radiation measuring instruments that measure external exposure to demonstrate compliance with the limits (see 20.3.4.407 NMAC);

<sup>3</sup> for soluble mixtures of U-238, U-234 and U-235 in air, chemical toxicity may be the limiting factor (see Subsection E of 20.3.4.405 NMAC). If the percent of weight (enrichment) of U-235 is not greater than 5, the concentration value for a 40-hour workweek is 0.2 milligrams uranium per cubic meter of air average. For any enrichment, the product of the average concentration and time of exposure during a 40-hour workweek shall not exceed 8E-3 (SA) microcurie-hours per milliliter ( $\mu\text{Ci-hr/ml}$ ), where SA is the specific activity of the uranium inhaled. The specific activity for natural uranium is 6.77E-7 curies per gram uranium. The specific activity for other mixtures of U-238, U-235 and U-234, if not known, shall be:

$SA = 3.6E-7$  curies/gram U for depleted uranium; and

$SA = (0.4 + 0.38 (\text{enrichment}) + 0.0034 (\text{enrichment})^2)E-6$  for enrichment > 0.72,

where enrichment is the percentage by weight of U-235, expressed as percent.

### F. Notes.

(1) If the identity of each radionuclide in a mixture is known but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(2) If the identity of each radionuclide in the mixture is not known, but it is known that certain radionuclides specified in this section are not present in the mixture, the inhalation ALI, DAC and effluent and sewage concentrations for the mixture are the lowest values specified in this section for any radionuclide that is not known to be absent from the mixture; or

Radionuclide	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
	Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
	Oral Ingestion	Inhalation		Air	Water	Monthly Average Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )		ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )			
If it is known that Ac-227-D and Cm-250-W are not present	-	7E-4	3E-13	-	-	-

Radionuclide	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
	Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
	Oral Ingestion	Inhalation		Air	Water	Monthly Average  Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )		ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )			
If, in addition, it is known that Ac-227-W, Y, Th-229-W, Y, Th-230-W, Th-232-W, Y, Pa-231-W, Y, Np-237-W, Pu-239-W, Pu-240-W, Pu-242-W, Am-241-W, Am-242m-W, Am-243-W, Cm-245-W, Cm-246-W, Cm-247-W, Cm-248-W, Bk-247-W, Cf-249-W, and Cf-251-W are not present	-	7E-3	3E-12	-	-	-

<p>If, in addition, it is known that Sm-146-W, Sm-147-W, Gd-148-D, W, Gd-152-D, W, Th-228-W, Y, Th-230-Y, U-232-Y, U-233-Y, U-234-Y, U-235-Y, U-236-Y, U-238-Y, Np-236-W, Pu-236-W, Y, Pu-238-W, Y, Pu-239-Y, Pu-240-Y, Pu-242-Y, Pu-244-W, Y, Cm-243-W, Cm-244-W, Cf-248-W, Cf-249-Y, Cf-250-W, Y, Cf-251-Y, Cf-252-W, Y, and Cf-254-W, Y are not present</p>	-	7E-2	3E-11	-	-	-
<p>If, in addition, it is known that Pb-210-D, Bi-210m-W, Po-210-D, W, Ra-223-W, Ra-225-W, Ra-226-W, Ac-225-D, W, Y, Th-227-W, Y, U-230-D, W, Y, U-232-D, W, Pu-241-W, Cm-240-W, Cm-242-W, Cf-248-Y, Es-254-W, Fm-257-W, and Md-258-W are not present</p>	-	7E-1	3E-10	-	-	-
<p>If, in addition, it is known that Si-32-Y, Ti-44-Y, Fe-60-D, Sr-90-Y, Zr-93-D, Cd-113m-D, Cd-113-D, In-115-D, W, La-138-D, Cd-176-W, Hf-178m-D, W, Hf-</p>	-	7E+0	3E-9	-	-	-

Radionuclide	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
	Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
	Oral Ingestion	Inhalation		Air	Water	Monthly Average  Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )		ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )			
182-D, W, Bi-210m-D, Ra-224-W, Ra-228-W, Ac-226-D, W, Y, Pa-230-W, Y, U-233-D, W, U-234-D, W, U-235-D, W, U-236-D, W, U-238-D, W, Pu-241-Y, Bk-249-W, Cf-253-W, Y, and Es-253-W are not present						

Radionuclide	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
	Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
	Oral Ingestion	Inhalation		Air	Water	Monthly Average  Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )		ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )			
If it is known that Ac-227-D, W, Y, Th-229-W, Y, Th-232-W, Y, Pa-231-W, Y, Cm-248-W, and Cm-250-W are not present	-	-	-	1E-14	-	-

<p>If, in addition, it is known that Sm-146-W, Gd-148-D, W, Gd-152-D, Th-228-W, Y, Th-230-W, Y, U-232-Y, U-233-Y, U-234-Y, U-235-Y, U-236-Y, U-238-Y, U-Nat-Y, Np-236-W, Np-237-W, Pu-236-W, Y, Pu-238-W, Y, Pu-239-W, Y, Pu-240-W, Y, Pu-242-W, Y, Pu-244-W, Y, Am-241-W, Am-242m-W, Am-243-W, Cm-243-W, Cm-244-W, Cm-245-W, Cm-246-W, Cm-247-W, Bk-247-W, Cf-249-W, Y, Cf-250-W, Y, Cf-251-W, Y, Cf-252-W, Y, and Cf-254-W, Y are not present.</p>	-	-	-	1E-13	-	-
<p>If, in addition, it is known that Sm-147-W, Gd-152-W, Pb-210-D, Bi-210m-W, Po-210-D, W, Ra-223-W, Ra-225-W, Ra-226-W, Ac-225-D, W, Y, Th-227-W, Y, U-230-D, W, Y, U-232-D, W, U-Nat-W, Pu-241-W, Cm-240-W, Cm-242-W, Cf-248-W, Y, Es-254-W, Fm-257-W, and Md-258-W are not present.</p>	-	-	-	1E-12	-	-

Radionuclide	Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
	Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
	Oral Ingestion	Inhalation		Air	Water	Monthly Average  Concentration ( $\mu\text{Ci/ml}$ )
ALI ( $\mu\text{Ci}$ )		ALI ( $\mu\text{Ci}$ )	DAC ( $\mu\text{Ci/ml}$ )			
If, in addition it is known that Fe-60, Sr-90, Cd-113m, Cd-113, In-115, I-129, Cs-134, Sm-145, Sm-147, Gd-148, Gd-152, Hg-194 (organic), Bi-210m, Ra-223, Ra-224, Ra-225, Ac-225, Th-228, Th-230, U-233, U-234, U-235, U-236, U-238, U-Nat, Cm-242, Cf-248, Es-254, Fm-257, and Md-258 are not present.	-	-	-	-	1E-6	1E-5

(3) If a mixture of radionuclides consists of uranium and its daughters in ore dust (10 micrometers AMAD particle distribution assumed) prior to chemical separation of the uranium from the ore, the following values may be used for the DAC of the mixture: 6E-11 microcurie of gross alpha activity from uranium-238, uranium-234, thorium-230 and radium-226 per milliliter of air; 3E-11 microcurie of natural uranium per milliliter of air; or 45 micrograms of natural uranium per cubic meter of air.

(4) If the identity and concentration of each radionuclide in a mixture are known, the limiting values should be derived as follows: determine, for each radionuclide in the mixture, the ratio between the concentration present in the mixture and the concentration otherwise established in this section for the specific radionuclide when not in a mixture. The sum of such ratios for all of the radionuclides in the mixture may not exceed "1" (i.e., "unity"). Example: If radionuclides "A," "B" and "C" are present in concentrations  $C_A$ ,  $C_B$  and  $C_C$ , and if the applicable DACs are  $DAC_A$ ,  $DAC_B$  and  $DAC_C$ , respectively, then the concentrations shall be limited so that the following relationship exists:

$$\frac{C_A}{DAC_A} + \frac{C_B}{DAC_B} + \frac{C_C}{DAC_C} < 1$$

(5) To convert microcuries to kilobecquerels, multiply the microcurie value by 37.

[20.3.4.461 NMAC - Rp, 20.3.4.461 NMAC, 04/30/2009]

**20.3.4.462 APPENDIX C – QUANTITIES<sup>1</sup> OF LICENSED MATERIAL REQUIRING LABELING:**

**A. Table 462.1.**

TABLE 462.1	
Radionuclide	Quantity (microcuries <sup>2</sup> )
Hydrogen-3	1,000
Beryllium-7	1,000
Beryllium-10	1
Carbon-11	1,000
Carbon-14	100
Fluorine-18	1,000
Sodium-22	100
Sodium-24	100
Magnesium-28	100
Aluminum-26	10
Silicon-31	1,000

**TABLE 462.1**

<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Silicon-32	1
Phosphorus-32	10
Phosphorus-33	100
Sulfur-35	100
Chlorine-36	10
Chlorine-38	1,000
Chlorine-39	1,000
Argon-39	1,000
Argon-41	1,000
Potassium-40	100
Potassium-42	1,000
Potassium-43	1,000
Potassium-44	1,000
Potassium-45	1,000
Calcium-41	100
Calcium-45	100
Calcium-47	100
Scandium-43	1,000
Scandium-44m	100
Scandium-44	100
Scandium-46	10
Scandium-47	100
Scandium-48	100
Scandium-49	1,000
Titanium-44	1
Titanium-45	1,000
Vanadium-47	1,000
Vanadium-48	100
Vanadium-49	1,000
Chromium-48	1,000
Chromium-49	1,000
Chromium-51	1,000
Manganese-51	1,000
Manganese-52m	1,000
Manganese-52	100
Manganese-53	1,000
Manganese-54	100
Manganese-56	1,000
Iron-52	100
Iron-55	100
Iron-59	10
Iron-60	1

**TABLE 462.1**

<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Cobalt-55	100
Cobalt-56	10
Cobalt-57	100
Cobalt-58m	1,000
Cobalt-58	100
Cobalt-60m	1,000
Cobalt-60	1
Cobalt-61	1,000
Cobalt-62m	1,000
Nickel-56	100
Nickel-57	100
Nickel-59	100
Nickel-63	100
Nickel-65	1,000
Nickel-66	10
Copper-60	1,000
Copper-61	1,000
Copper-64	1,000
Copper-67	1,000
Zinc-62	100
Zinc-63	1,000
Zinc-65	10
Zinc-69m	100
Zinc-69	1,000
Zinc-71m	1,000
Zinc-72	100
Gallium-65	1,000
Gallium-66	100
Gallium-67	1,000
Gallium-68	1,000
Gallium-70	1,000
Gallium-72	100
Gallium-73	1,000
Germanium-66	1,000
Germanium-67	1,000
Germanium-68	10
Germanium-69	1,000
Germanium-71	1,000
Germanium-75	1,000
Germanium-77	1,000
Germanium-78	1,000
Arsenic-69	1,000

**TABLE 462.1**

<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Arsenic-70	1,000
Arsenic-71	100
Arsenic-72	100
Arsenic-73	100
Arsenic-74	100
Arsenic-76	100
Arsenic-77	100
Arsenic-78	1,000
Selenium-70	1,000
Selenium-73m	1,000
Selenium-73	100
Selenium-75	100
Selenium-79	100
Selenium-81m	1,000
Selenium-81	1,000
Selenium-83	1,000
Bromine-74m	1,000
Bromine-74	1,000
Bromine-75	1,000
Bromine-76	100
Bromine-77	1,000
Bromine-80m	1,000
Bromine-80	1,000
Bromine-82	100
Bromine-83	1,000
Bromine-84	1,000
Krypton-74	1,000
Krypton-76	1,000
Krypton-77	1,000
Krypton-79	1,000
Krypton-81	1,000
Krypton-83m	1,000
Krypton-85m	1,000
Krypton-85	1,000
Krypton-87	1,000
Krypton-88	1,000
Rubidium-79	1,000
Rubidium-81m	1,000
Rubidium-81	1,000
Rubidium-82m	1,000
Rubidium-83	100
Rubidium-84	100

**TABLE 462.1**

<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Rubidium-86	100
Rubidium-87	100
Rubidium-88	1,000
Rubidium-89	1,000
Strontium-80	100
Strontium-81	1,000
Strontium-83	100
Strontium-85m	1,000
Strontium-85	100
Strontium-87m	1,000
Strontium-89	10
Strontium-90	0.1
Strontium-91	100
Strontium-92	100
Yttrium-86m	1,000
Yttrium-86	100
Yttrium-87	100
Yttrium-88	10
Yttrium-90m	1,000
Yttrium-90	10
Yttrium-91m	1,000
Yttrium-91	10
Yttrium-92	100
Yttrium-93	100
Yttrium-94	1,000
Yttrium-95	1,000
Zirconium-86	100
Zirconium-88	10
Zirconium-89	100
Zirconium-93	1
Zirconium-95	10
Zirconium-97	100
Niobium-88	1,000
Niobium-89m (66 min.)	1,000
Niobium-89 (122 min.)	1,000
Niobium-90	100
Niobium-93m	10
Niobium-94	1
Niobium-95m	100
Niobium-95	100
Niobium-96	100
Niobium-97	1,000

**TABLE 462.1**

<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Niobium-98	1,000
Molybdenum-90	100
Molybdenum-93m	100
Molybdenum-93	10
Molybdenum-99	100
Molybdenum-101	1,000
Technetium-93m	1,000
Technetium-93	1,000
Technetium-94m	1,000
Technetium-94	1,000
Technetium-96m	1,000
Technetium-96	100
Technetium-97m	100
Technetium-97	1,000
Technetium-98	10
Technetium-99m	1,000
Technetium-99	100
Technetium-101	1,000
Technetium-104	1,000
Ruthenium-94	1,000
Ruthenium-97	1,000
Ruthenium-103	100
Ruthenium-105	1,000
Ruthenium-106	1
Rhodium-99m	1,000
Rhodium-99	100
Rhodium-100	100
Rhodium-101m	1,000
Rhodium-101	10
Rhodium-102m	10
Rhodium-102	10
Rhodium-103m	1,000
Rhodium-105	100
Rhodium-106m	1,000
Rhodium-107	1,000
Palladium-100	100
Palladium-101	1,000
Palladium-103	100
Palladium-107	10
Palladium-109	100
Silver-102	1,000
Silver-103	1,000

<b>TABLE 462.1</b>	
<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Silver-104m	1,000
Silver-104	1,000
Silver-105	100
Silver-106m	100
Silver-106	1,000
Silver-108m	1
Silver-110m	10
Silver-111	100
Silver-112	100
Silver-115	1,000
Cadmium-104	1,000
Cadmium-107	1,000
Cadmium-109	1
Cadmium-113m	0.1
Cadmium-113	100
Cadmium-115m	10
Cadmium-115	100
Cadmium-117m	1,000
Cadmium-117	1,000
Indium-109	1,000
Indium-110m (69.1 min)	1,000
Indium-110 (4.9 h)	1,000
Indium-111	100
Indium-112	1,000
Indium-113m	1,000
Indium-114m	10
Indium-115m	1,000
Indium-115	100
Indium-116m	1,000
Indium-117m	1,000
Indium-117	1,000
Indium-119m	1,000
Tin-110	100
Tin-111	1,000
Tin-113	100
Tin-117m	100
Tin-119m	100
Tin-121m	100
Tin-121	1,000
Tin-123m	1,000
Tin-123	10
Tin-125	10

**TABLE 462.1**

<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Tin-126	10
Tin-127	1,000
Tin-128	1,000
Antimony-115	1,000
Antimony-116m	1,000
Antimony-116	1,000
Antimony-117	1,000
Antimony-118m	1,000
Antimony-119	1,000
Antimony-120 (16 min.)	1,000
Antimony-120 (5.76 d)	100
Antimony-122	100
Antimony-124m	1,000
Antimony-124	10
Antimony-125	100
Antimony-126m	1,000
Antimony-126	100
Antimony-127	100
Antimony-128 (10.4 min)	1,000
Antimony-128 (9.01 h)	100
Antimony-129	100
Antimony-130	1,000
Antimony-131	1,000
Tellurium-116	1,000
Tellurium-121m	10
Tellurium-121	100
Tellurium-123m	10
Tellurium-123	100
Tellurium-125m	10
Tellurium-127m	10
Tellurium-127	1,000
Tellurium-129m	10
Tellurium-129	1,000
Tellurium-131m	10
Tellurium-131	100
Tellurium-132	10
Tellurium-133m	100
Tellurium-133	1,000
Tellurium-134	1,000
Iodine-120m	1,000
Iodine-120	100
Iodine-121	1,000

**TABLE 462.1**

<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Iodine-123	100
Iodine-124	10
Iodine-125	1
Iodine-126	1
Iodine-128	1,000
Iodine-129	1
Iodine-130	10
Iodine-131	1
Iodine-132m	100
Iodine-132	100
Iodine-133	10
Iodine-134	1,000
Iodine-135	100
Xenon-120	1,000
Xenon-121	1,000
Xenon-122	1,000
Xenon-123	1,000
Xenon-125	1,000
Xenon-127	1,000
Xenon-129m	1,000
Xenon-131m	1,000
Xenon-133m	1,000
Xenon-133	1,000
Xenon-135m	1,000
Xenon-135	1,000
Xenon-138	1,000
Cesium-125	1,000
Cesium-127	1,000
Cesium-129	1,000
Cesium-130	1,000
Cesium-131	1,000
Cesium-132	100
Cesium-134m	1,000
Cesium-134	10
Cesium-135m	1,000
Cesium-135	100
Cesium-136	10
Cesium-137	10
Cesium-138	1,000
Barium-126	1,000
Barium-128	100
Barium-131m	1,000

<b>TABLE 462.1</b>	
<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Barium-131	100
Barium-133m	100
Barium-133	100
Barium-135m	100
Barium-139	1,000
Barium-140	100
Barium-141	1,000
Barium-142	1,000
Lanthanum-131	1,000
Lanthanum-132	100
Lanthanum-135	1,000
Lanthanum-137	10
Lanthanum-138	100
Lanthanum-140	100
Lanthanum-141	100
Lanthanum-142	1,000
Lanthanum-143	1,000
Cerium-134	100
Cerium-135	100
Cerium-137m	100
Cerium-137	1,000
Cerium-139	100
Cerium-141	100
Cerium-143	100
Cerium-144	1
Praseodymium-136	1,000
Praseodymium-137	1,000
Praseodymium-138m	1,000
Praseodymium-139	1,000
Praseodymium-142m	1,000
Praseodymium-142	100
Praseodymium-143	100
Praseodymium-144	1,000
Praseodymium-145	100
Praseodymium-147	1,000
Neodymium-136	1,000
Neodymium-138	100
Neodymium-139m	1,000
Neodymium-139	1,000
Neodymium-141	1,000
Neodymium-147	100
Neodymium-149	1,000

**TABLE 462.1**

<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Neodymium-151	1,000
Promethium-141	1,000
Promethium-143	100
Promethium-144	10
Promethium-145	10
Promethium-146	1
Promethium-147	10
Promethium-148m	10
Promethium-149	100
Promethium-150	1,000
Promethium-151	100
Samarium-141m	1,000
Samarium-141	1,000
Samarium-142	1,000
Samarium-145	100
Samarium-146	1
Samarium-147	100
Samarium-151	10
Samarium-153	100
Samarium-155	1,000
Samarium-156	1,000
Europium-145	100
Europium-146	100
Europium-147	100
Europium-148	10
Europium-149	100
Europium-150 (12.62 h)	100
Europium-150 (34.2 y)	1
Europium-152m	100
Europium-152	1
Europium-154	1
Europium-155	10
Europium-156	100
Europium-157	100
Europium-158	1,000
Gadolinium-145	1,000
Gadolinium-146	10
Gadolinium-147	100
Gadolinium-148	0.001
Gadolinium-149	100
Gadolinium-151	10
Gadolinium-152	100

<b>TABLE 462.1</b>	
<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Gadolinium-153	10
Gadolinium-159	100
Terbium-147	1,000
Terbium-149	100
Terbium-150	1,000
Terbium-151	100
Terbium-153	1,000
Terbium-154	100
Terbium-155	1,000
Terbium-156m (5.0 h)	1,000
Terbium-156m (24.4 h)	1,000
Terbium-156	100
Terbium-157	10
Terbium-158	1
Terbium-160	10
Terbium-161	100
Dysprosium-155	1,000
Dysprosium-157	1,000
Dysprosium-159	100
Dysprosium-165	1,000
Dysprosium-166	100
Holmium-155	1,000
Holmium-157	1,000
Holmium-159	1,000
Holmium-161	1,000
Holmium-162m	1,000
Holmium-162	1,000
Holmium-164m	1,000
Holmium-164	1,000
Holmium-166m	1
Holmium-166	100
Holmium-167	1,000
Erbium-161	1,000
Erbium-165	1,000
Erbium-169	100
Erbium-171	100
Erbium-172	100
Thulium-162	1,000
Thulium-166	100
Thulium-167	100
Thulium-170	10
Thulium-171	10

**TABLE 462.1**

<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Thulium-172	100
Thulium-173	100
Thulium-175	1,000
Ytterbium-162	1,000
Ytterbium-166	100
Ytterbium-167	1,000
Ytterbium-169	100
Ytterbium-175	100
Ytterbium-177	1,000
Ytterbium-178	1,000
Lutetium-169	100
Lutetium-170	100
Lutetium-171	100
Lutetium-172	100
Lutetium-173	10
Lutetium-174m	10
Lutetium-174	10
Lutetium-176m	1,000
Lutetium-176	100
Lutetium-177m	10
Lutetium-177	100
Lutetium-178m	1,000
Lutetium-178	1,000
Lutetium-179	1,000
Hafnium-170	100
Hafnium-172	1
Hafnium-173	1,000
Hafnium-175	100
Hafnium-177m	1,000
Hafnium-178m	0.1
Hafnium-179m	10
Hafnium-180m	1,000
Hafnium-181	10
Hafnium-182m	1,000
Hafnium-182	0.1
Hafnium-183	1,000
Hafnium-184	100
Tantalum-172	1,000
Tantalum-173	1,000
Tantalum-174	1,000
Tantalum-175	1,000
Tantalum-176	100

<b>TABLE 462.1</b>	
<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Tantalum-177	1,000
Tantalum-178	1,000
Tantalum-179	100
Tantalum-180m	1,000
Tantalum-180	100
Tantalum-182m	1,000
Tantalum-182	10
Tantalum-183	100
Tantalum-184	100
Tantalum-185	1,000
Tantalum-186	1,000
Tungsten-176	1,000
Tungsten-177	1,000
Tungsten-178	1,000
Tungsten-179	1,000
Tungsten-181	1,000
Tungsten-185	100
Tungsten-187	100
Rhenium-177	1,000
Rhenium-178	1,000
Rhenium-181	1,000
Rhenium-182 (12.7 h)	1,000
Rhenium-182 (64.0 h)	100
Rhenium-184m	10
Rhenium-184	100
Rhenium-186m	10
Rhenium-186	100
Rhenium-187	1,000
Rhenium-188m	1,000
Rhenium-188	100
Rhenium-189	100
Osmium-180	1,000
Osmium-181	1,000
Osmium-182	100
Osmium-185	100
Osmium-189m	1,000
Osmium-191m	1,000
Osmium-191	100
Osmium-193	100
Osmium-194	1
Iridium-182	1,000
Iridium-184	1,000

<b>TABLE 462.1</b>	
<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Iridium-185	1,000
Iridium-186	100
Iridium-187	1,000
Iridium-188	100
Iridium-189	100
Iridium-190m	1,000
Iridium-190	100
Iridium-192m (1.4 m)	10
Iridium-192 (73.8 d)	1
Iridium-194m	10
Iridium-194	100
Iridium-195m	1,000
Iridium-195	1,000
Platinum-186	1,000
Platinum-188	100
Platinum-189	1,000
Platinum-191	100
Platinum-193m	100
Platinum-193	1,000
Platinum-195m	100
Platinum-197m	1,000
Platinum-197	100
Platinum-199	1,000
Platinum-200	100
Gold-193	1,000
Gold-194	100
Gold-195	10
Gold-198m	100
Gold-198	100
Gold-199	100
Gold-200m	100
Gold-200	1,000
Gold-201	1,000
Mercury-193m	100
Mercury-193	1,000
Mercury-194	1
Mercury-195m	100
Mercury-195	1,000
Mercury-197m	100
Mercury-197	1,000
Mercury-199m	1,000
Mercury-203	100

<b>TABLE 462.1</b>	
<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Thallium-194m	1,000
Thallium-194	1,000
Thallium-195	1,000
Thallium-197	1,000
Thallium-198m	1,000
Thallium-198	1,000
Thallium-199	1,000
Thallium-200	1,000
Thallium-201	1,000
Thallium-202	100
Thallium-204	100
Lead-195m	1,000
Lead-198	1,000
Lead-199	1,000
Lead-200	100
Lead-201	1,000
Lead-202m	1,000
Lead-202	10
Lead-203	1,000
Lead-205	100
Lead-209	1,000
Lead-210	0.01
Lead-211	100
Lead-212	1
Lead-214	100
Bismuth-200	1,000
Bismuth-201	1,000
Bismuth-202	1,000
Bismuth-203	100
Bismuth-205	100
Bismuth-206	100
Bismuth-207	10
Bismuth-210m	0.1
Bismuth-210	1
Bismuth-212	10
Bismuth-213	10
Bismuth-214	100
Polonium-203	1,000
Polonium-205	1,000
Polonium-207	1,000
Polonium-210	0.1
Astatine-207	100

<b>TABLE 462.1</b>	
<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Astatine-211	10
Radon-220	1
Radon-222	1
Francium-222	100
Francium-223	100
Radium-223	0.1
Radium-224	0.1
Radium-225	0.1
Radium-226	0.1
Radium-227	1,000
Radium-228	0.1
Actinium-224	1
Actinium-225	0.01
Actinium-226	0.1
Actinium-227	0.001
Actinium-228	1
Thorium-226	10
Thorium-227	0.01
Thorium-228	0.001
Thorium-229	0.001
Thorium-230	0.001
Thorium-231	100
Thorium-232	100
Thorium-234	10
Thorium-natural	100
Protactinium-227	10
Protactinium-228	1
Protactinium-230	0.1
Protactinium-231	0.001
Protactinium-232	1
Protactinium-233	100
Protactinium-234	100
Uranium-230	0.01
Uranium-231	100
Uranium-232	0.001
Uranium-233	0.001
Uranium-234	0.001
Uranium-235	0.001
Uranium-236	0.001
Uranium-237	100
Uranium-238	100
Uranium-239	1,000

**TABLE 462.1**

<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Uranium-240	100
Uranium-natural	100
Neptunium-232	100
Neptunium-233	1,000
Neptunium-234	100
Neptunium-235	100
Neptunium-236 (1.15E+5 y)	0.001
Neptunium-236 (22.5 h)	1
Neptunium-237	0.001
Neptunium-238	10
Neptunium-239	100
Neptunium-240	1,000
Plutonium-234	10
Plutonium-235	1,000
Plutonium-236	0.001
Plutonium-237	100
Plutonium-238	0.001
Plutonium-239	0.001
Plutonium-240	0.001
Plutonium-241	0.001
Plutonium-242	0.001
Plutonium-243	1,000
Plutonium-244	0.001
Plutonium-245	100
Americium-237	1,000
Americium-238	100
Americium-239	1,000
Americium-240	100
Americium-241	0.001
Americium-242m	0.001
Americium-242	10
Americium-243	0.001
Americium-244m	100
Americium-244	10
Americium-245	1,000
Americium-246m	1,000
Americium-246	1,000
Curium-238	100
Curium-240	0.1
Curium-241	1
Curium-242	0.01

<b>TABLE 462.1</b>	
<b>Radionuclide</b>	<b>Quantity (microcuries<sup>2</sup>)</b>
Curium-243	0.001
Curium-244	0.001
Curium-245	0.001
Curium-246	0.001
Curium-247	0.001
Curium-248	0.001
Curium-249	1,000
Berkelium-245	100
Berkelium-246	100
Berkelium-247	0.001
Berkelium-249	0.1
Berkelium-250	10
Californium-244	100
Californium-246	1
Californium-248	0.01
Californium-249	0.001
Californium-250	0.001
Californium-251	0.001
Californium-252	0.001
Californium-253	0.1
Californium-254	0.001
Einsteinium-250	100
Einsteinium-251	100
Einsteinium-253	0.1
Einsteinium-254m	1
Einsteinium-254	0.01
Fermium-252	1
Fermium-253	1
Fermium-254	10
Fermium-255	1
Fermium-257	0.01
Mendelevium-257	10
Mendelevium-258	0.01
Any alpha-emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	0.001
Any radionuclide other than alpha-emitting radionuclides not listed	0.01

TABLE 462.1	
Radionuclide	Quantity (microcuries <sup>2</sup> )
above, or mixtures of beta emitters of unknown composition	

**Table 462.1 notes:**

<sup>1</sup> the quantities listed above were derived by taking 1/10th of the most restrictive ALI listed in columns 1 and 2 of table I of 20.3.4.461 NMAC, rounding to the nearest factor of 10, and constraining the values listed between 0.001 and 1,000 microcuries (37 becquerels and 37 megabecquerels). Values of 100 microcuries (3.7 megabecquerels) have been assigned for radionuclides having a radioactive half-life in excess of E+9 years, except rhenium, 1,000 microcuries (37 megabecquerels) to take into account their low specific activity;

<sup>2</sup> to convert microcuries to kilobecquerels, multiply the microcurie value by 37.

**B. Note.** For purposes of Subsection E of 20.3.4.428 NMAC, Subsection A of 20.3.4.431 NMAC and Subsection A of 20.3.4.451 NMAC where there is involved a combination of radionuclides in known amounts, the limit for the combination shall be derived as follows: determine, for each radionuclide in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific radionuclide when not in combination. The sum of such ratios for all radionuclides in the combination may not exceed "1", that is, unity.

[20.3.4.462 NMAC - Rp, 20.3.4.462 NMAC, 4/30/2009; A, 8/10/2021]

**20.3.4.463 [RESERVED]**

**20.3.4.464 [RESERVED]**

**20.3.4.465 [RESERVED]**

**20.3.4.466 APPENDIX G - REQUIREMENTS FOR TRANSFERS OF LOW-LEVEL RADIOACTIVE WASTE INTENDED FOR DISPOSAL AT LICENSED LAND DISPOSAL FACILITIES AND MANIFESTS:**

LLW means low-level radioactive waste as defined in the Low-Level Radioactive Waste Policy Act.

**A. Manifest.**

(1) A waste generator, collector or processor who transports, or offers for transportation LLW intended for ultimate disposal at a licensed low-level radioactive

waste land disposal facility must prepare a manifest [NRC OMB Control Numbers 3150-0164, -0165 and -0166] reflecting information requested on applicable NRC forms 540 (*uniform low-level radioactive waste manifest* (shipping paper) and 541 (*uniform low-level radioactive waste manifest* (container and waste description)) and, if necessary, on an applicable NRC form 542 (*uniform low-level radioactive waste manifest* (manifest index and regional compact tabulation)). NRC forms 540 and 540A must be completed and must physically accompany the pertinent low-level waste shipment. Upon agreement between shipper and consignee, NRC forms 541, 541A, 542 and 542A may be completed, transmitted and stored in electronic media with the capability for producing legible, accurate and complete records on the respective forms. Licensees are not required by NRC to comply with the manifesting requirements of this part when they ship the following:

(a) LLW for processing and expect its return (i.e., for storage under their license) prior to disposal at a licensed land disposal facility;

(b) LLW that is being returned to the licensee who is the "waste generator" or "generator", as defined in this part; or

(c) radioactively contaminated material to a "waste processor" that becomes the processor's "residual waste" unless regulated by other applicable federal or state regulations;

(d) these exclusions from manifesting requirements do not, however, exempt the licensee from complying with applicable DOT requirements for shipments referencing 49 CFR, including the preparation of shipping papers.

(2) For guidance in completing these forms, refer to the instructions that accompany the forms. Copies of manifests required by this section may be legible carbon copies, photocopies or computer printouts that reproduce the data in the format of the uniform manifest.

(3) NRC forms 540, 540A, 541, 541A, 542 and 542A, and the accompanying instructions, in hard copy, may be obtained by writing or calling the Office of the Chief information Officer, United States nuclear regulatory commission, Washington, DC 20555-0001, telephone (301) 415-5877, or by visiting the NRC's web site at <http://www.nrc.gov> and selecting forms from the index found on the home page.

(4) This section includes information requirements of the DOT, as codified in 49 CFR Part 172. Additional 49 CFR requirements may be applicable. Information on hazardous, medical or other waste, required to meet EPA regulations, as codified in 40 CFR Parts 259, 261 or elsewhere, is not addressed in this section, and must be provided on the required EPA forms. However, any required EPA forms must accompany the *uniform low-level radioactive waste manifest* required by this chapter.

(5) As used in this section, the following definitions apply:

(a) **"chelating agent"** has the same meaning as that given in 20.3.13.7 NMAC;

(b) **"chemical description"** means a description of the principal chemical characteristics of a low-level radioactive waste;

(c) **"computer-readable medium"** means that the department's computer can transfer the information from the medium into its memory;

(d) **"consignee"** means the designated receiver of the shipment of low-level radioactive waste;

(e) **"decontamination facility"** means a facility operating under a department, NRC or agreement state license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse or other waste management objectives, and, for purposes of this part, is not considered to be a consignee for LLW shipments;

(f) **"disposal container"** means a container principally used to confine low-level radioactive waste during disposal operations at a land disposal facility (also see "high integrity container"); note that for some shipments, the disposal container may be the transport package;

(g) **"EPA identification number"** means the number received by a transporter following application to the administrator of EPA as required by 40 CFR Part 263;

(h) **"generator"** means a licensee operating under a department, NRC or agreement state license who (1) is a waste generator as defined in this part, or (2) is the licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act (e.g., waste generated as a result of decontamination or recycle activities);

(i) **"high integrity container"** (HIC) means a container commonly designed to meet the structural stability requirements of 20.3.13.1325 NMAC, and to meet DOT requirements for a type A package;

(j) **"land disposal facility"** has the same meaning as that given in 20.3.13.7 NMAC;

(k) **"NRC forms 540, 540A, 541, 541A, 542 and 542A"** are official NRC forms referenced in this section; licensees need not use originals of these NRC forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size and location of information; upon agreement between the shipper and consignee, NRC forms 541 (and 541A) and NRC forms 542 (and 542A) may be completed, transmitted and stored in electronic media; the electronic media

must have the capability for producing legible, accurate and complete records in the format of the uniform manifest;

(l) **"package"** means the assembly of components necessary to ensure compliance with the packaging requirements of DOT regulations, together with its radioactive contents, as presented for transport;

(m) **"physical description"** means the items called for on NRC form 541 to describe a LLW;

(n) **"residual waste"** means LLW resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators; this waste is attributable to the processor or decontamination facility, provided that other federal laws or regulations, such as those of Resource Conservation and Recovery Act (RCRA), are not applicable;

(o) **"shipper"** means the licensed entity (i.e., the waste generator, waste collector or waste processor) who offers low-level radioactive waste for transportation, typically consigning this type of waste to a licensed waste collector, waste processor or land disposal facility operator;

(p) **"shipping paper"** means NRC form 540 and, if required, NRC form 540A which includes the information required by DOT in 49 CFR part 172;

(q) **"source material"** has the same meaning as that given in 20.3.3.7 NMAC;

(r) **"special nuclear material"** has the same meaning as that given in 20.3.3.7 NMAC;

(s) **"uniform low-level radioactive waste manifest" or "uniform manifest"** means the combination of NRC forms 540, 541 and, if necessary, 542, and their respective continuation sheets as needed, or equivalent;

(t) **"waste collector,"** including "waste broker," means an entity, operating under a department, NRC or agreement state license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor or licensed land disposal facility;

(u) **"waste description"** means the physical, chemical and radiological description of a low-level radioactive waste as called for on NRC form 541;

(v) **"waste generator"** means an entity, operating under a department, NRC or agreement state license, who (1) possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further

use, and (2) transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal; a licensee performing processing or decontamination services may be a "waste generator" if the transfer of low-level radioactive waste from its facility is defined as "residual waste";

**(w) "waste processor"** means an entity, operating under a department, NRC or agreement state license, whose principal purpose is to process, repackage or otherwise treat low-level radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste land disposal facility; and

**(x) "waste type"** means a waste within a disposal container having a unique physical description (i.e., a specific waste descriptor code or description; or a waste sorbed on or solidified in a specifically defined media).

**(6) Information requirements.**

**(a) General information.** The shipper of the radioactive waste shall provide the following information on the uniform manifest:

**(i)** the name, facility address and telephone number of the licensee shipping the waste;

**(ii)** an explicit declaration indicating whether the shipper is acting as a waste generator, collector, processor or a combination of these identifiers for purposes of the manifested shipment; and

**(iii)** the name, address and telephone number, or the name and EPA identification number for the carrier transporting the waste.

**(b) Shipment information.** The shipper of the radioactive waste shall provide the following information regarding the waste shipment on the uniform manifest:

**(i)** the date of the waste shipment;

**(ii)** the total number of packages or disposal containers;

**(iii)** the total disposal volume and disposal weight in the shipment;

**(iv)** the total radionuclide activity in the shipment;

**(v)** the activity of each of the radionuclides H-3, C-14, Tc-99 and I-129 contained in the shipment; and

(vi) the total masses of U-233, U-235 and plutonium in special nuclear material, and the total mass of uranium and thorium in source material.

**(c) Disposal container and waste information.** The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding the waste and each disposal container of waste in the shipment:

(i) an alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;

(ii) a physical description of the disposal container, including the manufacturer and model of any high integrity container;

(iii) the volume displaced by the disposal container;

(iv) the gross weight of the disposal container, including the waste;

(v) for waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;

(vi) a physical and chemical description of the waste;

(vii) the total weight percentage of chelating agent for any waste containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating agent;

(viii) the approximate volume of waste within a container;

(ix) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name;

(x) the identities and activities of individual radionuclides contained in each container, the masses of U-233, U-235 and plutonium in special nuclear material, and the masses of uranium and thorium in source material, including fissile category classification; for discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices and wastes in solidification/stabilization media), the identities and activities of individual radionuclides associated with or contained on these waste types within a disposal container shall be reported;

(xi) the total radioactivity within each container;

(xii) for wastes consigned to a disposal facility, the classification of the waste pursuant to 20.3.13.1324 NMAC; waste not meeting the structural stability requirements of Subsection B of 20.3.13.1325 NMAC; and

(xiii) any other information required on a manifest or shipping paper by the DOT, the NRC or other regulatory agencies.

**(d) Uncontainerized waste information.** The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:

- (i) the approximate volume and weight of the waste;
- (ii) a physical and chemical description of the waste;
- (iii) the total weight percentage of chelating agent if the chelating agent exceeds 0.1% by weight, plus the identity of the principal chelating agent;
- (iv) for waste consigned to a disposal facility, the classification of the waste pursuant to 20.3.13.1324 NMAC; waste not meeting the structural stability requirements of Subsection B of 20.3.13.1325 NMAC must be identified;
- (v) the identities and activities of individual radionuclides contained in the waste, the masses of U-233, U-235 and plutonium in special nuclear material, and the masses of uranium and thorium in source material; and
- (vi) for wastes consigned to a disposal facility, the maximum radiation levels at the surface of the waste.

**(e) Multi-generator disposal container information.** This section applies to disposal containers enclosing mixtures of waste originating from different generators. (Note: The origin of the LLW resulting from a processor's activities may be attributable to one or more "generators," including "waste generators," as defined in this section). It also applies to mixtures of wastes shipped in an uncontainerized form, for which portions of the mixture within the shipment originate from different generators.

- (i) For homogeneous mixtures of waste, such as incinerator ash, provide the waste description applicable to the mixture and the volume of the waste attributed to each generator.
- (ii) For heterogeneous mixtures of waste, such as the combined products from a large compactor, identify each generator contributing waste to the disposal container, and, for discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices and wastes in solidification/stabilization media), the identities and activities of individual radionuclides contained on these waste types within the disposal container. For each generator, provide the following: (1) the volume of waste within the disposal container; (2) a physical and chemical description of the waste, including the solidification agent, if any; (3) the total weight percentage of chelating agents for any disposal container containing more than 0.1% chelating agent by weight, plus the identity of the principal chelating

agent; (4) the sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name if the media is claimed to meet stability requirements in Subsection B of 20.3.13.1325 NMAC; and (5) radionuclide identities and activities contained in the waste, the masses of U-233, U-235 and plutonium in special nuclear material, and the masses of uranium and thorium in source material if contained in the waste.

**B. Certification.** An authorized representative of the waste generator, processor or collector shall certify by signing and dating the shipment manifest that the transported materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the department, the DOT and the NRC. A collector in signing the certification is certifying that nothing has been done to the collected waste which would invalidate the waste generator's certification.

**C. Control and Tracking.**

(1) Any licensee who transfers radioactive waste to a land disposal facility or a licensed waste collector shall comply with the requirements in Subparagraphs (a) through (i) of this paragraph. Any licensee who transfers waste to a licensed waste processor for waste treatment or repackaging shall comply with the requirements of Subparagraphs (d) through (i) of this paragraph. A licensee shall:

(a) prepare all wastes so that the waste is classified according to 20.3.13.1324 NMAC, and meets the waste characteristics requirements in 20.3.13.1325 NMAC;

(b) label each disposal container (or transport package if potential radiation hazards preclude labeling of the individual disposal container) of waste to identify whether it is class A waste, class B waste, class C waste or greater than class C waste, in accordance with 20.3.13.1324 NMAC;

(c) conduct a quality assurance program to assure compliance with 20.3.13.1324 NMAC and 20.3.13.1325 NMAC (the program must include management evaluation of audits);

(d) prepare the NRC *uniform low-level radioactive waste manifest* as required by Subsection A of this section;

(e) forward a copy or electronically transfer the *uniform low-level radioactive waste manifest* to the intended consignee so that either (1) receipt of the manifest precedes the LLW shipment or (2) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both delivery methods (1) and (2) is also acceptable;

**(f)** include NRC form 540 (and NRC form 540A, if required) with the shipment regardless of the option chosen in Subparagraph (e) of this paragraph;

**(g)** receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC form 540;

**(h)** retain a copy of or electronically store the *uniform low-level radioactive waste manifest* and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 20.3.3 NMAC; and

**(i)** for any shipments or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with Paragraph (5) of this subsection.

**(2)** Any waste collector licensee who handles only prepackaged waste shall:

**(a)** acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of NRC form 540;

**(b)** prepare a new manifest to reflect consolidated shipments that meet the requirements of this section; the waste collector shall ensure that, for each container of waste in the shipment, the manifest identifies the generator of that container of waste;

**(c)** forward a copy or electronically transfer the *uniform low-level radioactive waste manifest* to the intended consignee so that either (1) receipt of the manifest precedes the LLW shipment or (2) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee; using both delivery methods (1) and (2) is also acceptable;

**(d)** include NRC form 540 (and NRC form 540A, if required) with the shipment regardless of the option chosen in Subparagraph (c) of this paragraph;

**(e)** receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC form 540;

**(f)** retain a copy of or electronically store the *uniform low-level radioactive waste manifest* and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 20.3.3 NMAC;

**(g)** for any shipments or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with Paragraph (5) of this subsection; and

**(h)** notify the shipper and the department when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been cancelled.

**(3)** Any licensed waste processor who treats or repackages waste shall:

**(a)** acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of NRC form 540;

**(b)** prepare a new manifest that meets the requirements of this section; preparation of the new manifest reflects that the processor is responsible for meeting these requirements; for each container of waste in the shipment, the manifest shall identify the waste generators, the preprocessed waste volume and the other information as required in Subparagraph (e) of Paragraph (6) of Subsection A of this section;

**(c)** prepare all wastes so that the waste is classified according to 20.3.13.1324 NMAC, and meets the waste characteristics requirements in 20.3.13.1325 NMAC;

**(d)** label each package of waste to identify whether it is class A waste, class B waste or class C waste, in accordance with 20.3.13.1324 NMAC and 20.3.13.1326 NMAC;

**(e)** conduct a quality assurance program to assure compliance with 20.3.13.1324 NMAC and 20.3.13.325 NMAC (the program shall include management evaluation of audits);

**(f)** forward a copy or electronically transfer the *uniform low-level radioactive waste manifest* to the intended consignee so that either (1) receipt of the manifest precedes the LLW shipment or (2) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee; using both delivery methods (1) and (2) is also acceptable;

**(g)** include NRC form 540 (and NRC form 540A, if required) with the shipment regardless of the option chosen in paragraph Subparagraph (f) of this paragraph;

**(h)** receive acknowledgment of the receipt of the shipment in the form of a signed copy of NRC form 540;

**(i)** retain a copy of or electronically store the *uniform low-level radioactive waste manifest* and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 20.3.3 NMAC;

**(j)** for any shipment or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this section, conduct an investigation in accordance with Paragraph (5) of this subsection; and

**(k)** notify the shipper and the department when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

(4) The land disposal facility operator shall:

(a) acknowledge receipt of the waste within one week of receipt by returning, as a minimum, a signed copy of NRC form 540 to the shipper; the shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator; if any discrepancy exists between materials listed on the *uniform low-level radioactive waste manifest* and materials received, copies or electronic transfer of the affected forms must be returned indicating the discrepancy;

(b) maintain copies of all completed manifests and electronically store the information required by 20.3.13.1334 NMAC until the department terminates the license; and

(c) notify the shipper and the department when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

(5) Any shipment or part of a shipment for which acknowledgment is not received within the times set forth in this section must:

(a) be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer; and

(b) be traced and reported; the investigation shall include tracing the shipment and filing a report with the department; each licensee who conducts a trace investigation shall file a written report with the department within 2 weeks of completion of the investigation.

[20.3.4.466 NMAC - Rp, 20.3.4.466 NMAC, 4/30/2009; A, 8/10/2021]

#### 20.3.4.467 NATIONALLY TRACKED SOURCE THRESHOLDS:

The terabecquerel values are the regulatory standard. The curie values specified are obtained by converting from the terabecquerel value. The curie values are provided for practical usefulness only and are rounded after conversion.

Radioactive Material	Category 1	Category 1	Category 2	Category 2
	terabecquerel	curie	terabecquerel	curie
Actinium-227	20	540	0.2	5.4
Americium-241	60	1,600	0.6	16
Americium-241/Be	60	1,600	0.6	16
Californium-252	20	540	0.2	5.4
Cobalt-60	30	810	0.3	8.1

<b>TABLE 467.1</b>				
<b>Radioactive Material</b>	<b>Category 1</b>	<b>Category 1</b>	<b>Category 2</b>	<b>Category 2</b>
	terabecquerel	curie	terabecquerel	curie
Curium-244	50	1,400	0.5	14
Cesium-137	100	2,700	1	27
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,200	0.8	22
Plutonium-238	60	1,600	0.6	16
Plutonium-239/Be	60	1,600	0.6	16
Polonium-210	60	1,600	0.6	16
Promethium-147	40,000	1,100,000	400	11,000
Radium-226	40	1,100	0.4	11
Selenium-75	200	5,400	2	54
Strontium-90	1,000	27,000	10	270
Thorium-228	20	540	0.2	5.4
Thorium-229	20	540	0.2	5.4
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	3	81

[20.3.4.467 NMAC - N, 04/30/2009]

## **PART 5: RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS**

### **20.3.5.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.3.5.1 NMAC - N, 5/19/02]

### **20.3.5.2 SCOPE:**

The regulations in this part apply to all licensees or registrants who use sources of radiation for industrial radiography. Except for those regulations of this Part clearly applicable only to sealed radioactive sources, both radiation machine and sealed radioactive sources are covered by this part. The requirements of this part are in addition to, and not in substitution for, other applicable requirements of 20.3 NMAC.

[20.3.5.2 NMAC - Rp, 20 NMAC 3.1.5.501, 5/19/02]

### **20.3.5.3 STATUTORY AUTHORITY:**

Sections 74-1-8, 74-1-9, 74-3-5, and 74-3-9 NMSA 1978.

[20.3.5.3 NMAC - N, 5/19/02]

**20.3.5.4 DURATION:**

Permanent.

[20.3.5.4 NMAC - N, 5/19/02]

**20.3.5.5 EFFECTIVE DATE:**

May 19, 2002, unless a later date is cited at the end of a section.

[20.3.5.5 NMAC - N, 5/19/02]

**20.3.5.6 OBJECTIVE:**

To establish radiation safety requirements for both radiation machines and sealed radioactive sources used for industrial radiography.

[20.3.5.6 NMAC - Rp, 20 NMAC 3.1.5.500, 5/19/02]

**20.3.5.7 DEFINITIONS:**

As used in this Part, the following apply:

**A.** "ALARA" (acronym for "as low as is reasonably achievable") means making every reasonable effort to maintain exposures to radiation as far below the dose limits specified in Part 4 of 20.3 NMAC as is practical consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of radiation and licensed materials in the public interest;

**B.** "Annual refresher safety training" means a review conducted or provided by the licensee or registrant for its employees on radiation safety aspects of industrial radiography. The review may include, as appropriate, the results of internal inspections, new procedures or equipment, new or revised regulations, accidents or errors that have been observed, and should also provide opportunities for employees to ask safety questions;

**C.** "Associated equipment" means equipment that is used in conjunction with a radiographic exposure device to make radiographic exposures that drives, guides, or comes in contact with the source, (e.g., guide tube, control tube, control (drive) cable, removable source stop, "J" tube and collimator when it is used as an exposure head;

**D.** "Becquerel" (Bq) means one disintegration per second;

**E.** "Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet shielded so that radiation levels at every location on the exterior meet the limitations specified in 20.3.4.406 NMAC;

**F.** "Cabinet x-ray system" means an x-ray system with the x-ray tube installed in an enclosure (hereinafter termed "Cabinet") which, independently of existing architectural structures except the floor on which it may be placed, is intended to contain at least that portion of a material thing irradiated, provide radiation attenuation, and exclude personnel from its interior during generation of x-radiation. Included are all x-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad, and bus terminals, and in similar facilities. An x-ray tube used within a shielded part of a building, or x-ray equipment that may temporarily or occasionally incorporate portable shielding is not considered a cabinet x-ray system;

**G.** "Certified cabinet x-ray system" means an x-ray system which has been certified in accordance with 21 CFR 1010.2 as being manufactured and assembled pursuant to the provisions of 21 CFR 1020.40;

**H.** "Certifying Entity" means an independent certifying organization meeting the requirements in 20.3.5.12 NMAC or an Agreement State meeting the requirements in 20.3.5.12 NMAC;

**I.** "Collimator" means a radiation shield that is placed on the end of the guide tube or directly onto a radiographic exposure device to restrict the size of the radiation beam when the sealed source is cranked into position to make a radiographic exposure;

**J.** "Control (drive) cable" means the cable that is connected to the source assembly and used to drive the source to and from the exposure location;

**K.** "Control drive mechanism" means a device that enables the source assembly to be moved to and from the exposure device;

**L.** "Control tube" means a protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device;

**M.** "Exposure head" means a device that locates the gamma radiography sealed source in the selected working position. (an exposure head is also known as a source stop);

**N.** "Field station" means a facility where licensed material or registered machines may be stored or used, and from which equipment is dispatched;

**O.** "Gray" means the SI unit of absorbed dose; one gray is equal to an absorbed dose of 1 Joule/kilogram. It is also equal to 100 rads;

**P.** "Guide tube" (Projection sheath) means a flexible or rigid tube (i.e., "J" tube) for guiding the source assembly and the attached control cable from the exposure device to the exposure head; the guide tube may also include the connections necessary for attachment to the exposure device and to the exposure head;

**Q.** "Hands-on experience" means experience in all of those areas considered to be directly involved in the radiography process;

**R.** "Independent certifying organization" means an independent organization that meets all of the criteria of 20.3.5.12 NMAC;

**S.** "Industrial radiography" means the examination of the macroscopic structure of materials by nondestructive methods using sources of ionizing radiation to produce radiographic images;

**T.** "Lixiscope" means a portable light-intensified imaging device using a sealed source;

**U.** "Permanent radiographic installation" means an enclosed shielded room, cell, or vault, not located at a temporary jobsite, in which radiography is performed;

**V.** "Personal supervision" means guidance and instruction to a radiographer trainee by a radiographer instructor who is present at the site, in visual contact with the trainee while the trainee is using sources of radiation, and in such proximity that immediate assistance can be given if required;

**W.** "Practical examination" means a documented demonstration through practical application of the safety rules and principles in industrial radiography including use of all appropriate equipment and procedures;

**X.** "Radiation safety officer" (RSO) for industrial radiography means an individual with the responsibility for the overall radiation safety program on behalf of the licensee or registrant and who meets the requirements as specified in Subsection C of 20.3.5.11 NMAC;

**Y.** "Radiographer" means any individual who performs, or in attendance personally supervises, industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these regulations and all license and/or certificate of registration conditions; this individual must meet the training requirements as specified in Subsection B of 20.3.5.11 NMAC;

**Z.** "Radiographer certification" means written approval received from a certifying entity stating that an individual has satisfactorily met certain established radiation safety, testing, and experience criteria;

**AA.** "Radiographer instructor" means any radiographer who provides on-the-job training to radiographer trainees in accordance with Subsection D of 20.3.5.11 NMAC;

**AB.** "Radiographer trainee" means any individual who, under the personal supervision of a radiographer instructor, uses sources of radiation, related handling tools, or radiation survey instruments during the course of his instruction;

**AC.** "Radiographer's assistant" means any individual who under the direct supervision of a radiographer, uses radiographic exposure devices, sealed sources or related handling tools, or radiation survey instruments in industrial radiography;

**AD.** "Radiographic exposure device" means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure;

**AE.** "Radiographic operations" means all activities performed with a radiographic device, or with a radiation machine; these include however are not limited to activities associated with the use of the device or machine, or transport (except when being transported by a common or contract transport), including surveys to confirm the adequacy of boundaries, setting up equipment and any activity inside restricted area boundaries;

**AF.** "Radiographic personnel" means any radiographer, radiographer's assistant, radiographer instructor, or radiographer trainee;

**AG.** "Residential location" means any area where structures in which people lodge or live are located, and the grounds on which structures are located including, but not limited to, houses, apartments, condominiums, and garages;

**AH.** "S-tube" means a tube through which the radioactive source travels when inside a radiographic exposure device;

**AI.** "Sealed source" means any byproduct material that is encased in a capsule designed to prevent leakage or escape of the byproduct material;

**AJ.** "Shielded position" means the location within the radiographic exposure device or source changer where the sealed source is secured and restricted from movement;

**AK.** "Shielded-room radiography" means industrial radiography conducted in an enclosed room, the interior of which is not occupied during radiographic operations, which is shielded so that radiation levels at every location on the exterior meet the limitations specified in 20.3.4.406 NMAC;

**AL.** "sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv = 100 rems);

**AM.** "Source assembly" means an assembly that consists of the sealed source and a connector that attaches the source to the control cable; the source assembly may also include a stop ball used to secure the source in the shielded position;

**AN.** "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources;

**AO.** "Storage area" means any location, facility, or vehicle which is used to store, to transport, or to secure a radiographic exposure device, a storage container, or a sealed source when it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source;

**AP.** "Storage container" means a shielded device in which sealed sources are secured and stored;

**AQ.** "Temporary job site" means any location where industrial radiography is performed and where licensed material or X-ray machines may be stored other than the location(s) listed in a specific license or certificate of registration; and

**AR.** "Transport container" means a package that is designed to provide radiation safety and security when sealed sources are transported and which meets all applicable requirements of the U.S. department of transportation;

**AS.** "Underwater radiography" means industrial radiography performed when the radiographic exposure device and/or related equipment are beneath the surface of the water.

[20.3.5.7 NMAC - Rp, 20 NMAC 3.1.5.502, 5/19/02]

#### **20.3.5.8 EXEMPTIONS:**

**A.** Except for the requirements of Subsections B and C of 20.3.5.25 NMAC, certified x-ray systems designed to exclude individuals from the interior of the cabinet are exempt from the requirements of this part.

**B.** Industrial uses of lixiscopes are exempt from the requirements of this part.

[20.3.5.8 NMAC - Rp, 20 NMAC 3.1.5.503, 5/19/02]

#### **20.3.5.9 PROHIBITIONS:**

Industrial radiography performed with a sealed source that is not fastened to or contained in a radiographic exposure device, known as fish pole radiography, is prohibited unless specifically authorized in a license issued by the department.

[20.3.5.9 NMAC - Rp, 20 NMAC 3.1.5.526, 5/19/02]

#### **20.3.5.10 SPECIFIC LICENSE FOR INDUSTRIAL RADIOGRAPHY:**

An application for a specific license for the use of licensed material in industrial radiography will be approved if the applicant meets the following requirements:

**A.** The applicant satisfies the general requirements specified in Part 3 of 20.3 NMAC for byproduct material, as appropriate, and any special requirements contained in this part.

**B.** An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

(1) any reference to the commission or NRC shall be deemed a reference to the department;

(2) 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

(3) 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable; and

(4) for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), and 10 CFR 37.81 the licensee shall use the following address when applicable: New Mexico Environment Department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

**C.** The applicant submits an adequate program for training radiographers and radiographers' assistants that meets the requirements of Paragraph (1) of Subsection A of 20.3.5.11 NMAC. License applicants need not describe the initial training and examination program for radiographers in the subjects outlined in Paragraph (1) of Subsection A of 20.3.5.11 NMAC.

**D.** The applicant submits procedures for verifying and documenting the certification status of radiographers and for ensuring that the certification of individuals acting as radiographers remains valid.

**E.** The applicant submits written operating and emergency procedures as described in 20.3.5.29 NMAC.

**F.** The applicant submits a description of a program for inspections of the job performance of each radiographer and radiographers' assistant. The intervals for these performance inspections are not to exceed six months as described in Subsection B of 20.3.5.13 NMAC.

**G.** The applicant submits a description of the applicant's overall organizational structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

**H.** The applicant identifies and lists the qualifications of the individual(s) designated as the RSO and potential designees responsible for ensuring that the licensee's radiation safety program is implemented in accordance with approved procedures. Refer to Subsection C of 20.3.5.11 NMAC for RSO qualification requirements.

**I.** If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant must describe the procedures for performing and the qualifications of the person(s) authorized to do the leak testing. If the applicant intends to analyze its own wipe samples, the application must include a description of the procedures to be followed. The description must include the:

- (1) instruments to be used;
- (2) methods of performing the analysis; and
- (3) pertinent experience of the person who will analyze the wipe samples.

**J.** If the applicant intends to perform "in-house" calibrations of survey instruments the applicant must describe methods to be used and the relevant experience of the person(s) who will perform the calibrations. All calibrations must be performed according to the procedures described and at the intervals prescribed in 20.3.5.16 NMAC.

**K.** The applicant identifies and describes the location(s) of all field stations and permanent radiographic installations.

**L.** The applicant identifies the location(s) where all records required by this part and other parts of 20.3 NMAC will be maintained. If a license is issued to the applicant, the licensee shall maintain copies of records required by this Part and other applicable Parts of 20.3 NMAC at the specified location(s).

[20.3.5.10 NMAC - N, 5/19/02; A, 02/14/2023]

#### **20.3.5.11 TRAINING AND QUALIFICATION REQUIREMENTS:**

**A. Radiographer's assistant.** Licensees and registrants may not permit any individual to act as a radiographer's assistant until the requirements of this subsection have been completed. Until completion of these requirements the individual is considered to be a radiographer trainee. Licensees and registrants will have 120 days from the effective date of these regulations to comply with these requirements:

(1) Training shall be provided regarding the fundamentals of radiation safety including:

(a) Characteristics of gamma and X-ray radiation;

(b) Units of radiation dose and quantity of radioactivity;

(c) Hazards of exposure to radiation during radiographic operations, including case histories of accidents in radiography;

(d) Levels of radiation experienced during radiographic operations; and

(e) Methods of controlling radiation dose (time, distance, and shielding).

(f) Proper techniques for use and operation, and limitations of, the specific radiation survey instruments and personnel monitoring equipment used by the licensee or registrant.

(2) The individual has been provided copies of and instruction in the requirements contained in this part, applicable sections of Parts 3, 4, and 10 of 20.3 NMAC, 10 CFR 71 of federal regulations, and conditions of the radioactive materials license or registration under which the radiographer will perform industrial radiography, and the licensee's or registrant's operating and emergency procedures;

(3) The individual has developed competence to use, under the personal supervision of the radiographer or radiographer instructor, the radiographic exposure devices, sealed sources, radiation machines, associated equipment, and radiation survey instruments that the assistant will use; and

(4) The individual has demonstrated understanding of the instructions provided under Paragraph (2) of Subsection A of 20.3.5.11 NMAC by successfully completing a written test on the subjects covered and has demonstrated competence in the use of hardware described in Paragraph (3) of Subsection A of 20.3.5.11 NMAC by successful completion of a practical examination on the use of such hardware.

**B. Radiographer.** Licensees may not permit any individual to act as a radiographer until the individual has completed the requirements of this subsection. With the exception of Paragraph (3) of Section B of 20.3.5.11 NMAC, licensees and registrants will have 120 days from the effective date of these regulations to comply with these requirements:

- (1) The requirements of Subsection A of 20.3.5.11 NMAC; and,
- (2) Two months minimum on-the-job training in addition to paragraph (1) of Subsection B of 20.3.5.11 NMAC; and,
- (3) Certification through a radiographer certification program by a certifying entity in accordance with the criteria specified in 20.3.5.12 NMAC. Licensees or registrants will have one calendar year from the effective date of these regulations to comply with this requirement. Records of radiographer certification maintained in accordance with Subsection F of 20.3.5.11 NMAC provide appropriate affirmation of meeting this certification requirement; and,
- (4) Has demonstrated understanding of the license or registration and the operating and emergency procedures by successful completion of a written or oral examination covering this material; and,
- (5) Has received adequate training and has demonstrated understanding in the use of the licensee's or registrant's radiation survey instruments and associated equipment by successful completion of a practical examination covering the following material:
  - (a) Use, operation, calibration, and limitations of radiation survey instruments; and
  - (b) Survey techniques; and
  - (c) Use of personnel monitoring equipment; and
- (6) Has received adequate training and has demonstrated understanding in the use of the licensee's or registrant's radiographic exposure devices, sources, radiation machines, and associated equipment by successful completion of a practical examination covering the following material:
  - (a) Operation and control of radiographic exposure equipment, radiation machines, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtailed); and
  - (b) Storage, control, and disposal of licensed material; and
  - (c) Inspection and maintenance of equipment.

**C. Radiation safety officer (RSO).** The licensee may not permit any individual to act as an RSO until the requirements of this subsection have been satisfied. Licensees and registrants will have one year from the effective date of these regulations to comply with these requirements:

(1) The minimum qualifications, training, and experience for RSOs are as follows:

(a) Completion of the training and qualification requirements of Subsection B of 20.3.5.11 NMAC; and

(b) 2000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

(c) Formal training in the establishment and maintenance of a radiation protection program.

(2) The department will consider alternatives to these requirements when the RSO has appropriate training and/or experience in the field of ionizing radiation, and in addition, has adequate formal training with respect to the establishment and maintenance of a radiation safety protection program.

**D. Radiographer instructor.** No individual shall act as a radiographer instructor unless such individual:

(1) Has met the requirements of Subsection B of 20.3.5.11 NMAC; and

(2) Has 2000 hours of hands-on experience as a qualified radiographer in industrial radiographic operations; and

(3) Has been named as a radiographer instructor on the license or a registration certificate issued by the Department.

**E. Annual refresher training.** The licensee or registrant shall provide annual refresher training in radiation safety for each radiographer and radiographer's assistant at intervals not to exceed 12 months.

**F. Records of training and certification.** Each licensee or registrant shall maintain the following records (of training and certification) for 3 years after the record is made:

(1) Records of training of each radiographer and each radiographer's assistant. The record must include radiographer certification documents and verification of certification status, copies of written tests, dates of oral and practical examinations, and names of individuals conducting and receiving the oral and practical examinations; and

(2) Records of annual refresher safety training for each radiographer and each radiographer's assistant. The records must list the topics discussed during the refresher safety training, the dates the annual refresher safety training was conducted, and names of the instructors and attendees. For inspections of job performance

required by Subsection B of 20.3.5.13 NMAC, the records must also include a list showing the items checked and any non-compliances observed by the RSO.

[20.3.5.11 NMAC - Rp, 20 NMAC 3.1.5.515, 5/19/02]

### **20.3.5.12 REQUIREMENTS FOR AN INDEPENDENT CERTIFYING ORGANIZATION:**

**A.** An independent certifying organization shall:

- (1) be an organization such as a society or association, whose members participate in, or have an interest in, the fields of industrial radiography; and
- (2) make its membership available to the general public nationwide that is not restricted because of race, color, religion, sex, age, national origin or disability; and
- (3) have a certification program open to nonmembers, as well as members; and
- (4) be an incorporated, nationally recognized organization, that is involved in setting national standards of practice within its fields of expertise; and
- (5) have an adequate staff, a viable system for financing its operations, and a policy-and decision-making review board; and
- (6) have a set of written organizational by-laws and policies that provide adequate assurance of lack of conflict of interest and a system for monitoring and enforcing those by-laws and policies; and
- (7) have a committee, whose members can carry out their responsibilities impartially, to review and approve the certification guidelines and procedures, and to advise the organization's staff in implementing the certification program; and
- (8) have a committee, whose members can carry out their responsibilities impartially, to review complaints against certified individuals and to determine appropriate sanctions; and
- (9) have written procedures describing all aspects of its certification program, maintain records of the current status of each individual's certification and the administration of its certification program; and
- (10) have procedures to ensure that certified individuals are provided due process with respect to the administration of its certification program, including the process of becoming certified and any sanctions imposed against certified individuals; and

(11) have procedures for proctoring examinations, including qualifications for proctors. These procedures must ensure that the individuals proctoring each examination are not employed by the same company or corporation (or a wholly-owned subsidiary of such company or corporation) as any of the examinees; and

(12) exchange information about certified individuals with other independent certifying organizations, the Department, the U.S. nuclear regulatory commission, and/or Agreement States and allow periodic review of its certification program and related records; and

(13) provide a description to the department of its procedures for choosing examination sites and for providing an appropriate examination environment.

**B. Requirements for certification programs. All certification programs must:**

(1) require applicants for certification to: a) receive training in the topics set forth in Subsection D of 20.3.5.12 NMAC or equivalent Agreement State regulations; and b) satisfactorily complete a written examination covering these topics; and

(2) require applicants for certification to provide documentation that demonstrates that the applicant has:

(a) received training in the topics set forth in Subsection D of 20.3.5.12 NMAC or equivalent Agreement State regulations;

(b) satisfactorily completed a minimum period of on-the-job training; and

(c) has received verification by an Agreement State or a NRC licensee that the applicant has demonstrated the capability of independently working as a radiographer; and

(3) include procedures to ensure that all examination questions are protected from disclosure; and

(4) include procedures for denying an application, revoking, suspending, and reinstating a certificate; and

(5) provide a certification period of not less than 3 years nor more than 5 years; and

(6) include procedures for renewing certifications and, if the procedures allow renewals without examination, require evidence of recent full-time employment and annual refresher training.

(7) Provide a timely response to inquiries, by telephone or letter, from members of the public, about an individual's certification status.

C. Requirements for written examinations. All examinations must be:

- (1) designed to test an individual's knowledge and understanding of the topics listed in Subsection D of 20.3.5.12 NMAC or equivalent Agreement State requirements; and
- (2) written in a multiple-choice format; and
- (3) have test items drawn from a question bank containing psychometrically valid questions based on the material in Subsection D of 20.3.5.12 NMAC.

D. Required Training Topics. All certification programs shall include training in the following topics:

- (1) fundamentals of radiation safety including:
  - (a) characteristics of gamma radiation; and
  - (b) units of radiation dose and quantity of radioactivity; and
  - (c) hazards of exposure to radiation; and
  - (d) levels of radiation from licensed material; and
  - (e) methods of controlling radiation dose (time, distance, and shielding); and
- (2) radiation detection instruments including:
  - (a) use, operation, calibration, and limitations of radiation survey instruments; and
  - (b) survey techniques; and
  - (c) use of personnel monitoring equipment; and
- (3) equipment to be used including:
  - (a) operation and control of radiographic exposure equipment, remote handling equipment, and storage containers, including pictures or models of source assemblies (pigtailed); and
  - (b) storage, control, and disposal of licensed material; and
  - (c) inspection and maintenance of equipment; and
- (4) the requirements of pertinent State and Federal regulations; and

- (5) case histories of accidents in radiography.

[20.3.5.12 NMAC - N, 5/19/02]

### **20.3.5.13 REQUIREMENTS OF THE RADIATION SAFETY OFFICER (RSO):**

**A.** The specific duties and authorities of the RSO include, but are not limited to:

- (1) Ensuring that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's or registrant's program; and

- (2) Establish, document, and oversee all operating, emergency, and ALARA procedures required by Part 4 of 20.3 NMAC. The procedures shall be revised by the RSO whenever necessary to ensure procedural accuracy. The procedures shall be reviewed regularly by the RSO at intervals not to exceed one calendar year to ensure that they conform to Part 4, other pertinent regulations, and to the conditions of the license or registration; and

- (3) Overseeing and approving all phases of the training program for radiographic personnel, ensuring that appropriate and effective radiation protection practices are taught; and

- (4) Ensuring that required radiation surveys and leak tests are performed and documented in accordance with the regulations, including any corrective measures when levels of radiation exceed established limits; and

- (5) Ensuring that personnel monitoring devices are calibrated and used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by 20.3.4.453 NMAC; and

- (6) Ensuring that operations are conducted safely and to assume control for instituting corrective actions including stopping of operations when necessary.

**B.** Inspections of Job Performance. Except as provided in paragraph (4) of Subsection B of 20.3.5.13 NMAC, the RSO or designee shall conduct an inspection program of the job performance of each radiographer and radiographer's assistant to ensure that the Department's regulations, license or registration requirements, and the applicant's operating and emergency procedures are followed. The inspection program must:

- (1) Include observation of the performance of each radiographer and radiographer's assistant during an actual industrial radiographic operation, at intervals not to exceed 6 months; and

(2) Provide that, if a radiographer or a radiographer's assistant has not participated in an industrial radiographic operation for more than 6 months since the last inspection, the radiographer must demonstrate knowledge of the training requirements of paragraph (5) of Subsection B of 20.3.5.11 NMAC and the radiographer's assistant must re-demonstrate knowledge of the training requirements of paragraph (3) of Subsection A of 20.3.5.11 NMAC by a practical examination before these individuals can next participate in a radiographic operation.

(3) The Department may consider alternatives requested in writing in those situations where the individual serves as both radiographer and RSO.

(4) Records of semi-annual inspections of job performance for each radiographer and each radiographer's assistant shall include a list showing the items checked and any non-compliances observed by the RSO.

[20.3.5.13 NMAC - N, 5/19/02]

#### **20.3.5.14 SUPERVISION OF RADIOGRAPHER'S ASSISTANTS:**

Whenever a radiographer's assistant uses radiographic exposure devices, associated equipment, sealed sources, radiation machines, or conducts radiation surveys required by Subsection B of 20.3.5.17 NMAC to determine that the sealed source has returned to the shielded position after an exposure, the assistant shall be under the personal supervision of a radiographer. The personal supervision must include:

**A.** The radiographer's physical presence at the site where the sealed sources or radiation machines are being used;

**B.** The availability of the radiographer to give immediate assistance if required; and

**C.** The radiographer's direct observation of the assistant's performance of the operations referred to in this section.

[20.3.5.14 NMAC - Rp, 20 NMAC 3.1.5.518, 5/19/02]

#### **20.3.5.15 PERSONNEL MONITORING:**

**A.** The licensee or registrant may not permit any individual to act as a radiographer or a radiographer's assistant unless, at all times during radiographic operations, each individual wears, on the trunk of the body, a direct reading dosimeter, an operating alarm ratemeter, and a personnel dosimeter. At permanent radiography installations where other appropriate alarming or warning devices are in routine use, the wearing of an alarming ratemeter is not required.

(1) Pocket dosimeters must have a range from zero to two millisieverts (200 millirems) and must be recharged at the start of each shift. Electronic personal dosimeters may only be used in place of ion-chamber pocket dosimeters.

(2) Each personnel dosimeter must be assigned to and worn by only one individual.

(3) Film badges must be replaced for personnel at least monthly and all other personnel dosimeters that require replacement must be replaced at least quarterly. All personnel dosimeters that must be evaluated must be evaluated at least quarterly or promptly after replacement, whichever is more frequent.

**B.** Direct reading dosimeters such as pocket dosimeters or electronic personal dosimeters must be read and the exposures recorded at the beginning and end of each shift. Records shall be maintained in accordance with Paragraph (2) of Subsection H of 20.3.5.15 NMAC.

**C.** Pocket dosimeters, or electronic personal dosimeters, must be checked at periods not to exceed 12 months for correct response to radiation. Acceptable dosimeters must read within plus or minus twenty percent of the true radiation exposure. Records shall be maintained in accordance with Paragraph (1) of Subsection H of 20.3.5.15 NMAC.

**D.** If an individual's pocket chamber is found to be off-scale, or if his or her electronic personal dosimeter reads greater than two millisieverts (200 millirems), and the possibility of radiation exposure cannot be ruled out as the cause, the individual's personnel dosimeter must be sent for processing within 24 hours. In addition, the individual may not resume work associated with licensed material use until a determination of the individual's radiation dose has been made. This determination must be made by the RSO or the RSO's designee. The results of this determination shall be documented. The documents shall be maintained in accordance with Subsection H of 20.3.5.15 NMAC.

**E.** If a personnel dosimeter that is required by Subsection A of 20.3.5.15 NMAC is lost or damaged, the worker shall cease work immediately until a replacement dosimeter is provided and the exposure is calculated for the time period from issuance to loss or damage of the dosimeter. The results of the calculated exposure and the time period for which the dosimeter was lost or damaged shall be documented. The documents shall be maintained in accordance with Paragraph (4) of Subsection H of 20.3.5.15 NMAC.

**F.** Dosimetry results shall be maintained in accordance with Paragraph (3) of Subsection H of 20.3.5.15 NMAC.

**G.** Each alarm ratemeter must --

(1) Be checked to ensure that the alarm functions properly (sounds) before using at the start of each shift;

(2) Be set to give an alarm signal at a preset dose rate of five mSv/hr (500 mrem/hr); with an accuracy of plus or minus twenty percent of the true radiation dose rate;

(3) Require special means to change the preset alarm function; and

(4) Be calibrated at periods not to exceed 12 months for correct response to radiation. The licensee or registrant shall maintain records of alarm ratemeter calibrations in accordance with Paragraph (2) of Subsection H of 20.3.5.15 NMAC.

**H. Personnel Monitoring Records.** Each licensee and registrant shall maintain the following exposure records pursuant to 20.3.5.15 NMAC:

(1) Direct reading dosimeter readings and yearly operability checks required by Subsections B and C of 20.3.5.15 NMAC for three years after the record is made.

(2) Records of alarm ratemeter calibrations for three years after the record is made.

(3) Reports received for personnel dosimetry shall be maintained until the Department terminates the license or registration.

(4) Records of estimates of exposures as a result of: off-scale personal direct reading dosimeters, or lost or damaged personnel dosimeters, until the department terminates the license or registration.

[20.3.5.15 NMAC - Rp, 20 NMAC 3.1.5.517, 5/19/2002; A, 5/1/2024]

#### **20.3.5.16 RADIATION SURVEY INSTRUMENTS:**

**A.** Licensees and registrants shall keep sufficient calibrated and operable radiation survey instruments at each location to make the radiation surveys required by this Part and by 20.3.4.416 NMAC. Instrumentation required by this section must be capable of measuring a range from 0.02 millisieverts (2 millirems) per hour through 0.01 sievert (1 rem) per hour.

**B.** Each radiation survey instrument shall be calibrated:

(1) At energies appropriate for use and at intervals not to exceed 6 months and after each instrument servicing (except battery changes);

(2) Such that accuracy within plus or minus 20 percent can be demonstrated;  
and

(3) At 2 points located approximately 1/3 and 2/3 of full-scale on each scale for linear scale instruments; at mid-range of each decade, and at 2 points of at least 1 decade for logarithmic scale instruments; and at appropriate points for digital instruments.

**C.** Records of these calibrations shall be maintained for 3 years after the calibration date for inspection by the Department.

**D.** Each radiation survey instrument shall be checked with a radiation source at the beginning of each day of use and at the beginning of each work shift to ensure it is operating properly.

[20.3.5.16 NMAC - Rp, 20 NMAC 3.1.5.509, 5/19/02]

### **20.3.5.17 RADIATION SURVEYS AND SURVEY RECORDS:**

**A.** No radiographic operation shall be conducted unless calibrated and operable radiation survey instrumentation, as described in 20.3.5.16 NMAC is available and used at each site where radiographic exposures are made.

#### **B. Survey Requirements for Devices Containing Radioactive Materials.**

(1) Using a survey instrument meeting the requirements of Subsection A of 20.3.5.17 NMAC, conduct a survey of the radiographic exposure device and the guide tube after each exposure when approaching the device or the guide tube. The survey must determine that the sealed source has returned to its shielded position before exchanging films, repositioning the exposure head, or dismantling equipment.

(2) Conduct a survey of the radiographic exposure device with a calibrated radiation survey instrument any time the source is exchanged and whenever a radiographic exposure device is placed in a storage area (as defined in Subsection AO of 20.3.5.7 NMAC), to ensure that the sealed source is in its shielded position.

**C.** Survey Requirements for Radiation Machines. A physical radiation survey shall be made after each radiographic exposure using radiation machines to determine that the machine is "off".

**D.** Records shall be kept of the surveys required by Subsection B of 20.3.5.17 NMAC. Such records shall be maintained for inspection by the Department for 3 years after completion of the survey. If the survey was used to determine an individual's exposure, however, the records of the survey shall be maintained until the Department authorizes their disposition.

[20.3.5.17 NMAC - Rp, 20 NMAC 3.1.5.521, 5/19/02]

### **20.3.5.18 SPECIFIC REQUIREMENTS FOR RADIOGRAPHIC OPERATIONS:**

**A.** Licensees and registrants shall supply the following items at each job site:

- (1) At least one operable, calibrated survey instrument;
- (2) A current whole body NVLAP certified dosimeter for each individual;
- (3) An operable, calibrated pocket dosimeter with a range of 0 to 200 milliroentgens (2 milligrays) for each worker; and
- (4) The appropriate barrier ropes and signs.

**B.** Industrial radiographic operations shall not be performed if any of the items in Subsection A of 20.3.5.18 NMAC are not available at the job site or are inoperable.

**C.** No individual other than a qualified radiographer, radiographer's assistant, radiographer instructor, or radiographer trainee (under the personal supervision of a radiographer instructor) shall manipulate controls or operate equipment used in industrial radiographer operations.

**D.** No individual shall act as radiographer instructor unless such individual possesses the qualifications required for radiographer instructors as listed in Subsection D of 20.3.5.11 NMAC.

**E.** During an inspection by the Department, the Department inspector may terminate an operation if any of the items in Subsection A of 20.3.5.18 NMAC are not available and operable or if the required number of radiographic personnel is not present. Operations shall not be resumed until such conditions are met.

**F.** All radiographic operations conducted at locations of use authorized on the license or registration must be conducted in a permanent radiographic installation, unless specifically authorized by the Department.

**G.** Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or a radiographer's assistant who has at a minimum met the requirements specified within Subsections B or A of 20.3.5.11 NMAC as appropriate. The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Radiography may not be performed if only one qualified individual is present. Licensees will have one calendar year from the effective date of these regulations to meet the requirements for having two qualified individuals present at locations other than a permanent radiographic installation.

**H.** During each radiographic operation the radiographer, or the other individual present as required by Subsection G of 20.3.5.18 NMAC, shall maintain continuous

direct visual surveillance of the operation to protect against unauthorized entry into a high radiation area, as defined in Part 1 of 20.3 NMAC, except:

(1) Where the high radiation area is equipped with a control device or alarm system as described in Part 4 of 20.3 NMAC; or

(2) Where the high radiation area is locked to protect against unauthorized or accidental entry.

**I.** All areas in which industrial radiography is being performed must be conspicuously posted as required by Part 4 of 20.3 NMAC. Exceptions to posting requirements listed in Part 4 do not apply to industrial radiographic operations.

**J.** Utilization Logs. Each licensee or registrant shall maintain current logs which shall be kept available for inspection by the Department for 3 years from the date of the recorded event, showing for each source of radiation the following information:

(1) A description, including the make, model, and serial number of the radiographic exposure device or transport or storage container in which the sealed source is located;

(2) The identity and signature of the radiographer to whom assigned;

(3) Locations where used and dates of use; and

(4) The date(s) each source of radiation is removed from storage and returned to storage.

**K.** Locking of Sources of Radiation.

(1) Each radiographic exposure device must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The exposure device and/or its container must be kept locked (and if a keyed-lock, with the key removed at all times) when not under the direct surveillance of a radiographer or a radiographer's assistant except at permanent radiographic installations as stated in Subsection G of 20.3.5.18 NMAC. In addition, during radiographic operations the sealed source assembly must be secured in the shielded position each time the source is returned to that position.

(2) Each sealed source storage container and source changer must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Storage containers and source changers must be kept locked (and if a keyed-lock, with the key removed at all times) when containing sealed sources except when under the direct surveillance of a radiographer or a radiographer's assistant.

L. A licensee may conduct underwater radiography only if procedures have been approved by the Department.

[20.3.5.18 NMAC - Rp, 20 NMAC 3.1.5.523, 5/19/02]

#### **20.3.5.19 PERMANENT RADIOGRAPHIC INSTALLATIONS:**

A. Each entrance that is used for personnel access to the high radiation area in a permanent radiographic installation must have either:

(1) An entrance control of the type described in Part 4 of 20.3 NMAC that reduces the radiation level upon entry into the area, or

(2) Both conspicuous visible and audible warning signals to warn of the presence of radiation. The visible signal must be actuated by radiation whenever the source is exposed. The audible signal must be actuated when an attempt is made to enter the installation while the source is exposed.

B. The alarm system must be tested for proper operation with a radiation source each day before the installation is used for radiographic operations. The test must include a check of both the visible and audible signals. Entrance control devices that reduce the radiation level upon entry (designated in Subsection A of 20.3.5.19 NMAC) must be tested monthly. If an entrance control device or an alarm is operating improperly, it must be immediately labeled as defective and repaired within 7 calendar days. The facility may continue to be used during this 7-day period, provided the licensee implements the continuous surveillance requirements of Subsection H of 20.3.5.18 NMAC and uses an alarming ratemeter.

C. Test records for entrance controls and audible and visual alarms must be maintained for 3 years after they are made.

[20.3.5.19 NMAC - Rp, 20 NMAC 3.1.5.514, 5/19/02]

#### **20.3.5.20 LABELING, STORAGE, AND TRANSPORTATION:**

A. The licensee may not use a source changer or a container to store licensed material unless the source changer or the storage container has securely attached to it a durable, legible, and clearly visible label bearing the standard trefoil radiation caution symbol conventional colors, i.e., magenta, purple or black on a yellow background, having a minimum diameter of 25 mm, and the wording:

CAUTION (or "DANGER")

RADIOACTIVE MATERIAL

NOTIFY CIVIL AUTHORITIES (or "NAME OF COMPANY")

**B.** The licensee may not transport licensed radioactive material unless the material is packaged, and the package is labeled, marked, and accompanied with appropriate shipping papers in accordance with regulations set out in 10 CFR part 71.

**C.** Locked radiographic exposure devices, storage containers, and radiation machines shall be physically secured to prevent tampering or removal by unauthorized personnel. The licensee shall store licensed material in a manner which will minimize danger from explosion or fire.

**D.** The licensee shall lock and physically secure the transport package containing licensed material or radiation machine(s) in the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal of the licensed material from the vehicle.

[20.3.5.20 NMAC - N, 5/19/02]

### **20.3.5.21 PERFORMANCE REQUIREMENTS FOR RADIOGRAPHY EQUIPMENT.**

Equipment used in industrial radiographic operations must meet the following minimum criteria:

**A.** Each radiographic exposure device and all associated equipment must meet the requirements specified in American national standard N432-1980 "Radiological Safety for the Design and Construction of Apparatus for Gamma Radiography," (published as NBS handbook 136, issued January 1981). This publication has been approved for incorporation by reference by the director of the federal register in accordance with 5 U.S.C. 552(a). This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and from the American National Standards Institute, Inc., 25 West 43<sup>rd</sup> Street, New York, New York 10036, Telephone (212) 642-4900.

**B.** In addition to the requirements specified in Subsection A of 20.3.5.21 NMAC, the following requirements apply to radiographic exposure devices and associated equipment;

(1) Each radiographic exposure device utilizing radioactive material must have attached to it by the user, a durable, legible, clearly visible label bearing the:

(a) chemical symbol and mass number of the radionuclide in the device;

(b) activity and the date on which this activity was last measured;

(c) model number and serial number of the sealed source;

(d) manufacturer of the sealed sources; and

(e) licensee's name, address, and telephone number.

(2) Radiographic exposure devices intended for use as type B transport containers must meet the applicable requirements of 10 CFR part 71; and

(3) Modification of any exposure devices and associated equipment is prohibited, unless the design of any replacement component, including source holder, source assembly, controls or guide tubes would not compromise the design safety features of the system.

**C.** In addition to the requirements specified in Subsections A and B of 20.3.5.21 NMAC, the following requirements apply to radiographic exposure devices and associated equipment that allow the source to be moved out of the device for routine operation.

(1) The coupling between the source assembly and the control cable must be designed in such a manner that the source assembly will not become disconnected if cranked outside the guide tube. The coupling must be such that it cannot be unintentionally disconnected under normal and reasonably foreseeable abnormal conditions.

(2) The device must automatically secure the source assembly when it is cranked back into the fully shielded position within the device. This securing system may only be released by means of a deliberate operation on the exposure device.

(3) The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device must be equipped with safety plugs or covers which must be installed during storage and transportation to protect the source assembly from water, mud, sand or other foreign matter.

(4) Each sealed source or source assembly must have attached to it or engraved in it, a durable, legible, visible label with the words "DANGER-- RADIOACTIVE." The label must not interfere with the safe operation of the exposure device or associated equipment.

(5) The guide tube must be able to withstand a crushing test that closely approximates the crushing forces that are likely to be encountered during use, and be able to withstand a kinking resistance test that closely approximates the kinking forces that are likely to be encountered during use.

(6) Guide tubes must be used when moving the source out of the device.

(7) An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube must be attached to the outermost end of the guide tube during radiographic operations.

(8) The guide tube exposure head connection must be able to withstand the tensile test for control units specified in ANSI N432-1980.

(9) Source changers must provide a system for assuring that the source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly.

**D.** All radiographic exposure devices and associated equipment in use must comply with the requirements of this section.

**E.** Notwithstanding Subsection A of 20.3.5.21 NMAC, equipment used in industrial radiographic operations need not comply with §8.9.2(c) of the endurance test in American national standards institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiography equipment can realistically exert on the lever or crankshaft of the drive mechanism.

[20.3.5.21 NMAC - Rp, 20 NMAC 3.1.5.506, 5/19/02; A, 06/13/2017]

#### **20.3.5.22 LIMITS ON EXTERNAL RADIATION LEVELS FROM STORAGE CONTAINERS AND SOURCE CHANGERS:**

The maximum exposure rate limits for storage containers and source changers are 2 millisieverts (200 millirem) per hour at any exterior surface, and 0.1 millisieverts (10 millirem) per hour at 1 meter from any exterior surface with the sealed source in the shielded position.

[20.3.5.22 NMAC - Rp, 20 NMAC 3.1.5.504, 5/19/02]

#### **20.3.5.23 INSPECTION AND MAINTENANCE:**

**A.** The licensee or registrant shall perform visual and operability checks on survey meters, radiation machines, radiographic exposure devices, transport and storage containers, associated equipment and source changers before use on each day the equipment is to be used to ensure that the equipment is in good working condition, that the sources are adequately shielded, and that required labeling is present. Survey instrument operability must be performed using check sources or other appropriate means. If equipment problems are found, the equipment must be removed from service until repaired.

**B.** Each licensee or registrant shall perform, and have written procedures for, inspection and routine maintenance of radiation machines, radiographic exposure devices, source changers, associated equipment, transport and storage containers, and survey instruments at intervals not to exceed 3 months or before the first use thereafter to ensure the proper functioning of components important to safety. Replacement

components shall meet design specifications. If equipment problems are found, the equipment must be removed from service until repaired.

**C.** The inspection and maintenance program must include procedures to assure that Type B packages are shipped and maintained in accordance with the certificate of compliance or other approval.

**D.** If any inspection conducted pursuant to Subsections A, B, or C of 20.3.5.23 NMAC reveals damage to components critical to radiation safety, the device shall be removed from service and labeled as defective until repairs have been made.

**E.** Records of equipment problems and of any maintenance performed pursuant to the requirements of this section shall be made in accordance with the following:

(1) Each licensee or registrant shall maintain records of equipment problems found in daily checks and quarterly inspections of radiation machines, radiographic exposure devices, transport and storage containers, associated equipment, source changers, and survey instruments; and retain each record for 3 years after it is made.

(2) The record must include the date of check or inspection, name of inspector, equipment involved, any problems found, and what repair and/or maintenance, if any, was done.

[20.3.5.23 NMAC - Rp, 20 NMAC 3.1.5.513, 5/19/02]

#### **20.3.5.24 LEAK TESTING, REPAIR, TAGGING, OPENING, MODIFICATION, AND REPLACEMENT OF SEALED SOURCES:**

**A.** The replacement of any sealed source fastened to or contained in a radiographic exposure device and leak testing, repair, tagging, opening, or any other modification of any sealed source shall be performed only by persons specifically authorized to do so by the Department.

**B.** Each sealed source shall be tested for leakage at intervals not to exceed six months. In the absence of a certificate from a transferor indicating that a test has been made within the six-month period prior to the transfer, the sealed source shall not be put into use until tested.

**C.** The leak test shall be capable of detecting the presence of 185 becquerels (0.005 microcuries) of removable contamination on the sealed source. An acceptable leak test for sealed sources in the possession of a radiography licensee would be to test at the nearest accessible point to the sealed source storage position, or other appropriate measuring point, by a procedure to be approved pursuant to Part 3 of 20.3 NMAC. Records of leak test results shall be kept in units of becquerels or microcuries and maintained for inspection by the Department for 3 years.

**D.** Any test conducted pursuant to Subsections B and C of 20.3.5.24 NMAC that reveals the presence of 185 becquerels (0.005 microcuries) or more of removable radioactive material shall be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the equipment involved from use and shall cause it to be decontaminated and repaired or to be disposed of in accordance with 20.3 NMAC. Within 5 days after obtaining results of the test, the licensee shall file a report with the Department describing the equipment involved, the test results, and the corrective action taken.

**E.** A sealed source which is not fastened to or contained in a radiographic exposure device shall have permanently attached to it a square durable tag at least 2.5 cm on each side bearing the prescribed radiation caution symbol in conventional colors, magenta or purple on a yellow background, and at least the instructions: "Danger - Radioactive Material - Do Not Handle - Notify Civil Authorities if Found."

**F.** Each exposure device using depleted uranium (DU) shielding and an "S" tube configuration must be tested for DU contamination at intervals not to exceed 12 months. The analysis must be capable of detecting the presence of 185 Bq (0.005 microcuries) of radioactive material on the test sample and must be performed by a person specifically authorized by the Department to perform the analysis. Should such testing reveal the presence of 185 Bq (0.005 microcuries) or more of removable DU contamination, the exposure device must be removed from use until an evaluation of the wear on the S-tube has been made. Should the evaluation reveal that the S-tube is worn through, the device may not be used again. DU shielded devices do not have to be tested for DU contamination while in storage and not in use. Before using or transferring such a device however, the device must be tested for DU contamination if the interval of storage exceeded 12 months. Records of DU leak tests results shall be kept in units of microcuries (becquerels) and maintained for inspection by the department for 3 years.

[20.3.5.24 NMAC - Rp, 20 NMAC 3.1.5.510, 5/19/02]

#### **20.3.5.25 SPECIAL REQUIREMENTS AND EXEMPTIONS FOR CABINET RADIOGRAPHY:**

**A.** Systems for cabinet radiography designed to allow admittance of individuals shall:

(1) Comply with all applicable requirements of this Part, and Sections 405 to 412 of 20.3.4 NMAC. If such a system is a certified cabinet x-ray system, it shall comply with all applicable requirements of this Part and 21 CFR 1020.40; and

(2) Be evaluated at intervals not to exceed 1 year to assure compliance with the applicable requirements as specified in paragraph (1) of Subsection A of 20.3.5.25 NMAC. Records of these evaluations shall be maintained for inspection by the Department for a period of 3 years after the evaluation.

**B.** Certified cabinet x-ray systems designed to exclude individuals from the interior of the cabinet are exempt from the requirements of this Part except that:

(1) Operating personnel must be provided with a NVLAP certified dosimeter, and reports of the results shall be maintained for inspection by the Department;

(2) No registrant shall permit any individual to operate a cabinet x-ray system until such individual has received a copy of and instruction in the operating procedures for the unit and has demonstrated competence in its use. Records which demonstrate compliance with this section shall be maintained for inspection by the Department until disposition is authorized by the Department;

(3) Tests for proper operation of high radiation area control devices or alarm systems, where applicable, shall be conducted, recorded, and maintained in accordance with Subsection B of 20.3.5.19 NMAC; and

(4) The registrant shall perform an evaluation at intervals not to exceed 1 year, to determine conformance with Sections 405 to 412 of 20.3.4 NMAC. If such a system is a certified cabinet x-ray system, it shall be evaluated at intervals not to exceed 1 year to determine conformance with 21 CFR 1020.40. Records of these evaluations shall be maintained for inspection by the Department for a period of 3 years after the evaluation.

**C.** Certified cabinet x-ray systems shall be maintained in compliance with 21 CFR 1020.49 unless prior approval has been granted by the Department pursuant to Subsection A of 20.3.1.107 NMAC.

[20.3.5.25 NMAC - Rp, 20 NMAC 3.1.5.524, 5/19/02]

#### **20.3.5.26 SPECIAL REQUIREMENTS FOR RADIOGRAPHY EMPLOYING RADIATION MACHINES:**

**A.** Shielded room radiography. Shielded room radiography (as defined in Subsection AK of 20.3.5.7 NMAC) using radiation machines shall be exempt from other requirements of this Part; however:

(1) no registrant shall permit any individual to operate a radiation machine for shielded room radiography until such individual has received a copy of, and instruction in, and demonstrated an understanding of operating procedures of the unit, and has demonstrated competence in its use;

(2) each registrant shall supply appropriate personnel monitoring equipment to, and shall require the use of such equipment by, every individual who operates, makes "set-ups", or performs maintenance on a radiation machine for shielded room radiography; and

(3) a physical radiation survey shall be conducted to determine that the radiation machine is "off" prior to each entry into the shielded room. Such surveys shall be made with a radiation measuring instrument which is capable of measuring radiation of the energies and at the exposure rates to be encountered, which is in good working order, and which has been properly calibrated within the preceding three months or following the last instrument servicing, whichever is later.

**B.** Other radiography using radiation machines. Other radiography using machines shall be exempt from 20.3.5.17 NMAC, 20.3.5.21 NMAC, 20.3.5.22 NMAC, and 20.3.5.24 NMAC; however:

(1) A physical radiation survey shall be conducted to determine that the radiation machine is "off" prior to each entry into the radiographic exposure area. Such surveys shall be made with a radiation measuring instrument capable of measuring radiation of the energies and at the exposure rates to be encountered, which is in good working order, and which has been properly calibrated within the preceding three months or following the last instrument servicing, whichever is later. Survey results and records of boundary locations shall be maintained and kept available for inspection; and

(2) Mobile or portable radiation machines shall be physically secured to prevent removal by unauthorized personnel.

[20.3.5.26 NMAC - Rp, 20 NMAC 3.1.5.525, 5/19/02]

### **20.3.5.27 REPORTING REQUIREMENTS:**

**A.** In addition to the reporting requirements specified in Part 3 and under other sections of 20.3 NMAC, each licensee or registrant (as appropriate) shall provide a written report to the department within 30 days of the occurrence of any of the following incidents involving radiographic equipment:

- (1) Unintentional disconnection of the source assembly from the control cable;
- (2) Inability to retract the source assembly to its fully shielded position and secure it in this position; and/or
- (3) Failure of any component (critical to safe operation of the device) to properly perform its intended function.

**B.** The licensee or registrant shall include the following information in each report submitted under Subsection A of 20.3.5.27 NMAC:

- (1) A description of the equipment problem;
- (2) Cause of each incident, if known;

- (3) Manufacturer and model number of equipment involved in the incident;
- (4) Place, time and date of the incident;
- (5) Actions taken to establish normal operations;
- (6) Corrective actions taken or planned to prevent recurrence; and
- (7) Qualifications of personnel involved in the incident.

**C.** Any licensee or registrant conducting radiographic operations, or storing radioactive material or radiation machine(s), at any location not listed on the license for a period in excess of 180 days in a calendar year, shall notify the Department in writing prior to exceeding the 180 days.

[20.3.5.27 NMAC - Rp, 20 NMAC 3.1.5.507, 5/19/02]

#### **20.3.5.28 INVENTORY ACCOUNTING REQUIREMENTS:**

##### **A. Receipt and Transfer of Sealed Sources.**

(1) Each licensee shall maintain records showing the receipts and transfers of sealed sources, radiation machines, and devices using DU for shielding and retain each record for 3 years after it is made.

(2) These records must include the date, the name of the individual making the record, radionuclide, number of becquerels (curies) or mass (for DU), and manufacturer, model, and serial number of each sealed source, radiation machine, and/or device, as appropriate.

##### **B. Quarterly Inventories.**

(1) Quarterly physical inventories shall be conducted by licensees and registrants to account for all sealed sources, radiography exposure devices, radiation machines, and devices containing depleted uranium received or in their possession. Inventory records shall be maintained for 3 years from the date of the inventory for inspection by the Department.

(2) Each record must include the date of the inventory, name of the individual conducting the inventory, quantities of radiation machines, radionuclide, number of becquerels (curies) or mass (for DU) in each device, location of sealed source and/or devices, and manufacturer, model, and serial number of each sealed source, radiation machines, and/or device, as appropriate.

[20.3.5.28 NMAC - Rp, 20 NMAC 3.1.5.511, 5/19/02]

### **20.3.5.29 OPERATING AND EMERGENCY PROCEDURES:**

**A.** Operating and emergency procedures must include, as a minimum, instructions in the following:

- (1) Appropriate handling and use of licensed sealed sources and radiographic exposure devices so that no person is likely to be exposed to radiation doses in excess of the limits established in Part 4 of 20.3 NMAC;
- (2) Methods and occasions for conducting radiation surveys;
- (3) Methods for controlling access to radiographic areas;
- (4) Methods and occasions for locking and securing radiographic exposure devices, transport and storage containers and sealed sources;
- (5) Personnel monitoring and the use of personnel monitoring equipment;
- (6) Transporting sealed sources to field locations, including packing of radiographic exposure devices and storage containers in the vehicles, placarding of vehicles when needed, and control of the sealed sources during transportation (refer to 49 CFR parts 171-173);
- (7) The inspection, maintenance, and operability checks of radiographic exposure devices, survey instruments, transport containers, and storage containers;
- (8) Steps that must be taken immediately by radiography personnel in the event a pocket dosimeter is found to be off-scale or an alarm ratemeter alarms unexpectedly;
- (9) The procedure for notifying proper persons in the event of an accident;
- (10) Minimizing exposure of persons in the event of an accident;
- (11) Source recovery procedure if licensee will perform source recovery;
- (12) Maintenance of records.

**B.** Each licensee or registrant shall maintain a copy of current operating and emergency procedures until the Department terminates the license or registration. Superseded material must be retained for 3 years after the change is made.

[20.3.5.29 NMAC - Rp, 20 NMAC 3.1.5.516, 5/19/02]

### **20.3.5.30 DOCUMENTS AND RECORDS REQUIRED AT TEMPORARY JOB SITES:**

Each licensee or registrant shall also maintain copies of the following documents and records sufficient to demonstrate compliance at each applicable field station and each temporary jobsite:

- A. Appropriate license or certificate of registration or equivalent document;
- B. Operating and emergency procedures;
- C. A copy of Parts 4, 5, and 10 of 20.3 NMAC;
- D. Survey records required pursuant to 20.3.5.17 NMAC and area survey records required pursuant to Part 4 of 20.3 NMAC for the period of operation at the site;
- E. Daily pocket dosimeter records for the period of operation at the site;
- F. The latest instrument calibration and leak test records for specific devices and sealed sources in use at the site. Acceptable records include tags or labels which are affixed to the device or survey meter;
- G. Utilization records for each radiographic exposure device dispatched from that location as required by Subsection J of 20.3.5.18 NMAC;
- H. Records of equipment problems identified in daily checks of equipment as required by Subsection A of 20.3.5.23 NMAC;
- I. Records of alarm system and entrance control checks required by Subsection B of 20.3.5.19 NMAC, if applicable;
- J. Evidence of the latest calibrations of alarm ratemeters and operability checks of pocket dosimeters and/or electronic personal dosimeters as required by Subsection H of 20.3.5.15 NMAC; and,
- K. The shipping papers for the transportation of radioactive materials required by 10 CFR 71.5.
- L. When operating under reciprocity pursuant to Part 3 of 20.3 NMAC, a copy of the Agreement State license authorizing the use of licensed materials.

[20.3.5.30 NMAC - Rp, 20 NMAC 3.1.5.522, 5/19/02]

## **PART 6: X-RAYS IN HEALING ARTS**

### **20.3.6.1 ISSUING AGENCY:**

Environmental Improvement Board.

[Recompiled 11/27/01]

**20.3.6.2 SCOPE:**

This Subpart [Part] establishes requirements, for which a registrant is responsible, for use of x-ray equipment by or under the supervision of an individual authorized by and licensed in accordance with state statutes to engage in the healing arts or veterinary medicine. The provisions of this Subpart [Part] are in addition to, and not in substitution for, other applicable provisions of these regulations.

[5-3-95; 20.3.6.2 NMAC - Rn, NMAC 3.1.6.600, Recompiled xx/xx/xx]

**20.3.6.3 STATUTORY AUTHORITY:**

[RESERVED]

**20.3.6.4 DURATION:**

[RESERVED]

**20.3.6.5 EFFECTIVE DATE:**

[RESERVED]

**20.3.6.6 OBJECTIVE:**

[RESERVED]

**20.3.6.7 DEFINITIONS:**

As used in this Subpart [Part]:

A. "Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

B. "Added filter" means the filter added to the inherent filtration.

C. "Aluminum equivalent" means the thickness of aluminum (type 1100 alloy) affording the same attenuation, under specified conditions as the material in question. (The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper.)

D. "Attenuation block" means a block or stack 3.8 cm thick of type 1100 aluminum alloy or other material having equivalent attenuation.

E. "Automatic exposure control" means a device which automatically controls one or more technique factors in order to obtain at a preselected location(s) a required quantity of radiation (see also "Phototimer").

F. "Barrier" (see "Protective barrier").

G. "Beam axis" means a line from the source through the center of the x-ray field.

H. "Beam-limiting device" means a device which provides a means to restrict the dimensions of the x-ray field.

I. "Changeable filter" means any filter, exclusive of inherent filtration, which can be removed from the useful beam through any electronic, mechanical or physical process.

J. "Coefficient of variation (SA)" means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

where:

$\bar{x}$  = mean value of observations in sample

$x_i$  =  $i$ th observation in sample

$N$  = number of observations in sample

K. "Collimator" means a device or mechanism by which the x-ray beam is restricted in size.

L. "Contact therapy system" means that the x-ray tube port is put in contact with, or within 5 centimeters of, the surface being treated.

M. "Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, pushbuttons, and other hardware necessary for manually setting the technique factors.

N. "Cooling curve" means the graphical relationship between heat units stored and cooling time.

O. "Dead man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

P. "Density (D)" (as used in conjunction with image receptors) means the logarithm to the base 10 of the ratio of the incident to the transmitted luminous flux, where  $I$  is luminous flux.

$D = \text{LOG SUB } 10 \left[ \frac{I_{\text{Incident}}}{I_{\text{Transmitted}}} \right]$

Q. "Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

R. "Diagnostic x-ray system" means an x-ray system designed for irradiation of any part of the human body for the purpose of diagnosis or visualization.

S. "Direct scattered radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam (see also "Scattered radiation").

T. "Entrance exposure rate" means the roentgens per unit time at the point where the center of the useful beam enters the patient.

U. "Equipment" (see "X-ray equipment").

V. "Exposure" means the quotient of  $dQ$  by  $dm$  where  $dQ$  is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass  $dm$  are completely stopped in air. (The special unit of exposure is the roentgen,  $1R = 2.58 \times 10^{-4} C/Kg$ )

W. "Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

X. "Filter" means material placed in the useful beam to absorb preferentially the less penetrating components.

Y. "Fluoroscopic imaging assembly" means a component which comprises a reception system in which x-ray photons produce a fluoroscopic image. It includes equipment housings, electrical interlocks if any, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

Z. "General purpose radiographic x-ray system" means any radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

AA. "Gonad shield" means a protective barrier for the testes or ovaries.

AB. "Half-value layer (HVL)" means the thickness of specified material which attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

AC. "Image intensifier" means a device which produces an image of greater contrast than would be produced without the device present.

AD. "Image receptor" means any device, such as a fluorescent screen or radiographic film, which transforms incident x-ray photons either into a visible image or into another form which can be made into a visible image by further transformations.

AE. "Inherent filtration" means filtration permanently in the useful beam; it includes the window of the x-ray tube and any permanent tube or source enclosure.

AF. "Interlock" means a device for precluding access to a radiation area by automatically terminating exposure upon entry by personnel.

AG. "Kilovolts peak (kVp)" (see "Peak tube potential").

AH. "kWs" means kilowatt second which is equal to the product of peak kilovolts, amperes, and seconds or 103 kVmA sec.

AI. "Lead equivalent" means the thickness of material in question affording the same attenuation, under specified conditions, as the lead in question.

AJ. "Leakage radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for:

- (1) the useful beam; and
- (2) radiation produced when the exposure switch or timer is not activated.

AK. "Leakage technique factors" means the technique factors associated with the tube housing assembly which are used in measuring leakage radiation. They are defined as follows:

- (1) For capacitor energy storage equipment, the maximum rated number of exposures in an hour for operation at the maximum rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs (mAs) or the minimum obtainable from the unit, whichever is larger.

- (2) For field emission equipment rated for pulsed operation, the maximum rated number of x-ray pulses in an hour for operation at the maximum rated peak tube potential.

- (3) For all other equipment, the maximum rated continuous tube current for the maximum rated peak tube potential.

AL. "Light field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of

the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

AM. "Line pair" means an object in which parallel wires or strips are placed so that the space between each wire or strip is equal to the width of the wire or strip. A line pair is one space and a strip or wire.

AN. "Linear Accelerator" means a device for accelerating particles employing alternate electrodes and gaps arranged in a straight line, so proportioned that when their potentials are varied in the proper amplitude and frequency, particles passing through them receive successive increments of energy.

AO. "Line-voltage regulation" means the difference between the no-load and the load potentials expressed as a percent of the load line potential, that is: Percent line-voltage regulation =  $100 (V_n - V_1) / V_1$  where:

(1)  $V_n$  = No-load line potential and

(2)  $V_1$  = Load line potential

AP. "Maximum line current" means the root mean square current in the supply line of an x-ray machine operating at its maximum rating.

AQ. "Mobile equipment" (see "X-ray equipment").

AR. "Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

AS. "Personal monitoring" means the estimation of dose to a person.

AT. "Phototimer" means a method for controlling radiation exposures to image receptors by the amount of radiation which reaches a radiation monitoring device(s). The radiation monitoring device(s) is part of an electronic circuit which controls the duration of time the tube is activated (see also "Automatic exposure control").

AU. "Portable equipment" (see "X-ray equipment").

AV. "Position indicating device (PID)" means a device on dental x-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

AW. "Primary protective barrier" (see "Protective barrier").

AX. "Protective apron" means an apron made of radiation absorbing materials, used to reduce radiation exposure.

AY. "Protective barrier" means a barrier of radiation absorbing material(s) used to reduce radiation exposure. The types of protective barriers are as follows:

(1) "Primary protective barrier" means the material, excluding filters, placed in the useful beam, for protection purposes, to reduce the radiation exposure; and

(2) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

AZ. "Protective glove" means a glove made of radiation absorbing materials used to reduce radiation exposure.

BA. "Qualified expert" (see 106.CC [Subsection CC. Of Section 7 of 20.3.1.7 NMAC]).

BB. "Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

BC. "Radiographic imaging system" means any system whereby a permanent or semi-permanent image is recorded on an image receptor by the action of ionizing radiation.

BD. "Recording" means producing a permanent form of an image resulting from x-ray photons (e.g., film, video tape).

BE. "Registrant", as used in this Subpart [Part], means any person who owns or possesses and administratively controls an x-ray system which is used to deliberately expose humans or animals to the useful beam of the system and is required by the provisions in Subpart 1 and 2 [Part 1 and 2] of these regulations to register with this Department.

BF. "Repair person (Service person)" means an individual who maintains an x-ray system; not limited to a manufacturer, assembler or user.

BG. "Response time" means the time required for an instrument system to reach 90 percent of its final reading when the radiation-sensitive volume of the instrument system is exposed to a step change in radiation flux from zero sufficient to provide a steady state midscale reading.

BH. "Scattered radiation" means radiation that, during passage through matter, has been deviated in direction (see also "Direct scattered radiation").

BI. "Secondary protective barrier (see "Protective barrier").

BJ. "SID" (see "Source-image receptor distance").

BK. "Source" means the focal spot of the x-ray tube.

BL. "Source-image receptor distance (SID)" means the distance from the source to the center of the input surface of the image receptor.

BM. "Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

BN. "Stationary equipment " (see "X-ray equipment").

BO. "Stray radiation" means the sum of leakage and scattered radiation.

BP. "Technique factors" means the conditions of operation. They are specified as follows:

(1) For capacitor energy storage equipment, peak tube potential in kVp and quantity of charge in mAs;

(2) For field emission equipment rated for pulsed operation, peak tube potential in kVp and number of x-ray pulses; and

(3) For all other equipment, peak tube potential in kVp and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

BQ. "Therapeutic-type protective tube housing" means the tube housing with tube installed and it includes high voltage or filament transformers and other appropriate elements when they are contained within that housing.

BR. "Tube" means an x-ray tube, unless otherwise specified.

BS. "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and other appropriate elements when they are contained within the tube housing.

BT. "Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

BU. "Useful beam" means the radiation which passes through the tube housing port and the aperture of the beam-limiting device when the exposure switch or timer is activated.

BV. "Variable-aperture beam-limiting device" means a beam-limiting device which has capacity for stepless adjustment of the x-ray field size at a given SID.

BW. "Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons produce a visible image.

BX. "X-ray control" means a device which controls input power to the x-ray high-voltage generator of the x-ray tube. It includes equipment which controls the technique factors of an x-ray exposure.

BY. "X-ray equipment" means an x-ray system, subsystem or component thereof. Types of x-ray equipment are as follows:

- (1) Mobile means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled;
- (2) Portable means x-ray equipment designed to be hand-carried;
- (3) Stationary means x-ray equipment which is installed in a fixed location;  
and
- (4) Transportable means x-ray equipment installed in a vehicle or trailer.

BZ. "X-ray field" means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

CA. "X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube(s), high-voltage switches, electrical protective devices, and other appropriate elements.

CB. "X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures.

CC. "X-ray subsystem" means any combination of two or more components of an x-ray system for which there are requirements specified in this Subpart [Part].

CD. "X-ray tube" means any electron tube which is designed for the conversion of electrical energy into x-ray energy.

[5-3-95; 20.3.6.7 NMAC – Rn, 20 NMAC 3.1.6.601, Recompiled xx/xx/xx]

#### **20.3.6.602 GENERAL REQUIREMENTS:**

A. Administrative Controls:

(1) Registrant: The registrant shall be responsible for directing the operation of the x-ray machines which he has registered with the Department. He or his agent shall assure that the following provisions are met in the operation of the x-ray machine(s).

(a) An x-ray machine which does not meet the provision of these regulations shall not be operated for diagnostic or therapeutic purposes, if so directed by the Department.

(b) Individuals who will be operating the x-ray equipment shall be adequately instructed in the safe operating procedures and be competent in the safe use of the equipment.

(c) In the vicinity of each x-ray system's control panel a chart shall be provided which specifies for all examinations which are performed by that system a listing of information, including but not limited to the following, for each projection within that examination:

- (i) patient's anatomical size versus technique factors to be utilized;
- (ii) type of and size of the film or film-screen combination to be used;
- (iii) type of grid to be used if any, and focal distance;
- (iv) source to image receptor distance to be used; and
- (v) type and location of placement of gonad shielding to be used.

(d) Written safety procedures and rules shall be provided to each individual operating x-ray equipment under his control, including any restrictions of the operating technique required for the safe operation of the particular x-ray system. The operator shall be able to demonstrate familiarity with these rules.

(e) Except for patients who cannot be moved out of the room, only the staff and ancillary personnel required for the medical procedure or training shall be in the room during the radiographic exposure. Other than the patient being examined:

- (i) all individuals shall be positioned such that no part of the body including the extremities not protected by 0.5 mm lead equivalent, will be struck by the useful beam;
- (ii) staff and ancillary personnel shall be protected from the direct scatter radiation by protective aprons or whole body protective barriers of not less than 0.25 mm lead equivalent;

(iii) patients who cannot be removed from the room shall be protected from the direct and scatter radiation by whole body protective barriers of 0.25 mm lead equivalent or shall be so positioned that the nearest portion of the body is at least 2 meters from both the tube head and the nearest edge of the image receptor;

(iv) when a portion of the body of any staff or ancillary personnel is potentially subjected to stray radiation which could result in that individual receiving one quarter of the maximum permissible dose as defined in Subpart 4 [Part 4] additional protective devices may be required by the Department;

(f) Gonad shielding of not less than 0.25 mm lead equivalent shall be used for patients who have not passed the reproductive age during radiographic procedures in which the gonads are in the direct (useful) beam, except for cases in which this would interfere with the diagnostic procedures;

(g) Patients shall not be exposed to the useful beam except for healing arts purposes, each exposure of which has been authorized by a licensed practitioner of the healing arts. This provision specifically prohibits deliberate exposure for the following purposes:

(i) exposure of an individual for training, demonstration or other purpose unless there are also healing arts requirements and proper prescription has been provided; and

(ii) exposure of an individual for the purpose of healing arts screening without prior written approval of the Department. (Screening means an exposure of a person without a prior examination by a licensed practitioner).

(h) When a patient or film must be provided with auxiliary support during a radiation exposure:

(i) mechanical holding devices shall be used when the technique permits. The safety rules, required by 602 [Section 602 of 20.3.6.602 NMAC]. shall list individual projections where holding devices cannot be utilized;

(ii) written safety procedures, as required by 602.A.1.d [Subparagraph (d), Paragraph (1), Subsection A., Section 602 of 20.3.6.602 NMAC], shall indicate the requirements for selecting a holder and the procedure the holder shall follow;

(iii) the human holder shall be protected as required by 602.A.1.e [Subparagraph (e), Paragraph (1), Subsection A., Section 602 of 20.3.6.602 NMAC];

(iv) no person shall be used routinely to hold film or patients;

(v) such holding shall be permitted only in very unusual and rare situations; and

(vi) all x-ray room doors shall be closed before an exposure is made;

(i) Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized. This is interpreted to include but is not limited to:

(i) the speed of film or screen and film combinations shall be the fastest speed consistent with the diagnostic objective of the examinations;

(ii) the radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality; and

(iii) portable or mobile equipment shall be used only for examinations where it is impractical to transfer the patient(s) to a stationary installation;

(j) Personnel monitoring. All persons who are associated with the operation of an x-ray system are subject to the occupational exposure limits and the requirements for the determination of the doses which are stated in 405 and 412 [ Section 405 and 412 of 20.3.4.405 and 412 NMAC]. In addition, the following requirements are made:

(i) when protective clothing or devices are worn on portions of the body and a monitoring device(s) is required, at least one such device shall be utilized as follows: 1) when an apron is worn, the monitoring device shall be worn at collar level outside of the apron; and 2) the dose to the whole body based on the maximum dose attributed to any one critical organ (which are the gonads, the blood forming organs, head and trunk, or lens of the eye) shall be recorded in the reports required by 452 [Section 452 of 20.3.4.452 NMAC]. If more than one device is used, each dose shall be identified with the area of the body where the device was worn;

(ii) exposure of a personnel monitoring device to deceptively indicate a dose delivered to an individual is prohibited.

(2) Information and Maintenance Record and Associated Information: The registrant shall maintain at least the following information for each x-ray machine:

(a) Maximum rating of technique factors;

(b) Model numbers of all certifiable components;

(c) Aluminum equivalent filtration of the useful beam; including any routine variation;

(d) Tube rating charts and cooling curves;

(e) Record of surveys, calibrations, maintenance, modifications (from the original schematics and drawings) performed on the x-ray machine after the effective date of these regulations, along with the names of persons who performed the service;

(f) A scale drawing of the room in which a stationary x-ray system is located. The drawing shall denote the type of materials and their thickness (or lead equivalence) provided by each barrier of the room (walls, ceilings, floors, doors, windows). The drawing shall also denote the type of occupancy of adjacent areas to include above and below the x-ray room of concern (e.g., hallways, office, parking lots, and toilets). Estimates of the frequency of such occupancy shall also be noted on the drawing; and

(g) A copy of all correspondence with this Department regarding that x-ray machine.

(3) X-ray Log. Each facility shall maintain an x-ray log containing the examinations and the dates those examinations were performed. The log shall indicate when techniques for procedures vary from those specified in the technique chart required in 602.A.1.c [Subparagraph (c), Paragraph (1), Subsection A. , Section 602 of 20.3.6.602 NMAC].

#### B. Plan Review:

(1) Prior to construction, the floor plans and equipment arrangement of all installations (new or modifications of existing installations) utilizing x-rays for diagnostic or therapeutic purposes shall be submitted to the Department for review and approval. The required information is denoted in Subpart 6, 610 and 611 [Part 6, Sections 610 and 611 of 20.3.6.610 and 611].

(2) The Department may require the applicant to utilize the services of a qualified expert to determine the shielding requirement prior to the plan review and approval.

(3) The approval of such plans shall not preclude the requirement of additional modifications should a subsequent analysis of operating conditions indicate the possibility of an individual receiving a dose in excess of the limits prescribed in 405 to 412 [Sections 405 to 412 of 20.3.4.405 to 412 NMAC].

(4) For all medical facilities in hospitals or clinics, interlocks shall be required on all doors leading into diagnostic x-ray rooms when the doors cannot be seen by the operator at the control station.

C. Chemicals, film processing and darkroom will be complied with in accordance with Subpart 6, 612 [Part 6, Section 612 of 20.3.6.612 NMAC].

**20.3.6.603 GENERAL REQUIREMENTS FOR ALL DIAGNOSTIC X-RAY SYSTEMS:**

In addition to other requirements of this Subpart, all diagnostic x-ray systems shall meet the following requirements:

A. Warning Label: The control panel containing the main power switch shall bear the warning statement, legible and accessible to view: "WARNING: This X-ray Unit May Be Dangerous To Patient and Operator Unless Safe Exposure Factors and Operating Instructions Are Observed";

B. Battery Charge Indicator: On battery-powered generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation;

C. Leakage Radiation from the Diagnostic Source Assembly: The leakage radiation from the diagnostic source assembly measured at a distance of 1 m in any direction from the source shall not exceed 100 mR (1 mSv) in 1 hour when the x-ray tube is operated at its leakage technique factor. Compliance shall be determined by measurements averaged over an area of 100 sq cm (39.37 inches) with no linear dimension greater than 20 cm (7.87 inches); and

D. Radiation from Components other than the Diagnostic Source Assembly: The radiation emitted by a component other than the diagnostic source assembly shall not exceed 2 mR (2 mSv) in 1 hour at 5 cm from any accessible surface of the component when it is operated in an assembled x-ray system under any conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 sq cm (39.37 inches) with no linear dimension greater than 20 cm (7.87 inches).

E. Beam Quality:

(1) Half-value layer:

(a) The half-value layer (HVL) of the useful beam for a given x-ray tube potential shall not be less than the values shown in Table 603.1 [Table 1, Section 603 of 20.3.6.603 NMAC]. If it is necessary to determine such half-value layer at an x-ray tube potential which is not listed in Table 603.1 [Table I, Section 603 of 20.3.6.603 NMAC], linear interpolation or extrapolation may be made.

TABLE I

Design operating range	Measured potential	Half-value layer
(Kilovolts peak)	(Kilovolts peak)	aluminum) (Millimeters of)

Below 50	30	0.3	
	40	0.4	
	49	0.5	
50 to 70	50		1.2
	60	1.3	
	70	1.5	
Above 70	71	2.1	
	80	2.3	
	90	2.5	
	100	2.7	
	110	3.0	
	120	3.2	
	130	3.5	
	140	3.8	
	150	4.1	

(b) The above HVL criteria will be considered to have been met if it can be demonstrated that the aluminum equivalent of the total filtration in the primary beam is not less than that shown in Table 603.2 [Table II of Section 603, 20.3.6.603 NMAC].

TABLE II

FILTRATION REQUIRED vs. OPERATING VOLTAGE

Total Filtration (inherent plus added)

Operating Voltage (millimeters aluminum  
(kVp)equivalent)

Below 50 0.5 mm

50 - 70	1.5 mm
Above 70	2.5 mm

(c) Beryllium window tubes shall have a minimum of 0.5 mm aluminum equivalent filtration permanently mounted in the useful beam.

(d) For capacitor energy storage equipment, compliance shall be determined with the maximum quantity of charge per exposure.

(e) The required minimal aluminum equivalent filtration shall include the filtration contributed by all materials which are always present between the focal spot of the tube and the patient (e.g., a tabletop when the tube is mounted "under the table" and inherent filtration of the tube).

(2) Filtration control: For x-ray systems manufactured after August 1, 1974, which have variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filter(s) and will prevent an exposure unless the minimum required amount of filtration (see Table 603.1 or Table 603.2 above [Table I or II, Section 603 of 20.3.6.603 NMAC]) is in the useful beam for the given kVp which has been selected.

F. Multiple Tubes: Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes which have been selected shall be clearly indicated prior to initiation of the exposure. This indication shall be both on the x-ray control and at or near the tube housing assembly which has been selected.

G. Mechanical Support of Tube Head: The tube housing assembly supports shall be adjusted such that the tube housing assembly will remain stable during an exposure unless the tube housing movement is a designed function of the x-ray system.

H. Technique Indicators:

(1) The technique factors to be used during an exposure shall be indicated before the exposure begins, except when automatic exposure controls are used, in which case the technique factors which are set prior to the exposure shall be indicated.

(2) On equipment having fixed technique factors, the requirement, 603.H.1 [Paragraph (1), Subsection H., Section 603 of 20.3.6.603 NMAC], may be met by permanent markings. Indication of technique factors shall be visible from the operator's position except in the case of spot films by the fluoroscopist.

[5-3-95; 20.3.6.603 NMAC – Rn, 20 NMAC 3.1.6.603, Recompiled xx/xx/xx]

**20.3.6.604 FLUOROSCOPIC X-RAY SYSTEMS:**

All fluoroscopic x-ray systems shall meet the following requirements.

A. Limitation of Useful Beam:

(1) The fluoroscopic tube shall not produce x-rays unless the primary protective barrier is in position to intercept the entire useful beam at all times.

(2) The entire cross-section of the useful beam shall be intercepted by the primary protective barrier of the fluoroscopic image assembly at any SID.

(3) Limitation to the Imaging Surface.

(a) Non-Image-Intensified Fluoroscopy and Spot Filming: The x-ray field produced by non-image-intensified fluoroscopic equipment shall not extend beyond the entire visible area of the image receptor. This requirement applies to field size during both fluoroscopic procedures and spot-filming procedures.

(b) Image-Intensified Fluoroscopy and Spot Filming.

(i) During fluoroscopic or spot-filming procedures, neither the length nor the width of the x-ray field in the plane of the image receptor shall exceed the visible area of the image receptor by more than 3 percent of the SID. The sum of the excess length and the excess width shall be no greater than 4 percent of the SID.

(ii) Compliance shall be determined with the beam axis perpendicular to the image receptor. For rectangular x-ray fields used with circular image reception, the error in alignment shall be determined along the length and width dimensions of the x-ray field which pass through the center of the visible area of the image receptor.

B. Activation of the Fluoroscopic Tube: X-ray production in the fluoroscopic mode shall be controlled by a device which requires continuous pressure by the fluoroscopist for the entire time of any exposure. When recording serial fluoroscopic images, the fluoroscopist shall be able to terminate the x-ray exposure(s) at any time, but means may be provided to permit completion of any single exposure of the series in process.

C. Entrance Exposure Rate Allowable Limits:

(1) The exposure rate measured at the point where the center of the useful beam enters the patient shall not exceed 10 R per minute, (2.58 mC/kg) except during recording of fluoroscopic images or when provided with optional high-level control.

(2) When provided with optional high-level control, the equipment shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of 5 Rem (1.29 mC/kg) per minute at the point where the center of the useful beam enters the patient unless the high-level control is activated. A

continuous signal audible to the fluoroscopist shall indicate that the high-level control is being employed.

(3) Measuring Compliance of Entrance Exposure Rate Limits: Compliance with 604.C [Subsection C., Section 604 of 20.3.6.604 NMAC] shall be determined by:

(a) removing movable grids and compression devices from the useful beam during the measurements;

(b) if the source is below the table, express exposure rate, 1 cm above the tabletop or cradle;

(c) express exposure rate, if the source is above the table, 30 cm above the tabletop with the end of the beam-limiting device or spacer positioned as closely as possible to the point of measurement; and

(d) in a C-arm type of fluoroscope, the exposure rate shall be measured, 30 cm (11.81 inches) from the input surface of the fluoroscopic imaging assembly.

(4) Periodic measurement of entrance exposure rate limits:

(a) periodic measurements of the exposure rate shall be made by a qualified expert. An adequate period for such measurements shall be annually or after any maintenance of the system which might affect the exposure rate.

(b) results of these measurements shall be posted where any fluoroscopist may have ready access to such results while using that fluoroscope and in the record required in 602.A.2.e [Subparagraph (e), Paragraph (2), Subsection A., Section 602 of 20.3.6.602 NMAC]. Results of the measurements shall include the maximum possible Rem/per minute, (1.29 mC/kg) as well as the physical factors used to determine all data; the name of the person performing the measurements; and the date the measurements were performed.

(c) Use of monitoring devices (e.g., commercially available film badges, thermoluminescent dosimeters, or low-energy dosimeters) may be used to perform the test, provided the measurements are made as noted in 604.C.4.d [Subparagraph (d), Paragraph (4), Subsection C. Section 604 of 20.3.6.604 NMAC].

(d) Conditions of measurement:

(i) the measurement shall be made under the conditions that satisfy the requirements of 604.C.3 [Paragraph (3), Subsection C., Section 604 of 20.3.6.604 NMAC];

(ii) the kVp shall be the peak Kv that the x-ray system is capable of producing;

(iii) the high-level control, if present, shall not be activated;

(iv) the x-ray systems that do not incorporate automatic exposure control (automatic brightness control, etc.) shall have sufficient material (e.g., lead or lead equivalence) placed in the useful beam to produce the maximum milliamperage of the x-ray system; and

(v) x-ray systems that incorporate automatic exposure control shall utilize the maximum milliamperage of the x-ray system. Materials (e.g. an attenuation block) may be placed in the useful beam to protect the imaging system.

#### D. Barrier Transmitted Radiation Rate Limits:

(1) The exposure rate due to transmission through the primary protective barrier with the attenuation block in the useful beam combined with radiation from the image intensifier, if provided, shall not exceed 2 mR (0.516 mC/kg) per hour at 10 cm (3.93 inches) from any surface of the fluoroscopic imaging assembly beyond the plane of the image receptor for each roentgen per minute of entrance exposure rate.

(2) Measuring compliance of barrier transmission:

(a) The exposure rate due to transmission through the primary protective barrier combined with radiation from the image intensifier shall be determined by measurements averaged over an area of 100 sq cm with no linear dimension greater than 20 cm (7.87 inches).

(b) If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly, positioned 30 cm (11.81 inches) above the tabletop.

(c) If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 cm (11.81 inches).

(d) Movable grids and compression devices shall be removed from the useful beam during the measurement.

(e) The attenuation block shall be positioned in the useful beam 10 cm (3.93 inches) from the point of measurement of entrance exposure rate and between this point and the input surface of the fluoroscopic imaging assembly.

E. Indication of Potential and Current: During fluoroscopy and cinefluorography, x-ray tube potential and current shall be continuously indicated.

F. Source-Skin Distance: The source to skin distance shall not be less than:

(1) 38 cm (14.96 inches) on stationary fluoroscopes installed after March 10, 1989;

(2) 35.5 cm (13.98 inches) on stationary fluoroscopes which are in operation prior to March 10, 1989;

(3) 30 cm (11.81 inches) on all mobile fluoroscopes; and

(4) 20 cm (7.87 inches) for image intensified fluoroscopes used for specific surgical application. The users operating manual must provide precautionary measures to be adhered to during the use of this device.

#### G. Fluoroscopic Timer:

(1) Means shall be provided to preset the cumulative on-time of the fluoroscopic tube. The maximum cumulative time of the timing device shall not exceed 5 minutes without resetting.

(2) A signal audible to the fluoroscopist shall indicate the completion of any preset cumulative on-time. Such signal shall continue to sound while x-rays are produced until the timing device is reset.

H. Mobile Fluoroscopes: In addition to the other requirements of 604 [Section 604 of 20.3.6.604 NMAC], mobile fluoroscopes shall provide intensified imaging.

#### I. Control of Scattered Radiation:

(1) Fluoroscopic table designs when combined with procedures utilized shall be such that no unprotected part of any staff or ancillary person's body shall be exposed to unattenuated scattered radiation which originates from under the table. The attenuation required shall be not less than 0.25 mm lead equivalent.

(2) Equipment configuration when combined with procedures shall be such that no portion of any staff or ancillary person's body, except the extremities, shall be exposed to the unattenuated scattered radiation emanating from above the tabletop unless that individual:

(a) is at least 120 cm (47.24 inches) from the center of the useful beam; or

(b) the radiation has passed through not less than 0.25 mm lead equivalent material (e.g., drapes, Bucky-slot cover, sliding or folding panel, or self supporting curtains) in addition to any lead equivalency provided by the protective apron referred to in 602 A.1.e.(2)[Item (ii), Subparagraph (e), Paragraph (1), Subsection A., Section 602 of 20.3.6.602 NMAC]; and

(c) Exceptions to 604.1.2 [Paragraph (2), Subsection I., Section 604 of 20.3.6.604 NMAC] may be made in some special procedures where a sterile field will not permit the use of the normal protective barriers. Where the use of the prefitted sterilized cover for the barriers is practical, the Department shall not permit such exception.

[5-3-95; 20.3.6.604 NMAC – Rn, 20 NMAC 3.1.6.604, Recompiled xx/xx/xx]

**20.3.6.605 RADIOGRAPHIC SYSTEMS OTHER THAN FLUOROSCOPIC, DENTAL, INTRAORAL, OR VETERINARIAN OR COMPUTED TOMOGRAPHY X-RAY SYSTEMS:**

A. Beam Limitation: The useful beam shall be limited to the area of clinical interest.

(1) General purpose stationary and mobile x-ray systems:

(a) Variable field limitation: There shall be provided a means for stepless adjustment of the size of the x-ray field. The minimum field size at a SID of 100 cm shall be equal to or less than 5 cm (1.96 inches) by 5 cm (1.96 inches).

(b) Visual Definition: Means shall be provided for visually defining the perimeter of the x-ray field. The total misalignment of the edges of the x-ray field along either the length or width of the visually defined field shall not exceed 2 percent of the distance from the source to the center of the visually defined field when the surface upon which it appears is perpendicular to the axis of the x-ray beam.

(2) Additional Requirements for Stationary General Purpose X-ray Systems: In addition to the requirements in 605.A.1 [Paragraph (1), Subsection A., Section 605 of 20.3.6.605 NMAC] above, all stationary x-ray systems shall:

(a) provide means to indicate when the axis of the x-ray beam is perpendicular to the plane of the image receptor, to align the center of the x-ray field with respect to the center of the image receptor to within 2 percent of the SID, and to indicate the SID to within 2 percent;

(b) be equipped with a beam-limiting device that numerically indicates the field size in the plane of the image receptor to which it is adjusted; and

(c) indicate field size dimensions and SID's in inches or cm, and shall be such that aperture adjustments result in x-ray field dimensions in the plane of the image receptor which correspond to those of the image receptor to within 2 percent of the SID when the beam axis is perpendicular to the plane of the image receptor.

(3) X-ray Systems Designed for One Image Receptor Size: Radiographic equipment designed for only one image receptor size at a fixed SID shall be provided with means to limit the field at the plane of the image receptor to dimensions no greater

than those of the image receptor, and to align the center of the x-ray field with the center of the image receptor to within 2 percent of the SID.

(4) Special purpose x-ray systems:

(a) Shall be provided with means to limit the x-ray field in the plane of the image receptor so that such field does not exceed each dimension of the image receptor by more than 2 percent of the SID when the axis of the x-ray beam is perpendicular to the plane of the image receptor.

(b) Shall be provided with means to align the center of the x-ray field with the center of the image receptor to within 2 percent of the SID.

(c) The above, 605.A.4.a and 605.A.4.b [Subparagraphs (a) and (b), Paragraph (4), Subsection A., Section 605 of 20.3.6.605 NMAC], may be met with a system that meets the requirements for a general purpose x-ray system as specified in 605.A.1 [Paragraph (1), Subsection A., Section 605 of 20.3.6.605 NMAC] above or, when alignment means are also provided, may be met with either:

(i) an assortment of removable, fixed-aperture, beam-limiting devices sufficient to meet the requirements for each combination of image receptor size and SID for which the unit is designed (each such device shall have clear and permanent markings to indicate the image receptor size and SID for which it is designed); or

(ii) a beam-limiting device having multiple fixed apertures sufficient to meet the requirements for each combination of image receptor size and SID for which the unit is designed. Permanent, clearly legible markings shall indicate the image receptor size and SID for which each aperture is designed and shall indicate which aperture is in position for use.

B. Radiation Exposure Control Devices:

(1) Timers: Means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. In addition:

(a) termination of exposure shall cause automatic resetting of the timer to its initial setting or to zero; and

(b) it shall not be possible to make an exposure when the timer is set to a zero or off position if either position is provided.

(2) X-ray control (exposure switch):

(a) A control shall be incorporated into each x-ray system such that an exposure can be terminated at any time except for:

- (i) exposure of one-half second or less; or
- (ii) during serial radiography when means shall be provided to permit completion of any single exposure of the series in process.

(b) Each x-ray control shall:

- (i) for stationary x-ray systems be permanently mounted in a protected area so that the operator is required to remain in that protected area during the entire exposure; or

- (ii) mobile and portable x-ray systems which are: 1) used for greater than one week in one location (one room or suite) shall meet the requirements of 605.B.2.b.(1) [Item (i), Subparagraph (b), Paragraph (2), Subsection B., Section 605 of 20.3.6.605 NMAC] above; 2) used for more than 1 hour and less than 1 week at one location (one room, or suite) shall meet the requirement of 605.B.2.b.(2)(a) [Item (ii), Subparagraph (b), Paragraph (2), Subsection B., Section 605 of 20.3.6.605 NMAC] or be provided with 1.98 m (6.5 feet) high protective barrier which is placed at least 1.83 m (6 feet) from the tube housing assembly and at least 1.83 m (6 feet) from the patient; or 3) used to make an exposure(s) of only one patient at the use location shall meet the requirement of 605.B.2.b.(2)(a) [Item (ii), Subparagraph (b), Paragraph (2), Subsection B., Section 605 of 20.3.6.605 NMAC] or 605.B.2.b.(2)(b) [Item(ii), Subparagraph (b), Paragraph (2), Subsection B., Section 605 of 20.3.6.605 NMAC] or be provided with a method of control which will permit the operator to be at least 3.66 m (12 feet) from the tube head assembly during an exposure.

- (iii) the x-ray control shall provide visual indication observable at or from the operator's protected position whenever x-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(3) Automatic Exposure Controls (Phototimer): When an automatic exposure control is provided:

- (a) indication shall be made on the control panel when this mode of operation is selected;

- (b) when the x-ray tube potential is equal to or greater than 50 kVp, the minimum exposure time for field emission equipment rated for pulsed operation shall be equal to or less than a time interval equivalent to two pulses;

- (c) the minimum exposure time for all equipment other than specified in 605.B.3.b [Subparagraph (b), Paragraph (3), Subsection B., Section 605 of 20.3.6.605 NMAC] shall be equal to or less than 1/60 second or a time interval required to deliver 5 mAs, whichever is greater;

(d) Either the product of peak x-ray tube potential, current, and exposure time shall be limited to not more than 60 kW per exposure or the product of x-ray tube current and exposure time shall be limited to not more than 600 mAs per exposure except when the x-ray tube potential is less than 50 kVp in which case the product of x-ray tube current and exposure time shall be limited to not more than 2000 mAs per exposure; and

(e) A visible signal shall indicate when an exposure has been terminated at the limits described in 605.B.3.d [Subparagraph (d), Paragraph (3), Subsection B., Section 605 of 20.3.6.605 NMAC], and manual resetting shall be required before further automatically timed exposures can be made. [5-3-95]

(4) Reproducibility: With a timer setting of 0.5 seconds or less, the average exposure period (T) shall be greater than or equal to 5 times the maximum exposure period (Tmax) minus the minimum exposure period (Tmin) when 4 timer tests are performed:  $T \geq 5(T_{max} - T_{min})$ .

C. Source-to-Source or Receptor Distance Limitation: All radiographic systems shall be provided with a durable, securely fastened means to limit the source-to-skin distance to not less than 30 cm (11.81 inches). This can be met when the collimator or cone provides the required limits.

D. Exposure Reproducibility: The exposure produced shall be reproducible to within the following criteria: When all technique factors are held constant, the coefficient of variation shall not exceed 0.10. This shall be deemed to have been met if when four exposures at identical technique factors are made that the value of the average exposure (E) is greater than or equal to five times the maximum exposure (Emax), minus the minimum exposure (Emin).  $E \geq 5(E_{max} - E_{min})$

E. Standby Radiation from Capacitor Energy Storage Equipment: Radiation emitted from the x-ray tube when the exposure switch or timer is not activated shall not exceed a rate of 2 mR (20 mSv) per hour at 5 cm (1.96 inches) from any accessible surface of the diagnostic source assembly, with the beam-limiting device fully open.

[5-3-95; 20.3.6.605 NMAC – Rn, 20 NMAC 3.1.6.605, Recompiled xx/xx/xx]

### **20.3.6.606 INTRAORAL DENTAL RADIOGRAPHIC SYSTEMS:**

In addition to the provisions of 602 and 603 [Sections 602 and 603 of 20.3.6.602 and 603 NMAC], the requirements of this section apply to x-ray equipment and associated facilities used for dental radiography. Criteria for extraoral dental radiographic systems are covered in 605 [Section 605 of 20.3.6.605 NMAC].

A. Source-to-Skin Distance: X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance to not less than:

- (1) 18 cm (7.09 inches) if operable above 50 kVp; or
- (2) 10 cm (3.93 inches) if not operable above 50 kVp.

B. Field Limitation:

(1) Radiographic systems designed for use with an intraoral image receptor shall be provided with means to limit the x-ray beam such that:

(a) if the minimum source-to-skin distance (SSD) is 18 cm (7.09 inches) or more, the x-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than 7 cm (2.76 inches); and

(b) if the minimum SSD is less than 18 cm, (7.09 inches) the x-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than 6 cm (2.36 inches).

C. Timers: Means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. In addition:

(1) Termination of exposure shall cause automatic resetting of the timer to its initial setting or to zero;

(2) It shall not be possible to make an exposure when the timer is to a zero or off position if either position is provided;

(3) Reproducibility: With a timer setting of 0.5 seconds or less, the average exposure period (T) shall be greater than or equal to 5 times the maximum exposure period (T<sub>max</sub>) minus the minimum exposure period (T<sub>min</sub>) when 4 timer tests are performed:  $T \geq 5(T_{max} - T_{min})$ .

D. X-ray Control (use of dead-man timers):

(1) A control shall be incorporated into each x-ray system such that an exposure can be terminated at any time, except for exposures of one-half second or less;

(2) Each x-ray control shall be located in such a way as to meet the following criteria:

(a) for stationary x-ray systems, it shall be required that the control switch be permanently mounted in a protected area (e.g., corridor outside the room) so that the operator is required to remain in that protected area during the entire exposure;

(b) for mobile and portable x-ray systems which are:

(i) used for greater than 1 week in one location (one room or suite) shall meet the requirements of 606.D.2.a [Subparagraph (a), Paragraph (2), Subsection D., Section 606 of 20.3.6.606 NMAC];

(ii) used for more than 1 hour and less than 1 week at one location (one room, or suite) shall meet the requirements of 606.D.2.b.(1) [Item (i), Subparagraph (b), Paragraph (2), Subsection D., Section 606 of 20.3.6.606 NMAC]] or be provided with 1.98 m (6.5 feet) high protective barrier which is placed at least 1.83 m (6 feet) from the tube housing assembly and at least 1.83 m (6 feet) from the patient;

(iii) used to make an exposure(s) of only one patient at the use location shall meet the requirement of 606.D.2.b.(1) or 606.D.2.b.(2) [Items (i) or (ii), Subparagraph (b), Paragraph (2), Subsection D., Section 606 of 20.3.6.606 NMAC] or be provided with a method of control which will permit the operator to be at least 3.63 m (12 feet) from the tube head assembly during an exposure.

(3) The x-ray control shall provide visual indication observable at or from the operator's protected position whenever x-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated; and

(4) From the operator's position, the patient must be capable of being viewed directly or via mirrors.

E. Exposure Reproducibility: The exposure produced shall be reproducible to within the following criteria: When all technique factors are held constant, the coefficient of variation shall not exceed 0.10. This shall be deemed to have been met if when four exposures at identical technique factors are made that the value of the average exposure ( $E$ ) is greater than or equal to five times the maximum exposure ( $E_{max}$ ) minus the minimum exposure ( $E_{min}$ ).  $E > 5(E_{max} - E_{min})$

#### F. Operating Controls:

(1) Patient and film holding devices shall be used when the techniques permit. The safety rules, required by 602.A.1.d [Subparagraph (d), Paragraph (1), Subsection A., Section 602 of 20.3.6.602 NMAC], shall list individual projections where holding devices cannot be utilized.

(2) Neither the tube housing nor the position indicating device shall be hand-held during an exposure.

(3) The x-ray system shall be arranged and operated in such a manner that the useful beam at the patient's skin does not exceed the dimensions specified in 606.B.1.a or 606.B.1.b [Subparagraphs (a) or (b), Paragraph (1), Subsection B., Section 606 of 20.3.6.606 NMAC].

(4) Dental fluoroscopy shall be prohibited.

**20.3.6.607 THERAPEUTIC X-RAY INSTALLATIONS:**

A. Equipment:

- (1) The protective tube housing shall be of therapeutic type.
- (2) Permanent diaphragms or cones for collimating the useful beam shall afford the same degree of protection as the tube housing. Adjustable or removable beam-defining diaphragms or cones shall transmit not more than five percent of the useful beam at the maximum kilovoltage and with maximum treatment filter.
- (3) Filters shall be secured in place to prevent them from dropping out during treatment. The filter slot shall be so constructed that the radiation escaping through it does not exceed 1 R (0.258 mC/kg) per hour at 1 m (3.28 feet), or, if the radiation from the slot is accessible to the patient, 30 R (7.74 mC/kg) per hour at 5 cm (1.96 inches) from the external opening. Each removable filter shall be marked with its thickness and material.
- (4) A filter indication system shall be used on all therapy machines using changeable filters. It shall be designed so as to permit easy recognition of any added filter in place. It shall indicate, from the control panel, the presence or absence of any filter.
- (5) The x-ray tube shall be so mounted that it cannot turn or slide with respect to the housing aperture.
- (6) Means shall be provided to immobilize the tube housing during stationary portal treatment.
- (7) A device (e.g., an automatic timer exposure meter or dose meter) shall be provided to terminate the exposure after a preset time interval or preset exposure of dose limit. Means shall be provided for the operator to terminate the exposure at any time.
- (8) Equipment utilizing shutters to control the useful beam shall have a shutter position indicator on the control panel.
- (9) The control panel shall include a device (usually an ammeter) which will give positive indication of the production of x-rays whenever the x-ray tube is energized.

B. Structural Shielding:

(1) All walls, floors, and ceilings that can be struck by the useful beam shall be provided with primary barriers to the height of the ceiling. Low-voltage superficial therapy units only require a height of 2.1 m (6.88 feet).

(2) All walls, floors, and ceilings that, because of restrictions in the orientation of the useful beam, cannot be struck by the useful beam shall be provided with secondary barriers to a minimum height of 2.1 m (6.88 feet).

(3) With equipment operating at voltages above 50 kVp, the required barriers shall be an integral part of the building.

(4) With equipment operating above 150 kVp, the control panel shall be within a protective booth equipped with an interlocked door, or located outside the treatment room.

(5) Interlocks shall be provided for x-ray therapy equipment capable of operating above 150 kVp so that, when any door of the treatment room is opened, either the machine will shut off automatically or the radiation level within the room will be reduced to an average of not more than 2 mR (20 mSv) per hour and a maximum of 10 mR (100 mSv) per hour at a distance of 1 m (3.28 feet) in any direction from the target. After such shutoff or reduction in output, it shall be possible to restore the machine to full operation only from the control panel.

(6) Windows, mirror systems, or closed-circuit television viewing screen shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator may see the patient and the control panel from the same position.

(7) Provision shall be made for oral communication with the patient from the control room.

(8) Treatment rooms to which access is possible through more than one entrance shall be provided with flashing warning lights in a readily observable position near the outside of all access doors, which will indicate when the useful beam is "on".

#### C. Operating Procedure:

(1) All new facilities, and existing facilities not previously surveyed, shall have a protection survey made by, or under the direction of a qualified expert. This also shall be done after any change in the facility which might produce a radiation hazard. The expert shall report his findings in writing to the person in charge of the facility and a copy of this report shall be transmitted to the Department.

(2) The facility shall be operated in compliance with any limitations indicated by the protection survey.

(3) When a patient must be held in position for radiation therapy, mechanical supporting or restraining devices shall be used whenever feasible. If the patient must be held by an individual, that individual shall be adequately protected and shall be positioned so that no part of the body will be struck by the useful beam and that the body is as far as possible from the edge of the useful beam. The exposure of any individual used for this purpose shall be monitored.

(4) The output of each therapeutic x-ray machine shall be calibrated by, or under the direction of, a qualified expert. The calibration shall be repeated after any change in or replacement of components of the x-ray generating equipment which could cause a change in x-ray output. Check calibrations shall be made at least once a year thereafter. Records of calibration shall be maintained by the registrant.

[5-3-95; 20.3.6.607 NMAC – Rn, 20 NMAC 3.1.6.607, Recompiled xx/xx/xx]

**20.3.6.608 SPECIAL REQUIREMENTS FOR X-RAY THERAPY EQUIPMENT OPERATED AT POTENTIALS OF 60 kVp AND BELOW:**

A. Equipment: All provisions of 607.A [Subsection A., Section 607 of 20.3.6.607 NMAC] apply except that the leakage radiation 5 cm (1.96 inches) from the surface to the tube housing shall not exceed 0.1 R/hr.

B. Operating Procedures:

(1) Automatic timers shall be provided which will permit accurate presetting and termination of exposures as short as one second.

(2) In the therapeutic application of apparatus constructed with beryllium or other low-filtration windows, the registrant shall ensure that the unfiltered useful beam is blocked at all times except when actually being used.

(3) Machines having an output of more than 1,000 R (100 Bq) per minute at any accessible place shall not be left unattended without the power being shut off at the main disconnect switch in addition to the control panel switch.

(4) The tube-head shall not be hand-held during x-ray therapy.

[5-3-95; 20.3.6.608 NMAC – Rn, 20 NMAC 3.1.6.608, Recompiled xx/xx/xx]

**20.3.6.609 VETERINARY MEDICINE RADIOGRAPHIC INSTALLATIONS:**

A. Equipment:

(1) The protective tube housing shall be of diagnostic type.

(2) Diaphragms or cones shall be provided for collimating the useful beam to the area of clinical interest, and shall provide the same degree of protection as is required of the housing.

(3) The total filtration permanently in the useful beam shall not be less than 0.5 mm aluminum equivalent for machines operating up to 50 kVp, 1.5 mm aluminum for machines operating between 50-70 kVp, and 2.5 mm aluminum equivalent for machines operating above 70 kVp.

(4) A device shall be provided to terminate the exposure after a preset time or exposure.

(5) A dead-man type of exposure switch shall be provided, together with an electrical cord of sufficient length, so that the operator can stand out of the useful beam and at least 1.8 m from the animal during all x-ray exposures.

B. Structural Shielding: All wall, ceiling, and floor areas shall be equivalent to or provided with applicable protective barriers as required in 602.B.1 and 602.B.2 [Paragraphs (1) and (2), Subsection B., Section 602 of 20.3.6.602 NMAC].

C. Operating Procedures:

(1) The operator shall stand well away from the useful beam and the animal during radiographic exposures.

(2) No individual other than the operator shall be in the x-ray room while exposures are being made unless such individual's assistance is required.

(3) When an animal must be held in position during radiography, mechanical supporting or restraining devices should be used. If the animal must be held by an individual, that individual shall be protected with appropriate shielding devices, such as protective gloves and apron, and he shall so positioned that no part of his body will be struck by the useful beam. The exposure of any individual used for this purpose shall be monitored.

[5-3-95; 20.3.6.609 NMAC – Rn, 20 NMAC 3.1.6.609, Recompiled xx/xx/xx]

**20.3.6.610 APPENDIX A. INFORMATION ON RADIATION SHIELDING REQUIRED FOR PLAN REVIEWS:**

A. In order for the Department to provide evaluation, technical advice and official approval on shielding requirements for a radiation installation, the following information is needed:

(1) normal location of the radiation producing equipment's radiation port; port's travel and traverse limits; general direction(s) of the radiation beam; locations of

all windows; locations of the operator's booth; location of the equipment's control console; distance from x-ray tube to nearest primary barrier;

(2) structural composition and thickness of all walls, doors, partitions, floor(s), and ceiling(s) of room(s) concerned;

(3) height, floor-to-floor, of room(s) concerned;

(4) type of occupancy of all adjacent areas inclusive of space above and below the room(s) concerned; for exterior walls, distance to the closest existing occupied area(s);

(5) kVp (Kilovolt Peak Potential) and maximum mA (milliamperage) for each radiation machine; and

(6) type of examination(s) or treatment(s) performed with equipment (e.g., dental, orthodontal, chest, gastrointestinal, fluoroscopic, podiatry, fixed therapy, rotational therapy, etc.).

B. Information on anticipated workload used in shielding calculations must be provided. This must include for each radiation machine number of exposures/week and average duration of each exposure.

C. If services of a qualified radiation expert have been utilized, a copy of his report shall be submitted with plans. This report must show all basic assumptions (i.e., workload, occupancy and use factors, distance, etc.) used to determine the shielding requirements.

[5-3-95; 20.3.6.610 NMAC – Rn, 20 NMAC 3.1.6.610, Recompiled xx/xx/xx]

### **20.3.6.611 APPENDIX B. MINIMUM DESIGN REQUIREMENTS FOR AN X-RAY MACHINE OPERATOR'S BOOTH:**

#### **A. Space Requirements:**

(1) The operator shall be allotted not less than 0.7 square m (7.5 square feet) of unobstructed floor space in the booth.

(2) The minimum space as indicated above may be any geometric configuration with no dimension of less than 61 cm (2 feet).

(3) The space shall be allotted excluding any encumbrance by the console, such as overhang or cables, or other similar encroachments.

(4) The booth shall be located or constructed such that unattenuated direct scatter radiation originating on the examination table or at the wall cassette not reach the operator's station in the booth.

(5) The booth walls shall be at least 2.1 m (7 feet) high and shall be permanently fixed to the floor or other structure as may be necessary.

(6) When a door or movable panel is used as an integral part of the booth structure, it must have a permissive device which will prevent an exposure when the door or panel is not closed (this type of booth structure is not recommended).

#### B. Switch Placement:

(1) The operator's switch for the radiographic machine shall be fixed within the booth.

(2) The switch shall be at least 1 m (40 inches) from any edge of the booth wall which is proximal to the examining table.

(3) The switch shall allow the operator to use the majority of the available viewing windows.

#### C. Viewing System Requirements:

(1) Each booth shall have a least one viewing device which will:

(a) be so placed that the operator can view the patient during any exposure;  
and

(b) the device shall be so placed that he can have full view of any occupant of the room and should be so placed that he can view any entry into the room; and if any door, which allows access to the room, cannot be seen from the booth, then that door must have a permissive device controlling the exposure which will prevent the exposure if the door is not closed.

(2) When the viewing system is a window:

(a) it shall have a visible area of at least 930 square cm (1.5 square feet);

(b) the distance between the proximal edge of the window and the open edge of the booth shall not be less than 45.7 cm (18 inches); and

(c) the glass shall have the same lead equivalence as that required in the booths' wall in which it is to be mounted.

(3) When the viewing system is by mirrors, the mirror(s) shall be so located as to accomplish the general requirements as in above.

(4) When the viewing system is by electronic means (e.g., TV, etc.):

(a) the camera shall be so located as to accomplish the general requirements of 611.C.1 [Paragraph (1), Subsection C. Section 611 of 20.3.6.611 NMAC]. above; and

(b) there shall be an alternative viewing system as a back-up for electronic failure.

[5-3-95; 20.3.6.611 NMAC – Rn, 20 NMAC 3.1.6.611, Recompiled xx/xx/xx]

**20.3.6.612 APPENDIX C. X-RAY FILM DEVELOPING:**

Time Temperature Chart:

Thermometer Readings		Minimum Developing
(Degrees)		Times (Minutes)
C	F	2.0
27	80	2.0
	79	2.5
	78	2.5
	77	3.0
24	76	3.0
	75	3.0
	74	3.5
	73	3.5
22	72	4.0
	71	4.0
	70	4.5
	69	4.5

20	68	5.0
	67	5.5
	66	5.5
	65	6.0
18	64	6.5
	63	7.0
	62	8.0
	61	8.5
16	60	9.5

A. Processing of Film: All films shall be processed in such a fashion as to achieve adequate sensitometric performance. This criterion shall be adjudged to have been met if either of the following items can be met:

- (1) film manufacturers' published recommendations as regards time and temperature are followed; or
- (2) each film shall be developed in accord with the time temperature chart.

B. Manual Processing of Film:

(1) Where film is developed manually, a system shall be available which consists of at least one three-sectional tank made of mechanically rigid, corrosion-resistant material (each section of which shall be constructed so as to retain its solution separation from the other two) and has the overall temperature-controlling capability of maintaining each solution such that the temperature of each solution will always fall within the range of 16 C to 27 C (60 -80 F).

- (2) Devices shall be available which will:
  - (a) give the actual temperature of the developer; and
  - (b) give an audible or visible signal, after a preset time (in minutes of duration).

(3) Chemical-Film Processing Control:

(a) Chemicals shall be mixed in accord with the chemical manufacturer's recommendations.

(b) Developer replenisher shall be periodically added to the developer tank based on the area of the films which have been developed (e.g., 1 liter per 3100 in<sup>2</sup> of film or in accord with the recommendations of the chemical manufacturer). Solution may be removed from the tank to permit the addition of an adequate volume of replenisher.

(c) All processing chemicals shall be completely replaced at least every 3 months.

(d) At the time of the complete processing chemical change, a film shall be exposed to a density of approximately one, with one-half of the film being protected from the exposure. After full development, it will be maintained in the darkroom or vicinity and at the beginning of each work day at least one test film or film strip (exposed under techniques identical with those used for the original test film) shall be compared with the original test film to evaluate the adequacy of developing results and base fog level.

#### C. Automatic Processors and Other Closed Processing Systems:

(1) Preventive maintenance shall be performed on the unit, except for extended periods of nonuse, on a frequency basis which is not less than that schedule recommended by the manufacturer. In the event that no schedule is available from the manufacturer a maintenance schedule shall be established which will preserve good film quality.

(2) After a full cleansing of the processor, a film shall be exposed to a density of approximately one, with one-half of the film protected from exposure. It will be developed and then kept near the unit and daily at least one test film (exposed under techniques identical with those used for the original test film) shall be compared with the original test film to evaluate the adequacy of the unit's developing capability and base fog level.

#### D. Darkrooms:

(1) Darkrooms shall be constructed so that film being processed, handled, or stored will be exposed only to light which has passed through a safe-light filter.

(2) The radiance and spectral emission of the safelight (bulb and filter combination) shall be such that film shall not be "fogged" above the base level when exposed for 1 minute at a distance of about 120 cm from the lamp(s). Film manufacturer's recommendations for a safelight and its placement shall be adjudged to meet this criterion.

**20.3.1.613-20.3.1.699 [RESERVED]**

## **PART 7: MEDICAL USE OF RADIONUCLIDES**

### **20.3.7.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.3.7.1 NMAC - Rp, 20 NMAC 3.1.1.100, 04/30/2009]

### **20.3.7.2 SCOPE:**

This part contains the requirements and provisions for the medical use of radioactive materials and for issuance of specific licenses authorizing the medical use of radioactive material. These requirements and provisions provide for the radiation safety of workers, the general public, patients and human research subjects. The requirements and provisions of this part are in addition to, and not in substitution for, other parts in this chapter. The requirements and provisions of 20.3.3 NMAC, 20.3.4 NMAC, 20.3.10 NMAC and 20.3.16 NMAC apply to applicants and licensees subject to this part unless specifically exempted. Other federal, state or local regulations may apply.

[20.3.7.2 NMAC - Rp, 20 NMAC 3.1.7.700, 04/30/2009]

### **20.3.7.3 STATUTORY AUTHORITY:**

Sections 74-1-9, 74-3-5 and 74-3-9 NMSA 1978.

[20.3.7.3 NMAC - Rp, 20 NMAC 3.1.1.102, 04/30/2009]

### **20.3.7.4 DURATION:**

Permanent.

[20.3.7.4 NMAC - Rp, 20 NMAC 3.1.1.103, 04/30/2009]

### **20.3.7.5 EFFECTIVE DATE:**

April 30, 2009, unless a later date is cited at the end of a section.

[20.3.7.5 NMAC - Rp, 20 NMAC 3.1.1.104, 04/30/2009]

### **20.3.7.6 OBJECTIVE:**

This part provides for the medical use and licensing of radioactive materials.

[20.3.7.6 NMAC - Rp, 20 NMAC 3.1.1.105, 04/30/2009]

### 20.3.7.7 DEFINITIONS:

**A. "Address of use"** means the building or buildings that are identified on the license and where radioactive material may be prepared, received, used or stored.

**B. "Area of use"** means a portion of an address of use that has been set aside for the purpose of preparing, receiving, using or storing radioactive material.

**C. "Associate Radiation Safety Officer (ARSO)"** means an individual who:

(1) Meets the requirements in 10 CFR § 35.50 and 10 CFR §35.59; and

(2) Is currently identified as an Associate Radiation Safety Officer for the types of use of byproduct material for which the individual has been assigned duties and tasks by the Radiation Safety Officer on:

(a) A specific medical use license issued by the Commission or an Agreement State; or

(b) A medical use permit issued by a Commission master material licensee.

**D. "Authorized medical physicist"** means an individual who:

(1) meets the requirements in Subsection B of 20.3.7.714 NMAC, incorporating 10 CFR 35.51(a), and Subsection E of 20.3.7.714 NMAC; or

(2) is identified as an authorized medical physicist or teletherapy physicist on:

(a) a specific medical use license issued by the department, NRC or agreement state;

(b) a medical use permit issued by a NRC master material licensee;

(c) a permit issued by the department, NRC or agreement state broad scope medical use licensee; or

(d) a permit issued by a NRC master material license broad scope medical use permittee.

**E. "Authorized nuclear pharmacist"** means a pharmacist who:

(1) meets the requirements in Subsection C of 20.3.7.714 NMAC, incorporating 10 CFR 35.55(a), and Subsection E of 20.3.7.714 NMAC; or

(2) is identified as an authorized nuclear pharmacist on:

(a) a specific license issued by the department, NRC or agreement state that authorizes medical use or the practice of nuclear pharmacy;

(b) a permit issued by a NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

(c) a permit issued by a department, NRC or agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

(d) a permit issued by a NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

(3) is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

(4) is designated as an authorized nuclear pharmacist in accordance with Subparagraph (e) of Paragraph (2) of Subsection J of 20.3.3.315 NMAC.

**F. "Authorized user"** means a physician, dentist or podiatrist who:

(1) meets the requirements in Subsection E of 20.3.7.714 NMAC and any of the following subsections of 20.3.7.714 NMAC: Subsection F, incorporating 10 CFR 35.190(a); Subsection G, incorporating 10 CFR 35.290(a); Subsection H, incorporating 10 CFR 35.390(a); Subsection I, incorporating 10 CFR 35.392(a); Subsection J, incorporating 10 CFR 35.394(a); Subsection L, incorporating 10 CFR 35.490(a); Subsection N, incorporating 10 CFR 35.590(a); or Subsection O, incorporating 10 CFR 35.690(a); or

(2) is identified as an authorized user on:

(a) a department, NRC or agreement state license that authorizes the medical use of radioactive material;

(b) a permit issued by a NRC master material licensee that is authorized to permit the medical use of radioactive material;

(c) a permit issued by a department, NRC or agreement state specific licensee of broad scope that is authorized to permit the medical use of radioactive material; or

(d) a permit issued by a NRC master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

**G. "Brachytherapy"** means a method of radiation therapy in which sources are used to deliver a radiation dose at a distance of up to a few centimeters by surface, intracavitary, intraluminal or interstitial application.

**H. "Brachytherapy source"** means a radioactive source or a manufacturer-assembled source train or a combination of these sources that is designed to deliver a therapeutic dose within a distance of a few centimeters.

**I. "Client's address"** means the area of use or a temporary job site for the purpose of providing mobile medical service in accordance with Subsection J of 20.3.7.703 NMAC.

**J. "Dedicated check source"** means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

**K. "Dentist"** means an individual licensed by a state or territory of the United States, the District of Columbia or the commonwealth of Puerto Rico to practice dentistry.

**L. "High dose-rate remote afterloader"**, as used in this part, means a brachytherapy device that remotely delivers a dose rate in excess of 12 grays (1200 rads) per hour at the point or surface where the dose is prescribed.

**M. "Low dose-rate remote afterloader"**, as used in this part, means a brachytherapy device that remotely delivers a dose rate of less than or equal to two grays (200 rads) per hour at the point or surface where the dose is prescribed.

**N. "Management"** means the chief executive officer or other individual having the authority to manage, direct or administer the licensee's activities or those persons' delegate or delegates.

**O. "Manual brachytherapy"**, as used in this part, means a type of brachytherapy in which the brachytherapy sources (e.g., seeds, ribbons) are manually placed topically on or inserted either into the body cavities that are in close proximity to a treatment site or directly into the tissue volume.

**P. "Medical event"** means an event that meets the criteria in Paragraph (1) or (2) of Subsection A of 20.3.7.716 NMAC.

**Q. "Medical institution"** means an organization in which more than one medical discipline is practiced.

**R. "Medical use"** means the intentional internal or external administration of radioactive material or the radiation from radioactive material to patients or human research subjects under the supervision of an authorized user.

**S. "Medium dose-rate remote afterloader"**, as used in this part, means a brachytherapy device that remotely delivers a dose rate of greater than two grays (200 rads) per hour, but less than or equal to 12 grays (1200 rads) per hour at the point or surface where the dose is prescribed.

**T. "Mobile medical service"** means the transportation of radioactive material to and its medical use at the client's address.

**U. "NIST"** means the national institute of standards and technology which is the standards-defining agency of the United States government, formerly the national bureau of standards. It is one of three agencies that fall under the technology administration ([www.technology.gov](http://www.technology.gov)), a branch of the United States commerce department that is devoted to advancing American economic growth through the use of technology.

**V. "Ophthalmic physicist"** means an individual who

(1) Meets the requirements in 10 CFR § 35.433(a)(2) and 10 CFR § 35.59;  
and

(2) Is identified as an ophthalmic physicist on a:

(a) Specific medical use license issued by the Commission or an Agreement State;

(b) Permit issued by a Commission or Agreement State broad scope medical use licensee;

(c) Medical use permit issued by a Commission master material licensee; or

(d) Permit issued by a Commission master material licensee broad scope medical use permittee.

**W. "Output"** means the exposure rate, dose rate or a quantity related in a known manner to these rates from a brachytherapy source or a teletherapy, remote afterloader or gamma stereotactic radiosurgery unit for a specified set of exposure conditions.

**X. "Patient intervention"** means actions by the patient or human research subject, whether intentional or unintentional, such as dislodging or removing treatment devices or prematurely terminating the administration.

**Y. "Pharmacist"** means an individual licensed by a state or territory of the United States, the District of Columbia or the commonwealth of Puerto Rico to practice pharmacy.

**Z. "Physician"** means a medical doctor or doctor of osteopathy licensed by a state or territory of the United States, the District of Columbia or the commonwealth of Puerto Rico to prescribe drugs in the practice of medicine.

**AA. "Podiatrist"** means an individual licensed by a state or territory of the United States, the District of Columbia or the commonwealth of Puerto Rico to practice podiatry.

**BB. "Positron emission tomography (PET) radionuclide production facility"** is defined as a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

**CC. "Preceptor"** means an individual who provides, directs or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, radiation safety officer or a associate radiation officer.

**DD. "Prescribed dosage"** means the specified activity or range of activity of unsealed radioactive material as documented:

- (1) in a written directive; or
- (2) in accordance with the directions of the authorized user for procedures performed pursuant to 20.3.7.704 NMAC and 20.3.7.705 NMAC.

**EE. "Prescribed dose"** means:

- (1) for gamma stereotactic radiosurgery, the total dose as documented in the written directive;
- (2) for teletherapy, the total dose and dose per fraction as documented in the written directive;
- (3) for manual brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive; or
- (4) for remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

**FF. "Pulsed dose-rate remote afterloader"**, as used in this part, means a special type of remote afterloading brachytherapy device that uses a single source capable of delivering dose rates in the "high dose-rate" range, but:

- (1) is approximately one-tenth of the activity of typical high dose-rate remote afterloader sources; and

(2) is used to simulate the radiobiology of a low dose-rate treatment by inserting the source for a given fraction of each hour.

**GG. "Radiation safety officer"** means an individual who:

(1) meets the requirements in Subsection E of 20.3.7.714 NMAC and either Subsection A of 20.3.7.714 NMAC, incorporating 10 CFR 35.50(a), or Subsection A of 20.3.3.714 NMAC, incorporating 10 CFR 35.50(c)(1); or

(2) is identified as a radiation safety officer on:

(a) a specific medical use license issued by the department, NRC or agreement state; or

(b) a medical use permit issued by a NRC master material licensee.

**HH. "Stereotactic radiosurgery"** means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a therapeutic dose to a tissue volume.

**II. "Structured educational program"** means an educational program designed to impart particular knowledge and practical education through interrelated studies and supervised training.

**JJ. "Teletherapy"**, as used in this part, means a method of radiation therapy in which collimated gamma rays are delivered at a distance from the patient or human research subject.

**KK. "Temporary job site"** means a location where mobile medical services are conducted other than those location(s) of use authorized on the license.

**LL. "Therapeutic dosage"** means a dosage of unsealed radioactive material that is intended to deliver a radiation dose to a patient or human research subject for palliative or curative treatment.

**MM. "Therapeutic dose"** means a radiation dose delivered from a source containing radioactive material to a patient or human research subject for palliative or curative treatment.

**NN. "Treatment site"** means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

**OO. "Type of use"** means use of radioactive material under the following sections: 20.3.7.704 NMAC, 20.3.7.705 NMAC, 20.3.7.708 NMAC, 20.3.7.710 NMAC, 20.3.7.711 NMAC, 20.3.7.712 NMAC and 20.3.7.713 NMAC.

**PP.** "Unit dosage" means a dosage prepared for medical use for administration as a single dosage to a patient or human research subject without any further manipulation of the dosage after it is initially prepared.

**QQ.** "Written directive" means an authorized user's written order for the administration of radioactive material or radiation from radioactive material to a specific patient or human research object, as specified in Subsection G of 20.3.7.702 NMAC.

[20.3.7.7 NMAC - Rp, 20 NMAC 3.1.7.701, 04/30/2009; A, 02/14/2023]

### **20.3.7.8-20.3.7.699 [RESERVED]**

### **20.3.7.700 GENERAL REGULATORY REQUIREMENTS:**

#### **A. Provisions for research involving human subjects.**

(1) A licensee may conduct research involving human research subjects only if it uses the radioactive materials specified on its license for the uses authorized on the license.

(2) If the research is conducted, funded, supported or regulated by a federal agency that has implemented the *federal policy for the protection of human subjects* (45 CFR Part 46), the licensee shall, before conducting research:

(a) obtain review and approval of the research from an "institutional review board," as defined and described in the *federal policy for the protection of human subjects*; and

(b) obtain "informed consent," as defined and described in the *federal policy for the protection of human subjects*, from the human research subject.

(3) If the research will not be conducted, funded, supported or regulated by a federal agency that has implemented the *federal policy for the protection of human subjects*, the licensee shall, before conducting research, apply for and receive a specific amendment to its medical use license issued by the department. The amendment request must include a written commitment that the licensee will, before conducting research:

(a) obtain review and approval of the research from an "institutional review board," as defined and described in the *federal policy for the protection of human subjects*; and

(b) obtain "informed consent," as defined and described in the *federal policy for the protection of human subjects*, from the human research subject.

(4) Nothing in this subsection relieves licensees from complying with the other requirements in this part.

**B. FDA, federal and state requirements.** Nothing in this part relieves the licensee from complying with applicable FDA, other federal and state requirements governing radioactive drugs or devices.

**C. Implementation.**

(1) When a requirement in this part differs from the requirement in an existing license condition, the requirement in this part shall govern.

(2) A licensee shall continue to comply with any license condition that requires it to implement procedures required by Subsections D, J, K and L of 20.3.7.711 NMAC until there is a license amendment or renewal that modifies the license condition.

**D. License required.**

(1) A person may manufacture, produce, acquire, receive, possess, prepare, use or transfer radioactive material for medical use only in accordance with a specific license issued by the department or as allowed in Paragraph (2) of this subsection.

(2) A specific license is not needed for an individual who:

(a) receives, possesses, uses or transfers radioactive material in accordance with the requirements in this chapter under the supervision of an authorized user as provided in Subsection F of 20.3.7.702 NMAC unless prohibited by license condition; or

(b) prepares unsealed radioactive material for medical use in accordance with the requirements in this chapter under the supervision of an authorized nuclear pharmacist or authorized user as provided in Subsection F of 20.3.7.702 NMAC unless prohibited by license condition.

**E. Application for license, amendment or renewal.**

(1) An application must be signed by the applicant or licensee, or a person duly authorized to act for or on their behalf.

(2) An application for a license for medical use of radioactive material as described in 20.3.7.704 NMAC, 20.3.7.705 NMAC, 20.3.7.708 NMAC, 20.3.7.710 NMAC, 20.3.7.711 NMAC, 20.3.7.712 NMAC and 20.3.7.713 NMAC must be made by:

(a) filing in duplicate of a department form, *application for radioactive material license*, completed according to the instructions in the form; and

(b) submitting written procedures required by Subsections D, J, K and L of 20.3.7.711 NMAC, as applicable.

(3) An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

(a) any reference to the commission or NRC shall be deemed a reference to the department;

(b) 10 CFR 37.5 Definitions of: agreement state, byproduct material, commission and person shall not be applicable,

(c) 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable;

(d) for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), and 10 CFR 37.81, the licensee shall use the following address when applicable: New Mexico environment department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

(4) A request for a license amendment or renewal must be made by:

(a) filing in duplicate of a department form, *application for radioactive material license*, as described in Paragraph (2) of this subsection; and

(b) submitting procedures required by Subsections D, J, K and L of 20.3.7.711 NMAC, as applicable.

(5) In addition to the requirements in Paragraphs (2) and (3) of this subsection, an application for a license or amendment for medical use of radioactive material described in 20.3.7.713 NMAC must also include information regarding any radiation safety aspects of the medical use of the material that are not addressed in sections 20.3.7.702 NMAC and 20.3.7.703 NMAC. The applicant shall also provide specific information on:

(a) radiation safety precautions and instructions;

(b) methodology for measurement of dosages or doses to be administered to patients or human research subjects; and

(c) calibration, maintenance and repair of instruments and equipment necessary for radiation safety.

(6) The applicant or licensee shall also provide any other additional information requested by the department in its review of the application, license renewal

or amendment, within 30 days of the request or other time as may be specified in the request.

(7) An applicant that satisfies the requirements specified in Subsection B of 20.3.3.314 NMAC may apply for a type "A" specific license of broad scope.

**F. License amendments.** A licensee shall apply for and must receive a license amendment:

(1) before it receives, prepares or uses radioactive material for a type of use that is permitted under 20.3.7 NMAC but that is not authorized on the licensee's current license issued under this part;

(2) before it permits anyone to work as an authorized user, authorized nuclear pharmacist or authorized medical physicist under the license, except:

(a) for an authorized user, an individual who meets the definition of an *authorized user* as defined in 20.3.7.7 NMAC;

(b) for an authorized nuclear pharmacist, an individual who meets the definition of an *authorized nuclear pharmacist* as defined in 20.3.7.7 NMAC;

(c) for an authorized medical physicist, an individual who meets the definition of an *authorized medical physicist* as defined in 20.3.7.7 NMAC; or

(d) a physician, podiatrist or dentist who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses or a nuclear pharmacist who used only accelerator-produced radioactive materials in the practice of nuclear pharmacy at a government agency or federally recognized Indian tribe before November 30, 2007 or at all other locations of use in non-licensing state (as defined in 20.3.1.7 NMAC) before August 8, 2009, or an earlier date as noticed by the NRC, and for only those materials and uses performed before these dates;

(3) before it changes radiation safety officers, except as provided in Paragraph (4) of Subsection A of 20.3.7.702 NMAC;

(4) before it receives radioactive material in excess of the amount or in a different form, or receives a different radioactive material than is authorized on the license;

(5) before it adds to or changes the areas of use identified in the application or on the license, including areas used in accordance with either 20.3.7.704 NMAC or 20.3.7.705 NMAC if the change includes the addition or relocation of either an area where PET radionuclides are produced or a PET radioactive drug delivery line from the PET radionuclide/PET radioactive drug production area; other areas of use where

radioactive material is used only in accordance with either 20.3.7.704 NMAC or 20.3.7.705 NMAC are exempt;

(6) before it changes the address(es) of use identified in the application or on the license; and

(7) before it revises procedures required by Subsections D, J, K and L of 20.3.7.711 NMAC, as applicable, where such revision reduces radiation safety.

#### **G. Notifications.**

(1) For each individual, no later than 30 days after the date that the licensee permits the individual to work as an authorized user, an authorized nuclear pharmacist or an authorized medical physicist under Paragraph (2) of Subsection F of this section:

(a) the licensee shall verify the training and experience and provide the department with a copy the documentation demonstrating the training and experience as listed in the definitions of authorized user, authorized nuclear pharmacist or authorized medical physicist in 20.3.7.7 NMAC; or

(b) the licensee shall verify the training and experience and provide the department of a copy of the documentation demonstrating that only accelerator-produced radioactive materials, discrete sources, or both, were used for medical use or in the practice of nuclear pharmacy at a government agency or federally recognized Indian tribe before November 30, 2007 or at all other locations of use in non-licensing states (as defined in 20.3.1.7 NMAC) before August 8, 2009, or an earlier date as noticed by the NRC.

(2) A licensee shall notify the department by letter no later than 30 days after:

(a) an authorized user, an authorized nuclear pharmacist, radiation safety officer or an authorized medical physicist permanently discontinues performance of duties under the license or has a name change;

(b) the licensee permits an authorized user or an individual qualified to be a radiation safety officer, under Subsection A of 20.3.7.714 NMAC, incorporating 10 CFR 35.50 and Subsection E of 20.3.7.714 NMAC, to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer in accordance with Paragraph (4) of Subsection A of 20.3.7.702 NMAC.

(c) the licensee's mailing address changes;

(d) the licensee's name changes, but the name change does not constitute a transfer of control of the license as described in Subsection B of 20.3.3.317 NMAC; or

(e) the licensee has added to or changed the areas of use identified in the application or on the license where radioactive material is used in accordance with either 20.3.7.704 NMAC or 20.3.7.705 NMAC if the change does not include addition or relocation of either an area where PET radionuclides are produced or a PET radioactive drug delivery line from the PET radionuclide or PET radioactive drug production area.

(3) A licensee shall notify the department by letter no later than 30 days after a calibration, transmission or reference source under Subsection E of 20.3.7.703 NMAC is acquired. The notification shall contain a description of the source, manufacturer name, model and serial number of the source, and the license number of the manufacturer of the specific license issued by the department, NRC or an agreement state under Subsection K of 20.3.3.315 NMAC or equivalent NRC or agreement state requirements.

(4) The licensee shall send the documents required in this subsection to the appropriate address identified in 20.3.1.116 NMAC.

**H. Exemptions regarding type A specific licenses of broad scope.** A licensee possessing a type "A" specific license of broad scope for medical use, issued under 20.3.3.314 NMAC, is exempt from:

(1) the provisions of Paragraph 4 of Subsection E of 20.3.7.700 NMAC regarding the need to file an amendment to the license for medical use of radioactive materials, for use described in 20.3.7.713 NMAC;

(2) the provisions of Paragraph (2) of Subsection F of 20.3.7.700 NMAC;

(3) the provisions of Paragraph (5) of Subsection F of 20.3.7.700 NMAC regarding additions to or changes in the areas of use at the addresses specified in the application or on the license;

(4) the provisions of Paragraph (1) of Subsection G of 20.3.7.700 NMAC;

(5) the provisions of Subparagraph (a) of Paragraph (2) of Subsection G of 20.3.7.700 NMAC for an authorized user, an authorized nuclear pharmacist or an authorized medical physicist;

(6) the provisions of Subparagraph (e) of Paragraph (2) of Subsection G of 20.3.7.700 NMAC regarding additions to or changes in the areas of use identified in the application or on the license where radioactive material is used in accordance with either 20.3.7.704 NMAC or 20.3.7.705 NMAC;

(7) the provisions in Paragraph (3) of Subsection G of 20.3.7.700 NMAC; and

(8) the provisions of Paragraph (1) of Subsection I of 20.3.7.702 NMAC.

[20.3.7.700 NMAC - Rp, 20 NMAC 3.1.7.700, 04/30/2009; A, 06/13/2017; A, 02/14/2023]

**20.3.7.701 [RESERVED]**

**20.3.7.702 GENERAL ADMINISTRATIVE REQUIREMENTS:**

**A. Radiation safety officer.**

(1) A licensee or licensee's management shall appoint a radiation safety officer, who agrees, in writing, to be responsible for implementing a radiation protection program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements. A licensee's management may appoint, in writing, one or more Associate Radiation Safety Officers to support the Radiation Safety Officer. The Radiation Safety Officer, with written agreement of the licensee's management, must assign the specific duties and tasks to each Associate Radiation Safety Officer. These duties and tasks are restricted to the types of use for which the Associate Radiation Safety Officer is listed on a license. The Radiation Safety Officer may delegate duties and tasks to the Associate Radiation Safety Officer but shall not delegate the authority or responsibilities for implementing the radiation protection program.

(2) A licensee shall establish the authority, duties and responsibilities of the radiation safety officer in writing.

(3) A licensee shall provide the radiation safety officer sufficient authority, organizational freedom, time, resources and management prerogative to:

- (a) identify radiation safety problems;
- (b) initiate, recommend or provide corrective actions;
- (c) prevent or order the cessation of unsafe operations; and
- (d) verify implementation of corrective actions.

(4) For up to 60 days each year, a licensee may permit an authorized user or an individual qualified to be a radiation safety officer, under Subsections A and E of 20.3.7.714 NMAC, to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer, as provided in Paragraph (3) of this subsection, if the licensee takes the actions required in Paragraphs (1), (2), (3) and (5) of this subsection and notifies the department in accordance with Paragraph (2) of Subsection G of 20.3.7.700 NMAC.

(5) A licensee may simultaneously appoint more than one temporary radiation safety officer in accordance with Paragraph (4) of this subsection, if needed to ensure

that the licensee has a temporary radiation safety officer that satisfies the requirements to be a radiation safety officer for each of the different types of uses of radioactive material permitted by the license.

**B. Authority and responsibilities for the radiation protection program.** In addition to the radiation protection program requirements of 20.3.4.404 NMAC, a licensee or licensee's management shall approve in writing:

- (1) requests for a license application, renewal or amendment before submittal to the department;
- (2) any individual before allowing that individual to work as an authorized user, authorized nuclear pharmacist or authorized medical physicist; and
- (3) radiation protection program changes that do not require a license amendment and are permitted under Subsection E of this section.

**C. Record keeping.** A licensee shall retain a record of actions taken under Subsections A and B of this section in accordance with Subsection A of 20.3.7.715 NMAC.

**D. Radiation safety committee.** Licensees that are authorized for two or more different types of use of radioactive material under 20.3.7.708, 20.3.7.710 and 20.3.7.711 NMAC or two or more types of units under 20.3.7.711 NMAC shall establish a radiation safety committee to oversee all uses of radioactive material permitted by the license. The radiation safety committee shall meet the following administrative requirements.

(1) The radiation safety committee must include an authorized user of each type of use permitted by the license, the radiation safety officer, a representative of the nursing service and a representative of management who is neither an authorized user, nor a radiation safety officer. The radiation safety committee may include other members who the licensee considers appropriate.

(2) The radiation safety committee shall meet at least once each calendar quarter. To establish a quorum and to conduct business, one-half of the committee's membership shall be present, including the radiation safety officer and the management's representative.

(3) The licensee shall maintain minutes of each radiation safety committee meeting, promptly provide each member with a copy of the meeting minutes and retain one copy for the duration of the license.

(4) To oversee the use of licensed material, the radiation safety committee shall:

(a) review and verify the training and experience documentation (such as the board certification, preceptor statement(s), or any additional required training) and approve or disapprove any individual who is to be listed on a license as an authorized user, an authorized nuclear pharmacist, a radiation safety officer or an authorized medical physicist before submitting a license application or request for amendment or renewal;

(b) review and verify the training and experience documentation (such as the board certification, preceptor statement(s), the license or the permit identifying an individual as an authorized user, authorized nuclear pharmacist, authorized medical physicist or a radiation safety officer) and approve or disapprove any individual prior to allowing that individual to work as an authorized user, authorized nuclear pharmacist, a radiation safety officer or an authorized medical physicist;

(c) review, on the basis of safety, and approve or disapprove each proposed method of use of radioactive material;

(d) review, on the basis of safety, and approve or disapprove with the advice and consent of the radiation safety officer and the management representative, licensee's procedures and radiation protection program changes prior to submittal to the department for licensing action;

(e) review quarterly records of the radiation protection program indicating non-ALARA occurrences and all incidents and medical events involving radioactive material with respect to cause and subsequent actions taken; and

(f) review, annually, with the assistance of the radiation safety officer, the radiation protection program.

#### **E. Radiation protection program changes.**

(1) A licensee may revise its radiation protection program without department approval if:

(a) the revision does not require a license amendment under Subsection F of 20.3.7.700 NMAC;

(b) the revision is in compliance with the requirements in 20.3 NMAC and the license;

(c) the revision has been reviewed and approved by the radiation safety officer and licensee's management; and

(d) the affected individuals are instructed on the revised program before the changes are implemented.

(2) A licensee shall retain a record of each change in accordance with Subsection B of 20.3.7.715 NMAC.

#### **F. Supervision.**

(1) A licensee that permits the receipt, possession, use or transfer of radioactive material by an individual under the supervision of an authorized user, as allowed by Subparagraph (a) of Paragraph (2) of Subsection D of 20.3.7.700 NMAC, shall:

(a) in addition to the requirements in 20.3.10.1002 NMAC, instruct the supervised individual in the licensee's written radiation protection program and quality assurance procedures, written directive procedures, requirements of this chapter and license conditions with respect to the use of radioactive material;

(b) require the supervised individual to follow the instructions of the supervising authorized user for medical uses of radioactive material, written radiation protection program and quality assurance procedures established by the licensee, written directive procedures, the requirements in 20.3 NMAC and license conditions with respect to the medical use of radioactive material;

(c) require the supervising authorized user to periodically review the supervised individual's use of radioactive material and the records kept to reflect this use; and

(d) document the performance of the supervised individual with respect to the medical use of radioactive material.

(2) A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by Subparagraph (b) of Paragraph (2) of Subsection D of 20.3.7.700 NMAC shall:

(a) in addition to the requirements in 20.3.10.1002 NMAC, instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's involvement with radioactive material;

(b) require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, the licensee's written radiation protection program and quality assurance procedures, the requirements of 20.3 NMAC and license conditions;

(c) require the supervising authorized nuclear pharmacist or authorized user to periodically review the work of the supervised individual as it pertains to radiation

safety and quality assurance in preparing radioactive material for medical use and the records kept to reflect that work; and

(d) document the performance of the supervised individual with respect to the medical use of radioactive material.

(3) A licensee who permits supervised activities under Paragraphs (1) and (2) of this subsection is responsible for the acts and omissions of the supervised individual.

**G. Written directive.** Each applicant or licensee under this part, as applicable, shall establish and maintain written directive procedures to provide high confidence that byproduct material or radiation from radioactive material will be administered as directed by the authorized user. The written directive procedures must include written policies and procedures that meet the following specific requirements.

(1) A written directive must be prepared, dated and signed by an authorized user before the administration of I-131 sodium iodide of quantities greater than 30 microcuries (1.11 megabecquerels), any therapeutic dosage of unsealed radioactive material or any therapeutic dose of radiation from radioactive material. If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive is acceptable. The information contained in the oral directive must be documented as soon as possible in writing in the patient's record. A written directive documenting the oral directive must be prepared, dated and signed by the authorized user within 48 hours of the oral directive.

(2) A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed byproduct material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose or the next fractional dose. If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive is acceptable, provided that the oral revision is documented as soon as possible in writing in the patient's record. A revised written directive documenting the oral revision must be prepared, dated and signed by the authorized user within 48 hours of the oral revision.

(3) The written directive must contain the patient's or human research subject's name and the following information:

(a) for any administration of quantities greater than 30 microcuries (1.11 megabecquerels) of I-131 sodium iodide: the dosage;

(b) for an administration of a therapeutic dosage of unsealed radioactive material other than I-131 sodium iodide: the radioactive drug, dosage and route of administration;

(c) for gamma stereotactic radiosurgery: the total dose, treatment site and values for the target coordinate settings per treatment for each anatomically distinct treatment site;

(d) for teletherapy: the total dose, dose per fraction, number of fractions and treatment site;

(e) for high dose-rate remote afterloading brachytherapy: the radionuclide, treatment site, dose per fraction, number of fractions and total dose; or

(f) For permanent implant brachytherapy:

(i) Before implantation: The treatment site, the radionuclide, and the total source strength; and

(ii) After implantation but before the patient leaves the post-treatment recovery area: The treatment site, the number of sources implanted, the total source strength implanted, and the date; or

(g) for all other brachytherapy, including low, medium and pulsed dose rate remote afterloaders: before implantation: the treatment site, radionuclide and dose; and after implantation but before completion of the procedure: the radionuclide, treatment site, number of sources, total source strength and exposure time (or the total dose); and date.

(4) A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed byproduct material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose. If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive is acceptable. The oral revision must be documented as soon as possible in the patient's record. A revised written directive must be signed by the authorized user within 48 hours of the oral revision.

(5) The licensee shall retain a copy of the written directive in accordance with Subsection C of 20.3.7.715 NMAC.

#### **H. Procedures for administrations requiring a written directive.**

(1) For any administration requiring a written directive, the licensee shall develop, implement and maintain written procedures to provide high confidence that:

(a) the patient's or human research subject's identity is verified by more than one method as the individual named in the written directive before each administration; and

(b) each administration is in accordance with the written directive.

(2) At a minimum, the procedures required by Paragraph (1) of this subsection must address the following items that are applicable to the licensee's use of radioactive material:

(a) verifying the identity of the patient or human research subject;

(b) verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;

(c) checking both manual and computer-generated dose calculations; and

(d) verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by 20.3.7.711 NMAC or 20.3.7.713 NMAC.

(e) Determining if a medical event, as defined in 20.3.7.716 NMAC and 10 CFR 35.3045, has occurred; and

(f) Determining, for permanent implant brachytherapy, within 60 calendar days from the date the implant was performed, the total source strength administered outside of the treatment site compared to the total source strength documented in the post-implantation portion of the written directive, unless a written justification of patient unavailability is documented.

(3) A licensee shall retain a copy of the procedures required under Paragraph (1) of this subsection in accordance with Subsection D of 20.3.7.715 NMAC.

**I. Suppliers of sealed sources or devices for medical use.** For medical use, a licensee may only use:

(1) sealed sources or devices manufactured, labeled, packaged and distributed in accordance with a license issued under Subsection K of 20.3.3.315 NMAC or equivalent requirements of NRC or an agreement state;

(2) sealed sources or devices non-commercially transferred from a 20.3.7 NMAC licensee, a NRC or agreement state licensee; or

(3) teletherapy sources manufactured and distributed in accordance with a license issued under 20.3.3 NMAC or the equivalent requirements of NRC or an agreement state.

[20.3.7.702 NMAC - Rp, 20 NMAC 3.1.7.702, 04/30/2009; A 02/14/2023]

**20.3.7.703 GENERAL TECHNICAL REQUIREMENTS:**

**A. Possession, use and calibration of instruments used to measure the activity of unsealed radioactive material.** Other than unit dosages of beta-emitting unsealed radioactive material obtained from the manufacturer or preparer, licensed pursuant to Subsection J of 20.3.3.315 NMAC, a medical use licensee authorized to administer radiopharmaceuticals shall possess a dose calibrator, and use it to measure the activity of unsealed radioactive material prior to the administration to each patient or human research subject for diagnostic applications. For therapeutic applications, a medical use licensee authorized to administer radiopharmaceuticals shall possess a dose calibrator, and use it to measure the activity of unsealed radioactive material prior to and after the administration to each patient or human research subject.

(1) A licensee shall:

(a) check each dose calibrator for constancy with a dedicated check source at the beginning of each day of use; to satisfy the requirements of this section, the check shall be done on a frequently used setting with a sealed source of not less than 10 microcuries (370 kilobecquerels) of radium-226 or 50 microcuries (1.85 megabecquerels) of any other photon-emitting radionuclide;

(b) test each dose calibrator for accuracy upon installation and at intervals not to exceed 12 months thereafter by assaying at least two sealed sources containing different radionuclides, the activity of which the manufacturer has determined within five percent of the stated activity, with minimum activity of 10 microcuries (370 kilobecquerels) for radium-226 and 50 microcuries (1.85 megabecquerels) for any other photon-emitting radionuclide, and at least one of which has a principal photon energy between 100 kiloelectron volts and 500 kiloelectron volts;

(c) test each dose calibrator for linearity upon installation and at intervals not to exceed three months thereafter over the range of use between 30 microcuries (1.11 megabecquerels), and the highest dosage that will be administered to a patient or human research subject; and

(d) test each dose calibrator for geometry dependence upon installation over the range of volumes and volume configurations for which it will be used; the licensee shall keep a record of this test for the duration of the use of the dose calibrator.

(2) A licensee shall mathematically correct dosage readings for any geometry or linearity error that exceeds ten percent if the dosage is greater than 10 microcuries (370 kilobecquerels), and shall repair or replace the dose calibrator if the accuracy or constancy error exceeds ten percent.

(3) A licensee shall also perform checks and tests required under this subsection, following adjustment or repair of the dose calibrator.

(4) **Beta-emitting radionuclides.** A licensee shall develop quality control procedures and use appropriate instrumentation to measure the radioactivity for beta-

emitting radiopharmaceuticals. A licensee may use checks, tests or calibration techniques other than those described in this section for instruments measuring the dosages of beta-emitting unsealed radioactive material if checks, tests or calibration techniques are in accordance with nationally recognized standards or the equipment manufacturer's instructions and have been approved by the department.

**(5)** A licensee shall retain a record of each instrument check, test and calibration required by this subsection in accordance with Subsection E of 20.3.7.715 NMAC.

**B. Determination of dosages of unsealed radioactive material for medical use.**

**(1)** A licensee shall determine and record the activity of each dosage before medical use for diagnostic applications and before and after medical use for therapeutic applications.

**(2)** This determination must be made by:

**(a)** direct measurement of radioactivity pursuant to Subsection A of this section;

**(b)** combination of direct measurement of radioactivity pursuant to Subsection A of this section and mathematical calculations;

**(c)** combination of volumetric measurements and mathematical calculations, based on the measurement made by:

**(i)** a manufacturer or preparer licensed under Subsection J of 20.3.3.315 NMAC or equivalent requirement of NRC or agreement state; or

**(ii)** a PET radioactive drug producer licensed under Subsection J of 20.3.3.307 NMAC or equivalent NRC or agreement state requirements; or

**(d)** decay correction, for unit dosages of beta-emitting unsealed radioactive material, based on the activity or activity concentration determined by:

**(i)** a manufacturer or preparer licensed under Subsection J of 20.3.3.315 NMAC or equivalent NRC or agreement state requirement;

**(ii)** a department, NRC or agreement state licensee for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug (IND) protocol accepted by FDA; or

**(iii)** a PET radioactive drug producer licensed under Subsection J of 20.3.3.307 NMAC or equivalent NRC or agreement state requirements.

(3) Unless otherwise directed by the authorized user, a licensee may not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than twenty percent.

(4) A licensee shall retain a record of the dosage determination required by this subsection in accordance with Subsection G of 20.3.7.715 NMAC.

### **C. Calibration and check of radiation survey instruments.**

(1) A licensee shall calibrate the radiation survey instruments used to show compliance with this part and 20.3.4 NMAC before first use, annually and following a repair that affects the calibration.

(2) A licensee shall:

(a) calibrate all scales with readings up to 1000 millirems (10 millisieverts) per hour with a radiation source;

(b) calibrate two separate readings on each scale or decade that will be used to show compliance; and

(c) conspicuously note on the instrument the date of calibration.

(3) A licensee shall consider a point as calibrated if the indicated exposure rate differs from the calculated exposure rate by no more than twenty percent.

(4) A licensee shall check each radiation survey instrument for proper operation with a dedicated check source at the beginning of each day of use.

(5) A licensee shall retain a record of each radiation survey instrument calibration in accordance with Subsection F of 20.3.7.715 NMAC.

**D. Quality control for other equipment.** Each licensee shall establish written quality control procedures (checks, tests, calibrations, efficiency measurements, etc.) for equipment used to obtain quantitative radiation measurements for radionuclide studies, described in this part, or radiation safety surveys, necessary to demonstrate compliance with this part and 20.3.4 NMAC. At a minimum, quality control procedures and their frequencies shall be those recommended by the equipment manufacturer.

**E. Authorization for calibration, transmission and reference sources.** Any person authorized by Subsection D of 20.3.7.700 NMAC for medical use of radioactive material may receive, possess and use any of the following radioactive material for check, calibration, transmission and reference use:

(1) sealed sources, not exceeding 30 millicuries (1.11 gigabecquerels) each, manufactured and distributed by a person specifically licensed under Subsection K of 20.3.3.315 NMAC or equivalent NRC or an agreement state requirements;

(2) sealed sources, not exceeding 30 millicuries (1.11 gigabecquerels) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed under Subsection K of 20.3.3.315 NMAC, providing the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions;

(3) any radioactive material with a half-life no longer than 120 days in individual amounts not to exceed 15 millicuries (0.56 gigabecquerel);

(4) any radioactive material with a half-life longer than 120 days in individual amounts not to exceed 200 microcuries (7.4 megabecquerels) or 1000 times the quantities in 20.3.3.338 NMAC; and

(5) technetium-99m in amounts as needed but not to exceed 100 millicuries.

#### **F. Requirements for possession of sealed sources and brachytherapy sources.**

(1) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer and shall maintain the instructions for the duration of source use in a legible form convenient for users.

(2) A licensee in possession of a sealed source shall:

(a) test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within 6 months before transfer to the licensee; and

(b) test the source for leakage at intervals not to exceed six months or at other intervals approved by the department, NRC or an agreement state.

(3) To satisfy the leak test requirements of this subsection, the licensee shall measure the sample so that the leak test can detect the presence of 0.005 microcurie (185 becquerels) of radioactive material in the sample.

(4) A licensee shall retain leak test records in accordance with Paragraph (1) of Subsection H of 20.3.7.715 NMAC.

(5) If the leak test reveals the presence of 0.005 microcurie (185 becquerels) or more of removable contamination, the licensee shall:

(a) immediately withdraw the sealed source from use and store, cause it to be repaired or disposed of in accordance with the requirements in 20.3.3 NMAC and 20.3.4 NMAC; and

(b) file a report within five days of the leak test result in accordance with Subsection C of 20.3.7.716 NMAC.

(6) A licensee need not perform a leak test on the following sources:

(a) sources containing only radioactive material with a half-life of less than 30 days;

(b) sources containing only radioactive material as a gas;

(c) sources containing 100 microcuries (3.7 megabecquerels) or less of beta or gamma-emitting material or 10 microcuries (0.37 megabecquerel) or less of alpha-emitting material;

(d) seeds of iridium-192 encased in nylon ribbon; and

(e) sources stored and not being used; however, the licensee shall test each such source for leakage before any use or transfer unless it has been leak tested within six months, or other frequency approved by the department, NRC or an agreement state, before the date of use or transfer.

(7) A licensee in possession of sealed sources or brachytherapy sources, except for gamma stereotactic radiosurgery sources, shall conduct a semi-annual physical inventory of all such sources in its possession. The licensee shall retain each inventory record in accordance with Paragraph (2) of Subsection H of 20.3.7.715 NMAC.

**G. Labeling of vials and syringes.** Each syringe and vial that contains unsealed radioactive material must be labeled to identify the radioactive drug. Each syringe shield and vial shield must also be labeled unless the label on the syringe or vial is visible when shielded.

**H. Surveys for contamination and ambient radiation exposure rate.**

(1) In addition to the surveys required by 20.3.4 NMAC:

(a) a licensee shall survey with a radiation detection survey instrument at the end of each day of use all areas where radiopharmaceuticals are routinely prepared or administered; and

(b) a licensee shall survey for removable contamination at the end of each day of use all areas where radiopharmaceuticals requiring written directive are routinely prepared for use or administered.

(2) A licensee does not need to perform the surveys required by Paragraph (1) of this subsection in areas where patients or human research subjects are confined when they cannot be released under Subsection I of 20.3.7.703 NMAC.

(3) A licensee shall retain a record of each survey in accordance with Subsection I of 20.3.7.715 NMAC.

#### **I. Release of individuals containing radiopharmaceuticals or permanent implants.**

(1) A licensee may authorize the release from its control of any individual who has been administered unsealed radioactive material or implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed 0.5 rem (five millisieverts) (the current revision of the NRC guidance NUREG-1556, volume 9, "*consolidated guidance about materials licenses: program-specific guidance about medical licenses*", describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding 0.5 rem (five millisieverts)).

(2) A licensee shall provide the released individual or the individual's parent or guardian, with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed 0.1 rem (one millisievert). If the total effective dose equivalent to a nursing infant or child could exceed 0.1 rem (one millisievert), assuming there was no interruption of breast-feeding, the instructions must also include:

(a) guidance on the interruption or discontinuation of breast-feeding; and

(b) information on the potential consequences, if any, of failure to follow the guidance.

(3) A licensee shall maintain a record of the basis for authorizing the release of an individual, in accordance with Paragraph (1) of Subsection J of 20.3.7.715 NMAC.

(4) The licensee shall maintain a record of instructions provided to a breast-feeding female in accordance with Paragraph (2) of Subsection J of 20.3.7.715 NMAC.

#### **J. Provision of mobile medical service.**

(1) A licensee providing mobile medical service shall:

(a) obtain a letter signed by the management of each client for which services are rendered that permits the use of radioactive material at the client's address and clearly delineates the authority and responsibility of the licensee and the client;

(b) check instruments used to measure the activity of unsealed radioactive material for proper function before medical use at each client's address or on each day of use, whichever is more frequent; at a minimum, the check for proper function required by this paragraph must include a constancy check;

(c) check radiation survey instruments for proper operation with a dedicated check source before use at each client's address or on each day of use, whichever is more frequent; and

(d) before leaving a client's address, survey all areas of use to ensure compliance with the requirements in 20.3.4 NMAC and 20.3.7 NMAC.

(2) A mobile medical service may not have radioactive material delivered from the manufacturer or the distributor to the client unless the client has a license allowing possession of the radioactive material. Radioactive material delivered to the client must be received and handled in conformance with the client's license.

(3) A licensee providing mobile medical services shall retain the letter required in Subparagraph (a) of Paragraph (1) of this subsection and the record of each survey required in Subparagraph (d) of Paragraph (1) of this subsection in accordance with Paragraphs (1) and (2) of Subsection K of 20.3.7.715 NMAC, respectively.

#### **K. Storage of volatiles and gases.**

(1) A license shall store volatile radiopharmaceuticals and radioactive gases in the shipper's radiation shield and container.

(2) A license shall store and use a multi-dosage container in a properly functioning fume hood.

#### **L. Decay-in-storage.**

(1) A licensee may hold radioactive material with a physical half-life of less than or equal to 120 days for decay-in-storage before disposal without regard of its radioactivity if the licensee:

(a) holds radioactive material for decay a minimum of 10 half-lives;

(b) monitors radioactive material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey instrument set on its most sensitive scale and with no interposed shielding;

(c) removes or obliterates all radiation labels, except for radiation labels on materials that are within containers and that will be managed as biomedical waste after they have been released from the licensee; and

(d) separates and monitors each generator column individually with all radiation shielding removed to ensure that its content have decayed to background radiation level before disposal.

(2) A licensee shall retain a record of each disposal permitted under Paragraph (1) of this subsection in accordance with Subsection L of 20.3.7.715 NMAC.

[20.3.7.703 NMAC - Rp, 20 NMAC 3.1.7.703, 04/30/2009; A, 06/13/2017]

**20.3.7.704 USE OF UNSEALED RADIOACTIVE MATERIAL FOR UPTAKE, DILUTION AND EXCRETION STUDIES FOR WHICH A WRITTEN DIRECTIVE IS NOT REQUIRED:**

Except for quantities that require a written directive under Paragraph (3) of Subsection G of Section 20.3.7.702 NMAC, a licensee may use any unsealed radioactive material prepared for medical use for uptake, dilution or excretion studies that is:

**A. obtained from:**

(1) a manufacturer or preparer licensed under Subsection J of 20.3.3.315 NMAC, or equivalent NRC or agreement state requirements; or

(2) a PET radioactive drug producer licensed under Subsection J of 20.3.3.307 NMAC or equivalent NRC or agreement state requirements; or

**B. excluding production of PET radionuclides, prepared by:**

(1) an authorized nuclear pharmacist;

(2) a physician who is an authorized user and who meets the requirements specified in either Subsection G of 20.3.7.714 NMAC, incorporating 10 CFR 35.290, or Subsection H of 20.3.7.714 NMAC, incorporating 10 CFR 35.390, and Subsection G of 20.3.7.714 NMAC, incorporating 10 CFR 35.290(c)(1)(ii)(G); or

(3) an individual under the supervision, as specified in Subsection F of 20.3.7.702 NMAC, of the authorized nuclear pharmacist in Paragraph (1) of this subsection or the physician who is an authorized user in Paragraph (2) of this subsection; or

**C. obtained from and prepared by a department, NRC or agreement state licensee** for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug protocol accepted by FDA; or

**D. prepared by the licensee** for use in research in accordance with a radioactive drug research committee-approved application or an investigational new drug protocol accepted by FDA.

[20.3.7.704 NMAC - Rp, 20 NMAC 3.1.7.704, 04/30/2009]

**20.3.7.705 USE OF UNSEALED RADIOACTIVE MATERIAL FOR IMAGING AND LOCALIZATION STUDIES FOR WHICH A WRITTEN DIRECTIVE IS NOT REQUIRED:**

Except for quantities that require a written directive under Paragraph (3) of Subsection G of 20.3.7.702 NMAC, a licensee may use any unsealed radioactive material prepared for medical for imaging and localization studies use that is:

**A. obtained from:**

(1) a manufacturer or preparer licensed pursuant to Subsection J of 20.3.3.315 NMAC or equivalent NRC or agreement state requirements; or

(2) a PET radioactive drug producer licensed under Subsection J of 20.3.3.307 NMAC or equivalent NRC or agreement state requirements; or

**B. excluding production of PET radionuclides, prepared by:**

(1) an authorized nuclear pharmacist;

(2) a physician who is an authorized user and who meets the requirements specified in either Subsection G of 20.3.7.714 NMAC, incorporating 10 CFR 35.290, or Subsection H of 20.3.7.714 NMAC, incorporating 10 CFR 35.390, and Subsection G of 20.3.7.714 NMAC, incorporating 10 CFR 35.290(c)(1)(ii)(G); or

(3) an individual under the supervision, as specified in Subsection F of 20.3.7.702 NMAC, of the authorized nuclear pharmacist in Paragraph (1) of this subsection or the physician who is an authorized user in Paragraph (2) of this subsection; or

**C. obtained from and prepared by a department, NRC or agreement state licensee** for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug protocol accepted by FDA; or

**D. prepared by the licensee** for use in research in accordance with a radioactive drug research committee-approved application or an investigational new drug protocol accepted by FDA.

[20.3.7.705 NMAC - Rp, 20 NMAC 3.1.7.705, 04/30/2009]

### **20.3.7.706 PERMISSIBLE MOLYBDENUM-99, STRONTIUM-82 AND STRONTIUM-85 CONCENTRATIONS:**

**A. Maximum concentrations.** A licensee may not administer to humans a radiopharmaceutical containing:

(1) more than 0.15 microcurie of molybdenum-99 per each millicurie of technetium-99m (0.15 kilobecquerel of molybdenum-99 per each megabecquerel of technetium-99m); or

(2) more than 0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride injection (0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride); or more than 0.2 microcurie of strontium-85 per millicurie of rubidium-82 chloride injection (0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82).

#### **B. Measurement.**

(1) A licensee preparing technetium-99m radiopharmaceutical from molybdenum-99/technetium-99m generators shall measure the molybdenum-99 concentration in each eluate from a generator to demonstrate compliance with Subsection A of this section.

(2) A licensee that uses a strontium-82/rubidium-82 generator for preparing a rubidium-82 radiopharmaceutical shall, before the first patient use of the day, measure the concentration of radionuclides strontium-82 and strontium-85 to demonstrate compliance with Subsection A of this section.

**C. Record keeping.** If a licensee is required to measure the molybdenum-99 concentration or strontium-85 and strontium-85 concentrations, the licensee shall retain a record of each measurement in accordance with Subsection M of 20.3.7.715 NMAC.

**D. Reporting.** The licensee shall report any measurement that exceeds the limits in Subsection A of this section at the time of generator elution, in accordance with subsection D of 20.3.7.716 NMAC and 10 CFR § 35.3204.

[20.3.7.706 NMAC - Rp, 20 NMAC 3.1.7.706, 04/30/2009, A, 02/14/2023]

### **20.3.7.707 CONTROL OF AEROSOLS AND GASES:**

#### **A. System Requirements.**

(1) A licensee who administers radioactive aerosols or gases shall do so with a system that shall keep airborne concentrations of the radioactive material, including releases to the environment, within the limits prescribed by 20.3.4 NMAC.

(2) The delivery or control system for the radioactive aerosols or gases shall either be directly vented to the atmosphere through an air exhaust or shall provide collection and decay or disposal of the aerosol or gas in a shielded container. Other federal, state or local regulatory requirements shall be met.

(3) The licensee shall perform check of the operation of reusable gas collection systems monthly or at other frequency approved by the department.

#### **B. Room Requirements.**

(1) A licensee shall only administer radioactive gases in rooms that are at negative pressure compared to surrounding rooms.

(2) The licensee shall perform measurements of ventilation rate at least semiannually or other frequency approved by the department for those areas of use required to operate under a negative pressure.

#### **C. Clearance Time.**

(1) Before receiving, using or storing a radioactive gas, the licensee shall calculate the amount of time needed after a release to reduce the concentration in the area of use to the limits in 20.3.4.461 NMAC. The calculation shall be based on the highest activity of gas handled in a single container and the measured available air exhaust rate.

(2) A licensee shall post the time calculated in Paragraph (1) of this subsection in the area of use and require that, in case of a gas spill, individuals evacuate the room until the posted time has elapsed or the concentration in the area of use is reduced below the limits in 20.3.4.461 NMAC.

**D. Record keeping.** A copy of the calculations required in Paragraph (1) of Subsection C of this section shall be retained in accordance with Subsection N of 20.3.7.715 NMAC.

[20.3.7.707 NMAC - Rp, 20 NMAC 3.1.7.707, 04/30/2009]

#### **20.3.7.708 USE OF UNSEALED RADIOACTIVE MATERIAL FOR WHICH A WRITTEN DIRECTIVE IS REQUIRED:**

A licensee may use any unsealed byproduct material identified in 10 CFR 35.390(b)(1)(ii)(G) prepared for medical use and for which a written directive is required that is:

**A. Obtained from a manufacturer or preparer** licensed under Subsection J of 20.3.3.315 NMAC or equivalent agreement state or NRC requirements; or

**B. Prepared by:**

- (1) an authorized nuclear pharmacist;
- (2) a physician who is an authorized user and who meets the requirements specified in either Subsection G of 20.3.7.714 NMAC, incorporating 10 CFR 35.290, or Subsection H of 20.3.7.714 NMAC, incorporating 10 CFR 35.390; or
- (3) an individual under the supervision, as specified in Subsection F of 20.3.7.702 NMAC, of the authorized nuclear pharmacist in Paragraph (1) of this subsection or the physician who is an authorized user in Paragraph (2) of this subsection; or

**C. Obtained from and prepared by a department, NRC or agreement state licensee** for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug protocol accepted by FDA; or

**D. Prepared by the licensee** for use in research in accordance with a radioactive drug research committee-approved application or an investigational new protocol accepted by FDA.

[20.3.7.708 NMAC - Rp, 20 NMAC 3.1.7.708, 04/30/2009, A, 02/14/2023]

**20.3.7.709 SAFETY INSTRUCTIONS AND PRECAUTIONS FOR USE OF UNSEALED RADIOACTIVE MATERIAL FOR WHICH A WRITTEN DIRECTIVE IS REQUIRED:**

In addition to the requirements in 20.3.10.1002 NMAC, the licensee shall provide the following.

**A. Safety Instructions.** A licensee shall provide radiation safety instructions initially and at least annually, to personnel caring for patients or human research subjects who cannot be released under Subsection I of 20.3.7.703 NMAC. To satisfy this requirement, the instruction must be commensurate with the duties of the personnel and include:

- (1) patient or human research subject control;
- (2) visitor control, including:
  - (a) routine visitation to hospitalized individuals in accordance with Paragraph (1) of Subsection A of 20.3.4.413 NMAC; and
  - (b) visitation authorized in accordance with Subsection F of 20.3.4.413 NMAC;

- (3) contamination control;
- (4) waste control; and
- (5) notification of the radiation safety officer, or their designee, and an authorized user if the patient or the human research subject has a medical emergency or dies.

**B. Record Keeping.** A licensee shall retain a record of individuals receiving safety instructions, as specified in Subsection A of this section, in accordance with Subsection O of 20.3.7.715 NMAC.

**C. Safety Precautions.** For each patient or human research subject who cannot be released under Subsection I of 20.3.7.703 NMAC, a licensee shall:

- (1) quarter the patient or the human research subject either in:
  - (a) a private room with a private sanitary facility; or
  - (b) a room, with a private sanitary facility, with another individual who also has received therapy with unsealed radioactive material and who also cannot be released under Subsection I of 20.3.7.703 NMAC;
- (2) visibly post the patient's or human research subject's room with a "Radioactive Materials" sign;
- (3) note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room;
- (4) either monitor material and items removed from the patient's or the human research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle the material and items as radioactive waste; and
- (5) a licensee shall notify the radiation safety officer, or their designee, and an authorized user, as soon as possible if the patient or human research subject has a medical emergency or dies.

[20.3.7.709 NMAC - Rp, 20 NMAC 3.1.7.708, 04/30/2009]

#### **20.3.7.710 MANUAL BRACHYTHERAPY:**

**A. Use of sources for manual brachytherapy.** The regulations of the NRC set forth in 10 CFR 35.400 are hereby incorporated by reference:

## **B. Surveys after source implant and removal.**

(1) Immediately after implanting sources in a patient or a human research subject, the licensee shall make a survey to locate and account for all sources that have not been implanted.

(2) Immediately after removing the last temporary implant source from a patient or a human research subject, the licensee shall make a survey of the patient or the human research subject with a radiation detection survey instrument to confirm that all sources have been removed.

(3) A licensee shall retain a record of the surveys required by Paragraphs (1) and (2) of this subsection in accordance with Subsection P of 20.3.7.715 NMAC.

## **C. Brachytherapy sources accountability.**

(1) A licensee shall maintain accountability at all times for all brachytherapy sources in storage or use.

(2) As soon as possible after removing sources from a patient or a human research subject, a licensee shall return brachytherapy sources to a secure storage area.

(3) A licensee shall maintain a record of the brachytherapy source accountability in accordance with Subsection Q of 20.3.7.715 NMAC.

## **D. Safety instructions.** In addition to the requirements in 20.3.10.1002 NMAC:

(1) the licensee shall provide radiation safety instructions, initially and at least annually, to personnel caring for patients or the human research subjects who are receiving brachytherapy and cannot be released under Subsection I of 20.3.7.703 NMAC; to satisfy this requirement, the instructions must be commensurate with the duties of the personnel and include:

(a) the size and appearance of the brachytherapy sources;

(b) safe handling of the brachytherapy sources and shielding instructions;

(c) a patient or human research subject control;

(d) visitor control, including both routine visitation of hospitalized individuals in accordance with Paragraph (1) of Subsection A of 20.3.4.413 NMAC, and visitation authorized in accordance with Subsection F of 20.3.4.413 NMAC; and

(e) notification of the radiation safety officer, or their designee, and an authorized user if the patient or human research subject has a medical emergency or dies;

(2) a licensee shall retain a record of individuals receiving safety instructions in accordance with Subsection O of 20.3.7.715 NMAC.

#### **E. Safety precautions.**

(1) For each patient or human research subject receiving brachytherapy and cannot be released under Subsection I of 20.3.7.703 NMAC a licensee shall:

(a) not quarter the patient or the human research subject in the same room with an individual who is not receiving brachytherapy;

(b) visibly post the patient's or human research subject's door with a "Radioactive Materials" sign; and

(c) note on the door or in the patient's or human research subject's chart where and how long visitors may stay in the patient's or human research subject's room.

(2) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

(a) dislodged from the patient; and

(b) lodged within the patient following removal of the source applicators.

(3) A licensee shall notify the radiation safety officer, or their designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

#### **F. Calibration measurements of brachytherapy sources.**

(1) Before the first medical use of a brachytherapy source, a licensee shall have:

(a) determined the source output or activity using a dosimetry system that meets the requirements of Paragraph (1) of Subsection F of 20.3.7.711 NMAC;

(b) determined source positioning accuracy within applicators; and

(c) used published protocols currently accepted by nationally recognized bodies to meet the requirements of Subparagraphs (a) and (b) of this paragraph.

(2) Instead of a licensee making its own measurements as required in Paragraph (1) of this subsection, the licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American association of physicists in medicine that are made in accordance with Paragraph (1) of this subsection.

(3) A licensee shall mathematically correct the outputs or activities determined in Paragraph (1) of this subsection for physical decay at intervals consistent with one percent physical decay.

(4) A licensee shall retain a record of each calibration in accordance with Subsection R of 20.3.7.715 NMAC.

**G. Decay of strontium-90 sources for ophthalmic treatments.** The regulations of the NRC set forth in 10 CFR 35.433 are hereby incorporated by reference.

**H. Therapy-related computer systems.** The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing must include, as applicable, verification of:

(1) the source-specific input parameters required by the dose calculation algorithm;

(2) the accuracy of dose, dwell time and treatment time calculations at representative points;

(3) the accuracy of isodose plots and graphic displays; and

(4) the accuracy of the software used to determine sealed source positions from radiographic images.

[20.3.7.710 NMAC - Rp, 20 NMAC 3.1.7.709, 04/30/2009; A, 02/14/2023]

#### **20.3.7.711 PHOTON EMITTING REMOTE AFTERLOADER UNITS, TELETHERAPY UNITS AND GAMMA STEREOTACTIC RADIOSURGERY UNITS:**

**A. Use of a sealed source in a remote afterloader unit, teletherapy unit or gamma stereotactic radiosurgery unit.** A licensee shall use sealed sources in photon emitting remote afterloader units, teletherapy units or gamma stereotactic radiosurgery units for therapeutic medical uses:

(1) as approved in the sealed source and device registry; or

(2) in research in accordance with an active investigational device exemption application accepted by the FDA provided the requirements of Paragraph (1) of Subsection I of 20.3.7.702 NMAC are met.

**B. Surveys of patients and human research subjects treated with a remote afterloader unit.**

(1) Before releasing a patient or a human research subject from licensee control, a licensee shall survey the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm that the source(s) has been removed from the patient or human research subject and returned to the safe shielded position.

(2) A licensee shall retain a record of these surveys in accordance with Subsection P of 20.3.7.715 NMAC.

**C. Installation, maintenance, adjustment and repair.**

(1) Only a person specifically licensed by the department, NRC or an agreement state shall install, maintain, adjust or repair a remote afterloader unit, teletherapy unit or gamma stereotactic radiosurgery unit that involves work on the source(s) shielding, the source(s) driving unit, or other electronic or mechanical component that could expose the source(s), reduce the shielding around the source(s) or compromise the radiation safety of the unit or the source(s).

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the department, NRC or an agreement state shall install, replace, relocate or remove a sealed source or source contained in other remote afterloader units, teletherapy units or gamma stereotactic radiosurgery units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the department, NRC, an agreement state or an authorized medical physicist shall install, replace, relocate or remove a sealed source(s) contained in the unit.

(4) A licensee shall retain a record of the installation, maintenance, adjustment and repair of remote afterloader units, teletherapy units and gamma stereotactic radiosurgery units in accordance with Subsection T of 20.3.7.715 NMAC.

**D. Safety procedures and instructions for remote afterloader units, teletherapy units and gamma stereotactic radiosurgery units.**

(1) A licensee shall:

(a) secure the unit, the console, the console keys and the treatment room when not in use or unattended;

(b) permit only individuals approved by the authorized user, radiation safety officer or authorized medical physicist to be present in the treatment room during treatment with the source(s);

(c) prevent dual operation of more than one radiation producing device in a treatment room if applicable; and

(d) develop, implement and maintain written procedures for responding to an abnormal situation when the operator is unable to place the source(s) in the shielded position or remove the patient or human research subject from the radiation field with controls from outside the treatment room. These procedures must include:

(i) instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;

(ii) the process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and

(iii) the names and telephone numbers of the authorized users, the authorized medical physicist and the radiation safety officer to be contacted if the unit or console operates abnormally.

(2) A copy of the procedures required by Subparagraph (d) of Paragraph (1) of this subsection must be physically located at the unit console.

(3) A licensee shall post instructions at the unit console to inform the operator of:

(a) the location of the procedures required by Subparagraph (d) of Paragraph (1) of this subsection; and

(b) the names and telephone numbers of the authorized users, the authorized medical physicist and the radiation safety officer to be contacted if the unit or console operates abnormally.

(4) Prior to the first use for patient treatment of a new unit or an existing unit with a manufacturer upgrade that affects the operation and safety of the unit, a licensee shall ensure that vendor operational and safety training is provided to all individuals who will operate the unit. The vendor operational and safety training must be provided by the device manufacturer or by an individual certified by the device manufacturer to provide the operational and safety training.

(5) A licensee shall provide operational and safety instruction, initially and at least annually, to all individuals who operate the unit at the facility, as appropriate to the individual's assigned duties, in:

(a) the procedures identified in Subparagraph (d) of Paragraph (1) of this subsection; and

(b) the operating procedures for the unit.

(6) A licensee shall ensure that operators, authorized medical physicists and authorized users participate in drills of the emergency procedures, initially and at least annually.

(7) A licensee shall retain a record of individuals receiving instruction required by Paragraph (5) of this subsection, in accordance with Subsection O of 20.3.7.715 NMAC.

(8) A licensee shall retain a copy of the procedures required by Subparagraph (d) of Paragraph (1) and Subparagraph (b) of Paragraph (4) of this subsection in accordance with Subsection U of 20.3.7.715 NMAC.

**E. Safety precautions for remote afterloader units, teletherapy units and gamma stereotactic radiosurgery units.**

(1) A licensee shall control access to the treatment room by a door at each entrance.

(2) A licensee shall equip each entrance to the treatment room with an electrical interlock system that will:

(a) prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;

(b) cause the source(s) to be shielded when an entrance door is opened; and

(c) prevent the source(s) from being exposed following an interlock interruption until all treatment room entrance doors are closed and the source(s) on-off control is reset at the console.

(3) A licensee shall require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, that radiation levels have returned to ambient levels.

(4) Except for low-dose remote afterloader units, a licensee shall construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation.

(5) For licensed activities where sources are placed within the patient's or human research subject's body, a licensee shall only conduct treatments which allow for expeditious removal of a decoupled or jammed source.

(6) In addition to the requirements specified in Paragraphs (1) through (5) of this subsection, a licensee shall:

(a) for medium dose-rate and pulsed dose-rate remote afterloader units, require:

(i) an authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit to be physically present during the initiation of all patient treatments involving the unit; and

(ii) an authorized medical physicist and either an authorized user or an individual, under the supervision of an authorized user, who has been trained to remove the source applicator(s) in the event of an emergency involving the unit, to be immediately available during continuation of all patient treatments involving the unit;

(b) for high dose-rate remote afterloader units, require:

(i) an authorized user and an authorized medical physicist to be physically present during the initiation of all patient treatments involving the unit; and

(ii) an authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, to be physically present during continuation of all patient treatments involving the unit;

(c) for gamma stereotactic radiosurgery units, require an authorized user and an authorized medical physicist to be physically present throughout all patient treatments involving the unit;

(d) notify the radiation safety officer, or their designee and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

(7) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source which:

(a) remains in the unshielded position; or

(b) is lodged within the patient following completion of the treatment.

#### **F. Dosimetry equipment.**

(1) Except for low dose-rate remote afterloader sources where the source output or activity is determined by the manufacturer, a licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions must be met.

(a) The system must have been calibrated using a system or source traceable to the NIST and published protocols accepted by nationally recognized bodies, or by a calibration laboratory accredited by the American association of physicists in medicine. The calibration must have been performed within the previous 2 years and after any servicing that may have affected system calibration.

(b) The system must have been calibrated within the previous 4 years. Eighteen to 30 months after that calibration, the system must have been inter-compared with another dosimetry system that was calibrated within the past 24 months by NIST or by a calibration laboratory accredited by the American association of physicists in medicine. The results of the inter-comparison must indicate that the calibration factor of the licensee's system had not changed by more than two percent. The licensee may not use the inter-comparison result to change the calibration factor. When inter-comparing dosimetry systems to be used for calibrating sealed sources for therapeutic units, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sources of the same radionuclide as the source used at the licensee's facility.

(2) The licensee shall have a dosimetry system available for use for spot-check output measurements, if applicable. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with Paragraph (1) of this subsection. This comparison must have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in Paragraph (1) of this subsection.

(3) The licensee shall retain a record of each calibration, inter-comparison and comparison in accordance with Subsection V of 20.3.7.715 NMAC.

#### **G. Full calibration measurements on teletherapy units.**

(1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

(a) before the first medical use of the unit;

(b) before medical use under the following conditions:

(i) whenever spot-check measurements indicate that the output differs by more than five percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) following replacement of the source or following reinstallation of the teletherapy unit in a new location;

(iii) following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(c) at intervals not exceeding one year.

(2) To satisfy the requirement of Paragraph (1) of this subsection, full calibration measurements must include determination of:

(a) the output within plus or minus three percent for the range of field sizes and for the distance or range of distances used for medical use;

(b) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(c) the uniformity of the radiation field and its dependence on the orientation of the useful beam;

(d) timer accuracy and linearity over the range of use;

(e) on-off error; and

(f) the accuracy of all distance measuring and localization devices in medical use.

(3) A licensee shall use the dosimetry system described in Paragraph (1) of Subsection F of 20.3.7.711 NMAC to measure the output for one set of exposure conditions. The remaining radiation measurements required in Subparagraph (a) of Paragraph (2) of this subsection may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by Paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in Subparagraph (a) of Paragraph (2) of this subsection for physical decay for intervals not exceeding 1 month for cobalt-60, 6 months for cesium-137, or at intervals consistent with one percent decay for all other nuclides.

(6) Full calibration measurements required by Paragraph (1) of this subsection and physical decay corrections required by Paragraph (5) of this subsection must be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration in accordance with Subsection W of 20.3.7.715 NMAC.

**H. Full calibration measurements on remote afterloader units.**

(1) A licensee authorized to use a remote afterloader unit for medical use shall perform full calibration measurements on each unit:

(a) before the first medical use of the unit;

(b) before medical use under the following conditions:

(i) following replacement of the source or following reinstallation of the unit in a new location; and

(ii) following any repair of the unit that includes removal of the source or major repair of the components associated with the source exposure assembly;

(c) at intervals not exceeding one quarter for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sources whose half-life exceeds 75 days; and

(d) at intervals not exceeding one year for low dose-rate remote afterloader units.

(2) To satisfy the requirement of Paragraph (1) of this subsection, full calibration measurements must include, as applicable, determination of:

(a) the output within plus or minus five percent;

(b) source positioning accuracy to within plus or minus 1 millimeter;

(c) source retraction with backup battery upon power failure;

(d) length of the source transfer tubes;

(e) timer accuracy and linearity over the typical range of use;

(f) length of the applicators; and

(g) function of the source transfer tubes, applicators and transfer tube-applicator interfaces.

(3) A licensee shall use the dosimetry system described in Paragraph (1) of Subsection F of 20.3.7.711 NMAC to measure the output.

(4) A licensee shall make full calibration measurements required by Paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

(5) In addition to the requirements for full calibrations for low dose-rate remote afterloader units in Paragraph (2) of this subsection, a licensee shall perform an autoradiograph of the source(s) to verify inventory and source(s) arrangement at intervals not exceeding one quarter.

(6) For low dose-rate remote afterloader units, a licensee may use measurements provided by the source manufacturer that are made in accordance with Paragraphs (1) through (5) of this subsection.

(7) A licensee shall mathematically correct the outputs determined in Subparagraph (a) of Paragraph (2) of this subsection for physical decay at intervals consistent with one percent physical decay.

(8) Full calibration measurements required by Paragraph (1) of this subsection and physical decay corrections required by Paragraph (7) of this subsection must be performed by the authorized medical physicist.

(9) A licensee shall retain a record of each calibration in accordance with Subsection W of 20.3.7.715 NMAC.

#### **I. Full calibration measurements on gamma stereotactic radiosurgery units.**

(1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each unit:

(a) before the first medical use of the unit;

(b) before medical use under the following conditions:

(i) whenever spot-check measurements indicate that the output differs by more than five percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) following replacement of the sources or following reinstallation of the gamma stereotactic radiosurgery unit in a new location; and

(iii) following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sources or major repair of the components associated with the source assembly; and

(c) at intervals not exceeding one year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.

(2) To satisfy the requirement of Paragraph (1) of this subsection, full calibration measurements must include determination of:

- (a) the output within plus or minus three percent;
- (b) relative helmet factors;
- (c) isocenter coincidence;
- (d) timer accuracy and linearity over the range of use;
- (e) on-off error;
- (f) trunnion centricity;
- (g) treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;
- (h) helmet microswitches;
- (i) emergency timing circuits; and
- (j) stereotactic frames and localizing devices (trunnions).

(3) A licensee shall use the dosimetry system described in Paragraph (1) of Subsection F of 20.3.7.711 NMAC to measure the output for one set of exposure conditions. The remaining radiation measurements required in Subparagraph (a) of Paragraph (2) of this subsection of this subsection may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by Paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in Subparagraph (a) of Paragraph (2) of this subsection at intervals not exceeding 1 month for cobalt-60 and at intervals consistent with one percent physical decay for all other radionuclides.

(6) Full calibration measurements required by Paragraph (1) of this subsection and physical decay corrections required by Paragraph (5) of this subsection must be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration in accordance with Subsection W of 20.3.7.715 NMAC.

**J. Periodic spot-checks for teletherapy units.**

(1) A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that include determination of:

(a) timer accuracy and timer linearity over the range of use;

(b) on-off error;

(c) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(d) the accuracy of all distance measuring and localization devices used for medical use;

(e) the output for one typical set of operating conditions measured with the dosimetry system described in Paragraph (2) of Subsection F of 20.3.7.711 NMAC; and

(f) the difference between the measurement made in Subparagraph (e) of this paragraph and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay).

(2) A licensee shall perform measurements required by Paragraph (1) of this subsection in accordance with written procedures established by the authorized medical physicist. That individual need not actually perform the spot-check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within 15 days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month and after each source installation to assure proper operation of:

(a) electrical interlocks at each teletherapy room entrance;

(b) electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);

(c) source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;

(d) viewing and intercom systems;

(e) treatment room doors from inside and outside the treatment room; and

(f) electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

(5) If the results of the checks required in Paragraph (4) of this subsection indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace or check the malfunctioning system.

(6) A licensee shall retain a record of each spot-check required by Paragraphs (1) and (4) of this subsection, and a copy of the procedures required by Paragraph (2), in accordance with Subsection X of 20.3.7.715 NMAC.

#### **K. Periodic spot-checks for remote afterloader units.**

(1) A licensee authorized to use a remote afterloader unit for medical use shall perform spot-checks of each remote afterloader facility and on each unit:

(a) before the first use of a high dose-rate, medium dose-rate or pulsed dose-rate remote afterloader unit on a given day;

(b) before each patient treatment with a low dose-rate remote afterloader unit;  
and

(c) after each source installation.

(2) A licensee shall perform the measurements required by Paragraph (1) of this subsection in accordance with written procedures established by the authorized medical physicist. That individual need not actually perform the spot check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within 15 days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) To satisfy the requirements of Paragraph (1) of this subsection, spot-checks must, at a minimum, assure proper operation of:

(a) electrical interlocks at each remote afterloader unit room entrance;

(b) source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(c) viewing and intercom systems in each high dose-rate, medium dose-rate and pulsed dose-rate remote afterloader facility;

(d) emergency response equipment;

(e) radiation monitors used to indicate the source position;

(f) timer accuracy;

(g) clock (date and time) in the unit's computer; and

(h) decayed source(s) activity in the unit's computer.

(5) If the results of the checks required in Paragraph (4) of this subsection indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace or check the malfunctioning system.

(6) A licensee shall retain a record of each check required by Paragraph (4) of this subsection and a copy of the procedures required by Paragraph (2) of this subsection in accordance with Subsection Y of 20.3.7.715 NMAC.

#### **L. Periodic spot-checks for gamma stereotactic radiosurgery units.**

(1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot-checks of each gamma stereotactic radiosurgery facility and on each unit:

(a) monthly;

(b) before the first use of the unit on a given day; and

(c) after each source installation.

(2) A licensee shall:

(a) perform the measurements required by Paragraph (1) of this subsection in accordance with written procedures established by the authorized medical physicist; that individual need not actually perform the spot check measurements;

(b) have the authorized medical physicist review the results of each spot-check within 15 days; the authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(3) To satisfy the requirements of Subparagraph (a) of Paragraph (1) of this subsection, spot-checks must, at a minimum:

(a) assure proper operation of:

(i) treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;

(ii) helmet microswitches;

(iii) emergency timing circuits; and

(iv) stereotactic frames and localizing devices (trunnions); and

(b) determine:

(i) the output for one typical set of operating conditions measured with the dosimetry system described in Paragraph (2) of Subsection F of 20.3.7.711 NMAC;

(ii) the difference between the measurement made above (Item (i) of Subparagraph (b) of Paragraph (3) of Subsection L of 20.3.7.711 NMAC) and the anticipated output, expressed as a percentage of the anticipated output (i.e., the value obtained at last full calibration corrected mathematically for physical decay);

(iii) source output against computer calculation;

(iv) timer accuracy and linearity over the range of use;

(v) on-off error; and

(vi) trunnion centricity.

(4) To satisfy the requirements of Subparagraphs (b) and (c) of Paragraphs (1) of this subsection, spot-checks must assure proper operation of:

(a) electrical interlocks at each gamma stereotactic radiosurgery room entrance;

(b) source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;

(c) viewing and intercom systems;

(d) timer termination;

(e) radiation monitors used to indicate room exposures; and

(f) emergency off buttons.

(5) A licensee shall arrange for the repair of any system identified in Paragraph (3) of this subsection that is not operating properly as soon as possible.

(6) If the results of the checks required in Paragraph (4) of this subsection indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace or check the malfunctioning system.

(7) A licensee shall retain a record of each check required by Paragraphs (3) and (4) and a copy of the procedures required by Paragraph (2) of this subsection in accordance with Subsection Z of 20.3.7.715 NMAC.

**M. Additional technical requirements for mobile remote afterloader units.**

(1) A licensee providing mobile remote afterloader service shall:

(a) check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent; and

(b) account for all sources before departure from a client's address of use.

(2) In addition to the periodic spot-checks required by Subsection K of 20.3.7.711 NMAC, a licensee authorized to use mobile afterloaders for medical use shall perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks must be made to verify the operation of:

(a) electrical interlocks on treatment area access points;

(b) source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(c) viewing and intercom systems;

(d) applicators, source transfer tubes and transfer tube-applicator interfaces;

(e) radiation monitors used to indicate room exposures;

(f) source positioning (accuracy); and

(g) radiation monitors used to indicate whether the source has returned to a safe shielded position.

(3) In addition to the requirements for checks in Paragraph (2) of this subsection, a licensee shall ensure overall proper operation of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.

(4) If the results of the checks required in Paragraph (2) of this subsection indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace or check the malfunctioning system.

(5) A licensee shall retain a record of each check required by Paragraph (2) of this subsection in accordance with Subsection AA of 20.3.7.715 NMAC.

#### **N. Radiation surveys.**

(1) In addition to the survey requirements in Subsection H of 20.3.7.703 NMAC and 20.3.4.416 NMAC, a person subject to this section shall make surveys to ensure that the maximum radiation levels and average radiation levels from the surface of the main source safe with the source(s) in the shielded position do not exceed the levels stated in the sealed source and device registry.

(2) The licensee shall make the survey required by Paragraph (1) of this subsection at installation of a new source and following repairs to the source(s) shielding, the source(s) driving unit or other electronic or mechanical component that could expose the source, reduce the shielding around the source(s) or compromise the radiation safety of the unit or the source(s).

(3) A licensee shall retain a record of the radiation surveys required by Paragraph (1) of this subsection in accordance with Subsection BB of 20.3.7.715 NMAC.

#### **O. Five-year inspection for teletherapy and gamma stereotactic radiosurgery units.**

(1) A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during source replacement to assure proper functioning of the source exposure mechanism and other safety components. The interval between each full inspection servicing shall not exceed 5 years for each teletherapy unit and shall not exceed 7 years for each gamma stereotactic radiosurgery unit.

(2) This inspection and servicing may only be performed by persons specifically licensed to do so by the department, NRC or an agreement state.

(3) A licensee shall keep a record of the inspection and servicing in accordance with Subsection CC of 20.3.7.715 NMAC.

**P. Therapy-related computer systems.** The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing must include, as applicable, verification of:

- (1) the source-specific input parameters required by the dose calculation algorithm;
- (2) the accuracy of dose, dwell time and treatment time calculations at representative points;
- (3) the accuracy of isodose plots and graphic displays;
- (4) the accuracy of the software used to determine sealed source positions from radiographic images; and
- (5) the accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

[20.3.7.711 NMAC - Rp, 20 NMAC 3.1.7.710, 04/30/2009; A, 02/14/2023]

#### **20.3.7.712 SEALED SOURCES FOR DIAGNOSIS:**

**A. Use of sealed sources for diagnosis.** A licensee shall use only sealed sources for diagnostic medical uses if the sealed sources are approved in the Sealed Source and Device Registry for diagnostic medicine. The sealed sources may be used for diagnostic medical uses that are not explicitly listed in the Sealed Source and Device Registry but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry.

**B.** A licensee must only use medical devices containing sealed sources for diagnostic medical uses if both the sealed sources and medical devices are approved in the Sealed Source and Device Registry for diagnostic medical uses. The diagnostic medical devices may be used for diagnostic medical uses that are not explicitly listed in the Sealed Source and Device Registry but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry.

**C.** Sealed sources and devices for diagnostic medical uses may be used in research in accordance with an active Investigational Device Exemption (IDE) application accepted by the U.S. Food and Drug Administration provided the requirements of 10 CFR § 35.49(a) are met.

**D. Survey instrument.** A licensee authorized to use radioactive material as a sealed source for diagnostic purposes shall have available for use a portable radiation survey meter capable of detecting dose rates ranging from 0.1 millirem (1 millisievert)

per hour to 1000 millirems (10 millisieverts) per hour. The instrument shall be operable and calibrated in accordance with section Subsection C of 20.3.7.703 NMAC.

[20.3.7.712 NMAC - Rp, 20 NMAC 3.1.7.711, 04/30/2009; A, 02/14/2023]

### **20.3.7.713 OTHER MEDICAL USES OF RADIOACTIVE MATERIAL OR RADIATION FROM RADIOACTIVE MATERIAL:**

A licensee may use radioactive material or a radiation source approved for medical use which is not specifically addressed in 20.3.7.704 NMAC through 20.3.7.712 NMAC of this part if:

**A.** the applicant or licensee has submitted the information required by Paragraph (2) through (4) of Subsection E of 20.3.7.700 NMAC; and

**B.** the applicant or licensee has received written approval from the department in a license or license amendment and uses the material in accordance with the requirements and specific conditions the department considers necessary for the medical use of the material.

[20.3.7.713 NMAC - N, 04/30/2009]

### **20.3.7.714 TRAINING REQUIREMENTS:**

**A. Radiation safety officer and Associate Radiation Safety Officer.** The regulations of the NRC set forth in 10 CFR 35.50 are hereby incorporated by reference.

**B. Training for an authorized medical physicist.** The regulations of the NRC set forth in 10 CFR 35.51 are hereby incorporated by reference.

**C. Training for an authorized nuclear pharmacist.** The regulations of the NRC set forth in 10 CFR 35.55 are hereby incorporated by reference.

**D. Training for experienced radiation safety officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist and authorized nuclear pharmacist.** The regulations of the NRC set forth in 10 CFR 35.57 are hereby incorporated by reference.

**E. Recency of training.** The training and experience specified in Subsections A, B, C, F, G, H, I, J, K, L, M, N and O of this section must have been obtained within the 7 years preceding the date of application or the individual must have had related continuing education and experience since the required training and experience was completed.

**F. Training for uptake, dilution, and excretion studies.** (For use of unsealed radioactive material under 20.3.7.704 NMAC) The regulations of the NRC set forth in 10 CFR 35.190 are hereby incorporated by reference.

**G. Training for imaging and localization studies.** (For use of unsealed radioactive material under 20.3.7.705 NMAC) The regulations of the NRC set forth in 10 CFR 35.290 are hereby incorporated by reference.

**H. Training for use of unsealed radioactive material for which a written directive is required.** (For use of unsealed radioactive material under 20.3.7.708 NMAC) The regulations of the NRC set forth in 10 CFR 35.390 are hereby incorporated by reference.

**I. Training for the oral administration of sodium iodide i-131 requiring a written directive in quantities less than or equal to 33 millicuries (1.22 gigabecquerels).** The regulations of the NRC set forth in 10 CFR 35.392 are hereby incorporated by reference.

**J. Training for the oral administration of sodium iodide i-131 requiring a written directive in quantities greater than 33 millicuries (1.22 gigabecquerels).** The regulations of the NRC set forth in 10 CFR 35.394 are hereby incorporated by reference.

**K. Training for the parenteral administration of unsealed byproduct material requiring a written directive.** The regulations of the NRC set forth in 10 CFR 35.396 are hereby incorporated by reference.

**L. Training for use of manual brachytherapy sources.** (For use of radioactive material under 20.3.7.710 NMAC) The regulations of the NRC set forth in 10 CFR 35.490 are hereby incorporated by reference.

**M. Training for ophthalmic use of strontium-90.** (For use of radioactive material under 20.3.7.710 NMAC) The regulations of the NRC set forth in 10 CFR 35.491 are hereby incorporated by reference.

**N. Training for use of sealed sources for diagnosis:** (For use of radioactive material under 20.3.7.712 NMAC) The regulations of the NRC set forth in 10 CFR 35.590 are hereby incorporated by reference.

**O. Training for use of remote afterloader units, teletherapy units and gamma stereotactic radiosurgery units** (For use of radioactive material under 20.3.7.711 NMAC). The regulations of the NRC set forth in 10 CFR 35.690 are hereby incorporated by reference.

**P. Modifications.** The following modifications are made to the incorporated federal regulations in this section.

- (1) "Commission" means the department or NRC.
- (2) "Act" means the Radiation Protection Act, Sections 74-3-1 through 74-3-16 NMSA 1978.
- (3) "Byproduct material" means radioactive material as defined in this chapter.
- (4) "10 CFR 35.100" means 20.3.7.704 NMAC.
- (5) "10 CFR 35.200" means 20.3.7.705 NMAC.
- (6) "10 CFR 35.300" means 20.3.7.708 NMAC.
- (7) "10 CFR 35.400" means 20.3.7.710 NMAC.
- (8) "10 CFR 35.500" means 20.3.7.712 NMAC.
- (9) "10 CFR 35.600" means 20.3.7.711 NMAC.
- (10) "At all other locations of use" in Subsection D of this section, incorporating 10 CFR 35.57 means at all other locations of use in non-licensing state, as defined in 20.3.1.7 NMAC.

[20.3.7.714 NMAC - Rp, 20 NMAC 3.1.7.712; A, 02/14/2023]

#### **20.3.7.715 RECORDS:**

##### **A. Records of Authority and Responsibilities for Radiation Protection Programs.**

(1) A licensee shall retain a record of actions taken by the licensee's management in accordance with Subsection C of 20.3.7.702 NMAC for 5 years. The record must include a summary of the actions taken and a signature of licensee management.

(2) The licensee shall retain a copy of both authority, duties and responsibilities of the radiation safety officer as required by Paragraph (2) of Subsection A of 20.3.7.702 NMAC, and a signed copy of each radiation safety officer's agreement to be responsible for implementing the radiation safety program, as required by Paragraph (1) of Subsection A of 20.3.7.702 NMAC, for the duration of the license. The records must include the signature of the radiation safety officer and licensee management.

**B. Records of Radiation Protection Program Changes.** A licensee shall retain a record of each radiation protection program change made in accordance with Subsection E of 20.3.7.702 NMAC for 5 years. The record must include a copy of the

old and new procedures, the effective date of the change and the signature of the licensee management that reviewed and approved the change.

**C. Records of Written Directives.** A licensee shall retain a copy of each written directive as required by Subsection G of 20.3.7.702 NMAC for 3 years.

**D. Records for Procedures for Administrations Requiring a Written Directive.** A licensee shall retain a copy of the procedures required by Subsection H of 20.3.7.702 NMAC for the duration of the license.

**E. Records of Calibrations, Test or Checks of Instruments Used to Measure the Activity of Unsealed Radioactive Material.** A licensee shall maintain a record of instrument checks, tests and calibrations required by Subsection A of 20.3.7.703 NMAC for 3 years. The records must include the model and serial number of the instrument, the date of the check, test or calibration, the activity and serial number of the calibration source(s) used for the check, test or calibration, whichever applicable, the results of the check, test or calibration and the name of the individual who performed the check, test or calibration.

**F. Records of Radiation Survey Instrument Calibrations.** A licensee shall maintain a record of radiation survey instrument calibrations required by Subsection C of 20.3.7.703 NMAC for 3 years. The record must include the model and serial number of the instrument, the date of the calibration, the results of the calibration and the name of the individual who performed the calibration.

**G. Records of Dosages of Unsealed Radioactive Material for Medical Use.**

(1) A licensee shall maintain a record of dosage determinations required by Subsection B of 20.3.7.703 NMAC for 3 years.

(2) The record must contain:

(a) the radiopharmaceutical;

(b) the patient's or human research subject's name or identification number if one has been assigned;

(c) the prescribed dosage, the determined dosage or a notation that the total activity is less than 30 microcuries (1.1 megabecquerels);

(d) the date and time of the dosage determination; and

(e) the name of the individual who determined the dosage.

**H. Records of Leaks Tests and Inventory of Sealed Sources and Brachytherapy Sources.**

(1) A licensee shall retain records of leak tests required by Paragraph (2) of Subsection F of 20.3.7.703 NMAC for 3 years. The records must include the model number, and serial number if one has been assigned, of each source tested; the identity of each source by radionuclide and its estimated activity; the results of the test; the date of the test and the name of the individual who performed the test.

(2) A licensee shall retain records of the semi-annual physical inventory of sealed sources and brachytherapy sources required by Paragraph (7) of Subsection F of 20.3.7.703 NMAC for 3 years. The inventory records must contain the model number of each source, and serial number if one has been assigned, the identity of each source by radionuclide and its nominal activity, the location of each source and the name of the individual who performed the inventory.

**I. Records of Surveys.** A licensee shall retain a record of each survey required by Subsection H of 20.3.7.703 NMAC for 3 years. The record must include the date of the survey, the results of the survey, the instrument used to make the survey and the name of the individual who performed the survey.

**J. Records of the Release of Individuals Containing Unsealed Radioactive Material or Implants Containing Radioactive Material.**

(1) A licensee shall retain a record of the basis for authorizing the release of an individual in accordance with Subsection I of 20.3.7.703 NMAC, if the total effective dose equivalent is calculated by:

- (a) using the retained activity rather than the activity administered;
- (b) using an occupancy factor less than 0.25 at 1 meter;
- (c) using the biological or effective half-life; or
- (d) considering the shielding by tissue.

(2) A licensee shall retain a record that the instructions required by Paragraph (2) of Subsection I of 20.3.7.703 NMAC were provided to a breast-feeding female if the radiation dose to the infant or child from continued breastfeeding could result in a total effective dose equivalent exceeding 0.5 rem (5 millisieverts).

(3) The records required by Paragraphs (1) and (2) of this section must be retained for 3 years after the date of release of the individual.

**K. Records of Mobile Medical Services.**

(1) A licensee shall retain a copy of each letter that permits the use of radioactive material at a client's address, as required by Subparagraph (a) of Paragraph (1) of Subsection J of 20.3.7.703 NMAC. Each letter must clearly delineate the authority

and responsibility of the licensee and the client and must be retained for 3 years after the last provision of service.

**(2)** A licensee shall retain the record of each survey required by Subparagraph (d) of Paragraph (1) of Subsection J of 20.3.7.703 NMAC for 3 years. The record must include the date of the survey, the results of the survey, the instrument used to make the survey and the name of the individual who performed the survey.

**L. Records of Decay-In-Storage.** A licensee shall maintain records of the disposal of licensed materials, as required by Subsection L of 20.3.7.703 NMAC, for 3 years. The record must include the date of the disposal, the survey instrument used, the background radiation level, the radiation level measured at the surface of each waste container and the name of the individual who performed the survey.

**M. Records of Molybdenum-99, Strontium-82 and Strontium-85 Concentrations.** A licensee shall maintain a record of the molybdenum-99, strontium-82 and strontium-85 concentration tests required by 20.3.7.706 NMAC for 3 years. The record must include:

**(1)** for each measured elution of technetium-99m, the ratio of the measures expressed as microcuries of molybdenum-99 per each millicurie of technetium-99m (or kilobecquerel of molybdenum-99 per each megabecquerel of technetium-99m), the time and date of the measurement and the name of the individual who made the measurement; or

**(2)** for each measured elution of rubidium-82, the ratio of the measures expressed as microcuries of strontium-82 per millicurie of rubidium-82 (or kilobecquerel of strontium-82 per megabecquerel of rubidium), microcurie of strontium-85 per millicurie of rubidium-82 (or kilobecquerel of strontium-85 per megabecquerel of rubidium), the time and date of the measurement and the name of the individual who made the measurement.

**N. Records of Gas Controls.** A licensee shall maintain the records specified in Subsection D of 20.3.7.707 NMAC for 3 years.

**O. Records of Safety Instructions.** A licensee shall maintain a record of safety instructions required by Subsection A of 20.3.7.709 NMAC, Subsection D of 20.3.7.710 NMAC and Subsection D of 20.3.7.711 NMAC for 3 years. The record must include a list of the topics covered, the date of the instruction, the name(s) of the attendee(s) and the name(s) of the individual(s) who provided the instruction.

**P. Records of Surveys after Source Implant and Removal.** A licensee shall maintain a record of the surveys required by Subsection B of 20.3.7.710 NMAC and Subsection B of 20.3.7.711 NMAC for 3 years. Each record must include the date and results of the survey, the survey instrument used and the name of the individual who made the survey.

#### **Q. Records of Brachytherapy Source Accountability.**

(1) A licensee shall maintain a record of brachytherapy source accountability required by Subsection B of 20.3.7.710 NMAC for 3 years.

(2) For temporary implants, the record must include:

(a) the number and activity of sources removed from storage, the time and date they were removed from storage, the name of the individual who removed them from storage and the location of use; and

(b) the number and activity of sources returned to storage, the time and date they were returned to storage and the name of the individual who returned them to storage.

(3) For permanent implants, the record must include:

(a) the number and activity of sources removed from storage, the date they were removed from storage and the name of the individual who removed them from storage;

(b) the number and activity of sources not implanted, the date they were returned to storage and the name of the individual who returned them to storage; and

(c) the number and activity of sources permanently implanted in the patient or human research subject.

#### **R. Records of Calibration Measurements of Brachytherapy Sources.**

(1) A licensee shall maintain a record of the calibrations of brachytherapy sources required by Subsection F of 20.3.7.710 NMAC for 3 years after the last use of the source.

(2) The record must include:

(a) the date of the calibration;

(b) the manufacturer's name, model number and serial number for the source and the instruments used to calibrate the source;

(c) the source output or activity;

(d) the source positioning accuracy within the applicators; and

(e) the name of the individual, the source manufacturer or the calibration laboratory that performed the calibration.

#### **S. Records of Decay of Strontium- 90 Sources for Ophthalmic Treatments.**

(1) A licensee shall maintain a record of the activity of a strontium-90 source required by Subsection G of 20.3.7.710 NMAC for the life of the source.

(2) The record must include:

(a) the date and initial activity of the source as determined under Subsection F of 20.3.7.710 NMAC; and

(b) for each decay calculation, the date and the source activity as determined under Subsection G of 20.3.7.710 NMAC.

#### **T. Records of Installation, Maintenance, Adjustment and Repair of Remote Afterloader Units, Teletherapy Units and Gamma Stereotactic Radiosurgery Units.**

A licensee shall retain a record of the installation, maintenance, adjustment and repair of remote afterloader units, teletherapy units and gamma stereotactic radiosurgery units as required by Subsection C of 20.3.7.711 NMAC for 3 years. For each installation, maintenance, adjustment and repair, the record must include the date, description of the service and name(s) of the individual(s) who performed the work.

**U. Records of Safety Procedures.** A licensee shall retain a copy of the procedures required by Subparagraph (d) of Paragraph (1) of Subsection D of 20.3.7.711 NMAC and Subparagraph (b) of Paragraph (4) of Subsection D of 20.3.7.711 NMAC until the licensee no longer possesses the remote afterloader, teletherapy unit or gamma stereotactic radiosurgery unit.

#### **V. Records of Dosimetry Equipment Used with Remote Afterloader Units, Teletherapy Units and Gamma Stereotactic Radiosurgery Units.**

(1) A licensee shall retain a record of the calibration, inter-comparison and comparisons of its dosimetry equipment done in accordance with Subsection F of 20.3.7.711 NMAC for the duration of the license.

(2) For each calibration, inter-comparison or comparison, the record must include:

(a) the date;

(b) the manufacturer's name, model numbers and serial numbers of the instruments that were calibrated, inter-compared or compared as required by Paragraphs (1) and (2) of Subsection F of 20.3.7.711 NMAC;

(c) the correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an inter-comparison; and

(d) the names of the individuals who performed the calibration, inter-comparison or comparison.

#### **W. Records of Teletherapy, Remote Afterloader and Gamma Stereotactic Radiosurgery Full Calibrations.**

(1) A licensee shall maintain a record of the teletherapy unit, remote afterloader unit and gamma stereotactic radiosurgery unit full calibrations required by Subsection G of 20.3.7.711 NMAC, Subsection H of 20.3.7.711 NMAC and Subsection I of 20.3.7.711 NMAC for 3 years, respectively.

(2) The record must include:

(a) the date of the calibration;

(b) the manufacturer's name, model number and serial number of the teletherapy, remote afterloader and gamma stereotactic radiosurgery unit(s), the source(s) and the instruments used to calibrate the unit(s);

(c) the results and an assessment of the full calibrations;

(d) the results of the autoradiograph required for low dose-rate remote afterloader units; and

(e) the signature of the authorized medical physicist who performed the full calibration.

#### **X. Records of Periodic Spot Checks for Teletherapy Units.**

(1) A licensee shall retain a record of each periodic spot-check for teletherapy units required by Subsection J of 20.3.7.711 NMAC for 3 years.

(2) The record must include:

(a) the date of the spot-check;

(b) the manufacturer's name, model number and serial number of the teletherapy unit, source and instrument used to measure the output of the teletherapy unit;

(c) an assessment of timer linearity and constancy;

(d) the calculated on-off error;

(e) a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device;

(f) the determined accuracy of each distance measuring and localization device;

(g) the difference between the anticipated output and the measured output;

(h) notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each source exposure indicator light and the viewing and intercom system and doors; and

(i) the name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(3) A licensee shall retain a copy of the procedures required by Paragraph (2) of Subsection J of 20.3.7.711 NMAC until the licensee no longer possesses the teletherapy unit.

#### **Y. Records of Periodic Spot-checks for Remote Afterloader Units.**

(1) A licensee shall retain a record of each spot-check for remote afterloader units required by Subsection K of 20.3.7.711 NMAC for 3 years.

(2) The record must include, as applicable:

(a) the date of the spot-check;

(b) the manufacturer's name, model number and serial number for the remote afterloader unit and source;

(c) an assessment of timer accuracy;

(d) notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom systems and clock and decayed source activity in the unit's computer; and

(e) the name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(3) A licensee shall retain a copy of the procedures required by Paragraph (2) of Subsection K of 20.3.7.711 NMAC until the licensee no longer possesses the remote afterloader unit.

#### **Z. Records of Periodic Spot-checks for Gamma Stereotactic Radiosurgery Units.**

(1) A licensee shall retain a record of each spot-check for gamma stereotactic radiosurgery units required by Subsection L of 20.3.7.711 NMAC for 3 years.

(2) The record must include:

(a) the date of the spot-check;

(b) the manufacturer's name, model number and serial number for the gamma stereotactic radiosurgery unit and the instrument used to measure the output of the unit;

(c) an assessment of timer linearity and accuracy;

(d) the calculated on-off error;

(e) a determination of trunnion centricity;

(f) the difference between the anticipated output and the measured output;

(g) an assessment of source output against computer calculations;

(h) notations indicating the operability of radiation monitors, helmet microswitches, emergency timing circuits, emergency off buttons, electrical interlocks, source exposure indicator lights, viewing and intercom systems, timer termination, treatment table retraction mechanism and stereotactic frames and localizing devices (trunnions); and

(i) the name of the individual who performed the periodic spot-check and the signature of the authorized medical physicist who reviewed the record of the spot-check.

(3) A licensee shall retain a copy of the procedures required by Paragraph (2) of Subsection L of 20.3.7.711 NMAC until the licensee no longer possesses the gamma stereotactic radiosurgery unit.

**AA. Records of Additional Technical Requirements for Mobile Remote Afterloader Units.**

(1) A licensee shall retain a record of each check for mobile remote afterloader units required by Subsection M of 20.3.7.711 NMAC for 3 years.

(2) The record must include:

(a) the date of the check;

(b) the manufacturer's name, model number and serial number of the remote afterloader unit;

(c) notations accounting for all sources before the licensee departs from a facility;

(d) notations indicating the operability of each entrance door electrical interlock, radiation monitors, source exposure indicator lights, viewing and intercom system, applicators, source transfer tubes and transfer tube applicator interfaces and source positioning accuracy; and

(e) the signature of the individual who performed the check.

**BB. Records of Surveys of Therapeutic Treatment Units.**

(1) A licensee shall maintain a record of radiation surveys of treatment units made in accordance with Subsection N of 20.3.7.711 NMAC for the duration of use of the unit.

(2) The record must include:

(a) the date of the measurements;

(b) the manufacturer's name, model number and serial number of the treatment unit, source and instrument used to measure radiation levels;

(c) each dose rate measured around the source while the unit is in the off position and the average of all measurements; and

(d) the signature of the individual who performed the test.

**CC. Records of 5-Year Inspection for Teletherapy and Gamma Stereotactic Radiosurgery Units.**

(1) A licensee shall maintain a record of the 5-year inspections for teletherapy and gamma stereotactic radiosurgery units required by Subsection O of 20.3.7.711 NMAC for the duration of use of the unit.

(2) The record must contain:

(a) the inspector's radioactive materials license number;

(b) the date of inspection;

(c) the manufacturer's name, model number and serial number of both the treatment unit and source;

- (d) a list of components inspected and serviced and the type of service; and
- (e) the signature of the inspector.

[20.3.7.715 NMAC - N, 04/30/2009]

### **20.3.7.716 REPORTS:**

#### **A. Report and notification of a medical event.**

(1) A licensee shall report any event, except for an event that results from patient intervention, in which the administration of byproduct material or radiation from byproduct material, except permanent implant brachytherapy, results in:

(a) a dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 5 rems (50 millisieverts) effective dose equivalent, 50 rems (0.5 sievert) to an organ or tissue or 50 rems (0.5 sievert) shallow dose equivalent to the skin; and:

(i) the total dose delivered differs from the prescribed dose by twenty percent or more;

(ii) the total dosage delivered differs from the prescribed dosage by twenty percent or more or falls outside the prescribed dosage range; or

(iii) the fractionated dose delivered differs from the prescribed dose, for a single fraction, by fifty percent or more;

(b) a dose that exceeds 5 rems (50 millisieverts) effective dose equivalent, 50 rems (0.5 sievert) to an organ or tissue, or 50 rems (0.5 sievert) shallow dose equivalent to the skin from any of the following:

(i) an administration of a wrong radioactive drug containing byproduct material;

(ii) an administration of a radioactive drug containing radioactive material by the wrong route of administration;

(iii) an administration of a dose or dosage to the wrong individual or human research subject;

(iv) an administration of a dose or dosage delivered by the wrong mode of treatment; or

(v) a leaking sealed source; and

(c) a dose to the skin or an organ or tissue other than the treatment site that exceeds by 50 rems (0.5 sievert) to an organ or tissue and fifty percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).

(d) For permanent implant brachytherapy, the administration of byproduct material or radiation from byproduct material (excluding sources that were implanted in the correct site but migrated outside the treatment site) that results in—

(i) The total source strength administered differing by 20 percent or more from the total source strength documented in the post-implantation portion of the written directive;

(ii) The total source strength administered outside of the treatment site exceeding 20 percent of the total source strength documented in the post-implantation portion of the written directive; or

(iii) An administration that includes any of the following: the wrong radionuclide; the wrong individual or human research subject; sealed source(s) implanted directly into a location discontinuous from the treatment site, as documented in the post-implantation portion of the written directive; or a leaking sealed source resulting in a dose that exceeds 0.5 Sv (50 rem) to an organ or tissue.

(2) A licensee shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(3) The licensee shall notify by telephone the department no later than the next calendar day after discovery of the medical event.

(4) The licensee shall submit a written report to the department within 15 days after discovery of the medical event.

(a) The written report must include:

(i) the licensee's name;

(ii) the name of the prescribing physician;

(iii) a brief description of the event;

(iv) why the event occurred;

(v) the effect, if any, on the individual(s) who received the administration;

(vi) what actions, if any, have been taken or are planned to prevent recurrence; and

(vii) certification that the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not.

(b) The report may not contain the individual's name or any other information that could lead to identification of the individual.

(5) The licensee shall provide notification of the event to the referring physician and also notify the individual who is the subject of the medical event no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he or she will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee may not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the medical event, because of any delay in notification. To meet the requirements of this paragraph, the notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian. If a verbal notification is made, the licensee shall inform the individual or appropriate responsible relative or guardian that a written description of the event can be obtained from the licensee upon request. The licensee shall provide such a written description if requested.

(6) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event or to that individual's responsible relatives or guardians.

(7) A licensee shall:

(a) annotate a copy of the report provided to the department with the:

(i) name of the individual who is the subject of the event; and

(ii) social security number or other identification number, if one has been assigned, of the individual who is the subject of the event; and

(b) provide a copy of the annotated report to the referring physician, if other than the licensee, no later than 15 days after the discovery of the event.

**B. Report and notification of a dose to an embryo, fetus or a nursing child.**

(1) A licensee shall report any dose to an embryo or fetus that is greater than 5 rems (50 millisieverts) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual unless the dose to the embryo or fetus was specifically approved, in advance, by the authorized user.

(2) A licensee shall report any dose to a nursing child that is a result of an administration of radioactive material to a breast-feeding individual that:

(a) is greater than 5 rems (50 millisieverts) total effective dose equivalent; or

(b) has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.

(3) The licensee shall notify by telephone the department no later than the next calendar day after discovery of a dose to the embryo, fetus or nursing child that requires a report in Paragraphs (1) or (2) in this subsection.

(4) The licensee shall submit a written report to the department within 15 days after discovery of a dose to the embryo, fetus or nursing child that requires a report in Paragraphs (1) or (2) in this subsection.

(a) The written report must include:

(i) the licensee's name;

(ii) the name of the prescribing physician;

(iii) a brief description of the event;

(iv) why the event occurred;

(v) the effect, if any, on the embryo, fetus or the nursing child;

(vi) what actions, if any, have been taken or are planned to prevent recurrence; and

(vii) certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.

(b) The report must not contain the individual's or child's name or any other information that could lead to identification of the individual or child.

(5) The licensee shall provide notification of the event to the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than 24 hours after discovery of an event that would require

reporting under Paragraph (1) or (2) of this subsection, unless the referring physician personally informs the licensee either that he or she will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee is not required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within 24 hours, the licensee shall make the appropriate notifications as soon as possible thereafter. The licensee may not delay any appropriate medical care for the embryo, fetus or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification. To meet the requirements of this paragraph, the notification may be made to the mother's or child's responsible relative or guardian instead of the mother. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian that a written description of the event can be obtained from the licensee upon request. The licensee shall provide such a written description if requested.

(6) A licensee shall:

(a) annotate a copy of the report provided to the NRC with the:

(i) name of the pregnant individual or the nursing child who is the subject of the event; and

(ii) social security number or other identification number, if one has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and

(b) provide a copy of the annotated report to the referring physician, if other than the licensee, no later than 15 days after the discovery of the event.

**C. Report of a leaking source.** A licensee shall file a report within five days if a leak test required by Subsection F of 20.3.7.703 NMAC reveals the presence of 0.005 microcurie (185 becquerels) or more of removable contamination. The report must be filed with the department and it must include the model number and serial number, if assigned, of the leaking source, the radionuclide and its estimated activity, the results of the test, the date of the test and the action taken.

**D. Report and notification for an eluate exceeding permissible molybdenum-99, strontium-82, and strontium-85 concentrations:**

(1) The licensee shall notify by telephone the department and NRC Operations Center and the distributor of the generator within 7 calendar days after discovery that an eluate exceeded the permissible concentration listed in 10 CFR § 35.204(a) at the time of generator elution. The telephone report to the department and NRC must include the manufacturer, model number, and serial number (or lot number) of the generator; the results of the measurement; the date of the measurement; whether

dosages were administered to patients or human research subjects, when the distributor was notified, and the action taken.

(2) By an appropriate method listed in 10 CFR § 30.6(a) of this chapter, the licensee shall submit a written report to the department and appropriate NRC Regional Office listed in 10 CFR § 30.6 of this chapter within 30 calendar days after discovery of an eluate exceeding the permissible concentration at the time of generator elution. The written report must include the action taken by the licensee; the patient dose assessment; the methodology used to make this dose assessment if the eluate was administered to patients or human research subjects; and the probable cause and an assessment of failure in the licensee's equipment, procedures or training that contributed to the excessive readings if an error occurred in the licensee's breakthrough determination; and the information in the telephone report as required by Paragraph (1) of this section.

[20.3.7.716 NMAC - N, 04/30/2009; A, 02/14/2023]

## **PART 8: RADIATION SAFETY REQUIREMENTS FOR ANALYTICAL X-RAY EQUIPMENT**

### **20.3.8.1 ISSUING AGENCY:**

Environmental Improvement Board.

[Recompiled 11/27/01]

### **20.3.8.2 SCOPE:**

This Subpart [20.3.8 NMAC] provides special requirements for analytical x-ray equipment. The requirements of this Subpart [20.3.8 NMAC] are in addition to, and not in substitution for, applicable requirements in other Subparts [Parts] of these regulations.

[5-3-95; 20.3.8.2 NMAC--Rn, 20 NMAC 3.1.8.800, Recompiled 11/27/01]

### **20.3.8.3 STATUTORY AUTHORITY:**

[RESERVED]

### **20.3.8.4 DURATION:**

[RESERVED]

### **20.3.8.5 EFFECTIVE DATE**

[RESERVED]

**20.3.8.6 OBJECTIVE:**

**[RESERVED]**

**20.3.8.7 DEFINITIONS:**

A. "Analytical x-ray equipment" means equipment used for x-ray diffraction or fluorescence analysis.

B. "Analytical x-ray system" means a group of local and remote components utilizing x-rays to determine the elemental composition or to examine the microstructure of materials. Local components include those that are struck by x-rays such as radiation source housing, port and shutter assemblies, collimator, sample holders, cameras, goniometers, detectors and shielding. Remote components include power supplies, transformers, amplifiers, readout devices, and control panels.

C. "Fail-safe characteristics" mean a design feature which causes beam port shutters to close, or otherwise prevents emergence of the primary beam, upon the failure of a safety or warning device.

D. "Local components" mean part of an analytical x-ray system and include areas that are struck by x-rays such as radiation source housings, port and shutter assemblies, collimator, sample holders, cameras, goniometers, detectors and shielding but do not include power supplies, transformers, amplifiers, readout devices, and control panels.

E. "Normal operating procedures" mean step-by-step instructions necessary to accomplish the analysis. These procedures shall include sample insertion and manipulation, equipment alignment, routine maintenance by the registrant, and data-recording procedures which are related to radiation safety.

F. "Open-beam configuration" means analytical x-ray system in which an individual could accidentally place part of his body in the primary beam path during normal operation.

G. "Primary beam" means ionizing radiation which passes through an aperture of the source housing by a direct path from the x-ray tube or a radioactive source located in the radiation source housing.

[5-3-95; 20.3.8.7 NMAC--Rn, 20 NMAC 3.1.8.801, Recompiled 11/27/01]

**20.3.8.8-20.3.8.801 [RESERVED]**

**20.3.8.802 EQUIPMENT REQUIREMENTS:**

A. Safety Device: A device which prevents the entry of any portion of an individual's body into the primary x-ray beam or which causes the beam to be shut off upon entry into its path shall be provided on all open-beam configurations. An applicant may apply to the Department for an exemption from the requirements of a safety device. Such application shall include:

- (1) A description of the various safety devices that have been evaluated;
- (2) The reason each of these devices cannot be used; and
- (3) A description of the alternative methods that will be employed to minimize the possibility of an accidental exposure, including procedures to assure that operators and others in the area will be informed of the absence of safety devices.

B. Warning Devices: Warning devices shall be labeled so that their purpose is identified. On equipment installed after March 10, 1989, these warning devices shall have fail-safe characteristics. Open-beam configurations shall be provided with a readily discernible indication of:

- (1) X-ray tube status (ON-OFF) located near the radiation source housing, if the primary beam is controlled in this manner; and/or
- (2) Shutter status (OPEN-CLOSED) located near each port on the radiation source housing, if the primary beam is controlled in this manner.

C. Ports: Unused ports on radiation source housings shall be secured in the closed position in a manner which will prevent casual opening.

D. Labeling: All analytical x-ray equipment shall be labeled with a readily discernible sign or signs bearing the radiation symbol and the words:

- (1) "CAUTION--HIGH INTENSITY X-RAY BEAM", or words having a similar intent on the x-ray source housing; and
- (2) "CAUTION--RADIATION: THIS EQUIPMENT PRODUCES RADIATION WHEN ENERGIZED" or words having a similar intent, near any switch that energizes an x-ray tube if the radiation source is an x-ray tube; or
- (3) "CAUTION--RADIOACTIVE MATERIAL", or words having a similar intent, on the source housing if the radiation source is a radionuclide.

E. Shutters: On open-beam configurations installed after March 10, 1989, each port on the radiation source housing shall be equipped with a shutter that cannot be opened unless a collimator or coupling has been connected to the port.

F. Warning Lights: A fail-safe, visible warning light labeled with the words "X-RAY ON", or words having a similar intent, shall be located:

(1) near any switch that energizes an x-ray tube and shall be illuminated only when the tube is energized; or

(2) in the case of a radioactive source, near any switch that opens a housing shutter, and shall be illuminated only when the shutter is open.

G. Radiation Source Housing: Each x-ray tube housing shall be so constructed that with all shutters closed the leakage radiation measured at a distance of 5 cm from its surface is not capable of producing a dose in excess of 2.5 mrem (25  $\mu$ Sv) in one hour at any specified tube rating. (If radioactive sources are used, corresponding dose limits shall not exceed 2.5 mrem (25  $\mu$ Sv) per hour.)

H. Generator Cabinet: Each x-ray generator shall be supplied with a protective cabinet which limits leakage radiation measured at a distance of 5 cm from its surface such that it is not capable of producing a dose in excess of 0.25 mrem (2.5  $\mu$ Sv) in one hour.

[5-3-95; 20.3.8.802 NMAC--Rn, 20 NMAC 3.1.8.802, Recompiled 11/27/01]

### **20.3.8.803 AREA REQUIREMENTS:**

A. Radiation Levels: The local components of an analytical x-ray system shall be located and arranged and shall include sufficient shielding or access control such that no radiation levels exist in any area surrounding the local component group which could result in a dose to an individual present therein in excess of the dose limits given in Section 405 [20.3.4.405 NMAC] to Section 412 [20.3.4.412 NMAC]. For systems utilizing x-ray tubes, these levels shall be met at any specified tube rating.

B. Surveys: Radiation surveys, as required by Section 405 [20.3.4.405 NMAC] and Section 416 [20.3.4.416 NMAC] of these regulations, of all analytical x-ray systems sufficient to show compliance with Section 802.A [Subsection A of 20.3.8.802 NMAC] shall be performed:

(1) upon installation of the equipment and at intervals not to exceed 12 months thereafter;

(2) following any change in the initial arrangement, number, or type of local components in the system;

(3) following any maintenance requiring the disassembly or removal of a local component in the system;

(4) during the performance of maintenance and alignment procedures if the procedures require the presence of a primary x-ray beam when any local component in the system is disassembled or removed; and

(5) any time a visual inspection of the local components in the system reveals an abnormal condition; and

(6) whenever personnel monitoring devices show a significant increase over the previous monitoring period or the readings are approaching the radiation dose limits in Subpart 4 [20.3.4 NMAC].

C. Posting: Each area or room containing analytical x-ray equipment shall be conspicuously posted with a sign or signs bearing the radiation symbol and the words "CAUTION-- X-RAY EQUIPMENT." or words having a similar intent.

[5-3-95; 20.3.8.803 NMAC--Rn, 20 NMAC 3.1.8.803, Recompiled]

#### **20.3.8.804 OPERATING REQUIREMENTS:**

A. Procedures: Normal operating procedures shall be written and available to all analytical x-ray equipment workers. No person shall be permitted to operate analytical x-ray equipment in any manner other than that specified in the procedures unless such person has obtained written approval of the radiation safety officer.

B. Bypassing: No person shall bypass a safety device unless such person has obtained the approval of the radiation safety officer. When a safety device or interlock has been bypassed, a readily discernible sign bearing the words "SAFETY DEVICE NOT WORKING," or words having a similar intent, shall be placed on the radiation source housing.

[5-3-95; 20.3.8.804 NMAC--Rn, 20 NMAC 3.1.8.804, Recompiled 11/27/01]

#### **20.3.8.805 PERSONNEL REQUIREMENTS:**

A. Instructions: No person shall be permitted to operate or maintain analytical x-ray equipment unless such person has received instruction in and demonstrated competence as to:

(1) identification of radiation hazards associated with the use of the equipment;

(2) significance of the various radiation warning and safety devices incorporated into the equipment, or the reasons they have not been installed on certain pieces of equipment and the extra precautions required in such cases;

(3) proper operating procedures for the equipment;

- (4) recognition of symptoms of an acute localized exposure; and
- (5) proper procedures for reporting an actual or suspected exposure.

B. Personnel Monitoring: Finger or wrist dosimeter devices shall be provided to and shall be used by:

- (1) analytical x-ray equipment workers using systems having an open-beam configuration and not equipped with a safety device; and
- (2) personnel maintaining analytical x-ray equipment if the maintenance procedures require the presence of a primary x-ray beam when any local component in the analytical x-ray system is disassembled or removed.

C. Reported dose values shall not be used for the purpose of determining compliance with Section 405 [20.3.4.405 NMAC] to Section 412 [20.3.4.412 NMAC] unless evaluated by a qualified expert.

[5-3-95; 20.3.8.808 NMAC--Rn, 20 NMAC 3.1.8.805, Recompiled 11/27/01]

**20.3.8.809-20.3.8.899 [RESERVED]**

## **PART 9: RADIATION SAFETY REQUIREMENTS FOR PARTICLE ACCELERATORS**

### **20.3.9.1 ISSUING AGENCY:**

Environmental Improvement Board.

[Recompiled 11/27/01]

### **20.3.9.2 SCOPE:**

A. This Subpart [20.3.9 NMAC] establishes procedures for the registration and the use of particle accelerators.

B. In addition to the requirements of Subpart 9 [20.3.9 NMAC], all registrants are subject to the requirements of Subparts 1, 2, 4, and 10 of these regulations. Registrants engaged in industrial radiographic operations are subject to the requirements of Subpart 5 [20.3.5 NMAC] and registrants engaged in the healing arts are subject to the requirements of Subparts 6 and 7 [20.3.6 and 20.3.7 NMAC] of these regulations. Registrants engaged in the production of radioactive material are subject to the requirements of Subpart 3 [20.3.3 NMAC].

[5-3-95;20.3.9.2 NMAC--Rn, 20 NMAC 3.1.9.900, Recompiled 11/27/01]

**20.3.9.3 STATUTORY AUTHORITY:**

[RESERVED]

**20.3.9.4 DURATION:**

[RESERVED]

**20.3.9.5 EFFECTIVE DATE:**

[RESERVED]

**20.3.9.6 OBJECTIVE:**

[RESERVED]

**20.3.9.7 DEFINITIONS:**

[RESERVED]

**20.3.9.8-20.3.9.900 [RESERVED]**

**20.3.9.901 REGISTRATION REQUIREMENTS:**

No person shall receive, possess, use, transfer, own or acquire a particle accelerator except as authorized in a registration issued pursuant to these regulations or as otherwise provided for in these regulations. The general procedures for registration of particle accelerator facilities are included in Subpart 2 [20.3.2 NMAC].

[5-3-95; 20.3.9.901 NMAC--Rn, 20 NMAC 3.1.9.901, Recompiled 11/27/01]

**20.3.9.902 GENERAL REQUIREMENTS FOR THE ISSUANCE OF A REGISTRATION FOR PARTICLE ACCELERATORS:**

In addition to the requirements of Subpart 2 [20.3.2 NMAC], a registration application for use of a particle accelerator will be approved only if the Department determines that:

A. the applicant is qualified by reason of training and experience to use the accelerator in question for the purpose requested in accordance with Subparts 4, 9, and 10 [20.3.4 NMAC, 20.3.9 NMAC and 20.3.10 NMAC] of these regulations in such a manner as to minimize danger to public health and safety or property;

B. the applicant's proposed or existing equipment, facilities, and operating and emergency procedures are adequate to protect health and minimize danger to public health and safety or property;

C. the issuance of the registration will not be inimical to the health and safety of the public, and the applicant satisfies any applicable special requirements in Section 903 [20.3.9.903 NMAC] of these regulations;

D. the applicant has appointed a radiation safety officer;

E. the applicant and the applicant's staff have substantial experience in the use of particle accelerators for the intended uses;

F. the applicant has established a radiation safety committee to approve, in advance, proposals for uses of particle accelerators, whenever deemed necessary by the Department; and

G. the applicant has an adequate training program for particle accelerator operators.

[5-3-95; 20.3.9.902 NMAC--Rn, 20 NMAC 3.1.9.902, Recompiled 11/27/01]

### **20.3.9.903 HUMAN USE OF PARTICLE ACCELERATORS:**

In addition to the requirements set forth in Subpart 2 [20.3.2 NMAC], a registration for use of a particle accelerator in the healing arts will be issued only if:

A. Whenever deemed necessary by the Department, the applicant has appointed a medical committee of at least three members to evaluate all proposals for research, diagnostic, and therapeutic use of a particle accelerator. Membership of the committee should include physicians expert in internal medicine, hematology, therapeutic radiology, and a person experienced in depth dose calculations and protection against radiation;

B. The individuals designated on the application as the users have substantial training and experience in deep therapy techniques or in the use of particle accelerators to treat humans; and]

C. The individual designated on the application as the user must be a physician.

[5-3-95; 20.3.9.903 NMAC--Rn, 20 NMAC 3.1.9.903, Recompiled 11/27/01]

### **20.3.9.904 GENERAL PROVISIONS:**

A. These regulations establish radiation safety requirements for the use of particle accelerators. The provisions of Section 904 [20.3.9.904 NMAC] through Section 911 [20.3.9.911 NMAC] are in addition to, and not in substitution for, other applicable provisions of these regulations.

B. The registrant shall be responsible for assuring that all requirements of Subpart 9 [20.3.9 NMAC] are met.

[5-3-95; 20.3.9.904 NMAC-- Rn, 20 NMAC 3.1.9.904, Recompiled 11/27/01]

**20.3.9.905 LIMITATIONS:**

A. No registrant shall permit any person to act as a particle accelerator operator until such person:

(1) has been instructed in radiation safety and shall have demonstrated an understanding thereof;

(2) has received copies of and instruction in Subpart 9 [20.3.9 NMAC] and the applicable requirements of Subparts 4 [20.3.4 NMAC] and 10 [20.3.10 NMAC], pertinent registration conditions and the registrant's operating and emergency procedures, and shall have demonstrated understanding thereof; and

(3) has demonstrated competence to use the particle accelerator, related equipment, and survey instruments which will be employed in his assignment.

B. Either the radiation safety committee or the radiation safety officer shall have the authority to terminate the operations at a particle accelerator facility if such action is deemed necessary to protect health and minimize danger to public health and safety or property.

[5-3-95; 20.3.9.905 NMAC-- Rn, 20 NMAC 3.1.9.905, Recompiled 11/27/01]

**20.3.9.906 SHIELDING AND SAFETY DESIGN REQUIREMENTS:**

A. A qualified expert, specifically accepted by the Department, shall be consulted in the design of a particle accelerator installation and called upon to perform a radiation survey when the accelerator is first capable of producing radiation and when the accelerator operates at design levels.

B. Each particle accelerator installation shall be provided with such primary and secondary barriers as are necessary to assure compliance with Section 405 to Section 412 [20.3.4.405 NMAC to 20.3.4.412 NMAC]. [5-3-95; 20.3.9.906 NMAC--Rn, 20 NMAC 3.1.9.906, Recompiled 11/27/01]

**20.3.9.907 PARTICLE ACCELERATOR CONTROLS AND INTERLOCK SYSTEMS:**

A. Instrumentation, readouts and controls on the particle accelerator control console shall be clearly identified and easily discernible.

B. All entrances into a target room or other high radiation area shall be provided with interlocks that shut down the machine under conditions of barrier penetration.

C. Except where the main control console and the only entrance are adjacent, when an interlock system has been tripped, it shall be possible to resume operation of the accelerator by manually resetting controls at the position where the interlock has been tripped, and lastly at the main control console.

D. Each safety interlock shall be on a circuit which shall allow its operation independently of all other safety interlocks.

E. All safety interlocks shall be fail-safe, i.e., designed so that any defect or component failure in the interlock system prevents operation of the accelerator.

F. A scram button or other emergency power cutoff switch shall be located and easily identifiable in all high radiation areas. Such cutoff switch shall include a manual reset so that the accelerator cannot be restarted from the accelerator control console without resetting the cutoff switch.

[5-3-95, 20.3.9.907 NMAC--Rn, 20 NMAC 3.1.9.907, Recompiled 11/27/01]

#### **20.3.9.908 WARNING DEVICES:**

A. All locations designated as high radiation areas, and entrances to such locations, shall be equipped with easily observable flashing or rotation warning lights that operate when, and only when, radiation is being produced.

B. Except in facilities designed for human exposure, each high radiation area shall have an audible warning device which shall be activated for 15 seconds prior to the possible creation of such high radiation area. Such warning device shall be clearly discernible in all high radiation areas and all radiation areas.

C. Barriers, temporary or otherwise, and pathways leading to high radiation areas shall be identified in accordance with Section 427 [20.3.4.427 NMAC].

[5-3-95, 20.3.9.908 NMAC--Rn, 20 NMAC 3.1.9.908, Recompiled 11/27/01]

#### **20.3.9.909 OPERATING PROCEDURES:**

A. Particle accelerators, when not in operation, shall be secured to prevent unauthorized use.

B. Only a switch on the accelerator control console shall be routinely used to turn the accelerator beam on and off. The safety interlock system shall not be used to turn off the accelerator beam except in an emergency.

C. All safety and warning devices, including interlocks, shall be checked for proper operability at intervals not to exceed three months. Results of such tests shall be maintained for inspection at the accelerator facility.

D. Electrical circuit diagrams of the accelerator, and the associated interlock systems, shall be kept current and maintained for inspection by the Department and available to the operator at each accelerator facility.

E. If, for any reason, it is necessary to intentionally bypass a safety interlock or interlocks, such action shall be:

- (1) Authorized by the radiation safety committee and radiation safety officer;
- (2) Recorded in a permanent log and a notice posted at the accelerator control console; and
- (3) Terminated as soon as possible.

F. A copy of the current operating and the emergency procedures shall be maintained at the accelerator control panel.

[5-3-95; 20.3.9.909 NMAC-- Rn, 20 NMAC 3.1.9.909, Recompiled 11/27/01]

#### **20.3.9.910 RADIATION MONITORING REQUIREMENTS:**

A. There shall be available at each particle accelerator facility, appropriate portable monitoring equipment which is operable and has been calibrated for the appropriate radiations being produced at the facility. Such equipment shall be tested for proper operation daily, when in use, and calibrated at intervals not to exceed one year, and after each servicing and repair.

B. A radiation protection survey shall be performed and documented by a qualified expert specifically approved by the Department when changes have been made in shielding, operation, equipment, or occupancy of adjacent areas.

C. Radiation levels in all high radiation areas shall be continuously monitored. The monitoring devices shall be electrically independent of the accelerator control and interlock systems and capable of providing a remote and local readout with visual and audible alarms at both the control panel and at entrance to high radiation areas, and other appropriate locations, so that people entering or present become aware of the existence of the hazard.

D. All area monitors shall be calibrated at intervals not to exceed one year and after each servicing and repair.

E. Whenever applicable, periodic surveys shall be made to determine the degree of contamination in target and other pertinent areas.

F. All area surveys shall be made in accordance with the written procedures established by a qualified expert, or the radiation safety officer of the particle accelerator facility.

G. Records of all radiation protection surveys, calibration results, instrumentation tests, and smear results shall be kept and on file at each accelerator facility.

[5-3-95; 20.3.9.910 NMAC--Rn, 20 NMAC 3.1.9.910, Recompiled 11/27/01]

#### **20.3.9.911 VENTILATION SYSTEMS:**

A. Adequate ventilation shall be provided in areas where airborne radioactivity may be produced.

B. A registrant, as required by Section 433 [20.3.4.433 NMAC], shall not vent, release or otherwise discharge airborne radioactive material to a restricted area which exceed the limits specified in Subpart 4, 461 [20.3.4.461 NMAC], Table II, except as authorized pursuant to Section 434 [20.3.4.434 NMAC]. For purposes of this paragraph, concentrations may be averaged over a period not greater than one year. Every reasonable effort should be made to maintain releases of radioactive material to unrestricted areas as far below these limits as is reasonably achievable.

[5-3-95; 20.3.9.911 NMAC--Rn, 20 NMAC 3.1.9.911, Recompiled 11/27/01]

#### **20.3.9.912-999 [RESERVED]**

### **PART 10: NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTIONS**

#### **20.3.10.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.3.10.1 NMAC - Rp, 20 NMAC 3.1.1.100, 6/30/2011]

#### **20.3.10.2 SCOPE:**

This part establishes requirements for notices, instructions and reports by licensees, registrants and regulated entities to individuals engaged in department-licensed and regulated activities. This includes options available to such individuals in connection with department inspections of licensees or registrants, in order to ascertain compliance with the provisions of the act, rules, orders and licenses issued thereunder. The provisions in this part apply to all persons who receive, possess, use or transfer sources of radiation licensed by or registered with the department pursuant to 20.3.10 NMAC.

[20.3.10.2 NMAC - Rp, 20 NMAC 3.1.10.1000, 6/30/2011]

**20.3.10.3 STATUTORY AUTHORITY:**

Sections 74-1-9, 74-3-5 and 74-3-9 NMSA 1978.

[20.3.10.3 NMAC - Rp, 20 NMAC 3.1.1.102, 6/30/2011]

**20.3.10.4 DURATION:**

Permanent.

[20.3.10.4 NMAC - Rp, 20 NMAC 3.1.1.103, 6/30/2011]

**20.3.10.5 EFFECTIVE DATE:**

June 30, 2011, unless a later date is cited at the end of a section.

[20.3.10.5 NMAC - Rp, 20 NMAC 3.1.1.104, 6/30/2011]

**20.3.10.6 OBJECTIVE:**

A. To ensure the proper instruction of workers in regards to radiological working conditions, and to ensure that adequate notice and reporting is provided to workers regarding radiological working conditions.

B. To provide for the safe possession and use of radioactive materials and radiation machines in keeping with the ALARA principle.

C. To ensure that worker rights are protected during department inspection of regulated entities.

[20.3.10.6 NMAC - Rp, 20 NMAC 3.1.1.105, 6/30/2011]

**20.3.10.7 DEFINITIONS:**

A. "Regulated activities" means any activity carried on which is under the jurisdiction of the department under the act.

B. "Regulated entities" means any individual, person, organization or corporation that is subject to the regulatory jurisdiction of the department, including but not limited to an applicant for or a holder of a standard design approval or a standard design certification.

C. "Worker" means any individual engaged in activities licensed or regulated by the department and controlled by a licensee or regulated entity, but does not include the licensee or regulated entity.

[20.3.10.7 NMAC- N, 6/30/2011]

**20.3.10.8-20.3.10.1000 [RESERVED]**

**20.3.10.1001 POSTING OF NOTICES TO WORKERS:**

A. Each licensee or registrant shall post current copies of the following documents:

- (1) the regulations in this part and in 20.3.4 NMAC;
- (2) the license, certificate of registration, license conditions or documents incorporated into a license by reference and amendments thereto;
- (3) the operating procedures applicable to activities under the license or registration; and
- (4) any notice of violation involving radiological working conditions, proposed imposition of civil penalty or order issued pursuant to 20.1.5 NMAC, and any response from the licensee or registrant.

B. If posting of a document specified in Subsection A of this section is not practicable, the licensee or registrant may post a notice which describes the document and states where it may be examined.

C. Each licensee or registrant, or each applicant for a specific license, shall promptly post the latest version of department form *notice to employees*.

D. Documents, notices or forms posted pursuant to this section shall appear in a sufficient number of places to permit individuals engaged in department-licensed or regulated activities to observe them on the way to or from any particular licensed or regulated activity location to which the document applies, shall be conspicuous, and shall be replaced if defaced or altered.

E. Documents posted pursuant to Paragraph (4) of Subsection A of this section shall be posted within 2 working days after receipt of the documents from the department; the licensee's or registrant's response, if any, shall be posted within 2 working days after dispatch by the licensee or registrant. Such documents shall remain posted for a minimum of 5 working days or until action correcting the violation has been completed, whichever is later.

[20.3.10.1001 NMAC - Rp, 20 NMAC 3.1.10.1001, 6/30/2011]

**20.3.10.1002 INSTRUCTIONS TO WORKERS:**

A. All individuals who in the course of employment are likely to receive in a year an occupational dose in excess of 100 millirems (1 millisievert) shall be:

(1) kept informed of the storage, transfer, or use of radiation or radioactive material or both;

(2) instructed in the health protection problems associated with exposure to radiation or radioactive material or both, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(3) instructed in, and required to observe, to the extent within the worker's control, the applicable provisions of department rules and licenses for the protection of personnel from exposure to radiation or radioactive material or both;

(4) instructed of their responsibility to report promptly to the licensee or registrant any condition which may lead to or cause a violation of the act, department rules and licenses; or unnecessary exposure to radiation or radioactive material or both;

(5) instructed in the appropriate response to warnings made in the event of any unusual occurrence or malfunction that may involve exposure to radiation or radioactive material or both; and

(6) advised as to the radiation exposure reports which workers may request pursuant to 20.3.10.1003 NMAC.

B. In determining those individuals subject to the requirements of Subsection A of this section, licensees must take into consideration assigned activities during normal and abnormal situations involving exposure to radiation or radioactive material or both, which can reasonably be expected to occur during the life of a licensed facility. The extent of these instructions must be commensurate with potential radiological health protection problems present in the work place.

[20.3.10.1002 NMAC - Rp, 20 NMAC 3.1.10.1002, 6/30/2011]

### **20.3.10.1003 NOTIFICATIONS AND REPORTS TO INDIVIDUALS:**

A. Radiation exposure data for an individual and the results of any measurements, analyses and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified in this section. The information reported shall include data and results obtained pursuant to department rules, orders or license conditions, as shown in records maintained by the licensee or registrant pursuant to department rules. Each notification and report shall:

(1) be in writing;

(2) include appropriate identifying data such as the name of the licensee or registrant, the name of the individual and the individual's identification number, preferably social security number;

(3) include the individual's exposure information; and

(4) contain the following statement: "This report is furnished to you under the provisions of 20.3.10 NMAC. You should preserve this report for further reference."

B. Each licensee or registrant shall make dose information available to workers as shown in records maintained by the licensee under the provisions of 20.3.4.446 NMAC. The licensee or registrant shall provide an annual report to each individual monitored under 20.3.4.417 NMAC of the dose received in that monitoring year if:

(1) the individual's occupational dose exceeds 1 millisievert (100 millirems) TEDE or 1 millisievert (100 millirems) to any individual organ or tissue; or

(2) the individual requests his or her annual dose report.

C. At the request of a worker formerly engaged in department-licensed or regulated activities controlled by the licensee or registrant, each licensee or registrant shall furnish to the worker a written report of the worker's exposure to radiation or radioactive material or both as shown in records maintained by the licensee pursuant to 20.3.4.446 NMAC for each year the worker was required to be monitored under the provisions of 20.3.4.417 NMAC. The report must be furnished within 30 days from the time the request is made, or within 30 days after the exposure of the individual has been determined by the licensee or registrant, whichever is later. This report must cover the period of time that the worker's activities involved exposure to radiation from sources of radiation licensed or regulated by the department and must include the dates and locations of licensed or department-regulated activities in which the worker participated during this period.

D. When a licensee or registrant is required pursuant to 20.3.4.452 NMAC, 20.3.4.453 NMAC or 20.3.4.454 NMAC to report to the department any exposure of an individual to radiation or radioactive material or both; the licensee or the registrant shall also provide the individual a written report on his or her exposure data included in the report to the department. The report must be transmitted no later than the transmittal to the department.

E. At the request of a worker who is terminating employment with the licensee or registrant that involved exposure to radiation or radioactive materials or both, during the current calendar quarter or the current year, each licensee or registrant shall provide at termination to each such worker, or to the worker's designee, a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year or fraction thereof. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a clear indication that this is an estimate.

[20.3.10.1003 NMAC - Rp, 20 NMAC 3.1.10.1003, 6/30/2011]

#### **20.3.10.1004 PRESENCE OF REPRESENTATIVES OF LICENSEE OR REGISTRANT AND WORKERS DURING INSPECTION:**

A. Each licensee, applicant for a license or registrant shall afford to the department at all reasonable times opportunity to inspect materials, machines, activities, facilities, premises and records pursuant to this chapter.

B. During an inspection, department inspectors may consult privately with workers as specified in 20.3.10.1005 NMAC. The licensee, registrant or their representative may accompany department inspectors during other phases of an inspection.

C. If, at the time of inspection, an individual has been authorized by the workers to represent them during department inspections, the licensee or registrant shall notify the inspectors of such authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

D. Each worker's representative shall be routinely engaged in work under control of the licensee or registrant and shall have received instructions as specified in 20.3.10.1002 NMAC.

E. Different representatives of licensees or registrants, and workers may accompany the inspectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one worker's representative at a time may accompany the inspectors.

F. With the approval of the licensee or registrant, and the workers' representative, and individual who is not routinely engaged in work under control of the licensee or registrant, for example, a consultant to the licensee or registrant, or to the workers' representative, shall be afforded the opportunity to accompany department inspectors during the inspection of physical working conditions.

G. Notwithstanding the other provisions of this section, department inspectors are authorized to refuse to permit accompaniment by any individual who deliberately interferes with a fair and orderly inspection. With regard to any area containing information classified by an agency of the United States government in the interest of national security, an individual who accompanies an inspector may have access to such information only if authorized to do so. With regards to any area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the licensee or registrant to enter the area.

[20.3.10.1004 NMAC - Rp, 20 NMAC 3.1.10.1004, 6/30/2011]

#### **20.3.10.1005 CONSULTATION WITH WORKERS DURING INSPECTIONS:**

A. Department inspectors may consult privately with workers concerning matters of occupational radiation protection and other matters related to applicable provisions of the department rules and licenses to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

B. During the course of an inspection, any worker may bring privately to the attention of the inspectors, either orally or in writing, any past or present condition which the worker has reason to believe may have contributed to or caused any violation of the act, the rules in this chapter or license condition, or any unnecessary exposure of an individual to sources of radiation under the licensee's or registrant's control. Any such notice in writing shall comply with the requirements of 20.3.10.1006 NMAC.

C. The provision of Subsection B of this section shall not be interpreted as authorization to disregard instructions pursuant to 20.3.10.1002 NMAC.

[20.3.10.1005 NMAC - Rp, 20 NMAC 3.1.10.1005, 6/30/2011]

#### **20.3.10.1006 REQUESTS BY WORKERS FOR INSPECTION:**

A. Any worker or representative of workers who believes that a violation of the act, the rules in this chapter, or license conditions exists or has occurred in work under a licensee or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the department. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or a representative of the workers. A copy shall be provided to the licensee or registrant by the department no later than at the time of inspection except that, upon the request of the worker giving such notice, such worker's name and the name of individuals referred to therein shall not appear in such copy or on any record published, released or made available by the department, except for good cause shown.

B. If, upon receipt of such notice, the department determines that the complaint meets the requirements set forth in Subsection A of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, the department shall cause an inspection to be made as soon as practicable to determine if such alleged violation exists or has occurred. Inspections pursuant to this section need not be limited to matters referred to in the complaint.

C. No licensee, registrant, contractor or subcontractor of a licensee or registrant shall discharge or in any manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceedings under the provisions of this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such worker on behalf of such worker or others of any option afforded by this part.

[20.3.10.1006 NMAC - Rp, 20 NMAC 3.1.10.1006, 6/30/2011]

### **20.3.10.1007 INSPECTIONS NOT WARRANTED: INFORMAL REVIEW:**

A. If the department determines with respect to a complaint under 20.3.10.1006 NMAC, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the department shall notify the complainant in writing of such determination. The complainant may obtain review of such determination by submitting a written statement of position with the secretary who will provide the licensee or registrant with a copy of such statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the secretary who will provide the complainant with a copy of such statement by certified mail. Upon the request of the complainant, the secretary may hold an informal conference in which the complainant and the licensee or registrant may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant will be made only following receipt of written authorization from the complainant. After considering all written or oral views presented, the secretary shall affirm, modify or reverse the determination of the department and furnish the complainant and the licensee or registrant a written notification of the decision and the reason therefore.

B. If the department determines that an inspection is not warranted because the requirements of Subsection A of 20.3.10.1006 NMAC have not been met, the complainant shall be notified in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of Subsection A of 20.3.10.1006 NMAC.

[20.3.10.1007 NMAC - Rp, 20 NMAC 3.1.10.1007, 6/30/2011]

**20.3.10.1008-20.3.10.1099 [RESERVED]**

## **PART 11: CABINET X-RAY SYSTEMS**

**20.3.11.1 ISSUING AGENCY:**

**[RESERVED]**

**20.3.11.2 SCOPE:**

This Subpart [20.3.11 NMAC] establishes requirements for use of cabinet x-ray systems, including x-ray systems used for inspection of carry-on baggage at airline terminals and similar facilities. The provisions of this Subpart [20.3.11 NMAC] are not applicable to systems which are designed exclusively for microscopic examination of material, e.g., x-ray diffraction, spectroscopic, and electron microscope equipment, or to systems for intentional exposure of humans to x-rays.

[5-3-95; 20.3.11.2 NMAC--Rn, 20 NMAC 3.1.11.1100, Recompiled 11/27/01]

**20.3.11.3 STATUTORY AUTHORITY:**

[RESERVED]

**20.3.11.4 DURATION:**

[RESERVED]

**20.3.11.5 EFFECTIVE DATE:**

[RESERVED]

**20.3.11.6 OBJECTIVE:**

[RESERVED]

**20.3.11.7 DEFINITIONS:**

A. "Access panel" means any barrier or panel which is designed to be removed or opened for maintenance or service purposes, requires tools to open, and permits access to the interior of the cabinets.

B. "Aperture" means any opening in the outside surface of the cabinet, other than a port, which remains open during generation of x-radiation.

C. "Cabinet x-ray system" means an x-ray system with the x-ray tube installed in an enclosure (hereinafter termed "Cabinet") which, independently of existing architectural structures except the floor on which it may be placed, is intended to contain at least that portion of a material thing irradiated, provide radiation attenuation, and exclude personnel from its interior during generation of x-radiation. Included are all x-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad, and bus terminals, and in similar facilities. An x-ray tube used within a shielded part of a building, or x-ray equipment that may temporarily or occasionally incorporate portable shielding is not considered a cabinet x-ray system.

D. "Door" means any barrier which is designed to be removable or opened for routine operation purposes, does not generally require tools to open, and permits access to the interior of the cabinet. For the purposes of Section 1103.D.1 [Paragraph (1), Subsection D of 20.3.11.1103 NMAC], inflexible hardware rigidly affixed to the door shall be considered part of the door.

E. "Exposure" means the quotient of  $dQ$  divided by  $dm$  where  $dQ$  is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass  $dm$  are completely stopped in air.

F. "External surface" means the outside surface of the cabinet x-ray system, including the high-voltage generator, doors, access panels, latches, control knobs, and other permanently mounted hardware and including the plane across any aperture or port.

G. "Floor" means the underside external surface of the cabinet.

H. "Ground Fault" means an accidental electrical grounding of an electrical conductor.

I. "Port" means any opening in the outside surface of the cabinet which is designed to remain open, during generation of x-rays, for the purpose of conveying material to be irradiated into and out of the cabinet, or for partial insertion of an object whose dimensions do not permit complete insertion into the cabinet.

J. "Primary beam" means the x-radiation emitted directly from the target and passing through the window of the x-ray tube.

K. "Safety interlock" means a device which is intended to prevent the generation of x-radiation when access by any part of the human body to the interior of the cabinet x-ray system through a door or access panel is possible.

L. "X-ray system" means an assemblage of components for the controlled generation of x-rays.

M. "X-ray tube" means any electron tube which is designed for the conversion of electrical energy into x-ray energy.

[5-3-95; 20.3.11.7 NMAC--Rn, 20 NMAC 3.1.11.1101, Recompiled 11/27/01]

**20.3.11.8-20.3.11.1101 [RESERVED]**

**20.3.11.1102 GENERAL SAFETY PROVISION:**

A. Use.

(1) The registrant shall assure that all x-ray equipment under his control is operated only by individuals adequately instructed in safe operating procedures and competent in safe use of the equipment.

(2) The registrant shall provide safety rules to each individual operating x-ray equipment under his control, including any restrictions of the operating technique required for the safe operation of the particular x-ray apparatus, and require that the operator demonstrate familiarity with these regulations.

(3) The registrant shall provide personnel monitoring in accordance with Section 417 [20.3.4.417 NMAC] of these regulations.

(4) The registrant shall report to the Department, in writing, a list of those individuals whose exposure equals or exceeds 1.250 rem per quarter, and reasons for the exposure.

B. Prohibited Use: No registrant shall operate or permit the operation of x-ray equipment unless the equipment and installation meet the applicable requirements of these regulations.

[5-3-95; 20.3.11.1102 NMAC--Rn, 20 NMAC 3.1.11.1102, Recompiled 11/27/01]

### **20.3.11.1103 REQUIREMENTS:**

#### A. Emission Limit.:

(1) Radiation emitted from the cabinet x-ray system shall not exceed an exposure of 0.5 mrem (5  $\mu$ Sv) per hour at any point 5 cm outside the external surface.

(2) Compliance with the exposure limit in Section 1103.A.1 [Paragraph (1), Subsection A of 20.3.11.1103 NMAC], shall be determined by measurements averaged over a cross-sectional area of ten square centimeters with no linear dimension greater than 5 centimeters, with the cabinet x-ray system operated at those combinations of x-ray tube potential, current, beam orientation, and conditions of scatter radiation which produce the maximum x-ray exposure at the external surface, and with the door and access panel fully closed as well as fixed at any other position which will allow the generation of x-radiation.

B. Floors: A cabinet x-ray system shall have a permanent floor. Any support surface to which a cabinet x-ray system is permanently affixed may be deemed the floor of the system.

C. Ports and Apertures: The insertion of any part of the human body through any port or aperture into the primary beam shall not be possible.

#### D. Safety Interlocks:

(1) Each door of a cabinet x-ray system shall have a minimum of two safety interlocks. One, but not both, of the required interlocks shall be such that door opening results in physical disconnection of the energy supply circuit to the high-voltage generator and such disconnection shall not be dependent upon any moving part other than the door.

(2) Each access panel shall have at least one safety interlock.

(3) Following interruption of x-ray generation by the functioning of any safety interlock, use of a control provided in accordance with Section 1103.F.2 [Paragraph (2), Subsection F of 20.3.11.1103 NMAC], shall be necessary for resumption of x-ray generation.

(4) Failure of any single component of the cabinet x-ray system shall not cause failure of more than one required safety interlock.

E. Ground Fault: A ground fault shall not result in the generation of x-rays.

F. Controls and Indicators for all Cabinet X-ray Systems: For all systems to which this section is applicable there shall be provided:

(1) A key-actuated control to ensure that x-ray generation is not possible with the key removed;

(2) A control or controls to initiate and terminate the generation of x-rays other than by functioning of safety interlock or the main power control;

(3) Two independent means which indicate when and only when x-rays are being generated, unless the x-ray generation period is less than one-half second, in which case the indicators shall be activated for one-half second, and which are discernible from any point at which initiation of x-ray generation is possible. Failure of a single component of the cabinet x-ray system shall not cause failure of both indicators to perform their intended function. One, but not both, of the indicators, required by this Section [Subsection] may be a milliammeter labeled to indicate x-ray tube current. All other indicators shall be legibly labeled "X-RAY ON "; and

(4) Additional means other than milliammeters which indicate when and only when x-rays are being generated, unless the x-ray generation period is less than one-half second, as needed to ensure that at least one indicator is visible from each door, access panel, and port, and is legibly labeled "X-RAY ON".

G. Additional Requirements for Cabinet X-ray Systems Designed to Admit Humans: For cabinet x-ray systems designed to admit humans there shall also be provided:

(1) A control within the cabinet for preventing and terminating x-ray generation, which cannot be reset, overridden or by-passed from the outside of the cabinet;

(2) No means by which x-ray generation can be initiated from within the cabinet;

(3) Audible and visible warning signals within the cabinet which are actuated for at least 10 seconds immediately prior to the first initiation of x-ray generation after closing any door designed to admit humans. Failure of any single component of the

cabinet x-ray system shall not cause failure of both the audible and visible warning signals;

(4) A visible warning signal within the cabinet which remains actuated when and only when x-rays are being generated, unless the x-ray generation period is less than one-half second, in which case the indicators shall be activated for one-half second;

(5) Signs indicating the meaning of the warning signals provided by Section 1103.G.3 [Paragraph (3), Subsection G of Section 20.3.11.1103 NMAC], and Subpart 4 [20.3.4 NMAC], and containing instructions for the use of the control provided by Section 1103.G.1 [Paragraph (1), Subsection G of 20.3.11.1103 NMAC]. These signs shall be legible, accessible to view, and illuminated when the main power control is in the "on" position; and

(6) A physical radiation survey shall be conducted to determine that the radiation machine is "off" prior to each entry into the shielded room. Such surveys shall be made with a radiation measuring instrument which is capable of measuring radiation of the energies and at the exposure rates to be encountered, which is in good working order, and which has been properly calibrated within the preceding three months or following the last instrument servicing, whichever is later.

#### H. Warning Labels:

(1) There shall be permanently affixed or inscribed on the cabinet x-ray system at the location of any controls that can be used to initiate x-ray generation, a clearly legible and visible label bearing the statement: CAUTION: X-RAYS PRODUCED WHEN ENERGIZED;

(2) There shall be permanently affixed or inscribed on the cabinet x-ray system adjacent to each port a clearly legible and visible label bearing the statement: CAUTION, X-RAY HAZARD: DO NOT INSERT ANY PART OF THE BODY WHEN SYSTEM IS ENERGIZED -- X-RAY HAZARD.

#### I. Instructions.

(1) Manufacturers of cabinet x-ray systems shall provide for purchasers, and to others upon request, at a cost not to exceed the cost of preparation and distribution, manuals and instructions that shall include at least the following technical and safety information: Potential, current, and duty cycle ratings of the x-ray generation equipment; adequate instructions concerning any radiological safety procedures and precautions which may be necessary because of unique features of the system; and a schedule of maintenance necessary to keep the system in compliance with this Subpart [Part].

(2) Manufacturers of cabinet x-ray systems which are intended to be assembled or installed by the purchaser shall provide instructions for assembly,

installation, adjustment and testing of the cabinet x-ray system adequate to assure that the system is in compliance with applicable provisions of this part when assembled, installed, adjusted and tested as directed.

J. Additional Requirements for X-ray Baggage Inspection Systems: X-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad, and bus terminals, and at similar facilities, shall be provided with the following means to ensure operator presence at the control area in a position which permits surveillance of the ports and doors during generation of x-radiation:

(1) During an exposure or preset succession of exposures of one-half second or greater duration, the means provided shall enable the operator to terminate the exposure or preset succession of exposures at any time, and

(2) During an exposure or preset succession of exposures of less than one-half second duration, the means provided may allow completion of the exposure in progress but shall enable the operator to prevent additional exposures.

[5-3-95; 20.3.11.1103 NMAC--Rn, 20 NMAC 3.1.11.1103, Recompiled 11/27/01]

**20.3.11.1104-20.3.11.1199 [RESERVED]**

## **PART 12: LICENSES AND RADIATION SAFETY REQUIREMENTS FOR WELL LOGGING**

### **20.3.12.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.3.12.1 NMAC - Rp, 20.3.12.1 NMAC, 6/30/2011]

### **20.3.12.2 SCOPE:**

The regulations in this part apply to all licensees who use sources of radiation for well logging service operations, radioactive markers or subsurface tracer studies in oil, gas, mineral, groundwater or geological exploration.

[20.3.12.2 NMAC - Rp, 20.3.12.2 NMAC, 6/30/2011]

### **20.3.12.3 STATUTORY AUTHORITY:**

Sections 74-1-9, 74-3-5, and 74-3-9 NMSA 1978.

[20.3.12.3 NMAC - Rp, 20.3.12.3 NMAC, 6/30/2011]

### **20.3.12.4 DURATION:**

Permanent.

[20.3.12.4 NMAC - Rp, 20.3.12.4 NMAC, 6/30/2011]

**20.3.12.5 EFFECTIVE DATE:**

June 30, 2011, unless a later date is cited at the end of a section.

[20.3.12.5 NMAC - Rp, 20.3.12.5 NMAC, 6/30/2011]

**20.3.12.6 OBJECTIVE:**

**A.** This part prescribes requirements for the issuance of a license authorizing the use of licensed materials including sealed sources, radioactive tracers, radioactive markers and uranium sinker bars in well logging in a single well. This part also prescribes radiation safety requirements for persons using licensed materials in these operations. The provisions and requirements of this part are in addition to, and not in substitution for, other requirements of this chapter. In particular, the provisions of 20.3.1 NMAC, 20.3.3 NMAC, 20.3.4 NMAC and 20.3.10 NMAC apply to applicants and licensees subject to this part.

**B.** The requirements set out in this part do not apply to the issuance of a license authorizing the use of licensed material in tracer studies involving multiple wells, such as field flooding studies, or to the use of sealed sources auxiliary to well logging but not lowered into wells.

[20.3.12.6 NMAC- Rp, 20.3.12.6 NMAC, 6/30/2011]

**20.3.12.7 DEFINITIONS:**

As used in this part, the following definitions apply.

**A.** "Energy compensation source" (ECS) means a small sealed source, with an activity not exceeding 100 microcuries (3.7 megabecquerels), used within a logging tool, or other tool components, to provide a reference standard to maintain the tool's calibration when in use.

**B.** "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

**C.** "Fresh water aquifer" means a geologic formation that is capable of yielding fresh water to a well or spring.

**D.** "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

**E.** "Irretrievable well logging source" means any sealed source containing licensed material that is pulled off or not connected to the wireline that suspends the source in the well and for which all reasonable effort at recovery has been expended.

**F.** "Licensed material" means byproduct, source, or special nuclear material received, processed, used or transferred under a license issued by the department under this chapter.

**G.** "Logging assistant" means any individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who performs surveys required by 20.3.12.14 NMAC.

**H.** "Logging supervisor" means the individual who uses licensed material or provides personal supervision in the use of licensed material at a temporary jobsite and who is responsible to the licensee for assuring compliance with the requirements of the department's regulations and the conditions of the license.

**I.** "Logging tool" means a device used subsurface to perform well logging.

**J.** "Personal supervision" means guidance and instruction by a logging supervisor, who is physically present at a temporary job site, who is in personal contact with logging assistants and who can give immediate assistance.

**K.** "Radioactive marker" means licensed material used for depth determination or direction orientation. For the purposes of this part, this term includes radioactive collar markers and radioactive iron nails.

**L.** "Safety review" means a periodic review provided by the licensee for its employees on radiation safety aspects of well logging. The review may include, as appropriate, the results of internal inspections, new procedures or equipment, accidents or errors that have been observed and opportunities for employees to ask safety questions.

**M.** "Sealed source" means any licensed material that is encased in a capsule designed to prevent leakage or escape of the licensed material.

**N.** "Source holder" means a housing or assembly into which a sealed source is placed for the purpose of facilitating the handling and use of the source in well logging operations.

**O.** "Subsurface tracer study" means the release of unsealed licensed material or a substance labeled with licensed material in a single well for the purpose of tracing the movement or position of the material or substance in the well or adjacent formation.

**P.** "Surface casing for protecting fresh water aquifers" means a pipe or tube used as a lining in a well to isolate fresh water aquifers from the well.

**Q.** "Temporary job site" means a location where licensed materials are present for the purpose of performing well logging or subsurface tracer studies.

**R.** "Tritium neutron generator target source" means a tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.

**S.** "Uranium sinker bar" means a weight containing depleted uranium used to pull a logging tool toward the bottom of a well.

**T.** "Well" means a drilled hole, in which well logging may be performed. As used in this part, "well" includes drilled holes for the purpose of oil, gas, mineral, groundwater or geological exploration.

**U.** "Well logging" means all operations involving the lowering and raising of measuring devices or tools which may contain licensed material or are used to detect licensed materials in wells for the purpose of obtaining information about the well or adjacent formations which may be used in oil, gas, mineral, groundwater or geological exploration.

[20.3.12.7 NMAC - Rp, 20.3.12.7 NMAC, 6/30/2011]

#### **20.3.12.8 APPLICATION FOR A SPECIAL LICENSE:**

A person, as defined in 20.3.1.7 NMAC, shall file an application in duplicate for a specific license authorizing the use of licensed material in well logging on a department prescribed form pursuant to 20.3.3.307 NMAC. The application must be sent to the department for review and approval.

[20.3.12.8 NMAC - N, 6/30/2011]

#### **20.3.12.9 SPECIFIC LICENSES FOR WELL LOGGING:**

The department will approve an application for a specific license for the use of licensed material in well logging if the applicant meets the following requirements.

**A.** The applicant shall satisfy the general requirements specified in 10 CFR 30.33 for byproduct material, 10 CFR 40.32 for source material and in 10 CFR 70.23 for special nuclear material and in 20.3.3.308 NMAC and any special requirements contained in this part.

**B.** An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

(1) any reference to the commission or NRC shall be deemed a reference to the department;

(2) 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

(3) 10 CFR 37.7, 10 CFR 37.9, 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable;

(4) for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), and 10 CFR 37.81, the licensee shall use the following address when applicable: New Mexico Environment Department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

**C.** The applicant shall develop a program for training logging supervisors and logging assistants and submit to the department a description of this program which specifies the:

(1) initial training;

(2) on-the-job training;

(3) annual safety reviews provided by the licensee;

(4) means the applicant will use to demonstrate the logging supervisor's knowledge and understanding of and ability to comply with the department's regulations and licensing requirements and the applicant's operating and emergency procedures; and

(5) means the applicant will use to demonstrate the logging assistant's knowledge and understanding of and ability to comply with the applicant's operating and emergency procedures.

**D.** The applicant shall submit to the department written operating and emergency procedures as described in 20.3.12.12 NMAC or an outline or summary of the procedures that includes the important radiation safety aspects of the procedures.

**E.** The applicant shall establish and submit to the department its program for annual inspections of the job performance of each logging supervisor to ensure that the department's regulations, license requirements and the applicant's operating and emergency procedures are followed. Inspection records must be retained for three years after each internal inspection.

**F.** The applicant shall submit a description of its overall organizational structure as it applies to the radiation safety responsibilities in well logging, including specified delegations of authority and responsibility.

**G.** If an applicant wants to perform leak testing of sealed sources, the applicant shall identify the manufacturers and the model numbers of the leak test kits to be used. If the

applicant wants to analyze its own wipe samples, the applicant shall establish procedures to be followed and submit a description of these procedures to the department. The description must include the:

- (1) instruments to be used;
- (2) methods of performing the analysis; and
- (3) pertinent experience of the person who will analyze the wipe samples.

[20.3.12.9 NMAC- N, 6/30/2011; A, 06/13/2017; A, 02/14/2023]

#### **20.3.12.10 RETRIEVAL OR ABANDONMENT OF SEALED SOURCES:**

##### **A. Agreement with well owner or operator.**

(1) A licensee may perform well logging with a sealed source only after the licensee has a written agreement with the employing well owner or operator. This written agreement shall identify who will meet the requirements of Subsections B and C of this section and who will meet the following requirements:

(a) the radiation monitoring requirements of Subsection A of 20.3.12.15 NMAC shall be performed; and

(b) if the environment, any equipment or personnel are contaminated with licensed material, they shall be decontaminated before release from the site or release for unrestricted use.

(2) Recordkeeping. The licensee shall retain a copy of the written agreement for 3 years after the completion of the well logging operation.

(3) A written agreement between the licensee and the well owner or operator is not required if the licensee and the well owner or operator are part of the same corporate structure or otherwise similarly affiliated. However, the licensee shall still otherwise meet the requirements of Subsections B and C of this section.

##### **B. Retrieval of lodged sealed sources.**

(1) If a sealed source becomes lodged in the well, a reasonable effort shall be made to recover it.

(2) A person may not attempt to recover a sealed source in a manner which, in the licensee's opinion, could result in its rupture.

**C. Irretrievable sealed sources.** If the sealed source is classified as irretrievable after reasonable efforts at recovery have been expended, the licensee shall implement the requirements of this subsection within 30 days.

(1) Each irretrievable well logging source shall be immobilized and sealed in place with a cement plug.

(2) The licensee shall implement means to prevent inadvertent intrusion on the source, unless the source is not accessible to any subsequent drilling operations.

(3) The licensee shall install a permanent identification plaque, constructed of long lasting material such as stainless steel, brass, bronze or monel, shall be mounted at the surface of the well, unless the mounting of the plaque is not practical. The size of the plaque shall be at least 17 centimeters (7 inches) square and 3 millimeters (1/8 inch) thick. The plaque shall contain:

(a) the word "caution";

(b) the radiation symbol (the color requirement in Subsection A of 20.3.4.427 NMAC need not be met);

(c) the date the source was abandoned;

(d) the name of the well owner or well operator, as appropriate;

(e) the well name and well identification number(s) or other designation;

(f) an identification of the sealed source(s) by radionuclide and quantity;

(g) the depth of the source and depth to the top of the plug; and

(h) an appropriate warning, such as, "do not re-enter this well."

**D.** A licensee may apply, pursuant to Subsection A of 20.3.1.107 NMAC, for department approval, on a case-by-case basis, of proposed procedures to abandon an irretrievable well logging source in a manner not otherwise authorized in this subsection.

[20.3.12.10 NMAC - Rp, 20.3.12.1203 NMAC, 6/30/2011]

#### **20.3.12.11 TRAINING:**

**A.** Logging supervisor. The licensee may not permit an individual to act as a logging supervisor until that person has met all of the following requirements:

(1) the person has completed training in the subjects outlined in Subsection E of this section;

(2) the person has received copies of, and instruction in:

(a) the department rules contained in the applicable sections of 20.3.4 NMAC, 20.3.10 NMAC and 20.3.12 NMAC;

(b) the department license under which the logging supervisor will perform well logging; and

(c) the licensee's operating and emergency procedures required by 20.3.12.12 NMAC;

(3) the person has completed on-the-job training and demonstrated competence in the use of licensed materials, remote handling tools and radiation survey instruments by a field evaluation; and

(4) the person has demonstrated understanding of the requirements in Paragraphs (1) and (2) of this subsection by successfully completing a written test.

**B.** Logging assistant. The licensee may not permit an individual to act as a logging assistant until that person has met the following requirements:

(1) the person has received instruction in applicable sections of 20.3.4 NMAC, 20.3.10 NMAC and 20.3.12 NMAC;

(2) the person has received copies of, and instruction in, the licensee's operating and emergency procedures required by 20.3.12.12 NMAC;

(3) the person has demonstrated understanding of the materials listed in Paragraphs (1) and (2) of this subsection by successfully completing a written or oral test; and

(4) the person has received instruction in the use of licensed materials, remote handling tools and radiation survey instruments, as appropriate for the logging assistant's intended job responsibilities.

**C.** The licensee shall provide safety reviews for logging supervisors and logging assistants at least once during each calendar year.

**D.** Recordkeeping. The licensee shall maintain a record on each logging supervisor's and logging assistant's training and annual safety review. The training records must include copies of written tests and dates of oral tests. The training records must be retained until 3 years following the termination of employment. Records of annual safety reviews must list the topics discussed and be retained for 3 years.

**E.** The licensee shall include the following subjects in the training required in Paragraph (1) of Subsection A of this section.

- (1) Fundamentals of radiation safety including:
  - (a) characteristics of radiation;
  - (b) units of radiation dose and quantity of radioactivity;
  - (c) hazards of exposure to radiation;
  - (d) levels of radiation from licensed material;
  - (e) methods of controlling radiation dose (time, distance, and shielding); and
  - (f) radiation safety practices, including prevention of contamination, and methods of decontamination.
- (2) Radiation detection instruments including:
  - (a) use, operation, calibration and limitations of radiation survey instruments;
  - (b) survey techniques; and
  - (c) use of personnel monitoring equipment.
- (3) Equipment to be used including:
  - (a) operation of equipment, including source handling equipment and remote handling tools;
  - (b) storage, control and disposal of licensed material; and
  - (c) maintenance of equipment.
- (4) The requirements of pertinent department regulations.
- (5) Case histories of accidents in well logging.

[20.3.12.11 NMAC - Rp, 20.3.12.1214 and 20.3.12.1225 NMAC, 6/30/2011]

#### **20.3.12.12 OPERATING AND EMERGENCY PROCEDURES:**

Each licensee shall develop and follow written operating and emergency procedures that cover the following topics:

- A.** the handling and use of licensed materials including the use of sealed sources in wells without surface casing for protecting fresh water aquifers, if appropriate;

- B.** the use of remote handling tools for handling sealed sources and radioactive tracer material except low-activity calibration sources;
- C.** methods and occasions for conducting radiation surveys, including surveys for detecting contamination, as required by Subsections C through E of 20.3.12.14 NMAC;
- D.** minimizing personnel exposure including exposures from inhalation and ingestion of licensed tracer materials;
- E.** methods and occasions for locking and securing stored licensed materials;
- F.** personnel monitoring and the use of personnel monitoring equipment;
- G.** transportation of licensed materials to field stations or temporary jobsites, packaging of licensed materials for transport in vehicles, placarding of vehicles when needed, and physically securing licensed materials in transport vehicles during transportation to prevent accidental loss, tampering or unauthorized removal;
- H.** picking up, receiving and opening packages containing licensed materials, in accordance with 20.3.4.432 NMAC;
- I.** for the use of tracers, decontamination of the environment, equipment, and personnel;
- J.** maintenance of records generated by logging personnel at temporary jobsites;
- K.** the inspection and maintenance of sealed sources, source holders, logging tools, injection tools, source handling tools, storage containers, transport containers and uranium sinker bars as required by 20.3.12.22 NMAC;
- L.** actions to be taken if a sealed source is lodged in a well;
- M.** notifying proper persons in the event of an accident; and
- N.** actions to be taken if a sealed source is ruptured including actions to prevent the spread of contamination and minimize inhalation and ingestion of licensed materials and actions to obtain suitable radiation survey instruments as required by Subsection B of 20.3.12.17 NMAC.

[20.3.12.12 NMAC - Rp, 20.3.12.1215 and 20.3.12.1218 NMAC, 6/30/2011]

### **20.3.12.13 PERSONNEL MONITORING:**

- A.** The licensee may not permit an individual to act as a logging supervisor or logging assistant unless that person wears, at all times during the handling of licensed radioactive materials, a personnel dosimeter. Each personnel dosimeter shall be

assigned to and worn by only one individual. Film badges shall be replaced at least monthly and other personnel dosimeters evaluated at least quarterly.

**B.** The licensee shall provide bioassay services to individuals using licensed radioactive materials in subsurface tracer studies if required by the license.

**C.** Recordkeeping. The licensee shall retain records of personnel dosimeters required by Subsection A of this section and bioassay results for inspection until the department authorizes disposition of the records.

[20.3.12.13 NMAC - Rp, 20.3.12.1216 NMAC, 6/30/2011; A, 5/1/2024]

#### **20.3.12.14 RADIATION SURVEYS:**

**A.** The licensee shall make radiation surveys, including but not limited to the surveys required under Subsections B through E of this section, of each area where licensed materials are used and stored.

**B.** Before transporting licensed materials, the licensee shall make a radiation survey of the position occupied by each individual in the vehicle and of the exterior of each vehicle used to transport the licensed materials.

**C.** If the sealed source assembly is removed from the logging tool before departure from the temporary jobsite, the licensee shall confirm that the logging tool is free of contamination by energizing the logging tool detector or by using a survey meter.

**D.** If the licensee has reason to believe that, as a result of any operation involving a sealed source, the encapsulation of the sealed source could be damaged by the operation, the licensee shall conduct a radiation survey, including a contamination survey, during and after the operation.

**E.** The licensee shall make a radiation survey at the temporary jobsite before and after each subsurface tracer study to confirm the absence of contamination.

**F.** Recordkeeping. The results of surveys required under Subsections A through E of this section must be recorded and must include the date of the survey, the name of the individual making the survey, the identification of the survey instrument used, and the location of the survey. The licensee shall retain records of surveys for inspection by the department for 3 years after they are made.

[20.3.12.14 NMAC - Rp, 20.3.12.1221 NMAC, 6/30/2011]

#### **20.3.12.15 RADIOACTIVE CONTAMINATION CONTROL:**

**A.** If the licensee detects evidence that a sealed source has ruptured or licensed materials have caused contamination, the licensee shall initiate immediately the emergency procedures required by 20.3.12.12 NMAC.

**B.** If contamination results from the use of licensed material in well logging, the licensee shall decontaminate all work areas, equipment and unrestricted areas.

**C.** During efforts to recover a sealed source lodged in the well, the licensee shall continuously monitor, with an appropriate radiation detection instrument or a logging tool with a radiation detector, the circulating fluids from the well, if any, to check for contamination resulting from damage to the sealed source.

[20.3.12.15 NMAC - N, 6/30/2011]

### **20.3.12.16 LABELS, SECURITY AND TRANSPORT PRECAUTIONS:**

#### **A. Labels.**

(1) The licensee may not use a source, source holder or logging tool that contains licensed material unless the smallest component that is transported as a separate piece of equipment with the licensed material inside bears a durable, legible and clearly visible marking or label. The marking or label must contain the radiation symbol specified in 20.3.4.427 NMAC, without the conventional color requirements, and the wording "Danger (or Caution) radioactive material."

(2) The licensee may not use a container to store licensed material unless the container has securely attached to it a durable, legible and clearly visible label. The label must contain the radiation symbol specified in 20.3.4.427 NMAC and the wording "Danger (or Caution), radioactive material, notify civil authorities (or name of company)."

(3) The licensee may not transport licensed material unless the material is packaged, labeled, marked and accompanied with appropriate shipping papers in accordance with regulations set out in 20.3.3.306 NMAC, incorporating 10 CFR Part 71.

#### **B. Security precautions during storage and transportation.**

(1) The licensee shall store each source containing licensed material in a storage container or transportation package. The container or package must be locked and physically secured to prevent tampering or removal of licensed material from storage by unauthorized personnel. The licensee shall store licensed material in a manner which will minimize danger from explosion or fire.

(2) The licensee shall lock and physically secure the transport package containing licensed material in the transporting vehicle to prevent accidental loss, tampering or unauthorized removal of the licensed material from the vehicle.

[20.3.12.16 NMAC - Rp, 20.3.12.1205, 20.3.12.1206, and 20.3.12.1212 NMAC, 6/30/2011]

### **20.3.12.17 RADIATION SURVEY INSTRUMENTS:**

**A.** The licensee shall keep a calibrated and operable radiation survey instrument capable of detecting beta and gamma radiation at each field station and temporary jobsite to make the radiation surveys required by this part and by 20.3.4 NMAC. To satisfy this requirement, the radiation survey instrument must be capable of measuring 0.001 millisievert (0.1 millirem) per hour through at least 0.5 millisievert (50 millirems) per hour.

**B.** The licensee shall have available additional calibrated and operable radiation detection instruments sensitive enough to detect the low radiation and contamination levels that could be encountered if a sealed source ruptured. The licensee may own the instruments or may have a procedure to obtain them quickly from a second party.

**C.** The licensee shall have each radiation survey instrument required under this section calibrated:

- (1) at intervals not to exceed 6 months and after each instrument servicing;
- (2) for linear scale instruments, at two points located approximately 1/3 and 2/3 of full-scale on each scale; for logarithmic scale instruments, at mid-range of each decade, and at two points of at least one decade; and for digital instruments, at appropriate points; and
- (3) so that an accuracy within plus or minus 20 percent of the calibration standard can be demonstrated on each scale.

**D.** Recordkeeping. The licensee shall retain calibration records for a period of 3 years after the date of calibration for inspection by the department.

[20.3.12.17 NMAC - Rp, 20.3.12.1207 NMAC, 6/30/2011]

### **20.3.12.18 LEAK TESTING OF SEALED SOURCES:**

**A.** Testing and recordkeeping requirements. Each licensee who uses a sealed source of radioactive material shall have the source tested for leakage periodically. Records of leak tests results shall be kept in units of microcuries and maintained for inspection by the department for 3 years after the leak test is performed.

**B.** Method of testing. The wipe of a sealed source shall be performed using a leak test kit or method approved by the department, NRC or an agreement state. The wipe sample shall be taken from the nearest accessible point to the sealed source where contamination might accumulate. The wipe sample shall be analyzed for radioactive

contamination. The analysis shall be capable of detecting the presence of 0.005 microcurie (185 becquerels) of radioactive material on the test sample and shall be performed by a person approved by the department, NRC or an agreement state to perform the analysis.

**C. Test frequency.**

(1) Each sealed source (except an energy compensation source (ECS)) shall be tested at intervals not to exceed 6 months. In the absence of a certificate from a transferor that a test has been made within the 6 months before the transfer, the sealed source may not be used until tested.

(2) Each energy compensation source (ECS) that is not exempt from testing in accordance with Subsection E of this section shall be tested at intervals not to exceed 3 years. In the absence of a certificate from a transferor that a test has been made within the 3 years before the transfer, the energy compensation source (ECS) may not be used until tested.

**D. Removal of leaking source from service.**

(1) If the test conducted pursuant to Subsections A and B of this section reveals the presence of 0.005 microcurie (185 becquerels) or more of removable radioactive material, the licensee shall remove the sealed source from service immediately and have it decontaminated, repaired or disposed of by a department, NRC or an agreement state licensee that is authorized to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by a department, NRC or an agreement state licensee that is authorized to perform these functions.

(2) The licensee shall submit a report to the department within 5 days of receiving the test result. The report must describe the equipment involved in the leak, the test results, any contamination which resulted from the leaking source and the corrective actions taken up to the time the report was made.

**E. Exemptions.** The following sealed sources are exempt from the periodic leak test requirements set out in Subsections A through D of this section:

- (1) hydrogen-3 (tritium) sources;
- (2) sources containing licensed material with a half-life of 30 days or less;
- (3) sealed sources containing licensed material in gaseous form;
- (4) sources of beta- or gamma-emitting radioactive material with an activity of 100 microcuries (3.7 megabecquerels) or less; and

(5) sources of alpha- or neutron-emitting radioactive material with an activity of 10 microcuries (0.370 megabecquerel) or less.

[20.3.12.18 NMAC - Rp, 20.3.12.1208 NMAC, 6/30/2011]

#### **20.3.12.19 PHYSICAL INVENTORY:**

Each licensee shall conduct a semi-annual physical inventory to account for all licensed material received and possessed under the license. The licensee shall retain records of the inventory for 3 years from the date of the inventory for inspection by the department. The inventory must indicate the quantity and kind of licensed material, the location of the licensed material, the date of the inventory and the name of the individual conducting the inventory. Physical inventory records may be combined with leak test records.

[20.3.12.19 NMAC - Rp, 20.3.12.1209 NMAC, 6/30/2011]

#### **20.3.12.20 RECORDS OF MATERIAL USE:**

**A.** Each licensee shall maintain records for each use of licensed material showing:

(1) the make, model number and serial number or a description of each sealed source used;

(2) in the case of unsealed licensed material used for subsurface tracer studies, the radionuclide and quantity of activity used in a particular well and the disposition of any unused tracer materials;

(3) the identity of the logging supervisor who is responsible for the licensed material and the identity of logging assistants present; and

(4) the location and date of use of the licensed material.

**B.** Recordkeeping. The licensee shall make the records required by Subsection A of this section available for inspection by the department. The licensee shall retain the records for 3 years from the date of the recorded event.

[20.3.12.20 NMAC - Rp, 20.3.12.1210 NMAC, 6/30/2011]

#### **20.3.12.21 DESIGN AND PERFORMANCE CRITERIA FOR SEALED SOURCES:**

**A.** A licensee may use a sealed source for use in well logging applications if:

(1) the sealed source is doubly encapsulated;

(2) the sealed source contains licensed material whose chemical and physical forms are as insoluble and nondispersible as practical; and

(3) meets the requirements of Subsections B, C and D of this section.

**B.** For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the requirements of USASI N5.10-1968, classification of sealed radioactive sources, or the requirements in Subsections C and D of this section.

**C.** For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications if it meets the oil well logging requirements of ANSI/HPS N43.6-1997, sealed radioactive sources - classification.

**D.** For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source, for use in well logging applications, if the sealed source's prototype has been tested and found to maintain its integrity after each of the tests in Paragraphs (1) through (5) of this subsection.

(1) Temperature. The test source shall be held at -40 degrees celsius for 20 minutes, 600 degrees celsius for 1 hour, and then be subject to a thermal shock test with a temperature drop from 600 degrees celsius to 20 degrees celsius within 15 seconds.

(2) Impact test. A 5-kilogram steel hammer, 2.5 centimeters in diameter, shall be dropped from a height of 1 meter onto the test source.

(3) Vibration test. The test source shall be subject to a vibration from 25 hertz to 500 hertz at 5 g (g meaning the acceleration due to gravity) amplitude for 30 minutes.

(4) Puncture test. A 1 gram hammer and pin, 0.3 centimeter pin diameter, shall be dropped from a height of 1 meter onto the test source.

(5) Pressure test. The test source shall be subject to an external pressure of  $1.695 \times 10^7$  pascals (24,600 pounds per square inch absolute).

**E.** The requirements in Subsections A, B, C and D of this section do not apply to sealed sources that contain licensed material in gaseous form.

**F.** The requirements in Subsections A, B, C and D of this section do not apply to energy compensation sources (ECS). ECSs shall be registered with the sealed source and device registry (see definition in 20.3.1.7 NMAC) upon an approval by the NRC under 10 CFR 32.210 or an agreement state equivalent regulations.

[20.3.12.21 NMAC - Rp, 20.3.12.1211 NMAC, 6/30/2011]

### **20.3.12.22 INSPECTION, MAINTENANCE AND OPENING OF A SOURCE OR SOURCE HOLDER:**

**A.** Each licensee shall visually check source holders, logging tools and source handling tools, for defects before each use to ensure that the equipment is in good working condition and that required labeling is present. If defects are found, the equipment must be removed from service until repaired, and a record must be made listing: the date of check, name of inspector, equipment involved, defects found and repairs made. These records must be retained for 3 years after the defect is found.

**B.** Each licensee shall have a program for semiannual visual inspection and routine maintenance of source holders, logging tools, injection tools, source handling tools, storage containers, transport containers and uranium sinker bars to ensure that the required labeling is legible and that no physical damage is visible. If defects are found, the equipment must be removed from service until repaired, and a record must be made listing: date, equipment involved, inspection and maintenance operations performed, any defects found and any actions taken to correct the defects. These records must be retained for 3 years after the defect is found.

**C.** Removal of a sealed source from a source holder or logging tool, and maintenance on sealed sources or holders in which sealed sources are contained may not be performed by the licensee unless a written operating procedure is developed and has been approved either by the department, NRC or an agreement state.

**D.** If a sealed source is stuck in the source holder, the licensee may not perform any operation, such as drilling, cutting or chiseling, on the source holder unless the licensee is specifically approved by the department, NRC or an agreement state to perform this operation.

**E.** The opening, repair or modification of any sealed source must be performed by persons specifically approved to do so by the department, NRC or an agreement state.

[20.3.12.22 NMAC - Rp, 20.3.12.1213 NMAC, 6/30/2011]

### **20.3.12.23 SUBSURFACE TRACER STUDIES:**

**A.** The licensee shall require all personnel handling radioactive tracer material to use protective gloves and, if required by the license, other protective clothing and equipment. The licensee shall take precautions to avoid ingestion or inhalation of radioactive tracer material and to avoid contamination of field stations and temporary jobsites.

**B.** A licensee shall not knowingly inject licensed material into fresh water aquifers unless specifically authorized to do so by the department.

[20.3.12.23 NMAC - Rp, 20.3.12.1219 NMAC, 6/30/2011]

#### **20.3.12.24 RADIOACTIVE MARKERS:**

The licensee may use radioactive markers in wells only if the individual markers contain quantities of licensed material not exceeding the exempt quantities specified in 20.3.3.330 NMAC. The use of markers is subject only to the requirements of physical inventory in 20.3.12.19 NMAC.

[20.3.12.24 NMAC - N, 6/30/2011]

#### **20.3.12.25 URANIUM SINKER BARS:**

The licensee may use a uranium sinker bar in well logging applications only if it is legibly impressed with the words "Caution - radioactive - depleted uranium" and "Notify civil authorities (or name of company) if found."

[20.3.12.25 NMAC - Rp, 20.3.12.1200 NMAC, 6/30/2011]

#### **20.3.12.26 USE OF A SEALED SOURCE IN A WELL WITHOUT A SURFACE CASING:**

The licensee may use a sealed source in a well without a surface casing for protecting fresh water aquifers only if the licensee follows a procedure for reducing the probability of the source becoming lodged in the well. The procedure must be approved by the department pursuant to Subsection C of 20.3.12.9 NMAC, the NRC or an agreement state.

[20.3.12.26 NMAC - N, 6/30/2011]

#### **20.3.12.27 ENERGY COMPENSATION SOURCE:**

**A.** The licensee may use an energy compensation source (ECS) which is contained within a logging tool or other tool components, only if the ECS contains quantities of licensed material not exceeding 100 microcuries (3.7 megabecquerels).

**B.** For well logging applications with a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of 20.3.12.18 NMAC, 20.3.12.19 NMAC and 20.3.12.20 NMAC.

**C.** For well logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of 20.3.12.10 NMAC, 20.3.12.18 NMAC, 20.3.12.19 NMAC, 20.3.12.20 NMAC, 20.3.12.26 NMAC and 20.3.12.32 NMAC.

[20.3.12.27 NMAC - Rp, 20.3.12.1201 NMAC, 6/30/2011]

#### **20.3.12.28 TRITIUM NEUTRON GENERATOR TARGET SOURCE:**

**A.** Use of a tritium neutron generator target source, containing quantities not exceeding 30 curies (1,110 megabecquerels) and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of this part except 20.3.12.10 NMAC, 20.3.12.21 NMAC and 20.3.12.32 NMAC.

**B.** Use of a tritium neutron generator target source, containing quantities exceeding 30 curies (1,110 megabecquerels) or in a well without a surface casing to protect fresh water aquifers, is subject to the requirements of this part except 20.3.12.21 NMAC.

[20.3.12.28 NMAC - Rp, 20.3.12.1202 NMAC, 6/30/2011]

#### **20.3.12.29 SECURITY DURING USE OF LICENSED MATERIAL:**

**A.** A logging supervisor must be physically present at a temporary jobsite whenever licensed materials are being handled or are not stored and locked in a vehicle or storage place. The logging supervisor may leave the jobsite in order to obtain assistance if a source becomes lodged in a well.

**B.** During well logging, except when radiation sources are below ground or in shipping or storage containers, the logging supervisor or other individual designated by the logging supervisor shall maintain direct surveillance of the operation to prevent unauthorized entry into a restricted area, as defined in 20.3.4.7 NMAC.

[20.3.12.29 NMAC - Rp, 20.3.12.1217 NMAC, 6/30/2011]

#### **20.3.12.30 DOCUMENTS AND RECORDS REQUIRED AT FIELD STATIONS:**

Each licensee shall maintain the following documents and records at the field station:

- A.** a copy of 20.3.4 NMAC, 20.3.10 NMAC and 20.3.12 NMAC;
- B.** the license authorizing the use of licensed material;
- C.** operating and emergency procedures required by 20.3.12.12 NMAC;
- D.** the record of radiation survey instrument calibrations required by 20.3.12.17 NMAC;
- E.** the record of leak test results required by 20.3.12.18 NMAC;
- F.** physical inventory records required by 20.3.12.19 NMAC;
- G.** utilization records required by 20.3.12.20 NMAC;
- H.** records of inspection and maintenance required by 20.3.12.22 NMAC;

- I. training records required by 20.3.12.11 NMAC; and
- J. survey records required by 20.3.12.14 NMAC.

[20.3.12.30 NMAC - Rp, 20.3.12.1222 NMAC, 6/30/2011]

### **20.3.12.31 DOCUMENTS AND RECORDS REQUIRED AT TEMPORARY JOBSITES:**

Each licensee conducting operations at a temporary jobsite shall maintain the following documents and records at the temporary jobsite until the well logging operation is completed:

- A. operating and emergency procedures required by 20.3.12.12 NMAC;
- B. evidence of latest calibration of the radiation survey instruments in use at the site required by 20.3.12.17 NMAC;
- C. latest survey records required by 20.3.12.14 NMAC;
- D. the shipping papers for the transportation of radioactive materials required by 20.3.3.306 NMAC, incorporating 10 CFR 71.5; and
- E. when operating under reciprocity pursuant to 20.3.3.324 NMAC, a copy of the NRC or agreement state license authorizing use of licensed materials.

[20.3.12.31 NMAC - Rp, 20.3.12.1223 NMAC, 6/30/2011]

### **20.3.12.32 NOTIFICATION OF INCIDENTS AND LOST SOURCES; ABANDONMENT PROCEDURES FOR IRRETRIEVABLE SOURCES:**

- A. The licensee shall immediately notify the department by telephone and subsequently, within 30 days, by confirmation in writing, if the licensee knows or has reason to believe that a sealed source has been ruptured. The written confirmation must designate the well or other location, describe the magnitude and extent of the escape of licensed materials, assess the consequences of the rupture, and explain efforts planned or being taken to mitigate these consequences.
- B. The licensee shall notify the department of the theft or loss of radioactive materials, radiation overexposures, excessive levels and concentrations of radiation and certain other accidents as required by 20.3.4.451 NMAC, 20.3.4.452 NMAC, 20.3.4.453 NMAC and 20.3.3.325 NMAC.
- C. If a sealed source becomes lodged in a well, and when it becomes apparent that efforts to recover the sealed source will not be successful, the licensee shall:

(1) notify the department by telephone of the circumstances that resulted in the inability to retrieve the source; and

(a) obtain department approval to implement abandonment procedures; or

(b) that the licensee implemented abandonment before department approval because the licensee believed there was an immediate threat to public health and safety; and

(2) advise the well owner or operator, as appropriate, of the abandonment procedures under Subsection A or D of 20.3.12.10 NMAC; and

(3) either ensure that abandonment procedures are implemented within 30 days after the sealed source has been classified as irretrievable or request an extension of time if unable to complete the abandonment procedures.

**D.** The licensee shall, within 30 days after a sealed source has been classified as irretrievable, make a report in writing to the department. The licensee shall send a copy of the report to each appropriate local, state or federal agency that issued permits or otherwise approved of the drilling operation. The report must contain the following information:

(1) date of occurrence;

(2) a description of the irretrievable well logging source involved including the radionuclide and its quantity, chemical and physical form;

(3) surface location and identification of the well;

(4) results of efforts to immobilize and seal the source in place;

(5) a brief description of the attempted recovery effort;

(6) depth of the source;

(7) depth of the top of the cement plug;

(8) depth of the well;

(9) the immediate threat to public health and safety justification for implementing abandonment if prior department approval was not obtained in accordance with Subparagraph (b) of Paragraph (1) of Subsection C of this section;

(10) any other information, such as a warning statement, contained on the permanent identification plaque; and

(11) local, state and federal agencies receiving copy of this report.

[20.3.12.32 NMAC - Rp, 20.3.12.1224 NMAC, 6/30/2011]

## **PART 13: LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE**

### **20.3.13.1 ISSUING AGENCY:**

Environmental Improvement Board.

[5-3-95; 20.3.13.1 NMAC - Rn, 20 NMAC 3.1.1.100, 04/15/2004]

### **20.3.13.2 SCOPE:**

**A.** The regulations in this part (20.3.13 NMAC) establish procedures, criteria, and terms and conditions upon which the department issues licenses for the land disposal of wastes received from other persons. The requirements of this part (20.3.13 NMAC) are in addition to, and not in substitution for, other applicable requirements of these regulations.

**B.** The regulations in this part (20.3.13 NMAC) do not apply to disposal of byproduct material as defined in definition (2) of "byproduct material", in Paragraph (2) of Subsection F of 20.3.1.7 NMAC in quantities greater than 10,000 kilograms containing more than 5 millicuries (18.5 megabecquerels) of radium-226, or disposal of waste as provided in 20.3.4 NMAC.

**C.** This part (20.3.13 NMAC) establishes procedural requirements and performance objectives applicable to any method of land disposal. It establishes specific technical requirements for near-surface disposal of radioactive waste which involves disposal in the uppermost portion of the earth.

[5-3-95; 20.3.13.2 NMAC - Rn, 20 NMAC 3.1.13.1300, 04/15/2004; A, 04/30/2009]

### **20.3.13.3 STATUTORY AUTHORITY:**

Sections 74-1-9, 74-3-5, and 74-3-9 NMSA 1978.

[5-3-95; 20.3.13.3 NMAC - Rn, 20 NMAC 3.1.1.102, 04/15/2004]

### **20.3.13.4 DURATION:**

Permanent.

[5-3-95; 20.3.13.4 NMAC - Rn, 20 NMAC 3.1.1.103, 04/15/2004]

#### **20.3.13.5 EFFECTIVE DATE:**

May 3, 1995, unless a later date is cited at the end of a section.

[5-3-95, 8-2-95, A, 7-30-99; 20.3.1.5 NMAC - Rn, 20 NMAC 3.1.1.104, 04/15/2004]

#### **20.3.13.6 OBJECTIVE:**

The regulations in this part (20.3.13 NMAC) establish procedures, criteria, and terms and conditions upon which the department issues licenses for the land disposal of wastes. [Refer to the purpose and scope promulgated by the board as specified in 20.3.13.2 NMAC.]

[5-3-95; 20.3.13.6 NMAC - Rn, 20 NMAC 3.1.13.1300.A, 04/15/2004]

#### **20.3.13.7 DEFINITIONS:**

As used in this part (20.3.13 NMAC), the following definitions apply.

**A.** "Active maintenance" means any significant activity needed during the period of institutional control to maintain a reasonable assurance that the performance objectives in 20.3.13.1307 NMAC and 20.3.13.1308 NMAC are met. Such active maintenance includes ongoing activities, such as the pumping and treatment of water from a disposal unit, or one-time measures, such as replacement of a disposal unit cover. Active maintenance does not include custodial activities, such as repair of fencing, repair or replacement of monitoring equipment, revegetation, minor additions to soil cover, minor repair of disposal unit covers and general disposal site upkeep, such as mowing grass.

**B.** "Buffer zone" means a portion of the disposal site that is controlled by the licensee, and that lies under the disposal units and between the disposal units and the boundary of the site.

**C.** "Chelating agent" means amine polycarboxylic acids, hydroxy-carboxylic acids, gluconic acid and polycarboxylic acids.

**D.** "Commencement of construction" means any clearing of land, excavation or other substantial action that would adversely affect the environment of a land disposal facility. The term does not mean disposal site exploration, necessary roads for disposal site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the disposal site or the protection of environmental values.

**E.** "Custodial agency" means an agency of the government designated to act on behalf of the government owner of the disposal site.

**F.** "Disposal" means the isolation of wastes from the biosphere inhabited by man and his food chains by emplacement in a land disposal facility.

**G.** "Disposal site" means that portion of a land disposal facility which is used for disposal of waste. It consists of disposal units and a buffer zone.

**H.** "Disposal unit" means a discrete portion of the disposal site into which waste is placed for disposal. For near-surface disposal, the unit is usually a trench.

**I.** "Engineered barrier" means a man-made structure or device that is intended to improve the land disposal facility's ability to meet the performance objective in this part (20.3.13 NMAC).

**J.** "Explosive material" means any chemical compound, mixture or device which produces a substantial instantaneous release of gas and heat spontaneously, or by contact with sparks or flame.

**K.** "Hazardous waste" means those wastes designated as hazardous by U.S. environmental protection agency regulations in 40 CFR, Part 261.

**L.** "Hydrogeologic unit" means any soil or rock unit or zone which, by virtue of its porosity or permeability, or lack thereof, has a distinct influence on the storage or movement of ground water.

**M.** "Inadvertent intruder" means a person who might occupy the disposal site after closure and engage in normal activities, such as agriculture, dwelling construction or other pursuits in which an individual might be unknowingly exposed to radiation from the waste.

**N.** "Intruder barrier" means a sufficient depth of cover over the waste that inhibits contact with waste, and helps to ensure that radiation exposures to an inadvertent intruder will meet the performance objectives set forth in this part (20.3.13 NMAC), or engineered structures that provide equivalent protection to the inadvertent intruder.

**O.** "Land disposal facility" means the land, buildings and equipment which is intended to be used for the disposal of wastes into the subsurface of the land.

**P.** "Monitoring" means observing and making measurements to provide data to evaluate the performance and characteristics of the disposal site.

**Q.** "Near-surface disposal facility" means a land disposal facility in which waste is disposed of within approximately the upper 30 meters of the earth's surface.

**R.** "Pyrophoric liquid" means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees F (54.4 degrees C). A pyrophoric solid is any solid material, other than one classed as an explosive, which under normal conditions is liable to

cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily, and when ignited, burns so vigorously and persistently as to create a serious transportation, handling or disposal hazard. Included in this definition are spontaneously combustible and water-reactive materials.

**S.** "Site closure and stabilization" means those actions that are taken upon completion of operations that prepare the disposal site for custodial care and that assure that the disposal site will remain stable and will not need ongoing active maintenance.

**T.** "Stability" means structural stability.

**U.** "Surveillance" means monitoring and observation of the disposal site for purposes of visual detection of need for maintenance, custodial care, evidence of intrusion and compliance with other license and regulatory requirements.

[5-3-95; 20.3.13.7 NMAC - Rn, 20 NMAC 3.1.13.1301 & A, 04/15/2004; A, 04/30/2009]

#### **20.3.13.8-20.3.13.1301 [RESERVED]**

#### **20.3.13.1302 LICENSE REQUIRED:**

**A.** No person may receive, possess, and dispose of waste received from other persons at a land disposal facility, unless authorized by a license issued by the department pursuant to this part (20.3.13 NMAC), and 20.3.3 NMAC.

**B.** Each person shall file an application with the department pursuant to 20.3.3.307 NMAC and obtain a license as provided in this part (20.3.13 NMAC) before commencement of construction of a land disposal facility. Failure to comply with this requirement may be grounds for denial of a license.

[5-3-95; 20.3.13.1302 NMAC - Rn, 20 NMAC 3.1.13.1302, 04/15/2004]

#### **20.3.13.1303 CONTENT OF APPLICATION:**

In addition to the requirements set forth in 20.3.3.308 NMAC, an application to receive from others, possess and dispose of wastes shall consist of general information, specific technical information, institutional information, and financial information as set forth in 20.3.13.1304 NMAC through 20.3.13.1308 NMAC.

[5-3-95; 20.3.13.1303 NMAC - Rn, 20 NMAC 3.1.13.1303, 04/15/2004]

#### **20.3.13.1304 GENERAL INFORMATION:**

The general information shall include each of the following.

**A. Identity of the applicant including:**

- (1)** the full name, address, telephone number and description of the business or occupation of the applicant;
- (2)** if the applicant is a partnership, the name and address of each partner, and the principal location where the partnership does business;
- (3)** if the applicant is a corporation or an unincorporated association, the state where it is incorporated or organized and the principal location where it does business, and the names and addresses of its directors and principal officers; and
- (4)** if the applicant is acting as an agent or representative of another person in filing the application, all information required under Subsection A of 20.3.13.1304 NMAC must be supplied with respect to the other person.

**B. Qualifications of the applicant including:**

- (1)** the organizational structure of the applicant, both off-site and on-site, including a description of lines of authority and assignments of responsibilities, whether in the form of administrative directives, contract provisions, or otherwise;
- (2)** the technical qualifications, including training and experience of the applicant and members of the applicant's staff to engage in the proposed activities; minimum training and experience requirements for personnel filling key positions described in Paragraph (1) of Subsection B of 20.3.13.1304 NMAC, must be provided;
- (3)** a description of the applicant's personnel training program; and
- (4)** the plan to maintain an adequate complement of trained personnel to carry out waste receipt, handling, and disposal operations in a safe manner.

**C. A description of:**

- (1)** the location of the proposed disposal site;
- (2)** the general character of the proposed activities;
- (3)** the types and quantities of waste to be received, possessed and disposed of;
- (4)** plans for use of the land disposal facility for purposes other than disposal of wastes; and
- (5)** the proposed facilities and equipment.

**D.** Proposed schedules for construction, receipt of waste, and first emplacement of waste at the proposed land disposal facility.

[5-3-95; 20.3.13.1304 NMAC - Rn, 20 NMAC 3.1.13.1304, 04/15/2004]

**20.3.13.1305 SPECIFIC TECHNICAL INFORMATION:**

The specific technical information shall include the following information needed for demonstration that the performance objectives and the applicable technical requirements of this part (20.3.13 NMAC) will be met:

**A.** a description of the natural and demographic disposal site characteristics as determined by disposal site selection and characterization activities; the description shall include geologic, geochemical, geotechnical, hydrologic, ecologic, archaeologic, meteorologic, climatologic, and biotic features of the disposal site and vicinity;

**B.** a description of the design features of the land disposal facility and the disposal units: for near-surface disposal, the description shall include those design features related to infiltration of water; integrity of covers for disposal units; structural stability of backfill, wastes, and covers; contact of wastes with standing water; disposal site drainage; disposal site closure and stabilization; elimination to the extent practicable of long-term disposal site maintenance; inadvertent intrusion; occupational exposures; disposal site monitoring; and adequacy of the size of the buffer zone for monitoring and potential mitigative measures;

**C.** a description of the principal design criteria and their relationship to the performance objectives;

**D.** a description of the design basis, natural events or phenomena and their relationship to the principal design criteria;

**E.** a description of codes and standards which the applicant has applied to the design and which will apply to construction of the land disposal facilities;

**F.** a description of the construction and operation of the land disposal facility; the description shall include, as a minimum, the methods of construction of disposal units, waste employment, the procedures for and areas of waste segregation, types of intruder barriers, on-site traffic and drainage systems, survey control program, methods and areas of waste storage, and methods to control surface water and ground water access to the wastes; the description shall also include a description of the methods to be employed in the handling and disposal of wastes containing chelating agents or other non-radiological substances that might affect meeting the performance objectives of this part (20.3.13 NMAC);

**G.** a description of the disposal site closure plan, including those design features which are intended to facilitate disposal site closure and to eliminate the need for ongoing active maintenance;

**H.** an identification of the known natural resources at the disposal site, whose exploitation could result in inadvertent intrusion into the wastes after removal of active institutional control;

**I.** a description of the kind, amount, classification and specifications of the radioactive material proposed to be received, possessed and disposed of at the land disposal facility;

**J.** a description of the quality assurance program for the determination of natural disposal site characteristics and for quality assurance during the design, construction, operation and closure of the land disposal facility; and the receipt, handling and emplacement of waste; audits and managerial controls must be included;

**K.** a description of the radiation safety program for control and monitoring of radioactive effluents to ensure compliance with the performance objective in 20.3.13.1317 NMAC and occupational radiation exposure to ensure compliance with the requirements of 20.3.4 NMAC, and to control contamination of personnel, vehicles, equipment, buildings and the disposal site; both routine operations and accidents shall be addressed; the program description must include procedures, instrumentation, facilities and equipment;

**L.** a description of the environmental monitoring program to provide data to evaluate potential health and environmental impacts, and the plan for taking corrective measures if migration of radionuclides is indicated;

**M.** a description of the administrative procedures that the applicant will apply to control activities at the land disposal facility; and

**N.** a description of the facility electronic record keeping system as required in 20.3.13.1334 NMAC.

[5-3-95, 7-30-99; 20.3.13.1305 NMAC - Rn, 20 NMAC 3.1.13.1305, 04/15/2004]

#### **20.3.13.1306 TECHNICAL ANALYSES:**

The specific technical information shall also include the following analyses needed to demonstrate that the performance objectives of this part (20.3.13 NMAC) will be met:

**A.** pathways analyzed in demonstrating protection of the general population from releases of radioactivity shall include air, soil, ground water, surface water, plant uptake and exhumation by burrowing animals; the analysis shall clearly identify and differentiate between the roles performed by the natural disposal site characteristics and

design features in isolating and segregating the wastes; the analysis shall clearly demonstrate that there is reasonable assurance that the exposure to humans from the release of radioactivity will not exceed the limits set forth in 20.3.13.1317 NMAC;

**B.** analysis of the protection of individuals from inadvertent intrusion shall include demonstration that there is reasonable assurance the waste classification and segregation requirements will be met and that adequate barriers to inadvertent intrusion will be provided;

**C.** analyses of the protection of individuals during operations shall include assessments of expected exposures due to routine operations and likely accidents during handling, storage and disposal of waste; the analysis shall provide reasonable assurance that exposures will be controlled to meet the requirements of 20.3.4 NMAC; and

**D.** analyses of the long-term stability of the disposal site and the need for ongoing active maintenance after site closure shall be based upon analyses of active natural processes, such as erosion, mass wasting, slope failure, settlement of wastes and backfill, infiltration through covers over disposal areas and adjacent soils, and surface drainage of the disposal site; the analyses shall provide reasonable assurance that there will not be a need for ongoing active maintenance of the disposal site following closure.

[5-3-95; 20.3.13.1306 NMAC - Rn, 20 NMAC 3.1.13.1306, 04/15/2004]

#### **20.3.13.1307 INSTITUTIONAL INFORMATION:**

The institutional information submitted by the applicant shall include:

**A.** a certification by the federal or state agency which owns the disposal site that the federal or state agency is prepared to accept transfer of the license when the provisions of 20.3.13.1304 NMAC are met, and will assume responsibility for institutional control after site closure and post closure observation and maintenance; and

**B.** where the proposed disposal site is on land not owned by the federal or a state government, the applicant shall submit evidence that arrangements have been made for assumption of ownership in fee by a federal or a state agency before the department issues a license.

[5-3-95; 20.3.13.1307 NMAC - Rn, 20 NMAC 3.1.13.1307, 04/15/2004]

#### **20.3.13.1308 FINANCIAL INFORMATION:**

The financial information shall be sufficient to demonstrate that the financial qualifications of the applicant are adequate to carry out the activities for which the license is sought and meet other financial assurance requirements of 20.3.3 NMAC.

[5-3-95; 20.3.13.1308 NMAC - Rn, 20 NMAC 3.1.13.1308, 04/15/2004]

### **20.3.13.1309 REQUIREMENTS FOR ISSUANCE OF A LICENSE:**

A license for the receipt, possession, and disposal of waste containing or contaminated with radioactive material will be issued by the department upon finding that:

**A.** the issuance of the license will not constitute an unreasonable risk to the health and safety of the public;

**B.** the applicant is qualified, by reason of training and experience, to carry out the disposal operations requested in a manner that protects and minimizes danger to life or property;

**C.** the applicant's proposed disposal site, disposal design, land disposal facility operations, including equipment, facilities and procedures, disposal site closure and post-closure institutional control, are adequate to protect the public health and safety in that they provide reasonable assurance that the general population will be protected from releases of radioactivity, as specified in the performance objective in 20.3.13.1317 NMAC;

**D.** the applicant's proposed disposal site, disposal site design, land disposal facility operations, including equipment, facilities and procedures, disposal site closure and post-closure institutional control, are adequate to protect the public health and safety in that they will provide reasonable assurance that individual inadvertent intruders are protected in accordance with the performance objective in 20.3.13.1318 NMAC;

**E.** the applicant's proposed land disposal facility operations, including equipment, facilities and procedures, are adequate to protect the public health and safety in that they will provide reasonable assurance that the standards for radiation protection set out in 20.3.4 NMAC will be met;

**F.** the applicant's proposed disposal site, disposal site design, land disposal facility operations, disposal site closure and post-closure institutional control are adequate to protect the public health and safety in that they will provide reasonable assurance that long-term stability of the disposed waste and the disposal site will be achieved, and will eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure;

**G.** the applicant's demonstration provides reasonable assurance that the applicable technical requirements of this part (20.3.13 NMAC) will be met;

**H.** the applicant's proposal for institutional control provides reasonable assurance that such control will be provided for the length of time found necessary to ensure the findings in Subsections C through F of 20.3.13.1309 NMAC, and that the institutional control meets the requirements of 20.3.13.1330 NMAC; and

I. the financial or surety arrangements meet the requirements of this part (20.3.13 NMAC) and 20.3.3 NMAC.

[5-3-95; 20.3.13.1309 NMAC - Rn, 20 NMAC 3.1.13.1309, 04/15/2004]

### **20.3.13.1310 CONDITIONS OF LICENSES:**

**A.** A license issued under this part (20.3.13 NMAC), or any right there under, may be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, only if the department finds, after securing full information, that the transfer is in accordance with the provisions of the act and gives its consent, in writing, in the form of a license amendment.

**B.** The licensee shall submit written statements under oath upon request of the department at any time before termination of the license, to enable the department to determine whether the license should be modified, suspended or revoked.

**C.** The license will be terminated only on the full implementation of the final closure plan as approved by the department, including post-closure observation and maintenance.

**D.** The licensee shall be subject to the provisions of the act now or hereafter in effect, and to all rules, regulations, and orders of the board or department. The terms and conditions of the license are subject to amendment, revision or modification by reason of amendments to, or by reason of rules, regulations and orders issued in accordance with the terms of the act.

**E.** Each person licensed by the department pursuant to the regulations in this part (20.3.13 NMAC) shall confine possession and use of materials to the locations and purpose authorized in the license.

**F.** The licensee shall not dispose of waste until the department has inspected the land disposal facility and has found it to be in conformance with the description, design and construction in the application for a license.

**G.** The department may incorporate in any license at the time of issuance, or thereafter, by appropriate rule, regulation or order, additional requirements and conditions with respect to the licensee's receipt, possession, and disposal of waste as it deems appropriate or necessary in order to:

(1) protect health or to minimize danger to life or property; and

(2) require reports and the keeping of records, and to provide for inspections of activities under the license that may be necessary or appropriate to effectuate the purposes of the act and regulations there under.

**H.** The authority to dispose of wastes expires on the date stated in the license. Any expiration date on a license applies only to the above ground activities and to the authority to dispose of waste. Failure to renew the license shall not relieve the licensee of responsibility for implementing site closure, post-closure observation and transfer of the license to the site owner.

**I.** Each licensee shall notify the department in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 (bankruptcy) of the United States Code by or against:

(1) the licensee;

(2) an entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(3) an affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

**J.** The notification specified in 20.3.13.1310 NMAC shall indicate the bankruptcy court in which the petition for bankruptcy was filed and the date of the filing of the petition.

[5-3-95; 20.3.13.1310 NMAC - Rn, 20 NMAC 3.1.13.1310, 04/15/2004]

#### **20.3.13.1311 APPLICATION FOR RENEWAL OR CLOSURE:**

**A.** An application for renewal or an application for closure under 20.3.13.1302 NMAC must be filed at least 90 days prior to license expiration.

**B.** Applications for renewal of a license must be filed in accordance with sections 20.3.13.1304 NMAC through 20.3.13.1308 NMAC. Applications for closure must be filed in accordance with 20.3.13.1312 NMAC. Information contained in previous applications, statements, or reports filed with the department under the license may be incorporated by reference if the references are clear and specific.

**C.** In any case in which a licensee has filed an application in proper form for renewal of a license, the license does not expire until the department has taken final action on the application for renewal.

**D.** In determining whether a license will be renewed, the department will apply the criteria set forth in 20.3.13.1309 NMAC.

[5-3-95; 20.3.13.1311 NMAC - Rn, 20 NMAC 3.1.13.1311, 04/15/2004]

#### **20.3.13.1312 CONTENTS OF APPLICATION FOR SITE CLOSURE AND STABILIZATION:**

**A.** Prior to final closure of the disposal site, or as otherwise directed by the department, the applicant shall submit an application to amend the license for closure. This closure application shall include a final revision and specific details of the disposal site closure plan included as subpart of the license application submitted under Subsection G of 20.3.13.1305 NMAC that includes each of the following:

(1) any additional geologic, hydrologic or other data pertinent to the long-term containment of emplaced wastes obtained during the operational period;

(2) the results of tests, experiments or any other analyses relating to backfill of excavated areas, closure and sealing, waste migration and interaction with emplacement media, or any other tests, experiments or analysis pertinent to the long-term containment of emplaced waste within the disposal site;

(3) any proposed revision of plans for:

(a) decontamination and/or dismantlement of surface facilities;

(b) backfilling of excavated areas; or

(c) stabilization of the disposal site for post-closure care; and

(4) any significant new information regarding the environmental impact of closure activities and long-term performance of the disposal site.

**B.** Upon review and consideration of an application to amend the license for closure submitted in accordance with Subsection A of 20.3.13.1312 NMAC, the department shall issue an amendment authorizing closure if there is reasonable assurance that the long-term performance objectives of this part (20.3.13 NMAC) will be met.

[5-3-95; 20.3.13.1312 NMAC - Rn, 20 NMAC 3.1.13.1312, 04/15/2004]

### **20.3.13.1313 POST-CLOSURE OBSERVATION AND MAINTENANCE.**

The licensee shall observe, monitor and carry out necessary maintenance and repairs at the disposal site until the site closure is complete and the license is transferred by the department in accordance with 20.3.13.1314 NMAC. Responsibility for the disposal site must be maintained by the licensee for 5 years. A shorter or longer time period for post-closure observation and maintenance may be established by the department and approved as part of the site closure plan, based on site-specific conditions.

[5-3-95; 20.3.13.1313 NMAC - Rn, 20 NMAC 3.1.13.1313, 04/15/2004]

### **20.3.13.1314 TRANSFER OF LICENSE:**

Following closure and the period of post-closure observation and maintenance, the licensee may apply for an amendment to transfer the license to the disposal site owner. The license shall be transferred when the department finds:

**A.** that the closure of the disposal site has been made in conformance with the licensee's disposal site closure plan, as amended and approved as part of the license;

**B.** that reasonable assurance has been provided by the licensee that the performance objectives of this part (20.3.13 NMAC) are met;

**C.** that any funds and necessary records for care will be transferred to the disposal site owner;

**D.** that the post-closure monitoring program is operational for implementation by the disposal site owner; and

**E.** that the federal or state agency which will assume responsibility for institutional control of the disposal site is prepared to assume responsibility and ensure that the institutional requirements found necessary under Subsection H of 20.3.13.1309 NMAC will be met.

[5-3-95; 20.3.13.1314 NMAC - Rn, 20 NMAC 3.1.13.1314, 04/15/2004]

#### **20.3.13.1315 TERMINATION OF LICENSE:**

**A.** Following any period of institutional control needed to meet the requirements found necessary under 20.3.13.1309 NMAC, the licensee may apply for an amendment to terminate the license.

**B.** This application will be reviewed in accordance with the provisions of 20.3.3.307 NMAC.

**C.** A license shall be terminated only when the department finds:

**(1)** that the institutional control requirements found necessary under Subsection H of 20.3.13.1309 NMAC have been met;

**(2)** that any additional requirements resulting from new information developed during the institutional control period have been met; and

**(3)** that permanent monuments or markers warning against intrusion have been installed.

[5-3-95; 20.3.13.1315 NMAC - Rn, 20 NMAC 3.1.13.1315, 04/15/2004]

#### **20.3.13.1316 GENERAL REQUIREMENTS:**

Land disposal facilities shall be sited, designed, operated, closed and controlled after closure so that reasonable assurance exists that exposure to individuals are within the requirements established in the performance objectives in sections 20.3.13.1317 NMAC through 20.3.13.1320 NMAC.

[5-3-95; 20.3.13.1316 NMAC - Rn, 20 NMAC 3.1.13.1316, 04/15/2004]

#### **20.3.13.1317 PROTECTION OF THE GENERAL POPULATION FROM RELEASE OF RADIOACTIVITY:**

Concentrations of radioactive material, which may be released to the general environment in ground water, surface water, air, soil, plants or animals, shall not result in an annual dose exceeding an equivalent of 25 millirems (250 microsieverts) to the whole body, 75 millirems (750 microsieverts) to the thyroid and 25 millirems (250 microsieverts) to any other organ of any member of the public. Reasonable effort should be made to maintain releases of radioactivity in effluents to the general environment as low as reasonably achievable.

[5-3-95; 20.3.13.1317 NMAC - Rn, 20 NMAC 3.1.13.1317, 04/15/2004]

#### **20.3.13.1318 PROTECTION OF INDIVIDUALS FROM INADVERTENT INTRUSION:**

Design, operation and closure of the land disposal facility shall ensure protection of any individual inadvertently intruding into the disposal site and occupying the site or contacting the waste at any time after active institutional controls over the disposal sites are removed.

[5-3-95; 20.3.13.1318 NMAC - Rn, 20 NMAC 3.1.13.1318, 04/15/2004]

#### **20.3.13.1319 PROTECTION OF INDIVIDUALS DURING OPERATIONS:**

Operations at the land disposal facility shall be conducted in compliance with the standards for radiation protection set out in Part 4 (20.3.4) NMAC, except for releases of radioactivity in effluents from the land disposal facility, which shall be governed by 20.3.13.1317 NMAC. Every reasonable effort should be made to maintain radiation exposures as low as is reasonably achievable.

[5-3-95; 20.3.13.1319 NMAC - Rn, 20 NMAC 3.1.13.1319, 04/15/2004]

#### **20.3.13.1320 STABILITY OF THE DISPOSAL SITE AFTER CLOSURE:**

The disposal facility shall be sited, designed, used, operated and closed to achieve long-term stability of the disposal site and to eliminate, to the extent practicable, the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring or minor custodial care are required.

[5-3-95; 20.3.13.1320 NMAC - Rn, 20 NMAC 3.1.13.1320, 04/15/2004]

### **20.3.13.1321 DISPOSAL SITE SUITABILITY REQUIREMENTS FOR LAND DISPOSAL:**

Disposal site suitability for near-surface disposal: The primary emphasis in disposal site suitability is given to isolation of wastes, and to disposal site features that ensure that the long-term performance objectives are met.

**A.** The disposal site shall be capable of being characterized, modeled, analyzed and monitored.

**B.** Within the region where the facility is to be located, a disposal site should be selected so that projected population growth and future developments are not likely to affect the ability of the disposal facility to meet the performance objectives of this part (20.3.13 NMAC).

**C.** Areas having known natural resources which, if exploited, would result in failure to meet the performance objectives of this part (20.3.13 NMAC) shall be avoided.

**D.** The disposal site shall be generally well-drained and free of areas of flooding or frequent ponding. Waste disposal shall not take place in a 100-year flood plain, coastal high-hazard area or wetland, as defined in Executive Order 11988, "floodplain management guidelines".

**E.** Upstream drainage areas shall be minimized to decrease the amount of runoff which could erode or inundate waste disposal units.

**F.** The disposal site shall provide sufficient depth to the water table such that ground water intrusion, perennial or otherwise, into the waste will not occur. The department will consider an exception to this requirement to allow disposal below the water table if it can be conclusively shown that disposal site characteristics will result in molecular diffusion being the predominant means of radionuclide movement and the rate of movement will result in the performance objectives being met. In no case will waste disposal be permitted in the zone of fluctuation of the water table.

**G.** The hydrogeologic unit used for disposal shall not discharge ground water to the surface within the disposal site.

**H.** Areas shall be avoided where tectonic processes, such as faulting, folding, seismic activity or vulcanism, may occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this part (20.3.13 NMAC), or preclude any defensible modeling and prediction of long-term impacts.

I. Areas shall be avoided where surface geologic processes, such as mass wasting, erosion, slumping, landsliding or weathering, occur with such frequency and extent to significantly affect the ability of the disposal site to meet the performance objectives of this part (20.3.13 NMAC), or may preclude defensible modeling and prediction of long-term impacts.

J. The disposal site must be located where nearby facilities or activities could adversely impact the ability of the site to meet the performance objectives of this part (20.3.13 NMAC) or significantly mask the environmental monitoring program.

[5-3-95; 20.3.13.1321 NMAC - Rn, 20 NMAC 3.1.13.1321, 04/15/2004]

#### **20.3.13.1322 DISPOSAL SITE DESIGN FOR LAND DISPOSAL:**

Disposal site design for near-surface disposal.

A. Site design features shall be directed toward long-term isolation and avoidance of the need for continuing active maintenance after site closure.

B. The disposal site design and operation shall be compatible with the disposal site closure and stabilization plan, and lead to disposal site closure that provides reasonable assurance that the performance objectives will be met.

C. The disposal site shall be designed to complement and improve, where appropriate, the ability of the disposal site's natural characteristics to assure that the performance objectives will be met.

D. Covers shall be designed to minimize to the extent practicable water infiltration, to direct percolating or surface water away from the disposed waste, and to resist degradation by surface geologic processes and biotic activity.

E. Surface features shall direct surface water drainage away from disposal units at velocities and gradients which will not result in erosion that will require ongoing active maintenance in the future.

F. The disposal site shall be designed to minimize to the extent practicable the contact of water with waste during storage, the contact of standing waste with water during disposal, and the contact of percolating or standing water with wastes after disposal.

[5-3-95; 20.3.13.1322 NMAC - Rn, 20 NMAC 3.1.13.1322, 04/15/2004]

#### **20.3.13.1323 LAND DISPOSAL FACILITY OPERATION AND DISPOSAL SITE CLOSURE:**

Near-surface disposal facility operation and disposal site closure.

**A.** Wastes designated as class A, pursuant to 20.3.13.1324 NMAC, shall be segregated from other wastes by placing them in disposal units that are sufficiently separated from disposal units for the other waste classes so that any interaction between class A wastes and other wastes will not result in the failure to meet the performance objectives of this part (20.3.13 NMAC). This segregation is not necessary for class A wastes if they meet the stability requirements in Subsection B of 20.3.13.1325 NMAC.

**B.** Wastes designated as class C pursuant to 20.3.13.1324 NMAC shall be disposed of so that the top of the waste is a minimum of 5 meters below the top surface of the cover, or must be disposed of with intruder barriers that are designed to protect against an inadvertent intrusion for at least 500 years.

**C.** Except as provided in Subsection L of 20.3.13.1323 NMAC, only waste classified as class A, B or C shall be acceptable for near-surface disposal. All waste shall be disposed of in accordance with requirements of Subsections D through L of 20.3.13.1323 NMAC.

**D.** Wastes shall be emplaced in a manner that maintains the package integrity during emplacement, minimizes the void spaces between packages, and permits the void spaces to be filled.

**E.** Void spaces between waste packages shall be filled with earth or other material to reduce future subsidence within the fill.

**F.** Waste shall be placed and covered in a manner that limits the radiation dose rate at the surface of the cover to levels that at a minimum will permit the licensee to comply with all provisions of sections 20.3.4.413 NMAC and 20.3.4.414 NMAC at the time the license is transferred pursuant to 20.3.13.1314 NMAC.

**G.** The boundaries and locations of each disposal unit shall be accurately located and mapped by means of a land survey. Near-surface disposal units shall be marked in such a way that the boundaries of each unit can be easily defined. Three permanent survey marker control points, referenced to United States geological survey (USGS) or national geodetic survey (NGS) survey control stations, shall be established on the site to facilitate surveys. The USGS or NGS control stations shall provide horizontal and vertical controls as checked against USGS or NGS record files.

**H.** A buffer zone of land shall be maintained between any buried waste and the disposal site boundary and beneath the disposed waste. The buffer zone shall be of adequate dimensions to carry out environmental monitoring activities specified in Subsection D of 20.3.13.1328 NMAC and take mitigative measures if needed.

**I.** Closure and stabilization measures as set forth in the approved site closure plan shall be carried out as each disposal unit is filled and covered.

**J.** Active waste disposal operations shall not have an adverse effect on completed closures and stabilization measures.

**K.** Only wastes containing or contaminated with radioactive material shall be disposed of at the disposal site.

**L.** Proposals for disposal of waste that is not generally acceptable for near-surface disposal because the waste form and disposal methods must be different, and in general, be more stringent than those specified for class C waste, must be submitted to the department for approval.

[5-3-95; 20.3.13.1323 NMAC - Rn, 20 NMAC 3.1.13.1323, 04/15/2004; A, 04/30/2009]

### **20.3.13.1324 WASTE CLASSIFICATION:**

Classification of waste for near surface disposal.

**A. Considerations.** Determination of the classification of radioactive waste involves two considerations. First, consideration must be given to the concentration of long-lived radionuclides (and their shorter-lived precursors) whose potential hazard will persist long after such precautions as institutional controls, improved waste form, and deeper disposal have ceased to be effective. These precautions delay the time when long-lived radionuclides could cause exposures. In addition, the magnitude of the potential dose is limited by the concentration and availability of the radionuclide at the time of exposure. Second, consideration must be given to the concentration of shorter-lived radionuclides for which requirements in institutional controls, waste form and disposal methods are effective. Additional consideration must be given to ensure that such waste is not regulated by RCRA.

#### **B. Classes of waste.**

**(1)** Class A waste is waste that is usually segregated from other waste classes at the disposal site. The physical form and characteristics of class A waste must meet the minimum requirements set forth in Subsection A of 20.3.13.1325 NMAC. If class A waste also meets the stability requirements set forth in Subsection B of 20.3.13.1325 NMAC, it is not necessary to segregate the waste for disposal.

**(2)** Class B waste is waste that must meet more rigorous requirements of waste form to ensure stability after disposal. The physical form and characteristics of class B waste must meet both the minimum and stability requirements set forth in 20.3.13.1325 NMAC.

**(3)** Class C waste is waste that not only must meet more rigorous requirements on waste form to ensure stability but also requires additional measures at the disposal facility to protect against inadvertent intrusion. The physical form and

characteristics of class C waste must meet both the minimum and stability requirements set forth in 20.3.13.1325 NMAC.

**C. Classification determined by long-lived radionuclides.** If radioactive waste contains only radionuclides listed in table 1324.1, classification shall be determined as follows:

(1) if the concentration does not exceed 0.1 times the value in table 1324.1, the waste is class A;

(2) if the concentration exceeds 0.1 times the value in table 1324.1 but does not exceed the value in table 1324.1, the waste is class C;

(3) if the concentration exceeds the value in table 1324.1, the waste is not generally acceptable for near-surface disposal; and

(4) for wastes containing mixtures of radionuclides listed in table 1324.1, the total concentration shall be determined by the sum of fractions rule described in Subsection G of 20.3.13.1324 NMAC.

TABLE 1324.1 Radionuclide	
Concentration	Curies per Cubic Meter(M <sup>3</sup> )
C-14	8
C-14 in activated metal	80
N-59 in activated metal	220
Nb-94 in activated metal	0.2
Tc-99	3
I-129	0.08

Alpha emitting transuranic nuclides with half life greater than 5 years	<sup>1</sup> 100
Pu-241	<sup>1</sup> 3,500
Cm-242	<sup>1</sup> 20,000
Ra-226	100
<p>NOTE: To convert the Ci/M<sup>3</sup> to gigabecquerel (G bq) per cubic meter, multiply the Ci/M<sup>3</sup> by 37.</p> <p><sup>1</sup>Units are nanocuries per gram.</p>	

**D. Classification determined by short-lived radionuclides.** If radioactive waste does not contain any of the radionuclides listed in table 1324.1, classification shall be determined based on the concentration shown in table 1324.2. However, as specified in Subsection F of 20.3.13.1324 NMAC, if radioactive waste does not contain any nuclides listed in either table 1324.1 or table 1324.2, it is class A.

(1) If the concentration does not exceed the value in table 1324.2, column 1, the waste is class A.

(2) If the concentration exceeds the value in table 1324.2, column 1, but does not exceed the value in column 2, the waste is class B.

(3) If the concentration exceeds the value in table 1324.2, column 2, but does not exceed the value in column 3, the waste is class C.

(4) If the concentration exceeds the value in table 1324.2, column 3, the waste is not generally acceptable for near-surface disposal.

(5) For wastes containing mixtures of the nuclides listed in table 1324.2, the total concentration shall be determined by the sum of fractions rule described in Subsection G of 20.3.13.1324 NMAC.

TABLE 1324.2
--------------

Radionuclide	Concentration, Curies Per Cubic Meter		
	Col. 1	Col. 2	Col. 3
Total of all nuclides with less than 5 year Half-life	700	( <sup>1</sup> )	( <sup>1</sup> )
H-3	40	( <sup>1</sup> )	( <sup>1</sup> )
Co-60	700	( <sup>1</sup> )	( <sup>1</sup> )
Ni-63	3.5	70	700
Ni-63 in activated metal	35	700	7000
Sr-90	0.04	150	7000
Cs-137	1	44	4600
NOTE: To convert the Ci/M <sup>3</sup> to gigabecquerel (GBq) per cubic meter, multiple the C/M <sup>3</sup> by 37.			

**E. Classification determined by both long and short-lived radionuclides.** If radioactive waste contains a mixture of radionuclides, some of which are listed in table 1324.1, and some of which are listed in table 1324.2, classification shall be determined as follows.

(1) If the concentration of a nuclide listed in table 1324.1 does not exceed 0.1 times the value listed in table 1324.1, the class shall be that determined by the concentration of nuclides in table 1324.2.

(2) If the concentration of a nuclide listed in table 1324.1 exceeds 0.1 times the value listed in table 1324.1 but does not exceed the value in table 1324.1, the waste shall be class C, provided the concentration of nuclides listed in table 1324.2 does not exceed the value shown in column 3 of table 1324.2.

**F. Classification of wastes with radionuclides, other than those listed in tables 1324.1 and 1324.2.** If radioactive waste does not contain any nuclides listed in either table 1324.1 or table 1324.2, it is class A.

**G. The sum of the fractions rule for mixtures of radionuclides.** For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each nuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits must all be taken from the same column of the same table. The sum of the fractions for the column must be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 50 Ci/m<sup>3</sup> and Cs-137 in a concentration of 22 Ci/m<sup>3</sup>. Since the concentrations both exceed the values in column 1 of table 1324.2, they must be compared to column 2 values. For Sr-90 fraction  $50/150=0.33$ ; for Cs-137 fraction,  $22/44=0.5$ ; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is class B.

**H. Determination of concentrations in wastes.** The concentration of a radionuclide may be determined by indirect methods, such as use of scaling factors which relate the inferred concentration of one radionuclide to another that is measured, or radionuclide material accountability, if there is reasonable assurance that the indirect methods can be correlated with actual measurements. The concentration of a radionuclide may be averaged over the volume of the waste, or weight of the waste if the units are expressed as nanocuries per gram.

[5-3-95; 20.3.13.1324 NMAC - Rn, 20 NMAC 3.1.13.1324, 04/15/2004]

### **20.3.13.1325 WASTE CHARACTERISTICS:**

**A.** The following are minimum requirements for all classes of waste and are intended to facilitate handling at the disposal site and provide protection of health and safety of personnel at the disposal site.

(1) Waste must not be packaged for disposal in cardboard or fiberboard boxes.

(2) Liquid waste must be solidified or packaged in sufficient absorbent material to absorb twice the volume of the liquid.

(3) Solid waste containing liquid shall contain as little free standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1 percent of the volume.

**(4)** Waste must not be readily capable of detonation, or of explosive decomposition or reaction at normal pressures and temperatures, or of explosive reaction with water.

**(5)** Waste must not contain, or be capable of generating, quantities of toxic gases, vapors or fumes harmful to persons transporting, handling or disposing of the waste. This does not apply to radioactive gaseous waste packaged in accordance with Paragraph (7) of Subsection A of 20.3.13.1325 NMAC.

**(6)** Waste must not be pyrophoric: Pyrophoric materials contained in waste shall be treated, prepared and packaged to be nonflammable.

**(7)** Waste in a gaseous form must be packaged at a pressure that does not exceed 1.5 atmosphere at 20 degrees C. Total activity must not exceed 100 curies per container.

**(8)** Waste containing hazardous, biological, pathogenic, or infectious material must be treated to reduce to the maximum extent practicable the potential hazard from the non-radiological materials.

**(9)** All RCRA regulations must be met.

**B.** The requirements in this section are intended to provide stability of the waste. Stability is intended to ensure that the waste does not structurally degrade and affect overall stability of the site through slumping, collapse or other failure of the disposal unit, and thereby lead to water infiltration. Stability is also a factor in limiting exposure to an inadvertent intruder, since it provides a recognizable and non-dispersible waste.

**(1)** Waste must have structural stability: A structurally stable waste form will generally maintain its physical dimensions and its form under the expected disposal conditions, such as weight of overburden and compaction equipment, the presence of moisture, and microbial activity and internal factors, such as radiation effects and chemical changes. Structural stability can be provided by the waste form itself, processing the waste to a stable form, or placing the waste in a disposal container or structure that provides stability after disposal.

**(2)** Notwithstanding the provisions in Paragraphs (2) and (3) of Subsection A of 20.3.13.1325 NMAC, liquid wastes, or wastes containing liquid, must be converted into a form that contain as little free standing and non-corrosive liquid as is reasonably achievable, but in no case shall the liquid exceed 1 percent of the volume of the waste when the waste is in a disposal container designed to ensure stability, or 0.5 percent of the volume of the waste for waste processed to a stable form.

**(3)** Void spaces within the waste and between the waste and its package must be reduced to the extent practicable.

[5-3-95; 20.3.13.1325 NMAC - Rn, 20 NMAC 3.1.13.1325, 04/15/2004]

**20.3.13.1326 LABELING:**

Each package of waste must be clearly labeled to identify whether it is class A waste, class B waste, or class C waste, in accordance with 20.3.13.1324 NMAC.

[5-3-95; 20.3.13.1326 NMAC - Rn, 20 NMAC 3.1.13.1326, 04/15/2004]

**20.3.13.1327 ALTERNATIVE REQUIREMENTS FOR WASTE CLASSIFICATION AND CHARACTERISTICS:**

The department may, upon request or on its own initiative, authorize other provisions for the classification and characteristics of waste on a specific basis, if, after evaluation of the specific characteristics of the waste, disposal site and method of disposal, it finds reasonable assurance of compliance with the performance objectives in sections 20.3.13.1316 NMAC through 20.3.13.1320 NMAC.

[5-3-95; 20.3.13.1327 NMAC - Rn, 20 NMAC 3.1.13.1327, 04/15/2004]

**20.3.13.1328 ENVIRONMENTAL MONITORING:**

**A.** At the time a license application is submitted, the applicant shall have conducted a preoperational monitoring program to provide basic environmental data on the disposal site characteristics. The applicant shall obtain information about the ecology, meteorology, climate, hydrology, geology, geochemistry and seismology of the disposal site. For those characteristics that are subject to seasonal variation, data must cover at least a twelve-month period.

**B.** During the land disposal facility site construction and operation, the licensee shall maintain an environmental monitoring program. Measurements and observations must be made and recorded to provide data to evaluate the potential health and environmental impacts during both the construction and the operation of the facility, and to enable the evaluation of long-term effects and the need for mitigative measures. The monitoring system must be capable of providing early warning of releases of radioactive materials from the disposal site before they leave the site boundary.

**C.** After the disposal site is closed, the licensee responsible for post-operational surveillance of the disposal site shall maintain a monitoring system based on the operation history, and the closure and stabilization of the disposal site. The monitoring system must be capable of providing early warning of releases of radioactive materials from the disposal site before they leave the site boundary.

**D.** The licensee shall have plans for taking corrective measures if the environmental monitoring program detects migration of radioactive materials which would indicate that the performance objectives may not be met.

[5-3-95; 20.3.13.1328 NMAC - Rn, 20 NMAC 3.1.13.1328, 04/15/2004]

**20.3.13.1329 ALTERNATIVE REQUIREMENTS FOR DESIGN AND OPERATIONS:**

The department may, upon request or on its own initiative, authorize provisions other than those set forth in sections 20.3.13.1322 NMAC through 20.3.13.1328 NMAC for the segregation and disposal of waste, and for the design and operation of a land disposal facility on a specific basis, if it finds reasonable assurance of compliance with the performance objectives of this part (20.3.13 NMAC).

[5-3-95; 20.3.13.1329 NMAC - Rn, 20 NMAC 3.1.13.1329, 04/15/2004]

**20.3.13.1330 INSTITUTIONAL REQUIREMENTS:**

**A.** Land ownership. Disposal of waste received from other persons may be permitted only on land owned in fee by the federal or a state government.

**B.** Institutional control. The land owner or custodial agency shall conduct an institutional control program to physically control access to the disposal site following transfer of control of the disposal site from the disposal site operator. The institutional control program shall also include, but not be limited to, conducting an environmental monitoring program at the disposal site, periodic surveillance, minor custodial care and other requirements as determined by the department, and shall include administration of funds to cover the costs for these activities. The period of controls will be determined by the department, but controls may not be relied upon for more than 100 years following transfer of control of the disposal site to the owner.

[5-3-95; 20.3.13.1330 NMAC - Rn, 20 NMAC 3.1.13.1330, 04/15/2004]

**20.3.13.1331 APPLICANT QUALIFICATIONS AND ASSURANCES:**

Each applicant shall show that it either possesses the necessary funds or has reasonable assurance of obtaining the necessary funds, or by a combination of the two, to cover the estimated costs of conducting all licensed activities over the planned operating life of the project, including costs of construction and disposal.

[5-3-95; 20.3.13.1331 NMAC - Rn, 20 NMAC 3.1.13.1331, 04/15/2004]

**20.3.13.1332 FUNDING FOR DISPOSAL SITE CLOSURE AND STABILIZATION:**

**A.** The applicant shall provide assurance prior to the commencement of operations that sufficient funds will be available to carry out disposal site closure and stabilization, including:

- (1) decontamination of dismantlement of land disposal facility structures; and

**(2)** closure and stabilization of the disposal site so that, following transfer of the disposal site to the site owner, the need for ongoing active maintenance is eliminated to the extent practicable and only minor custodial care, surveillance and monitoring are required; these assurances shall be based on department-approved cost estimates reflecting the department-approved plan for disposal site closure and stabilization; the applicant's cost estimates must take into account total costs that would be incurred if an independent contractor were hired to perform the closure and stabilization work;

**B.** in order to avoid unnecessary duplication and expense, the department will accept financial sureties that have been consolidated with ear-marked financial or surety arrangements established to meet requirements of federal or other state agencies for such decontamination, closure, and stabilization; the department will accept these arrangements only if they are considered adequate to satisfy the requirements of 20.3.13.1333 NMAC, and that the portion of the surety which covers the closure of the disposal site is clearly identified and committed for use in accomplishing these activities;

**C.** the licensee's financial or surety arrangement shall be submitted annually for review by the department to assure that sufficient funds will be available for completion of the closure plan;

**D.** the amount of the licensee's financial or surety arrangement shall change in accordance with changes in the predicted costs of closure and stabilization; factors affecting closure and stabilization cost estimates include inflation, increases in the amount of disturbed land, changes in engineering plans, closure and stabilization that has already been accomplished, and any other conditions affecting costs; the financial or surety arrangement shall be sufficient at all times to cover the costs of closure and stabilization of the disposal units that are expected to be used before the next license renewal;

**E.** the financial or surety arrangement shall be written for a specified period of time and shall be automatically renewed unless the person who issues the surety notifies the department, the beneficiary (the site owner) and the principal (the licensee), not less than 90 days prior to the renewal date, of its intention not to renew; in such situations, the licensee must submit a replacement surety within 30 days after notification of cancellation; if the licensee fails to provide a replacement surety acceptable to the department, the beneficiary may collect on the original surety;

**F.** proof of forfeiture shall not be necessary to collect the surety so that, in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration; the conditions described above shall be clearly stated on any surety instrument;

**G.** financial or surety arrangements generally acceptable to the department include surety bonds, cash deposits, certificates of deposit, deposits of government securities,

escrow accounts, irrevocable letters or lines of credit, trust funds and combinations of the above, or such other types of arrangements as may be approved by the department; self-insurance, or any arrangement which essentially constitutes self-insurance, will not satisfy the surety requirements for private sector applicants; and

**H.** the licensee's financial or surety arrangement shall remain in effect until the closure and stabilization program has been completed and approved by the department and the license has been transferred to the site owner.

[5-3-95; 20.3.13.1332 NMAC - Rn, 20 NMAC 3.1.13.1332, 04/15/2004]

### **20.3.13.1333 FINANCIAL ASSURANCE FOR INSTITUTIONAL CONTROLS:**

**A.** Prior to the issuance of the license, the applicant shall provide for department approval a binding arrangement between the applicant and the disposal site owner that ensures that sufficient funds will be available to cover the costs of monitoring and any required maintenance during the institutional control period. The binding arrangement shall be reviewed annually by the department to ensure that changes in inflation, technology and disposal facility operations are reflected in the arrangements.

**B.** Subsequent changes to the binding arrangements specified in Subsection A of 20.3.13.1334 NMAC relevant to institutional control shall be submitted to the department for prior approval.

[5-3-95; 20.3.13.1333 NMAC - Rn, 20 NMAC 3.1.13.1333, 04/15/2004]

### **20.3.13.1334 MAINTENANCE OF RECORDS, REPORTS AND TRANSFERS:**

**A.** Each licensee shall maintain any records and make any reports in connection with the licensed activities as may be required by the conditions of the license or by the rules, regulations and orders of the department.

**B.** Records which are required by these regulations or by license conditions shall be maintained for a period specified by the appropriate regulations or by license condition. If a retention period is not otherwise specified, these records must be maintained and transferred to the officials specified in Subsection D of 20.3.13.1334 NMAC as a condition of license termination, unless the department otherwise authorizes their disposition.

**C.** Records which shall be maintained pursuant to this part (20.3.13 NMAC) may be the original or a reproduced copy or microfilm if this reproduced copy or microfilm is capable of producing a copy that is clear and legible at the end of the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate and complete records during the required retention period. Records, such as letters, drawings and specifications, must include all pertinent

information such as stamps, initials and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

**D.** If there is a conflict between the department's regulations in this part (20.3.13 NMAC), license condition, or other written department approval or authorization pertaining to the retention period for the same type of record, the longest retention period specified takes precedence.

**E.** Notwithstanding Subsections A through D of 20.3.13.1334 NMAC, the licensee shall record the location and the quantity of radioactive wastes contained in the disposal site and transfer these records upon license termination to the chief executive of the nearest municipality, the chief executive of the county in which the facility is located, the county zoning board or land development and planning agency, the state governor and other state, local, and federal governmental agencies as designated by the department at the time of license termination.

**F.** Following receipt and acceptance of a shipment of radioactive waste, the licensee shall record the date that the shipment is received at the disposal facility, the date of disposal of the waste, a traceable shipment manifest number, a description of any engineered barrier or structural overpack provided for disposal of the waste, the location of disposal at the disposal site, the containment integrity of the waste disposal containers as received, any discrepancies between materials listed on the manifest and those received, the volume of any pallets, bracing, or other shipping or onsite generated materials that are contaminated, and are disposed of as contaminated or suspect materials, and any evidence of leaking or damaged disposal containers or radiation or contamination levels in excess of limits specified in U.S. department of transportation and department regulations. The licensee shall briefly describe any repackaging operations of any of the disposal containers included in the shipment, plus any other information required by the department as a license condition. The licensee shall retain these records until the department transfers or terminates the license that authorizes the activities described in this section.

**G.** Each licensee authorized to dispose of radioactive waste received from other persons shall file a copy of its financial report or a certified financial statement annually with the department in order to update the information base for determining financial qualifications.

**H.** Each licensee authorized to dispose of waste materials received from other persons, pursuant to this part (20.3.13 NMAC), shall submit annual reports to the department. Reports shall be submitted by the end of the first calendar quarter of each year for the preceding year.

**(1)** The reports shall include:

**(a)** specification of the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in airborne effluents during the preceding year;

- (b) the results of the environmental monitoring program;
- (c) a summary of licensee disposal unit survey and maintenance activities;
- (d) a summary, by waste class, of activities and quantities of radionuclides disposed of;
- (e) any instances in which observed site characteristics were significantly different from those described in the application for a license; and
- (f) any other information the department may require.

(2) If the quantities of radioactive materials released during the reporting period, monitoring results, or maintenance performed are significantly different from those expected in the materials previously reviewed as part of the licensing action, the report must specifically address those differences.

I. Any transfer of radioactive materials by the licensee is subject to the requirements in 20.3.3.323 NMAC of these regulations.

J. In addition to the other requirements of this section, the licensee shall store, or have stored manifest and other information pertaining to receipt and disposal of radioactive waste in an electronic record keeping system.

(1) The manifest information that must be electronically stored is:

(a) that required in 20.3.4.466 NMAC of these regulations, with the exception of shipper and carrier telephone numbers, and shipper and consignee certifications; and

(b) that information required in Subsection F of 20.3.13.1334 NMAC.

(2) As specified in facility license conditions, the licensee shall report the stored information, or subsets of this information, on a computer-readable medium.

[5-3-95, N, 7-30-99; 20.3.13.1334 NMAC - Rn, 20 NMAC 3.1.13.1334, 04/15/2004]

#### **20.3.13.1335 TESTS ON LAND DISPOSAL FACILITIES:**

Each licensee shall perform, or permit the department to perform, any tests the department deems appropriate or necessary for the administration of the regulations in this part (20.3.13 NMAC), including, but not limited to, tests of:

A. wastes;

B. facilities used for the receipt, storage, treatment, handling or disposal of wastes;

C. radiation detection and monitoring instruments; or

D. other equipment and devices used in connection with the receipt, possession, handling, treatment, storage or disposal of waste.

[5-3-95, N, 7-30-99; 20.3.13.1335 NMAC - Rn, 20 NMAC 3.1.13.1335, 04/15/2004]

#### **20.3.13.1336 DEPARTMENT INSPECTIONS OF LAND DISPOSAL FACILITIES:**

A. Each licensee shall afford to the department at all reasonable times, opportunity to inspect waste not yet disposed of and the premises, equipment, operations and facilities in which wastes are received, possessed, handled, treated, stored or disposed.

B. Each licensee shall make available to the department for inspection, upon reasonable notice, records kept by the licensee pursuant to these regulations. Authorized representatives of the department may copy and take away copies of, for the department's use, any record required to be kept pursuant to these regulations.

[5-3-95; 20.3.13.1336 NMAC - Rn, 20 NMAC 3.1.3.1336, 04/15/2004]

### **PART 14: NATURALLY OCCURRING RADIOACTIVE MATERIALS (NORM) IN THE OIL AND GAS INDUSTRY**

#### **20.3.14.1 ISSUING AGENCY:**

Environmental Improvement Board.

[Recompiled 11/27/01]

#### **20.3.14.2 SCOPE:**

A. The regulations of this Subpart [Part] and other applicable subparts of these regulations apply to any person who engages in the extraction, transfer, transport, storage or disposal of NORM, or in the enhancement of NORM, in the oil and gas industry by altering the chemical properties, physical state or concentration of the NORM or its potential exposure pathways to humans.

B. The regulations of this Subpart [Part] and other applicable subparts of these regulations also apply to sludges and scale deposits in tubulars and equipment and to scale deposits from cleaning added to the environment. The regulations of this Subpart [Part] and other applicable subparts of these regulations also apply to NORM deposits in soil, water and the environment unless otherwise regulated.

C. The regulations of this Subpart and other applicable subparts of these regulations also address Regulated NORM management, transfer, storage, and

disposal with regard to facilities involved in storage and/or cleaning of tubulars and equipment.

[8-2-95; 20.3.14.2 NMAC – Rn, 20 NMAC 3.1.14.1401, Recompiled 11/27/01]

**20.3.14.3 STATUTORY AUTHORITY:**

[RESERVED]

**20.3.14.4 DURATION:**

[RESERVED]

**20.3.14.5 EFFECTIVE DATE:**

[RESERVED]

**20.3.14.6 OBJECTIVE — PURPOSE:**

This Subpart [Part] establishes radiation protection standards for the possession, use, transfer, transport, storage and disposal of naturally occurring radioactive materials (NORM) associated with the oil and gas industry, and which are not subject to regulation under the Atomic Energy Act of 1954, as amended. Nothing in these regulations relieves a licensee from abiding by the regulations of the New Mexico Water Quality Control Commission, other applicable state and federal laws and regulations including those of the New Mexico Oil Conservation Commission, or the terms and conditions of the Rocky Mountain Low Level Radioactive Waste Compact.

[8-2-95; 20.3.14.6 NMAC – Rn, 20 NMAC 3.1.14.1400, Recompiled 11/27/01]

**20.3.14.7 DEFINITIONS:**

A. "Accessible point" means any external location on a piece of equipment, or place on a facility where NORM or Regulated NORM may be present. This includes any internal location which can be reached through an opening, by removal of a plate, lid or hatch or which is made accessible as a result of structural modification;

B. "Centralized facility" means a facility that is operated by one person or more than one person under an operating agreement for the purpose of disposing of Regulated NORM generated exclusively by that person or persons. This definition does not include plugged and abandoned wells and-or Underground Injection Control (UIC) wells used for disposal of Regulated NORM as provided in 1407.D.3 and 4,[Paragraph (3) and (4), Subsection D., Section 1407 of 20.3.14.1407 NMAC].

C. "Commercial facility" means any facility that receives compensation to receive, store, treat and-or dispose of Regulated NORM pursuant to applicable Department and Division rules and regulations;

D. "Decontamination" means the removal of media containing Regulated NORM from equipment or facilities solely for the intended purpose of reducing levels of radiation to levels below Regulated NORM levels in order to release equipment, materials, or land for unrestricted use in accordance with these regulations;

E. "Department" means the New Mexico Environment Department or its designated representative(s);

F. "Division" means the New Mexico Oil Conservation Division or its designated representative(s);

G. "Equipment" means tubulars (i.e., pipe), wellheads, separators, tanks, condensers, or any other related apparatus that have been in contact with produced gas or fluids associated with the oil and gas industry;

H. "Facility" means any land or structures, including appurtenances, and improvements on land or water used in or related to the oil and gas industry;

I. "General environment" means the total terrestrial, atmospheric, and aquatic environments outside the boundary of a facility;

J. "Naturally occurring radioactive material (NORM)" means any nuclide which is radioactive in its natural physical state (i.e., not manmade) but does not include byproduct, source or special nuclear material;

K. "Oil and Gas Industry" means any person(s) engaged in exploring, producing, gathering, trading, servicing, supplying, refining, and transporting of crude hydrocarbons, or their by-products and waste, or facilities associated with such activities;

L. "Produced water" means those waters produced in conjunction with the production of crude oil and-or natural gas and commonly collected at field storage, processing or disposal facilities, including, but not limited to: lease tanks, commingled tank batteries, burn pits, LACT units, dehydrators and community or lease salt water disposal systems, and which may be collected at gas processing plants, pipeline drips and other processing or transportation facilities;

M. "Product" means something produced, made, manufactured, refined, or beneficiated;

N. "Regulated NORM" means NORM contained in any oil-field soils, equipment, sludges or any other materials related to oil-field operations or processes exceeding the radiation levels specified in 1403 [Section 1403 of 20.3.14.1403 NMAC];

O. "Storage" means the collection and containment of Regulated NORM for the purpose of and prior to disposal. Storage does not include the accumulation of Regulated NORM in operating vessels; and

P. "Treatment" means any commercial method, technique, or process, including neutralization, designed to change the physical, chemical form or composition of Regulated NORM. This definition does not refer to treatment as defined in the Resource Conservation Recovery Act (RCRA), nor does it refer to processing of Regulated NORM for disposal in plugged and abandoned wells.

[8-2-95; 20.3.14.7 NMAC – Rn, 20 NMAC 3.1.14.1402, Recompiled 11/27/01]

### **20.3.14.9-20.3.14.1402 [RESERVED]**

#### **20.3.14.1403 EXEMPTIONS:**

A. For release for unrestricted use, persons who receive, possess, use, process, transfer, distribute, transport, store or dispose of NORM are exempt from the requirements of these regulations if: the NORM present is at concentrations of 30 picocuries per gram or less of radium 226, above background, or 150 picocuries per gram or less of any other NORM radionuclide, above background, in soil, in 15 cm layers, averaged over 100 square meters. Samples should be taken if gamma radiation readings (mR/hr) are equal to or exceed twice background readings when surveyed at a distance of 1 cm from the surface of the soil, in accordance with Department guidelines.

B. The possession and use of natural gas and natural gas products and crude oil and crude oil products as fuels are exempt from the requirements of this Subpart [Part].

C. NORM not otherwise exempted and equipment from oil, gas, and water production containing NORM are exempt from the requirements of this Subpart if the maximum radiation exposure reading at any accessible point does not exceed 50 microroentgens per hour (mR/hr) (0.5 mSv/hr), including background radiation levels. Sludges and scales contained in oil, gas and water production equipment are exempt from the requirements of this Subpart if the maximum radiation exposure reading within 1 cm of the surface of the sludge or scale does not exceed 50 microroentgens per hour (50 mR/hr) (0.5 mSv/hr), including background radiation levels. If the radiation readings exceed 50 mR/hr (0.5 mSv/hr), removable sludges and scales are exempt from the requirements of these regulations if the concentration of Radium 226, in a representative sample, does not exceed 30 picocuries per gram.

D. NORM not otherwise exempted and equipment from gas processing, fractionation, and dry gas distribution containing NORM are exempt from the

requirements of this Subpart [Part] if the removable surface NORM contamination does not exceed 1000 dpm/100 cm<sup>2</sup> and otherwise conforms with the requirements of 1403.A [Subsection A., Section 1403 of 20.3.14.1403 NMAC]. Removable scale from gas processing fractionating, and dry gas distribution is exempt from the requirements of this Subpart [Part] if the concentration of Lead 210, in a representative sample, does not exceed 150 picocuries per gram.

E. Produced water is exempt from the requirements of these regulations if it is reinjected into a Class I or Class II Underground Injection Control (UIC) well permitted by the Division and/or stored or disposed in a double, synthetically lined surface impoundment permitted by the Division.

[8-2-95; 20.3.14.1403 NMAC – Rn, 20 NMAC 3.1.14.1403, Recompiled 11/27/01]

#### **20.3.14.1404 RADIATION SURVEY INSTRUMENTS:**

A. Radiation survey instruments used to determine exemptions pursuant to 1403.C [Subsection C., Section 1403 of 20.3.14.1403 NMAC] shall be capable of measuring from 1 microrentgen per hour through at least 500 microrentgens per hour. Laboratory analytical instrumentation used in accordance with 1406 [Section 1406 of 20.3.14.1406 NMAC] must have a radiation detection system with an efficiency such that it is capable of measuring 1000 dpm/100 cm<sup>2</sup> on filter paper. The efficiency of portable survey instruments must be such that when cpm is equated to dpm, the 1000 dpm/100cm<sup>2</sup> limit is not exceeded.

B. Radiation survey instruments used to make surveys required by this Subpart shall be calibrated to an appropriate standard and operable according to Department guidelines for operability checks on a regular basis.

C. Each radiation survey instrument shall be calibrated:

- (1) by a qualified person or by the manufacturer provided the person or the manufacturer is certified by the Department;
- (2) at intervals not to exceed twelve (12) months and after each instrument servicing other than battery replacement; and
- (3) to demonstrate an accuracy within plus or minus 20 percent.

D. Records of required calibrations shall be maintained for Department inspection for five years after the calibration date.

[8-2-95; 20.3.14.1404 NMAC – Rn, 20 NMAC 3.1.14.1404, Recompiled 11/27/01]

#### **20.3.14.1405 PROTECTION OF WORKERS DURING OPERATIONS:**

A. All general and specific licensees shall conduct operations:

(1) in compliance with the standards for radiation protection set forth in Subparts 4 and 10 [Parts 4 and 10], except for releases of radioactivity in effluents, which shall be regulated under 1406 [Section 1406 of 20.3.14.1406 NMAC], and disposal, which shall be regulated under 1407 [Section 1407 of 20.3.14.1407 NMAC], and;

(2) pursuant to a Worker Protection Plan prepared according to applicable Department guidelines and maintained by the licensee and made available upon request of employees or representatives of the Department. The licensee shall post official notices to employees in areas where employees will have sufficient access to and notification of the Plan.

B. The Department will prepare and issue worker protection guidelines and notices to employees no later than six (6) months from the effective date of these regulations. The Worker Protection Plan prepared by the licensee pursuant to 1405.A.2 [Paragraph (2), Subsection A., Section 1405 of 20.3.14.1405 NMAC] shall be no less stringent than the Department's worker protection guidelines.

C. Licensees shall incorporate hazard identification and training into their hazard communication programs as required by the Occupational Safety and Health Administration (OSHA) or by the Board pursuant to the Occupational Health and Safety Act, and as required under Subpart [Part] 10 for personnel working on or around equipment and materials that contain Regulated NORM. Regulated NORM material that has been removed from equipment and containerized shall be labeled as per the requirement of 430 and 431 [Sections 430 and 431 of 20.3.4.430 and 431 NMAC] .

D. Licensees operating at more than one location may prepare a single Worker Protection Plan to cover all facilities and operations in New Mexico, provided that the Plan is readily accessible to all employees.

E. The total radiation dose in any one year to any General Licensee employee from Regulated NORM shall not exceed the standards for exposure to members of the public as set forth in Subpart [Part] 4. Employees engaged in an activity subject to a Specific License as required by 1411 [Section 1411 of 20.3.14.1411 NMAC], shall not exceed the limits for radiation workers as specified in Subpart [Part] 4. Any worker engaged in an activity subject to a Specific License and who is likely to receive in one year an accumulative dose in excess of 500 mrem (5 mSv) shall be monitored.

[8-2-95; 20.3.14.1405 NMAC – Rn, 20 NMAC 3.1.14.1405, Recompiled 11/27/01]

## **20.3.14.1406 PROTECTION OF THE GENERAL POPULATION FROM RELEASES OF RADIOACTIVITY:**

A. All licensees shall conduct operations in compliance with the standards for radiation protection set forth in Subpart [Part] 4 and in such a manner that concentrations of radioactive materials which are released to the general environment do not result in an annual dose exceeding 100 mrem (1 mSv) in a year. The dose in any unrestricted area from external sources shall not exceed 2 mrem (20 mSv) in any one hour. If the licensee permits members of the public to have access to restricted areas the limits for members of the public continue to apply to those individuals.

B. All licensees shall assure that any equipment released for unrestricted use shall not exceed the exposure limits specified in 1403 [Section 1403 of 20.3.14.1403 NMAC].

C. The licensee shall provide the recipient of transferred equipment, the inside of which is not accessible through any opening, plate, lid or hatch, with a notice that required surveys have been performed, that equipment meets the standards of 1403.C or D [Subsections C. or D., Section 1403 of 20.3.14.1403 NMAC], and that further surveys may be necessary if the equipment is structurally modified following transfer. The licensee shall retain copies of all notices of transfer.

[8-2-95; 20.3.14.1406 NMAC – Rn, 20 NMAC 3.1.14.1406, Recompiled 11/27/01]

#### **20.3.14.1407 DISPOSAL AND TRANSFER OF REGULATED NORM FOR DISPOSAL:**

A. Disposal of Regulated NORM on or near the surface of the ground shall be done pursuant to a general license issued under 1410 [Section 1410 of 20.3.14.1410 NMAC] and Subpart [Part] 13 and pursuant to NMOCD Rule 711. A general licensee may blend or disc Regulated NORM contaminated soils in place provided that:

(1) the soils were contaminated at that site and prior to promulgation of this Subpart [Part]; and

(2) the limits established in 1403.A [Subsection A., Section 1403 of 20.3.14.1403 NMAC] are met.

B. Disposal of Regulated NORM in nonretrieved flowlines and pipelines, in plugged and abandoned wells or by deep-well injection shall be done pursuant to a general license issued under 1410 [Section 1410 of 20.3.14.1410 NMAC] and pursuant to applicable Division rules and regulations.

C. All licensees shall store, transfer and/or dispose of Regulated NORM in accordance with the Worker Protection Plan required under 1405 [Section 1405 of 20.3.14.1405 NMAC]. All requirements of this Worker Protection Plan shall be available for inspection by the Department.

D. Regulated NORM shall only be disposed by the methods enumerated below, except that the Department will consider and approve alternative methods of disposal if the applicant demonstrates that such alternative method(s) will protect the environment,

public health and fresh waters, and otherwise is consistent with this Subpart [Part], with other provisions of this Part and with applicable Division rules and regulations.

(1) Disposal in Non-retrieved Flowlines and Pipelines: Non-retrieved flowlines and pipelines which are buried are authorized by the Department to be left in place in accordance with Division rules and regulations.

(2) Disposal at Commercial and Centralized Facilities: Before a commercial or centralized facility may accept Regulated NORM for treatment and/or disposal, the operator of the facility shall obtain both a specific license issued by the Department pursuant to the requirements of this Subpart [Part] and a permit from the Division, and must be in compliance with Subpart [Part] 13.

(3) Disposal in Plugged and Abandoned Wells: The Department allows downhole disposal of NORM solids and NORM contaminated equipment in wells which are to be plugged and abandoned, provided such procedures are performed in a manner to protect the environment, public health, and fresh waters; are conducted in accordance with applicable Division rules and regulations; and occur below the lowermost underground source of drinking water. The allowable form shall be media-laden fluid with a minimum density of nine (9.0) pounds per gallon and with the allowable volume for disposal dependent on the plug location required for a specific well.

(4) Disposal by Injection: The Department allows the injection of Regulated NORM into Underground Injection Control (UIC) Class I nonhazardous and Class II wells pursuant to NMOCD rules and regulations. All UIC Class I nonhazardous and Class II injection wells shall be permitted by the Division.

(5) Other Disposal Methods: Each person subject to general or specific license requirements shall manage and dispose of Regulated NORM:

(a) in accordance with the applicable requirements of Subparts [Parts] 4 and 10;

(b) in accordance with the applicable requirements of the U.S. Environmental Protection Agency for disposal of such wastes;

(c) by transfer of the wastes for disposal to a land disposal facility licensed by the U.S. Nuclear Regulatory Commission, an Agreement State, or a Licensing State; or

(d) in accordance with alternate methods authorized in this Subpart [Part] or by the Department in writing upon application or upon the Department's initiative and in accordance with Division Regulations.

### **20.3.14.1408 RADIATION SURVEY REQUIREMENTS:**

A. Persons subject to the general license established in 1410.A [Subsection A., Section 1410 of 20.3.14.1410 NMAC] shall conduct radiation surveys of equipment and facilities in their control or possession and maintain that information on file. Surveys would be conducted for all of the following events.

(1) Prior to working on facilities or equipment where potential release of regulated NORM could occur or where workers could be exposed to regulated NORM.

(2) Prior to any transfer of equipment to another operator, the general public, or a salvage firm.

(3) Prior to the movement or removal of equipment from any facility or facility reclamation.

(4) At facilities where pipe has been cleaned.

(5) At facilities where materials are known to have been spread, spilled or stockpiled.

B Surveys required by this Subpart shall be conducted using instruments that meet the requirements of 1404 [Section 1404 of 20.3.14.1404 NMAC].

C. Surveys required by this Subpart shall be performed pursuant to guidelines issued by the Department and by persons who possess the knowledge and/or training to perform such surveys pursuant to Department and Division Guidelines.

[8-2-95; 20.3.14.1408 NMAC – Rn, 20 NMAC 3.1.14.1408, Recompiled 11/27/01]

### **20.3.14.1409 REQUIREMENTS FOR STORAGE OF REGULATED NORM:**

A. Storage of Regulated NORM, whether under a general or specific license, will be done in such a manner as to prevent, to the extent practicable, release of NORM to unrestricted areas, and otherwise to protect human health and the environment.

B. Storage of Regulated NORM will be done in such a manner as to comply with the limits set forth in 413 and 425 [Sections 413 and 425 of 20.3.4.413 and 435 NMAC], including those specified in 461 [Section 461 of 20.3.4.461 NMAC], Table II, of these regulations.

C. Regulated NORM will be stored at all times: ]

(1) In accordance with the recommended practices of Section 6 of the American Petroleum Institute's Bulletin E2 (edition of April 1, 1992, or most recent edition), including practices specified for facility security, management of uncontained

NORM, containerization and labeling, signage and record keeping, except that the dose limits specified in Section 6 or Bulletin E2 shall not apply;

(2) NORM storage facilities must be designed to minimize or prevent release of Regulated NORM to the environment; and

(3) In accordance with applicable Department guidelines.

D. Licensing of Regulated NORM Storage Facilities:

(1) Effective August 2, 1995, storage of Regulated NORM for longer than one year must be under a specific license unless the Department grants an extension of a general license issued pursuant to 1410.A [Subsection A., Section 1410 of 20.3.14.1410 NMAC]. Such an extension must be requested by the licensee on an annual basis and may be granted by the Department on an annual basis, not to exceed 10 years of storage under a general license; and

(2) In granting an extension of a general license for storage of Regulated NORM, the Department must certify that the licensee is in compliance with 1409.A, B., and C [Subsections A., B., and C., Section 1409 of 20.3.14.1409 NMAC] and has a valid reason or reasons why the Regulated NORM under his or her ownership will not be disposed within the next year. Factors the Department should consider in determining whether the licensee has a valid reason or reasons for receiving an extension include, but are not limited to, the volume and radioactivity of the Regulated NORM, and/or the location of the storage facility and its proximity to populated areas or sensitive environments.

E. Storage of Regulated NORM under a specific license will be done in accordance with the requirements of this Subpart [Part], any other applicable requirements of these regulations and any other conditions as may be imposed by the Department to ensure compliance with these regulations.

[8-2-95; 20.3.14.1409 NMAC – Rn, 20 NMAC 3.1.14.1409, Recompiled 11/27/01]

**20.3.14.1410 GENERAL LICENSE:**

A. A general license is hereby issued to extract, receive, possess, own, use, process and transport Regulated NORM without regard to quantity. A general license is hereby issued to store Regulated NORM in accordance with the requirements of 1409 [Section 1409 of 20.3.14.1409 NMAC], for one year or less and to dispose of Regulated NORM in plugged and abandoned wells or Class II UIC wells pursuant to 1407.D.3 and 1407.D.4 [Paragraphs (3) and (4), Subsection D., Section 1407 of 20.3.14.1407 NMAC]. A general licensee may, as part of routine operations, perform maintenance work on equipment that contains Regulated NORM provided that work practices conform to the Worker Protection Plan and that employee exposures prescribed in 1405 [Section 1405 of 20.3.14.1405 NMAC] and Subpart [Part] 4 are not exceeded.

B. A general license does not authorize the manufacture or distribution of products containing Regulated NORM, does not allow the transfer for disposal of Regulated NORM between general licensees, and does not authorize the storage of Regulated NORM for compensation or other commercial purposes.

C. Facilities and equipment containing Regulated NORM shall not be released for unrestricted use.

D. No generally licensed facility, including plugged and abandoned wells used for NORM disposal, shall be transferred for unrestricted use where the concentration of radium-226 in soil averaged over 100 square meters exceeds 30 pCi/g above background in 15 cm layers.

E. Equipment containing Regulated NORM may be released for maintenance and/or overhaul provided the recipient is specifically licensed to perform such activity.

F. The transfer of Regulated NORM from one general licensee to another general licensee is authorized by the Department provided that the equipment and facilities containing Regulated NORM are to be used by the recipient for the same purpose or similar service.

G. Transfers of Regulated NORM do not relieve the transferring general licensee from the responsibilities of surveying pursuant to these requirements, informing the receiving general licensee of the results of such surveys, and maintaining records pursuant to these requirements.

H. Record keeping for NORM survey data is to be maintained for inspection by the Department.

I. The landowner shall be notified prior to on-site mixing of soil pursuant to 1407.A [Subsection A., Section 1407 of 20.3.14.1407 NMAC].

[8-2-95; 20.3.14.1410 NMAC – Rn, 20 NMAC 3.1.14.1410, Recompiled 11/27/01]

### **20.3.14.1411 SPECIFIC LICENSES:**

A. Unless otherwise exempted under the provisions of 1403 [Section 1403 of 20.3.14.1403 NMAC], or licensed under the provisions of Subpart [Part] 3 of these regulations, the manufacturing and distribution of any material or product containing Regulated NORM shall be specifically licensed pursuant to the requirements of this Subpart [Part] or pursuant to equivalent regulations of another state.

B. The decontamination of equipment or facilities containing Regulated NORM shall be performed only by persons specifically licensed.

C. Persons conducting the following activities involving equipment or facilities containing Regulated NORM must be specifically licensed to:

(1) dispose of or treat the resulting Regulated NORM unless exempted under this Subpart [Part];

(2) transfer Regulated NORM for long-term storage, treatment and/or disposal; or

(3) after August 2, 1995, store Regulated NORM in accordance with the requirements of 1409 [Section 1409 of 20.3.14.1409 NMAC] for longer than one year.

[8-2-95; 20.3.14.1411 NMAC – Rn, 20 NMAC 3.1.14.1411, Recompiled 11/27/01]

**20.3.14.1412 REQUIREMENTS FOR THE ISSUANCE OF SPECIFIC LICENSES:**

The licensee shall comply with the provisions of 308 [Section 308 of 20.3.3.308 NMAC].

[8-2-95; 20.3.14.1412 NMAC – Rn, 20 NMAC 3.1.14.1412, Recompiled 11/27/01]

**20.3.14.1413 FILING APPLICATION FOR SPECIFIC LICENSES:**

A. The licensee shall comply with the provisions of 307.A through F [Subsections A. through F., Section 307 of 20.3.3.307 NMAC].

B. An applicant for a specific license shall comply with the Public Notification requirements in 310 [Section 310 of 20.3.3.310 NMAC].

[8-2-95; 20.3.14.1413 NMAC – Rn, 20 NMAC 3.1.14.1413, Recompiled 11/27/01]

**20.3.14.1414 CONDITIONS FOR ISSUANCE OF SPECIFIC LICENSES:**

A. The licensee shall comply with the provisions of 316 and 317.A. through C [Subsections A. through C., Section 317 and Section 316 of 20.3.3.316 and 317 NMAC].

B. An application for a Specific License to decontaminate equipment or land not otherwise exempted under the provisions of 1403 [Section 1403 of 20.3.14.1403 NMAC] will be approved if:

(1) the applicant satisfies the requirements specified in 1413 [Section 1413 of 20.3.14.1413 NMAC]; and

(2) the applicant has adequately addressed the following items:

(a) procedures and equipment for monitoring and protection of workers;

(b) an evaluation of the radiation levels and concentrations of contamination expected during normal operations;

(c) operating and emergency procedures, including procedures for waste reduction and quality assurance of items released for unrestricted use; and

(d) a method of managing the Regulated NORM removed from contaminated equipment and facilities.

C. Each person licensed by the Department pursuant to this Part shall have met the financial surety requirements of 311.E [Subsection E., Section 311 of 20.3.3.311 NMAC].

D. Each person licensed by the Department pursuant to this Part shall manage and dispose of wastes containing Regulated NORM in accordance with 1407 [Section 1407 of 20.3.14.1407 NMAC].

[8-2-95; 20.3.14.1414 NMAC – Rn, 20 NMAC 3.1.14.1414, Recompiled 11/27/01]

#### **20.3.14.1415 MODIFICATION, EXPIRATION AND TERMINATION OF LICENSES:**

The licensee shall comply with the provisions in 322 [Section 322 of 20.3.3.322 NMAC].

[8-2-95; 20.3.14.1415 NMAC – Rn, 20 NMAC 3.1.14.1415, Recompiled 11/27/01]

#### **20.3.14.1416 RENEWAL OF LICENSES:**

A. Applications for renewal of specific licenses shall be filed in accordance with 1413 [Section 1413 of 20.3.14.1413 NMAC].

B. In any case in which a licensee, not less than 30 days prior to expiration of an existing license, has filed an application in proper form for renewal or for a new license authorizing the same activities, such existing license shall not expire until final action by the Department.

[8-2-95; 20.3.14.1416 NMAC – Rn, 20 NMAC 3.1.14.1416, Recompiled 11/27/01]

#### **20.3.14.1417 AMENDMENT OF LICENSES AT REQUEST OF SPECIFIC LICENSEE:**

Applications for amendment of a specific license shall be filed in accordance with 320 [Section 320 of 20.3.3.320 NMAC], and shall specify the respects in which the licensee desires the license to be amended and the grounds for such amendment.

[8-2-95; 20.3.14.1417 NMAC – Rn, 20 NMAC 3.1.14.1417, Recompiled 11/27/01]

#### **20.3.14.1418 ACRONYMS:**

- A. Bq/kg Becquerels per kilogram
- B. cm centimeters
- C. dpm disintegrations per minute
- D. LACT Lease Automated Custody Transfer
- E. NORM Naturally Occurring Radioactive Material
- F. P&A Plugged and Abandoned
- G. pCi/g picocuries per gram
- H. UIC Underground Injection Control
- I. mR/hr microroentgens per hour
- J. rem roentgen equivalent man
- K. mR/hr milliroentgen per hour
- L. RCRA Resource Conservation Recovery Act
- M. cpm counts per minute
- N. mSv millisievert
- O.  $\mu$ Sv microsievert
- P. mSv/hr microsievert per hour

[8-2-95; 20.3.14.1418 NMAC – Rn, 20 NMAC 3.1.14.1418, Recompiled 11/27/01]

**20.3.14.1419 RECIPROCAL RECOGNITION OF LICENSES:**

Recognition of Reciprocal Licenses shall be done in accordance with 324 [Section 324 of 20.3.3.324 NMAC].

[8-2-95; 20.3.14.1419 NMAC – Rn, 20 NMAC 3.1.14.1419, Recompiled 11/27/01]

**20.3.14.1420-20.3.14.1499 [RESERVED]**

**PART 15: LICENSES AND RADIATION SAFETY REQUIREMENTS FOR IRRADIATORS**

**20.3.15.1 ISSUING AGENCY:**

Environmental Improvement Board.

[5-3-95; 20.3.15.1 NMAC - Rn, 20 NMAC 3.1.1.100, 04/15/2004]

**20.3.15.2 SCOPE:**

**A.** The requirements of this part (20.3.15 NMAC) are in addition to other requirements in these regulations. In particular, the provisions of Parts 3, 4 and 10 (20.3.3 NMAC, 20.3.4 NMAC, and 20.3.10 NMAC) apply to applications and licenses subject to this part (20.3.15 NMAC). Nothing in this part (20.3.15 NMAC) relieves the licensee from complying with other applicable federal, state and local regulations governing the siting, zoning, land use and building code requirements for industrial facilities.

**B.** The regulations in this part (20.3.15 NMAC) apply to panoramic irradiators that have either dry or wet storage of the radioactive sealed sources and to under water irradiators in which both the source and the product being irradiated are under water. Irradiators whose dose rates exceed 5 grays (500 rads) per hour at 1 meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type, are covered by this part (20.3.15 NMAC).

**C.** The regulations in this part (20.3.15 NMAC) do not apply to self-contained dry-source storage irradiators (those in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel), medical radiology or teletherapy, radiography (the irradiation of materials for nondestructive testing purposes), gauging, or open-field (agricultural) irradiations.

[05/03/95; 20.3.15.2 NMAC - Rn, 20 NMAC 3.1.15.1500, 04/15/2004]

**20.3.15.3 STATUTORY AUTHORITY:**

Sections 74-1-9, 74-3-5, and 74-3-9 NMSA 1978.

[5-3-95; 20.3.15.3 NMAC - Rn, 20 NMAC 3.1.1.102, 04/15/2004]

**20.3.15.4 DURATION:**

Permanent.

[5-3-95; 20.3.15.4 NMAC - Rn, 20 NMAC 3.1.1.103, 04/15/2004]

**20.3.15.5 EFFECTIVE DATE:**

May 3, 1995, unless a later date is cited at the end of a section.

[5-3-95, 8-2-95, A, 7-30-99; 20.3.3.5 NMAC - Rn, 20 NMAC 3.1.1.104, 04/15/2004]

**20.3.15.6 OBJECTIVE:**

This part (20.3.15 NMAC) contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive materials in irradiators used to irradiate objects or materials using gamma radiation. This part (20.3.15 NMAC) also contains radiation safety requirements for operating irradiators.

[05/03/95; 20.3.15.2 NMAC - Rn, 20 NMAC 3.1.15.1500.A, 04/15/2004]

[Refer to the purpose and scope promulgated by the board as specified in 20.3.15.2 NMAC.]

**20.3.15.7 DEFINITIONS:**

**A.** "Annually" means either: (1) at intervals not to exceed 1 year; or (2) once per year, at about the same time each year (plus or minus 1 month).

**B.** "Doubly encapsulated sealed source" means a sealed source in which the radioactive material is sealed within a capsule and that capsule is sealed within another capsule.

**C.** "Irradiator" means a facility that uses radioactive sealed sources for the irradiation of objects or materials and in which radiation dose rates exceeding 5 grays (500 rads) per hour exist at 1 meter from the sealed radioactive sources in air or water, as applicable for the irradiator type, but does not include irradiators in which both the sealed source and the area subject to irradiation are contained within a device and are not accessible to personnel.

**D.** "Irradiator operator" means an individual who has successfully completed the training and testing described in 20.3.15.1517 NMAC, and is authorized by the terms of the license to operate the irradiator without a supervisor present.

**E.** "Panoramic dry-source-storage irradiator" means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored in shields made of solid materials. The term includes beam-type dry-source-storage irradiators in which only a narrow beam of radiation is produced for performing irradiations.

**F.** "Panoramic irradiator" means an irradiator in which the irradiations are done in air in areas potentially accessible to personnel. The term includes beam-type irradiators.

**G.** "Panoramic wet-source-storage irradiator" means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored under water in a storage pool.

**H.** "Pool irradiator" means any irradiator at which the sources are stored or used in a pool of water, including panoramic wet-source-storage irradiators and under water irradiators.

**I.** "Product conveyor system" means a system for moving the product to be irradiated to, from and within the area where irradiation takes place.

**J.** "Radiation room" means a shielded room in which irradiations take place. Under water irradiators do not have radiation rooms.

**K.** "Radiation safety officer" means an individual with responsibility for the overall radiation safety program at the facility.

**L.** "Sealed source" means any byproduct material that is used as a source of radiation and is encased in a capsule designed to prevent leakage or escape of the byproduct material.

**M.** "Seismic area" means any area where the probability of a horizontal acceleration in rock of more than 0.3 times the acceleration of gravity in 250 years is greater than 10 percent, as designated by the U.S. geological survey.

**N.** "Underwater irradiator" means an irradiator in which the sources always remain shielded under water and humans do not have access to the sealed sources or the space subject to irradiation without entering the pool.

[05/03/95; 20.3.15.7 NMAC - Rn, 20 NMAC 3.1.15.1500, 04/15/2004]

### **20.3.15.8-20.3.15.1500 [RESERVED]**

#### **20.3.15.1501 APPLICATION FOR A SPECIFIC LICENSE:**

A person, as defined in 20.3.1 NMAC of these regulations, may file an application for a specific license authorizing the use of sealed sources in an irradiator on forms provided by the department, in accordance with 20.3.3.307 NMAC.

[05/03/95; 20.3.15.1501 NMAC - Rn, 20 NMAC 3.1.15.1501, 04/15/2004]

#### **20.3.15.1502 SPECIFIC LICENSES FOR IRRADIATORS:**

The department will approve an application for a specific license for the use of licensed material in an irradiator if the applicant meets the requirements contained in this section.

**A.** The applicant shall satisfy the general requirements specified in 20.3.3 NMAC and the requirements contained in this part (20.3.15 NMAC).

**B.** An application for a specific license of category 1 and category 2 quantities of radioactive material shall comply with 10 CFR 37. The licensee shall comply with 10 CFR 37 except as follows:

(1) any reference to the commission or NRC shall be deemed a reference to the department;

(2) 10 CFR 37.5 definitions of agreement state, byproduct material, commission and person shall not be applicable;

(3) 10 CFR 37.7, 10 CFR 37.9, 10 CFR 37.11(a) and (b), 10 CFR 37.13, 10 CFR 37.71, 10 CFR 37.105, and 10 CFR 37.107 shall not be applicable;

(4) for any reporting or notification requirements that the licensee must follow in 10 CFR 37.45, 10 CFR 37.57, 10 CFR 37.77(a) through (d), 10 CFR 37.81, the licensee shall use, when applicable, New Mexico Environment Department/RCB, P.O. Box 5469, Santa Fe, NM 87502-5469 address information.

**C.** The application must describe the training provided to irradiator operators including:

(1) classroom training;

(2) on-the-job or simulator training;

(3) safety reviews;

(4) means employed by the applicant to test each operator's understanding of these regulations and licensing requirements, and the irradiator operating and emergency procedures; and

(5) minimum training and experience of personnel who may provide training.

**D.** The application must include an outline of the written operating and emergency procedures listed in 20.3.15.1518 NMAC that describes the radiation safety aspects of the procedures.

**E.** The application must describe the organizational structure for managing the irradiator, specifically the radiation safety responsibilities and authorities of the radiation safety officer, and those management personnel who have important radiation safety responsibilities or authorities. In particular, the application must specify who within the management structure has the authority to stop unsafe operations. The application must also describe the training and experience required for the position of radiation safety officer.

**F.** The application must include a description of the access control system required by 20.3.15.1507 NMAC, the radiation monitors required by 20.3.15.1510 NMAC, the method of detecting leaking sources required by 20.3.15.1521 NMAC including the sensitivity of the method, and a diagram of the facility that shows the locations of all required interlocks and radiation monitors.

**G.** If the applicant intends to perform leak testing of dry-source-storage sealed sources, the applicant shall establish procedures for leak testing and submit a description of these procedures to the department. The description must include the:

- (1) instruments to be used;
- (2) methods of performing the analysis; and
- (3) pertinent experience of the individual who analyzes the samples.

**H.** If licensee personnel are to load or unload sources, the applicant shall describe the qualifications and training of the personnel and the procedures to be used. If the applicant intends to contract for source loading or unloading at its facility, the loading or unloading must be done by an organization specifically authorized by the department to load or unload irradiator sources.

**I.** The applicant shall describe the inspection and maintenance checks, including the frequency of the checks required by 20.3.15.1522 NMAC.

[05/03/95; 20.3.15.1502 NMAC - Rn, 20 NMAC 3.1.15.1502, 04/15/2004; A, 06/13/2017; A, 02/14/2023]

### **20.3.15.1503 START OF CONSTRUCTION:**

The applicant may not begin construction of a new irradiator prior to the submission to the department an application for a license for the irradiator. As used in this section, the term "construction" includes the construction of any portion of the permanent irradiator structure on the site, but does not include engineering and design work, purchase of a site, site surveys or soil testing, site preparation, site excavation, construction of warehouse or auxiliary structures, and other similar tasks. Any activities undertaken prior to the issuance of a license are entirely at the risk of the applicant and have no bearing on the issuance of a license.

[05/03/95; 20.3.15.1503 NMAC - Rn, 20 NMAC 3.1.15.1503, 04/15/2004]

### **20.3.15.1504 APPLICATIONS FOR EXEMPTIONS:**

**A.** The department may, upon application of any interested person or upon its own initiative, grant any exemptions from the requirements in this part (20.3.15 NMAC) that it

determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

**B.** Any application for a license or for amendment of a license authorizing use of teletherapy-type unit for irradiation of materials or objects may include proposed alternatives for the requirements of this part (20.3.15 NMAC). The department will approve the proposed alternatives if the applicant provides adequate rationale for the proposed alternatives and demonstrates that they are likely to provide an adequate level of safety for workers and the public.

[05/03/95; 20.3.15.1504 NMAC - Rn, 20 NMAC 3.1.15.1504, 04/15/2004]

#### **20.3.15.1505 REQUEST FOR WRITTEN STATEMENTS:**

**A.** After the filing of the original application, the department may request further information necessary to enable the department to determine whether the application should be granted or denied.

**B.** Each license is issued with the condition that the licensee will, at any time before expiration of the license, upon the department's request, submit written statements to enable the department to determine whether the license should be modified, suspended or revoked.

[05/03/95; 20.3.15.1505 NMAC - Rn, 20 NMAC 3.1.15.1505, 04/15/2004]

#### **20.3.15.1506 PERFORMANCE CRITERIA FOR SEALED SOURCES:**

**A. Requirements.** Sealed sources installed after July 1, 1993:

- (1) must be doubly encapsulated;
- (2) must use radioactive material that is as non-dispersible as practical and that is as insoluble as practical if the source is used in a wet-source-storage or wet-source-change irradiator;
- (3) must be encapsulated in a material resistant to general corrosion and to localized corrosion, such as 316L stainless steel or other material with equivalent resistance if the sources are for use in irradiator pools; and
- (4) in prototype testing of the sealed source, must have been leak tested and found leak-free after each of the tests described in Subsections B through G of 20.3.15.1506 NMAC.

**B. Temperature.** The test source must be held at -40 degrees C for 20 minutes, 600 degrees C for one hour, and then be subject to a thermal shock test with a temperature drop from 600 degrees C to 20 degrees C within 15 seconds.

**C. Pressure.** The test source must be twice subjected for at least five minutes to an external pressure (absolute) of 2 million newtons per square meter.

**D. Impact.** A 2-kilogram steel weight, 2.5 centimeters in diameter, must be dropped from a height of 1 meter onto the test source.

**E. Vibration.** The test source must be subjected 3 times for 10 minutes each to vibrations sweeping from 25 hertz to 500 hertz, with a peak amplitude of 5 times the acceleration of gravity. In addition, each test source must be vibrated for 30 minutes at each resonant frequency found.

**F. Puncture.** A 50-gram weight and pin, 0.3-centimeter pin diameter, must be dropped from a height of 1 meter onto the test source.

**G. Bend.** If the length of the source is more than 15 times larger than the minimum cross-sectional dimension, the test source must be subjected to a force of 2000 newtons at its center equidistant from two support cylinders, the distance between which is 10 times the minimum cross-sectional dimension of the source.

[05/03/95; 20.3.15.1506 NMAC - Rn, 20 NMAC 3.1.15.1506, 04/15/2004; A, 06/13/2017]

#### **20.3.15.1507 ACCESS CONTROL:**

**A.** Each entrance to a radiation room at a panoramic irradiator must have a door or other physical barrier to prevent inadvertent entry of personnel if the sources are not in the shielded position. Product conveyer systems may serve as barriers as long as they reliably and consistently function as a barrier. It must not be possible to move the sources out of their shielded position if the door or barrier is open. Opening the door or barrier while the sources are exposed must cause the sources to return promptly to their shielded position. The personnel entrance door or barrier must have a lock that is operated by the same key used to move the source. The doors and barriers must not prevent any individual in the radiation room from leaving.

**B.** In addition, each entrance to a radiation room at a panoramic irradiator must have an independent backup access control to detect personnel entry while the sources are exposed. Detection of entry while the sources are exposed must cause the sources to return to their fully shielded position, and must also activate a visible and audible alarm to make the individual entering the room aware of the hazard. The alarm must also alert at least one other individual who is on-site of the entry. That individual shall be trained on how to respond to the alarm and prepared to promptly render or summon assistance.

**C.** A radiation monitor must be provided to detect the presence of high radiation levels in the radiation room of a panoramic irradiator before personnel entry. The monitor must be integrated with personnel access door locks to prevent room access

when radiation levels are high. Attempted personnel entry while the monitor measures high radiation levels must activate the alarm described in Subsection B of 20.3.15.1507 NMAC. The monitor may be located in the entrance (normally referred to as the maze), but not in the direct radiation beam.

**D.** Before the sources move from their shielded position in a panoramic irradiator, the source control must automatically activate conspicuous visible and audible alarms to alert people in the radiation room that the sources will be moved from their shielded position. The alarms must give individuals enough time to leave the room before the sources leave the shielded position.

**E.** Each radiation room at a panoramic irradiator must have a clearly visible and readily accessible control that would allow an individual in the room to make the sources return to their fully shielded position.

**F.** Each radiation room of a panoramic irradiator must contain a control that prevents the sources from moving from the shielded position, unless the control has been activated and the door or barrier to the radiation room has been closed within a preset time after activation of the control.

**G.** Each entrance to the radiation room of a panoramic irradiator and each entrance to the area within the personnel access barrier of an underwater irradiator must be posted as required by 20.3.4.428 NMAC. Radiation postings for panoramic irradiators must comply with the posting requirements of 20.3.4.428 NMAC, except that signs may be removed, covered, or otherwise made inoperative when the sources are fully shielded.

**H.** If the radiation room of a panoramic irradiator has roof plugs or other movable shielding, it must not be possible to operate the irradiator unless the shielding is in its proper location. This requirement may be met by interlocks that prevent operation if shielding is not placed properly or by an operating procedure requiring inspection of shielding before operating.

**I.** Underwater irradiators must have a personnel access barrier around the pool which must be locked to prevent access when the irradiator is not attended. Only operators and facility management may have access to keys to the personnel access barrier. There must be an intrusion alarm to detect unauthorized entry when the personnel access barrier is locked. Activation of the intrusion alarm must alert an individual (not necessarily onsite) who is prepared to respond or summon assistance.

[05/03/95; 20.3.15.1507 NMAC - Rn, 20 NMAC 3.1.15.1507 & A, 04/15/2004]

### **20.3.15.1508 SHIELDING:**

**A.** The radiation dose rate in areas that are normally occupied during operation of a panoramic irradiator may not exceed 0.02 millisievert (2 millirems) per hour at any

location 30 centimeters or more from the wall of the room when the sources are exposed. The dose rate must be averaged over an area not to exceed 100 square centimeters having no linear dimension greater than 20 cm. Areas where the radiation dose rate exceeds 0.02 millisievert (2 millirems) per hour must be locked, roped off or posted.

**B.** The radiation dose at 30 centimeters over the edge of the pool of a pool irradiator may not exceed 0.02 millisievert (2 millirems) per hour when the sources are in the fully shielded position.

**C.** The radiation dose rate at 1 meter from the shield of a dry-source-storage panoramic irradiator when the source is shielded may not exceed 0.02 millisievert (2 millirems) per hour and at 5 centimeters from the shield may not exceed 0.2 millisievert (20 millirems) per hour.

[05/03/95; 20.3.15.1508 NMAC - Rn, 20 NMAC 3.1.15.1508, 04/15/2004]

#### **20.3.15.1509 FIRE PROTECTION:**

**A.** The radiation room at a panoramic irradiator must have heat and smoke detectors. The detectors must activate an audible alarm. The alarm must be capable of alerting a person who is prepared to summon assistance promptly. The sources must automatically become fully shielded if a fire is detected.

**B.** The radiation room at a panoramic irradiator must be equipped with a fire extinguishing system capable of extinguishing a fire without the entry of personnel into the room. The system for the radiation room must have a shut-off valve to control flooding into unrestricted areas.

[05/03/95; 20.3.15.1509 NMAC - Rn, 20 NMAC 3.1.15.1509, 04/15/2004]

#### **20.3.15.1510 RADIATION MONITORS:**

**A.** Irradiators with automatic product conveyor systems must have a radiation monitor with an audible alarm located to detect loose radioactive sources that are carried toward the product exit. If the monitor detects a source, an alarm must sound and product conveyors must stop automatically. The alarm must be capable of alerting an individual in the facility who is prepared to summon assistance. Underwater irradiators in which the product moves within an enclosed stationary tube are exempt from the requirements of this subsection.

**B.** Underwater irradiators that are not in a shielded radiation room must have a radiation monitor over the pool to detect abnormal radiation levels. The monitor must have an audible alarm and a visible indicator at entrances to the personnel access barrier around the pool. The audible alarm may have a manual shut-off. The alarm must be capable of alerting an individual who is prepared to respond promptly.

[05/03/95; 20.3.15.1510 NMAC - Rn, 20 NMAC 3.1.15.1510, 04/15/2004]

### **20.3.15.1511 CONTROL OF SOURCE MOVEMENT:**

**A.** The mechanism that moves the sources of a panoramic irradiator must require a key to actuate. Actuation of the mechanism must cause an audible signal to indicate that the sources are leaving the shielded position. Only one key may be in use at any time, and only operators or facility management may possess it. The key must be attached to a portable radiation survey meter by a chain or cable. The lock for source control must be designed so that the key may not be removed if the sources are in an unshielded position. The door to the radiation room must require the same key.

**B.** The console of a panoramic irradiator must have a source position indicator that indicates when the sources are in the fully shielded position, when they are in transit and when the sources are exposed.

**C.** The control console of a panoramic irradiator must have a control that promptly returns the sources to the shielded position.

**D.** Each control for a panoramic irradiator must be clearly marked as to its function.

[05/03/95; 20.3.15.1511 NMAC - Rn, 20 NMAC 3.1.15.1511, 04/15/2004]

### **20.3.15.1512 IRRADIATOR POOLS:**

**A.** For licenses initially issued after July 1, 1993, irradiator pools must either:

(1) have a water-tight stainless steel liner or a liner metallurgically compatible with other components in the pool; or

(2) be constructed so that there is a low likelihood of substantial leakage and have a surface designed to facilitate decontamination; and

(3) in either case, the licensee shall have a method to safely store the sources during repairs of the pool.

**B.** For licenses initially issued after July 1, 1993, irradiator pools must have no outlets more than 0.5 meter below the normal low water level that could allow water to drain out of the pool. Pipes that have intakes more than 0.5 meter below the normal low water level and that could act as siphons must have siphon breakers to prevent the siphoning of pool water.

**C.** A means must be provided to replenish water losses from the pool.

**D.** A visible indicator must be provided in a clearly visible location to indicate if the pool water level is below the normal low water level or above the normal high water level.

**E.** Irradiator pools must be equipped with a purification system designed to be capable of maintaining the water during normal operation at a conductivity of 20 microsiemens per centimeter or less and with a clarity so that the sources can be seen clearly.

**F.** A physical barrier, such as a railing or cover, must be used around or over irradiator pools during normal operation to prevent personnel from accidentally falling into the pool. The barrier may be removed during maintenance, inspection and service operations.

**G.** If long-handled tools or poles are used in irradiator pools, the radiation dose rate on the handling areas of the tools may not exceed 0.02 millisievert (2 millirems) per hour.

[05/03/95; 20.3.15.1512 NMAC - Rn, 20 NMAC 3.1.15.1512, 04/15/2004]

#### **20.3.15.1513 SOURCE RACK PROTECTION:**

If the product to be irradiated moves on a product conveyor system, the source rack and the mechanism that moves the rack must be protected by a barrier or guides to prevent products and product carriers from hitting or touching the rack or mechanism.

[05/03/95; 20.3.15.1513 NMAC - Rn, 20 NMAC 3.1.15.1513. 04/15/2004]

#### **20.3.15.1514 POWER FAILURES:**

**A.** If electrical power at a panoramic irradiator is lost for longer than 10 seconds, the source must automatically return to the shielded position.

**B.** The lock on the door of the radiation room of a panoramic irradiator may not be deactivated by a power failure.

**C.** During a power failure, the area of any irradiator where sources are located may be entered only when using an operable and calibrated radiation survey meter.

[05/03/95; 20.3.15.1514 NMAC - Rn, 20 NMAC 3.1.15.1514, 04/15/2004]

#### **20.3.15.1515 DESIGN REQUIREMENTS:**

Irradiators whose construction begins after July 1, 1993, must meet the design requirements of this section.

**A. Shielding.** For panoramic irradiators, the licensee shall design shielding walls to meet generally accepted building code requirements for reinforced concrete, and design the walls, wall penetrations and entrance ways to meet the radiation shielding requirements of 20.3.15.1508 NMAC. If the irradiator will use more than  $2 \times 10^{17}$  becquerels (5 million curies) of activity, the licensee shall evaluate the effects of heating of the shielding walls by the irradiator sources.

**B. Foundations.** For panoramic irradiators, the licensee shall design the foundation, with consideration given to soil characteristics, to ensure it is adequate to support the weight of the facility shield walls.

**C. Pool integrity.** For pool irradiators, the licensee shall design the pool to assure that it is leak resistant, that is strong enough to bear the weight of the pool water and shipping casks, that a dropped cask would not fall on sealed sources, that all outlets or pipes meet the requirements of Subsection B of 20.3.15.1512 NMAC, and that metal components are metallurgically compatible with other components in the pool.

**D. Water handling system.** For pool irradiators, the licensee shall verify that the design of the water purification system is adequate to meet the requirements of Subsection E of 20.3.15.1512 NMAC. The system must be designed so that water leaking from the system does not drain to unrestricted areas without being monitored.

**E. Radiation monitors.** For all irradiators, the licensee shall evaluate the location and sensitivity of the monitor to detect sources carried by the product conveyor system as required by Subsection A of 20.3.15.1510 NMAC. The licensee shall verify that the product conveyor is designed to stop before a source on the product conveyor would cause a radiation overexposure to any person. For pool irradiators, if the licensee uses radiation monitors to detect contamination under Subsection B of 20.3.15.1521 NMAC, the licensee shall verify that the design of radiation monitoring systems to detect pool contamination includes sensitive detectors located close to where contamination is likely to concentrate.

**F. Source rack.** For pool irradiators, the licensee shall verify that there are no crevices on the source or between the source and source holder that would promote corrosion on a critical area of the source. For panoramic irradiators, the licensee shall determine that source rack drops due to loss of power will not damage the source rack and that source rack drops due to failure of cables (or alternate means of support) will not cause loss of integrity of sealed sources. For panoramic irradiators, the licensee shall review the design of the mechanism that moves the sources to assure that the likelihood of a stuck source is low and that, if the rack sticks, a means exists to free it with minimal risk to personnel.

**G. Access control.** For panoramic irradiators, the licensee shall verify from the design and logic diagram that the access control system will meet the requirements of 20.3.15.1507 NMAC.

**H. Fire protection.** For panoramic irradiators, the licensee shall verify that the number, location and spacing of the smoke and heat detectors are appropriate to detect fires, and that the detectors are protected from mechanical and radiation damage. The licensee shall verify that the design of the fire extinguishing system provides the necessary discharge patterns, densities and flow characteristics for complete coverage of the radiation room, and that the system is protected from mechanical and radiation damage.

**I. Source return.** For panoramic irradiators, the licensee shall verify that the source rack will automatically return to the fully shielded position if off-site power is lost for more than 10 seconds.

**J. Seismic.** For panoramic irradiators to be built in seismic areas, the licensee shall design the reinforced concrete radiation shields to retain their integrity in the event of an earthquake by designing to the seismic requirements of an appropriate source such as American concrete institute standard ACI 318-89, "Building Code Requirements for Reinforced Concrete," Chapter 21, "Special Provisions for Seismic Design," or local building codes, if current.

**K. Wiring.** For panoramic irradiators, the licensee shall verify that electrical wiring and electrical equipment in the radiation room are selected to minimize failures due to prolonged exposure to radiation.

[05/03/95; 20.3.15.1515 NMAC - Rn, 20 NMAC 3.1.15.1515, 04/15/2004; A, 06/13/2017]

### **20.3.15.1516 CONSTRUCTION MONITORING AND ACCEPTANCE TESTING:**

The requirements of this section must be met for irradiators whose construction begins after July 1, 1993. The requirements must be met prior to loading sources.

**A. Shielding.** For panoramic irradiators, the licensee shall monitor the construction of the shielding to verify that its construction meets design specifications and generally accepted building code requirements for reinforced concrete.

**B. Foundations.** For panoramic irradiators, the licensee shall monitor the construction of the foundations to verify that their construction meets design specifications.

**C. Pool integrity.** For pool irradiators, the licensee shall verify that the pool meets design specifications and shall test the integrity of the pool. The licensee shall verify that outlets and pipes meet the requirements of Subsection B of 20.3.15.1512 NMAC.

**D. Water handling system.** For pool irradiators, the licensee shall verify that the water purification system, the conductivity meter and the water level indicators operate properly.

**E. Radiation monitors.** For all irradiators, the licensee shall verify the proper operation of the monitor to detect sources carried on the product conveyor system, and the related alarms and interlocks required by Subsection A of 20.3.15.1510 NMAC. For pool irradiators, the licensee shall verify the proper operation of the radiation monitors and the related alarm, if used, to meet Subsection B of 20.3.15.1521 NMAC. For underwater irradiators, the licensee shall verify the proper operation of the over-the-pool monitor, alarms and interlocks required by Subsection B of 20.3.15.1510 NMAC.

**F. Source rack.** For panoramic irradiators, the licensee shall test the movement of the source racks for proper operation prior to source loading; testing must include source rack lowering due to simulated loss of power. For all irradiators with product conveyor systems, the licensee shall observe and test the operation conveyor system to assure that the requirements in 20.3.15.1513 NMAC are met for protection of the source rack and the mechanism that moves the rack; testing must include tests of any limit switches and interlocks used to protect the source rack and mechanism that moves the rack from moving product carriers.

**G. Access control.** For panoramic irradiators, the licensee shall test the completed access control system to assure that it functions as designed, and that all alarms, controls and interlocks work properly.

**H. Fire protection.** For panoramic irradiators, the licensee shall test the ability of the heat and smoke detectors to detect a fire, to activate alarms and to cause the source rack to automatically become fully shielded. The licensee shall test the operability of the fire extinguishing system.

**I. Source return.** For panoramic irradiators, the licensee shall demonstrate that the source racks can be returned to their fully shielded positions without offsite power.

**J. Computer systems.** For panoramic irradiators that use a computer system to control the access control system, the licensee shall verify that the access control system will operate properly if offsite power is lost, and shall verify that the computer has security features that prevent an irradiator operator from commanding the computer to override the access control system when it is required to be operable.

**K. Wiring.** For panoramic irradiators, the licensee shall verify that the electrical wiring and electrical equipment that were installed meet the design specifications.

[05/03/95; 20.3.15.1516 NMAC - Rn, 20 NMAC 3.1.15.1516, 04/15/2004]

#### **20.3.15.1517 TRAINING:**

**A.** Before an individual is permitted to operate an irradiator without a supervisor present, the individual must be instructed in:

**(1)** the fundamentals of radiation protection applied to irradiators (including the differences between external radiation and radioactive contamination, units of radiation dose, dose limits, why large radiation doses must be avoided, how shielding and access controls as provided in these regulations prevent large doses, how an irradiator is designed to prevent contamination, the proper use of survey meters and personnel dosimeters, other radiation safety features of an irradiator, and the basic function of the irradiator);

**(2)** the requirements of 20.3.10 NMAC and 20.3.15 NMAC that are relevant to the irradiator;

**(3)** the operation of the irradiator;

**(4)** those operating and emergency procedures listed in 20.3.15.1518 NMAC that the individual is responsible for performing; and

**(5)** case histories of accidents or problems involving irradiators.

**B.** Before an individual is permitted to operate an irradiator without a supervisor present, the individual shall pass a written test on the instruction received, consisting primarily of questions based on the licensee's operating and emergency procedures that the individual is responsible for performing and other operations necessary to safely operate the irradiator without supervision.

**C.** Before an individual is permitted to operate an irradiator without a supervisor present, the individual must have received on-the-job training or simulator training in the use of the irradiator as described in the license application. The individual shall also demonstrate the ability to perform those portions of the operating and emergency procedures that he or she is to perform.

**D.** The licensee shall conduct safety reviews for irradiator operators at least annually. The licensee shall give each operator a brief written test on the information. Each safety review must include, to the extent appropriate, each of the following:

**(1)** changes in operating and emergency procedures since the last review, if any;

**(2)** changes in regulations and license conditions since the last review, if any;

**(3)** reports on recent accidents, mistakes or problems that have occurred at irradiators, if any;

**(4)** relevant results of inspections of operator safety performance;

**(5)** relevant results of the facility's inspection and maintenance checks; and

(6) a drill to practice an emergency or abnormal event procedure.

E. The licensee shall evaluate the safety performance of each irradiator operator at least annually to ensure that regulations, license conditions, and operating and emergency procedures are followed. The licensee shall discuss the results of the evaluation with the operator, and shall instruct the operator on how to correct any mistakes or deficiencies observed.

F. Individuals who will be permitted unescorted access to the radiation room of the irradiator or the area around the pool of an underwater irradiator, but who have not received the training required for operators and the radiation safety officer, shall be instructed and tested in any precautions they should take to avoid radiation exposure, any procedures or parts of procedures listed in 20.3.15.1518 NMAC that they are expected to perform or comply with, and their proper response to alarms required in this part (20.3.15 NMAC). Tests may be oral.

G. Individuals who must be prepared to respond to alarms required by Subsection B of 20.3.15.1507 NMAC, Subsection I of 20.3.15.1507 NMAC, Subsection A of 20.3.15.1509 NMAC, Subsections A and B of 20.3.15.1510 NMAC, and Subsection B of 20.3.15.1521 NMAC shall be trained and tested on how to respond. Each individual shall be retested at least once a year. Tests may be oral.

[05/03/95; 20.3.15.1517 NMAC - Rn, 20 NMAC 3.1.15.1517, 04/15/2004]

#### **20.3.15.1518 OPERATING AND EMERGENCY PROCEDURES:**

A. The licensee shall have and follow written operating procedures for:

- (1) operation of the irradiator, including entering and leaving the radiation room;
- (2) use of personnel dosimeters;
- (3) surveying the shielding of panoramic irradiators;
- (4) monitoring pool water for contamination while the water is in the pool and before release of pool water to unrestricted areas;
- (5) leak testing of sources;
- (6) inspection and maintenance checks required by 20.3.15.1522 NMAC;
- (7) loading, unloading and repositioning sources, if the operations will be performed by the licensee; and

**(8)** inspection of movable shielding required by Subsection H of 20.3.15.1507 NMAC; if applicable.

**B.** The licensee shall have and follow emergency or abnormal event procedures, appropriate for the irradiator type, for:

- (1)** sources stuck in the unshielded position;
- (2)** personnel overexposures;
- (3)** a radiation alarm from the product exit portal monitor or pool monitor;
- (4)** detection of leaking sources, pool contamination or alarm caused by contamination of pool water;
- (5)** a low or high water level indicator, an abnormal water loss or leakage from the source storage pool;
- (6)** a prolonged loss of electrical power;
- (7)** a fire alarm or explosion in the radiation room;
- (8)** an alarm indicating unauthorized entry into the radiation room, area around pool or another alarmed area;
- (9)** natural phenomena, including an earthquake, a tornado, flooding, or other phenomena as appropriate for the geographical location of the facility; and
- (10)** the jamming of automatic conveyor systems.

**C.** The licensee may revise operating and emergency procedures without department approval only if all of the following conditions are met:

- (1)** the revisions do not reduce the safety of the facility;
- (2)** the revisions are consistent with the outline or summary of procedures submitted with the license application;
- (3)** the revisions have been reviewed and approved by the radiation safety officer; and
- (4)** the users or operators are instructed and tested on the revised procedures before they are put into use.

[05/03/95; 20.3.15.1518 NMAC - Rn, 20 NMAC 3.1.15.1518, 04/15/2004; A, 06/13/2017]

### **20.3.15.1519 PERSONNEL MONITORING:**

**A.** Irradiator operators shall wear a personnel dosimeter while operating a panoramic irradiator, or while in the area around the pool of an underwater irradiator. The personnel dosimeter processor must be capable of detecting high-energy photons in the normal and accident dose ranges (see Subsection C of 20.3.4.416 NMAC). Each personnel dosimeter must be assigned to and worn by only one individual. Film badges must be replaced at least monthly, and other personnel dosimeters that require replacement must be at least quarterly. All personnel dosimeters must be evaluated at least quarterly or promptly after replacement, whichever is more frequent.

**B.** Other individuals who enter the radiation room of a panoramic irradiator shall wear a dosimeter, which may be a pocket dosimeter. For groups of visitors, only two people who enter the radiation room are required to wear dosimeters. If pocket dosimeters are used to meet the requirements of this subsection, a check of their response to radiation must be done at least annually. Acceptable dosimeters must read within plus or minus thirty percent of the true radiation dose.

[5/3/1995; 20.3.15.1519 NMAC - Rn, 20 NMAC 3.1.15.1519, 4/15/2004; A, 8/31/2005; A, 5/1/2024]

### **20.3.15.1520 RADIATION SURVEYS:**

**A.** A radiation survey of the area outside the shielding of the radiation room of a panoramic irradiator must be conducted with the sources in the exposed position before the facility starts to operate. A radiation survey of the area above the pool of pool irradiators must be conducted after the sources are loaded, but before the facility starts to operate. Additional radiation surveys of the shielding must be performed at intervals not to exceed 3 years and before resuming operation after addition of new sources or any modification to the radiation room shielding or structure that might increase dose rates.

**B.** If the radiation levels specified in 20.3.15.1508 NMAC are exceeded, the facility must be modified to comply with the requirements in 20.3.15.1508 NMAC.

**C.** Portable radiation survey meters must be calibrated at least annually to an accuracy of +20 percent for the gamma energy of the sources in use. The calibration must be done at two points on each scale, or for digital instruments at one point per decade over the range that will be used. Portable radiation survey meters must be of a type that does not saturate and read zero at high radiation dose rates.

**D.** Water from the irradiator pool, other potentially contaminated liquids and sediments from pool vacuuming must be monitored for radioactive contamination before release to unrestricted areas. Radioactive concentrations must not exceed those specified in 20.3.4 NMAC, column 2 of table II, or table III of 20.3.4.461 NMAC, "annual

limits on intake (ALIs) and derived air concentrations (DACs) of radionuclides for occupational exposure; effluent concentration; concentrations for release to sewerage".

**E.** Before releasing resins for unrestricted use, they must be monitored before release in an area with a background level less than 0.5 microsievert (0.05 millirem) per hour. The resins may be released only if the survey does not detect radiation levels above background radiation levels. The survey meter used must be capable of detecting radiation levels of 0.5 microsievert (.05 millirem) per hour.

[05/03/95; 20.3.15.1520 NMAC - Rn, 20 NMAC 3.1.15.1520, 04/15/2004]

### **20.3.15.1521 DETECTION OF LEAKING SOURCES:**

**A.** Each dry-source-storage sealed source must be tested for leakage at intervals not to exceed 6 months using a leak test kit or method approved by the department. In the absence of a certificate from a transferor that a test has been made within the 6 months before the transfer, the sealed source may not be used until tested. The test must be capable of detecting the presence of 200 becquerels (0.005 microcurie) of radioactive material and must be performed by a person approved by the department to perform the test.

**B.** For pool irradiators, sources may not be put into the pool unless the licensee tests the sources for leaks or has a certificate from a transferor that a leak test has been done within the 6 months before the transfer. Water from the pool must be checked for contamination each day the irradiator operates. The check may be done either by using a radiation monitor on a pool water circulating system or by analysis of a sample of pool water. If a check for contamination is done by analysis of a sample of pool water, the results of the analysis must be available within 24 hours. If the licensee uses a radiation monitor on a pool water circulating system, the detection of above normal radiation levels must activate an alarm. The alarm set-point must be set as low as practical, but high enough to avoid false alarms. The licensee may reset the alarm set point to a higher level if necessary to operate the pool water purification system to clean up contamination in the pool if specifically provided for in written emergency procedures.

**C.** If a leaking source is detected, the licensee shall arrange to remove the leaking source from service and have it decontaminated, repaired or disposed of by a department licensee that is authorized to perform these functions. The licensee shall promptly check its personnel, equipment, facilities and irradiated product for radioactive contamination. No product may be shipped until the product has been checked and found free of contamination. If a product has been shipped that may have been inadvertently contaminated, the licensee shall arrange to locate and survey that product for contamination. If any personnel are found to be contaminated, decontamination must be performed promptly. If contaminated equipment, facilities or products are found, the licensee shall arrange to have them decontaminated or disposed of by a department licensee that is authorized to perform these functions. If a pool is contaminated, the licensee shall arrange to clean the pool until the contamination levels do not exceed the

appropriate concentration in column 2 of table II, 20.3.4.461 NMAC. (See 20.3.3.325 NMAC for reporting requirements.)

[05/03/95; 20.3.15.1521 NMAC - Rn, 20 NMAC 3.1.15.1521, 04/15/2004; A, 04/30/2009]

### **20.3.15.1522 INSPECTION AND MAINTENANCE:**

**A.** The licensee shall perform inspection and maintenance checks that include, as a minimum, each of the following at the frequency specified in the license or license application:

- (1)** operability of each aspect of the access control system required by 20.3.15.1507 NMAC;
- (2)** functioning of the source position indicator required by Subsection B of 20.3.15.1511 NMAC;
- (3)** operability of the radiation monitor for radioactive contamination in pool water required by Subsection B of 20.3.15.1521 NMAC, using a radiation check source, if applicable;
- (4)** operability of the over-pool radiation monitor at underwater irradiator as required by Subsection B of 20.3.15.1510 NMAC;
- (5)** operability of the product exit monitor required by Subsection A of 20.3.15.1510 NMAC;
- (6)** operability of the emergency source return control required by Subsection C of 20.3.15.1511 NMAC;
- (7)** leak-tightness of systems through which pool water circulates (visual inspection);
- (8)** operability of the heat and smoke detectors and extinguisher system required by 20.3.15.1509 NMAC, but without turning extinguishers on;
- (9)** operability of the means of pool water replenishment required by Subsection C of 20.3.15.1512 NMAC;
- (10)** operability of the indicators of high and low pool water levels required by Subsection D of 20.3.15.1512 NMAC;
- (11)** operability of the intrusion alarm required by Subsection I of 20.3.15.1507 NMAC;

(12) functioning and wear of the system, mechanisms, and cables used to raise and lower sources;

(13) condition of the barrier to prevent products from hitting the sources or source mechanism as required by 20.3.15.1513 NMAC;

(14) amount of water added to the pool to determine if the pool is leaking;

(15) electrical wiring on required safety systems for radiation damage; and

(16) pool water conductivity measurements and analysis as required by Subsection B of 20.3.15.1523 NMAC.

**B.** Malfunctions and defects found during inspection and maintenance checks must be repaired without undue delay.

[05/03/95; 20.3.15.1522 NMAC - Rn, 20 NMAC 3.1.15.1522, 04/15/2004]

#### **20.3.15.1523 POOL WATER PURITY:**

**A.** Pool water purification system must be run sufficiently to maintain the conductivity of the pool water below 20 microsiemens per centimeter under normal circumstances. If pool water conductivity rises above 20 microsiemens per centimeter, the licensee shall take prompt actions to lower the pool water conductivity and shall take corrective actions to prevent future recurrences.

**B.** The licensee shall measure the pool water conductivity frequently enough, but no less than weekly, to assure that the conductivity remains below 20 microsiemens per centimeter. Conductivity meters must be calibrated at least annually.

[05/03/95; 20.3.15.1523 NMAC - Rn, 20 NMAC 3.1.15.1523, 04/15/2004]

#### **20.3.15.1524 ATTENDANCE DURING OPERATION:**

**A.** Both an irradiator operator, and at least one other individual who is trained on how to respond and prepared to promptly render or summon assistance if the access control alarm sounds, shall be present on-site:

(1) whenever the irradiator is operated using an automatic product conveyor system; and

(2) whenever the product is moved into or out of the radiation room when the irradiator is operated in a batch mode.

**B.** At a panoramic irradiator at which static irradiations (no movement of the product) are occurring, a person who has received the training on how to respond to alarms described in Subsection G of 20.3.15.1517 NMAC must be onsite.

**C.** At an underwater irradiator, an irradiator operator must be present at the facility whenever the product is moved into or out of the pool. Individuals who move the product into or out of the pool of an underwater irradiator need not be qualified as irradiator operators; however, they must have received the training described in Subsections F and G of 20.3.15.1517 NMAC. Static irradiations may be performed without a person present at the facility.

[05/03/95; 20.3.15.1524 NMAC - Rn, 20 NMAC 3.1.15.1524, 04/15/2004; A, 06/13/2017]

### **20.3.15.1525 ENTERING AND LEAVING THE RADIATION ROOM:**

**A.** Upon first entering the radiation room of a panoramic irradiator after an irradiation, the irradiator operator shall use a survey meter to determine that the source has returned to its fully shielded position. The operator shall check the functioning of the survey meter with a radiation check source prior to entry.

**B.** Before exiting from and locking the door to the radiation room of a panoramic irradiator prior to a planned irradiation, the irradiator operator shall:

(1) visually inspect the entire radiation room to verify that no one else is in it; and

(2) activate a control in the radiation room that permits the sources to be moved from the shielded position, only if the door to the radiation room is locked within a preset time after setting the control.

**C.** During a power failure, the area around the pool of an underwater irradiator may not be entered without using an operable and calibrated radiation survey meter, unless the over-the-pool monitor required by Subsection B of 20.3.15.1510 NMAC is operating with backup power.

[05/03/95; 20.3.15.1525 NMAC - Rn, 20 NMAC 3.1.15.1525, 04/15/2004]

### **20.3.15.1526 IRRADIATION OF EXPLOSIVE OR FLAMMABLE MATERIALS:**

**A.** Irradiation of explosive material is prohibited, unless the licensee has received prior written authorization from the department. Authorization will not be granted, unless the licensee can demonstrate that detonation of the explosive would not rupture the sealed sources, injure personnel, damage safety systems or cause radiation overexposures of personnel.

**B.** Irradiation of more than small quantities of flammable material (flash point below 140 degrees F) is prohibited in panoramic irradiators, unless the licensee has received prior written authorization from the department. Authorization will not be granted, unless the licensee can demonstrate that a fire in the radiation room could be controlled without damage to sealed sources or safety systems and without radiation overexposures of personnel.

[05/03/95; 20.3.15.1526 NMAC - Rn, 20 NMAC 3.1.15.1526, 04/15/2004]

### **20.3.15.1527 RECORDS AND RETENTION PERIODS:**

The licensee shall maintain the following records at the irradiator for the periods specified.

**A.** A copy of the license, license conditions, documents incorporated into a license by reference, and amendments thereto until superseded by new documents or until the department terminates the license for documents not superseded.

**B.** Records of each individual's training, tests and safety reviews provided to meet the requirements of Subsections A, B, C, D, F and G of 20.3.15.1517 NMAC, until 3 years after the individual terminates work.

**C.** Records of the annual evaluations of the safety performance of irradiator operators required by Subsection E of 20.3.15.1517 NMAC for 3 years after the evaluation.

**D.** A copy of the current operating and emergency procedures required by 20.3.15.1518 NMAC, until superseded or the department terminates the license. Records of the radiation safety officer's review and approval of changes in procedures as required by Paragraph (3) of Subsection C of 20.3.15.1518 NMAC retained for 3 years from the date of the change.

**E.** Evaluations of personnel dosimeters required by 20.3.15.1519 NMAC until the department terminates the license.

**F.** Records of radiation surveys required by 20.3.15.1520 NMAC for 3 years from the date of the survey.

**G.** Records of radiation survey meter calibrations required by 20.3.15.1520 NMAC, and pool water conductivity meter calibrations required by Subsection B of 20.3.15.1523 NMAC until 3 years from the date of calibration.

**H.** Records of the results of leak tests required by Subsection A of 20.3.15.1521 NMAC, and the results of contamination checks required by Subsection B of 20.3.15.1521 NMAC for 3 years from the date of each test.

I. Records of the results of leak tests required by 20.3.15.1522 NMAC for 3 years.

J. Records of major malfunctions, significant defects, operating difficulties or irregularities, and major operating problems that involve required radiation safety equipment for 3 years after repairs are completed.

K. Records of the receipt, transfer and disposal of all licensed sealed sources as required by 20.3.1.108 NMAC.

L. Records on the design checks required by 20.3.15.1515 NMAC, and the construction control checks as required by 20.3.15.1516 NMAC until the license is terminated. The records must be signed and dated. The title or qualification of the person signing must be included.

M. Records related to decommissioning of the irradiator as required by 20.3.3.311 NMAC.

[05/03/95; 20.3.15.1527 NMAC - Rn, 20 NMAC 3.1.15.1527, 04/15/2004; A, 8/31/2005]

#### **20.3.15.1528 REPORTS:**

A. In addition to the reporting requirements in other parts these regulations (20.3 NMAC), the licensee shall report the following events, if not reported under other parts these regulations (20.3 NMAC):

- (1) source stuck in an unshielded position;
- (2) any fire or explosion in a radiation room;
- (3) damage to the source racks;
- (4) failure of the cable or drive mechanism used to move the source racks;
- (5) inoperability of the access control system;
- (6) detection of radiation source by the product exit monitor;
- (7) detection of radioactive contamination attributable to licensed radioactive material;
- (8) structural damage to the pool liner or walls;
- (9) abnormal water loss or leakage from the source storage pool; and
- (10) pool water conductivity exceeding 100 microsiemens per centimeter.

**B.** The report must include a telephone report within 24 hours as described in Paragraph (1) of Subsection C of 20.3.3.325 NMAC, and a written report within 30 days as described in Paragraph (2) of Subsection C of 20.3.3.325 NMAC.

[05/03/95; 20.3.15.1528 NMAC - Rn, 20 NMAC 3.1.15.1528, 04/15/2004; A, 04/30/2009]

## **PART 16: FEES FOR LICENSURE OF RADIOACTIVE MATERIALS**

### **20.3.16.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.3.16.1 NMAC - Rp, 20.3.16.1 NMAC 5/1/2024]

### **20.3.16.2 SCOPE:**

**A.** This Part applies to those entities or activities which require licensure in accordance with Chapter 3, Title 20 NMAC.

**B.** The requirements of this Part are in addition to, and not in substitution for, other applicable requirements of the regulations in Chapter 3, Title 20 NMAC.

**C.** This Part does not apply to those activities that the U.S. Nuclear Regulatory Commission (NRC) reserved exclusively for federal regulation.

[20.3.16.2 NMAC - Rp, 20.3.16.2 NMAC 5/1/2024]

### **20.3.16.3 STATUTORY AUTHORITY:**

Section 74-1-8.A(5) and Section 74-3-5.A(2) NMSA 1978.

[20.3.16.3 NMAC - Rp, 20.3.16.3 NMAC 5/1/2024]

### **20.3.16.4 DURATION:**

Permanent.

[20.3.16.4 NMAC - Rp, 20.3.16.4 NMAC 5/1/2024]

### **20.3.16.5 EFFECTIVE DATE:**

May 1, 2024.

[20.3.16.5 NMAC - Rp, 20.3.16.5 NMAC 5/1/2024]

#### **20.3.16.6 OBJECTIVE:**

To establish fees and costs associated with applying for and maintaining radioactive material licenses.

[20.3.16.6 NMAC - Rp, 20.3.16.6 NMAC 5/1/2024]

#### **20.3.16.7 DEFINITIONS:**

**A. "Amendment"** means a request made by a licensee to the department to approve a change to its license. Examples of amendments include, but are not limited to, changes to users, changes in materials, and transfers of licenses.

**B. "Application"** means an application for a new license, a renewal of a license or an amendment.

**C. "Byproduct material"** means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

**D. "Department"** means the New Mexico environment department and its duly authorized representatives.

**E. "Fee"** means an amount to be charged by the department in accordance with the provisions in this Part.

**F. "Fiscal year" or "FY"** means a year that begins on July 1 of each calendar year and ends on June 30 of the following calendar year. Fiscal years are identified by the year in which they end (e.g., fiscal year 2025 begins on July 1, 2024 and ends on June 30, 2025).

**G. "Generator"** means a person who produces, uses, stores, transfers, or disposes of radioactive materials in any licensable quantity.

**H. "Government agency"** means any state or federal executive department, commission, independent establishment, corporation, wholly or partly owned by any state or the United States of America which is an instrumentality of the state or United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in executive branches of government.

**I. "License" or "Materials license"** means a license, certificate, approval, registration, or other form of permission issued by the department under the various parts of these regulations.

**J. "Nonprofit educational institution"** means a public or nonprofit educational institution whose primary function is education, whose programs are accredited by a

nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

**K. "NORM"** means any naturally occurring radioactive material subject to the licensing requirements of these regulations.

**L. "NRC"** means the U.S. Nuclear Regulatory Commission; an officer, employee, or authorized representative of the commission.

**M. "Operating license"** means having a license issued pursuant to Part 3, Title 20 NMAC.

**N. "Person"** means:

(1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, or Government agency other than the department; any state or any political subdivision of, or any political entity within, a state; any foreign government or nation or any political subdivision of any such foreign government or nation; or other entity; and

(2) any legal successor, representative, agent, or agency of the foregoing.

**O. "Registration holder"** as used in this part means any manufacturer or initial distributor of a sealed source or device containing a sealed source that holds a certificate of registration issued by the NRC, or a holder of a registration for a sealed source or device manufactured in accordance with the unique specifications of, and for use by, a single applicant.

**P. "Source material"** means:

(1) uranium or thorium, or any combination thereof, in any physical or chemical form; or

(2) ores which contain by weight one-twentieth of one percent or more of

(a) uranium,

(b) thorium, or

(c) any combination thereof.

(3) Source material does not include special nuclear material.

**Q. "Special nuclear material"** means:

(1) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the NRC, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(2) any material artificially enriched by any of the special nuclear materials and excluding source material.

[20.3.16.7 NMAC - Rp, 20.3.16.7 NMAC 5/1/2024]

#### **20.3.16.8 INTERPRETATIONS:**

Except as specifically authorized by the department in writing, no interpretation of the regulations in this part by an officer or employee of the department, other than a written interpretation by the general counsel, will be recognized as binding on the department.

[20.3.16.8 NMAC - Rp, 20.3.16.8 NMAC 5/1/2024]

#### **20.3.16.9 CONSUMER PRICE INDEX ADJUSTMENT:**

Starting in fiscal year 2027, then in each subsequent calendar year, all fees in this Part shall be increased pursuant to the provisions in this Part if there is an increase in the unadjusted consumer price index (CPI) for all urban consumers, United States city average for all items, or its successor index, as published by the U.S. Bureau of Labor Statistics or its successor agency. The increase shall be measured by the percentage increase of the consumer price index as of October of the immediately preceding year over the level of the consumer price index as of October of the next previous year and shall be rounded up to the nearest dollar. A fee increase shall take effect on July 1 of the year in which the fee schedule is adjusted. In the event there is a decrease or absence of change in the CPI, fees shall remain the same until the next increase in CPI as described in this paragraph.

[20.3.16.9 NMAC – Rp, 20.3.16.9 NMAC 5/1/2024]

#### **20.3.16.10 ANNUAL FEE SCHEDULE, LICENSE APPLICATION FEES, AMENDMENT APPLICATION FEES, AND ANNUAL FEES:**

**A.** The department shall develop and publish a current fee schedule each year by May 1 to take effect by July 1 of the same year. The fee schedule will list current license application fees, amendment application fees, annual fees, and termination request fees.

**B.** Each Location of Use. All fees in this Part apply to each location of use listed on the license. The licensee shall pay the cumulative amount owed for each location of use for each license held by the licensee.

### **C. License Applications.**

(1) An application fee shall be charged for new licenses, renewals of licenses, and applications to reinstate expired, terminated, or inactive licenses. Each application for which a fee is prescribed must be accompanied by a remittance of the full amount of the fee prior to department review.

(2) Fees are charged regardless of whether the application is approved, denied, or withdrawn.

(3) Applications for licenses covering more than one fee category of special nuclear material or source material or byproduct material must be accompanied by the prescribed application fee for each applicable fee category.

(4) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for the fee category specified in paragraph 1 of Subsection B of 20.3.16.12 NMAC and in Subsection D of 20.3.16.12 NMAC.

(5) After the department approves an application for a new license, the applicant shall pay the full amount of annual fees due, regardless of the month of issuance of license, prior to commencing operations under the new license.

**D. Amendment Applications.** A licensee seeking an amendment to a license shall submit an amendment application for an amendment to an existing license submitted to the department. Each amendment application will be charged a fee of twenty-five percent of the amount of the license application fee that would be charged for the license in the fiscal year of the amendment submission.

### **E. Annual Fees.**

(1) Beginning July 1, 2024, annual fees will be charged prospectively. For existing licensees, annual fees will be due on July 1 of each year for use of the license for the next 12 months. For new licensees, the full amount of the annual fees will be due within 30 days of issuance of the license, regardless of the month of issuance, then the next due date for the annual fees will be July 1.

(2) If a single license authorizes more than one activity (e.g., human use and irradiator activities), then annual fees will be assessed for each fee category applicable to the license.

(3) If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person.

(4) Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses.

(5) Payment of the prescribed annual fee does not automatically renew the license for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Part 3, Title 20 NMAC as applicable and must be approved by the department.

[20.3.16.10 NMAC - Rp, 20.3.16.10 NMAC 5/1/2024]

### **20.3.16.11 CATEGORIES OF MATERIALS LICENSES, APPLICATION FEES AND ANNUAL FEES:**

**A.** The categories of materials licenses for which fees are due for each location of use are listed below in this section. For each category of materials license, the FY 25 and FY 26 application fee and FY 25 and FY 26 annual fee amounts are listed. Starting in FY 27, all license application fees and annual fees charged in FY 26 will be subject to the CPI adjustment described in this Part. Since the amendment application fees are calculated based on the license application fees, no additional CPI adjustment applies to amendment application fees.

#### **B. Special nuclear material:**

(1) Licenses for possession and use of special nuclear material of less than a critical mass, as defined in Code of Federal Regulations 10 CFR 70.4, in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:

(a) License application fee: \$1,300 for FY 25 and \$1,300 for FY 26; and

(b) Annual fee: \$1,200 for FY 25 and \$2,400 for FY 26.

(2) All other special nuclear material licenses, except licenses authorizing special nuclear material in the sealed or unsealed form in combination that would constitute a critical mass as defined in Code of Federal Regulations 10 CFR 70.4.

(a) License application fee: \$2,700 for FY 25 and \$2,700 for FY 26; and

(b) Annual fee: \$2,850 for FY 25 and \$5,700 for FY 26.

#### **C. Source material:**

(1) Licenses for possession and use of source material in recovery operations such as ion exchange facilities.

(a) License application fee: \$87,000 for FY 25 and \$87,000 for FY 26; and

(b) Annual fee: \$87,000 for FY 25 and \$87,000 for FY 26.

(2) Licenses that authorize only the possession, use and/or installation of source material for shielding.

(a) License application fee: \$1,300 for FY 25 and \$1,300 for FY 26; and

(b) Annual fee: \$1,350 for FY 25 and \$2,700 for FY 26.

(3) Licenses to distribute items containing source material to persons exempt from the licensing requirements of 20.3.3 NMAC.

(a) License application fee: \$6,200 for FY 25 and \$6,200 for FY 26; and

(b) Annual fee: \$4,450 for FY 25 and \$8,900 for FY 26.

(4) Licenses to possess, distribute, transfer, store, and dispose of source material to persons specifically licensed under 20.3.3 NMAC.

(a) License application fee: \$2,000 for FY 25 and \$2,000 for FY 26; and

(b) Annual fee: \$2,550 for FY25 and \$5,100 for FY26.

(5) Licenses for possession and use of source material for processing or manufacturing products or materials containing source material for commercial distribution.

(a) License application fee: \$2,700 for FY 25 and \$2,700 for FY 26; and

(b) Annual fee: \$3,150 for FY 25 and \$6,300 for FY 26.

(6) All other source material licenses

(a) License application fee: \$2,700 for FY 25 and \$2,700 for FY 26; and

(b) Annual fee: \$4,250 for FY 25 and \$8,500 for FY 26.

**D. Byproduct Material:**

(1) Licenses of broad scope for possession and use of byproduct material issued for processing or manufacturing of items containing byproduct material for commercial distribution.

(a) License application fee: \$13,500 for FY 25 and \$13,500 for FY 26; and

(b) Annual fee: \$13,700 for FY 25 and \$27,400 for FY 26.

(2) Other licenses for possession and use of byproduct material issued for processing or manufacturing of items containing byproduct material for commercial distribution.

(a) License application fee: \$3,700 for FY 25 and \$3,700 for FY 26; and

(b) Annual fee: \$4,800 for FY 25 and \$9,600 for FY 26.

(3) Licenses authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material.

(a) License application fee: \$5,400 for FY 25 and \$5,400 for FY 26; and

(b) Annual fee: \$4,500 for FY 25 and \$9,000 for FY 26.

(4) Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).

(a) Licensing application fee: \$3,300 for FY 25 and \$3,300 for FY 26; and

(b) Annual fee: \$4,950 for FY 25 and \$9,900 for FY 26.

(5) Licenses for possession and use of less than or equal to 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.

(a) License application fee: \$6,700 for FY 25 and \$6,700 for FY 26; and

(b) Annual fee: \$4,450 for FY 25 and \$8,900 for FY 26.

(6) Licenses for possession and use of greater than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes.

(a) License application fee: \$64,300 for FY 25 and \$64,300 for FY 26; and

(b) Annual fee: \$36,050 for FY 25 and \$72,100 for FY 26.

(7) Licenses to distribute items containing byproduct material that require device review or quantities of byproduct material to persons exempt from the licensing requirements of these regulations, except for specific licenses authorizing redistribution

of items that have been authorized for distribution to persons exempt from the licensing requirements.

(a) License application fee: \$6,900 for FY 25 and \$6,900 for FY 26; and

(b) Annual fee: \$4,350 for FY 25 and \$8,700 for FY 26.

(8) Licenses to distribute items containing byproduct material or quantities of byproduct material that require sealed source and/or device review to specifically licensed persons, except specific licenses authorizing redistribution of items that have been authorized for distribution to generally licensed persons.

(a) License application fee: \$2,100 for FY 25 and \$2,100 for FY 26; and

(b) Annual fee: \$1,800 for FY 25 and \$3,600 for FY 26.

(9) License issued to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements.

(a) License application fee: \$15,300 for FY 25 and \$15,300 for FY 26; and

(b) Annual fee: \$8,700 for FY 25 and \$17,400 for FY 26.

(10) Licenses issued to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons specifically licensed, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed.

(a) License application fee: \$1,200 for FY 25 and \$1,200 for FY 26; and

(b) Annual fee: \$1,350 for FY 25 and \$2,700 for FY 26.

(11) Licenses of broad scope for possession and use of byproduct material for research and development that do not authorize commercial distribution.

(a) License application fee: \$5,700 for FY 25 and \$5,700 for FY 26; and

(b) Annual fee: \$6,250 for FY 25 and \$12,500 for FY 26.

(12) Other licenses for possession and use of byproduct material for research and development that do not authorize commercial distribution.

(a) License application fee: \$8,600 for FY 25 and \$8,600 for FY 26; and

(b) Annual fee: \$6,700 for FY 25 and \$13,400 for FY 26

(13) Licenses that authorize services for other licensees:

(a) License application fee: \$9,200 for FY 25 and \$9,200 for FY 26; and

(b) Annual fee: \$7,600 for FY 25 and \$15,200 for FY 26.

(14) Licenses for the possession and use of byproduct material for industrial radiography operations; this category also includes the possession and use of source material for shielding when authorized on the same license:

(a) License application fee: \$9,200 for FY 25 and \$9,200 for FY 26; and

(b) Annual fee: \$14,550 for FY 25 and \$29,100 for FY 26.

(15) All other specific byproduct material licenses, including calibration and leak testing:

(a) License application fee: \$6,600 for FY 25 and \$6,600 for FY 26; and

(b) Annual fee: \$4,950 for FY 25 and \$9,900 for FY 26.

(16) Licenses for production of accelerator-produced radionuclides:

(a) License application fee: \$14,700 for FY 25 and \$14,700 for FY 26; and

(b) Annual fee: \$11,900 for FY 25 and \$23,800 for FY 26.

**E. Waste disposal and processing:**

(1) Class 1 Waste Licenses - Licenses specifically authorizing the receipt of waste byproduct material, source material, NORM, or special nuclear material from other persons specifically licensed for the purpose of contingency storage or commercial land disposal by the licensee; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:

(a) License application fee: \$5,000 for FY 25 and \$10,000 for FY 26; and

(b) Annual fee: \$10,000 for FY 25 and \$20,000 for FY 26.

(2) Class 2 Waste Licenses - Licenses specifically authorizing the receipt of waste byproduct material, source material, NORM, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee

will dispose of the material by transfer to another person authorized to receive or dispose of the material:

(a) License application fee: \$0 for FY 25 and \$0 for FY 26; and

(b) Annual fee: \$7,480 for FY 25 and \$7,480 for FY 26.

(3) Class 3 Waste Licenses - Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, NORM, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:

(a) License application fee: \$0 for FY 25 and \$0 for FY 26; and

(b) Annual fee: \$5,530 for FY 25 and \$5,530 for FY 26.

**F. Well logging:**

(1) Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:

(a) License application fee: \$4,800 for FY 25 and \$4,800 for FY 26; and

(b) Annual fee: \$6,250 for FY 25 and \$12,500 for FY 26.

(2) Licenses for possession and use of byproduct material for field flooding tracer studies:

(a) License application fee: \$6,530 for FY 25 and \$6,530 for FY 26; and

(b) Annual fee: \$3,265 for FY 25 and \$6,530 for FY 26.

**G. Nuclear laundries - Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material and storage and transfer of laundry from the license location:**

(1) License application fee: \$22,900 for FY 25 and \$22,900 for FY 26; and

(2) Annual fee: \$14,050 for FY 25 and \$28,100 for FY 26.

**H. Medical licenses:**

(1) Licenses for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units

teletherapy devices; this category also includes the possession and use of source material for shielding when authorized on the same license:

(a) License application fee: \$11,500 for FY 25 and \$11,500 for FY 26; and

(b) Annual fee: \$13,550 for FY 25 and \$27,100 for FY 26.

(2) Licenses of broad scope issued to medical institutions or two or more physicians authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:

(a) License application fee: \$9,000 for FY 25 and \$9,000 for FY 26; and

(b) Annual fee: \$18,500 for FY 25 and \$37,000 for FY 26.

(3) Other licenses for human use of byproduct material, source material, and/or special nuclear material except licenses for in-vitro analysis, and except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices; this category also includes the possession and use of source material for shielding when authorized on the same license:

(a) License application fee: \$10,900 for FY 25 and \$10,900 for FY 26; and

(b) Annual fee: \$8,400 for FY 25 and \$16,800 for FY 26.

**I.** Civil defense - Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:

(1) License application fee: \$2,600 for FY 25 and \$2,600 for FY 26; and

(2) Annual fee: \$3,000 for FY 25 and \$6,000 for FY 26.

**J.** Reciprocal Recognition of Licenses under 20.3.3.24 NMAC:

(1) License application fee: \$2,700 for FY 25 and \$2,700 for FY 26; and

(2) Annual fee: \$0 for FY25 and \$0 for FY26.

**K.** New categories. For generators of any category and any licensable quantity of radioactive material not listed above:

(1) License application fee: \$10,000 for FY 25 and \$10,000 for FY 26; and

(2) Annual Fee: \$10,000 for FY 25 and \$10,000 for FY 26.

[20.3.16.11 NMAC - Rp, 20.3.16.11 NMAC 5/1/2024]

### **20.3.16.12 SMALL ENTITIES AND ANNUAL FEES:**

**A.** A licensee may qualify as a small entity pursuant to the provisions of this section and receive a refund of a portion of annual fees paid following the submission of certification and documentation with the annual fee payment. The submission of certification and documentation of being a small entity after the due date of the annual fee payment will not allow the licensee to qualify as a small entity until the following year in which the next annual fee payment is due. To qualify as a small entity, an entity must provide appropriate documentation that it meets the size standards and gross income standards described in 20.3.16.12.

#### **B.** Small entity criteria.

(1) A small business that is a for-profit entity providing services or products and:

(a) earned average gross receipts of \$8 million or less over its last 3 completed fiscal years and is not engaged in manufacturing; or

(b) is a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months; or

(2) A small governmental jurisdiction that is a government of a city, county, town, township, or village with a population (including educational institution populations) of 49,999 or fewer individuals; or

(3) A small educational institution that:

(a) has more than seventy percent of its operating budget funded by state or local governments; or

(b) has zero percent to fifty percent of its operating budget funded by state or local governmental funds and has 500 or fewer employees.

**C.** For a small entity that meets the small entity criteria listed above in Paragraph A of this section the following are the maximum annual fees, for each location of use and for each licensed category:

(1) Small businesses not engaged in manufacturing and small not-for-profit organizations (Average gross receipts for the last three completed years for all business locations):

(a) Gross annual receipts of \$485,000 to \$7 million, the annual fee is \$ 4,900 for each location.

(b) Gross annual receipts of less than less than \$485,000, the annual fee is \$1,000 for each location.

(2) Manufacturing entities that have an average of 500 or fewer employees working in all of licensee's locations:

(a) 35 to 500 employees, the annual fee is \$4,900 for each location.

(b) Less than 35 employees, the annual fee is \$1000 for each location.

(3) Small governmental jurisdictions.

(a) Population of 20,000 to 49,999, the annual fee is \$ 4,900 for each location.

(b) Population of less than 20,000, the annual fee is \$1000 for each location.

(4) Educational institutions that are not state or publicly supported with 500 employees or less.

(a) With 35 to 500 employees, the annual fee is \$4,900 for each location.

(b) With less than 35 employees, the annual fee is \$1000 for each location.

**D.** For the purposes of this section, the department shall use the small business administration definition of receipts in the Code of Federal Regulations, 13 CFR 121.104(a)(1)(2), or its successor regulation. A licensee who is a subsidiary of a large entity does not qualify as a small entity for the purposes of this section.

**E.** Whenever appropriate in the interest of administering statutes and regulations within its jurisdiction, it is the practice of the department to answer inquiries from small entities concerning information on and advice about compliance with the statutes and regulations that affect them.

**F.** A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the department. The licensee must file the required certification on department Form RPP526 for each license under which it is billed. The department will include a copy of Form RPP526 with each annual fee invoice sent to a licensee. A licensee who seeks to qualify as a small entity must submit the completed Form RPP526 with the reduced annual fee payment.

**G.** For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

**H.** Small entities are required to pay the appropriate small entity fee for each fee category applicable to their license(s).

**I.** If a person files a false certification with respect to qualifying as a small entity, the department may refuse to process any application submitted by or on behalf of the person with respect to any license issued to the person and may suspend or revoke any licenses held by the person. The filing of a false certification to qualifying as a small entity under this section may also result in punitive action pursuant to applicable New Mexico state statutes.

[20.3.16.12 NMAC - Rp, 20.3.16.12 NMAC 5/1/2024]

#### **20.3.16.13 PRORATION:**

**A.** The purpose of proration is to bring all licensees to an annual fee due date of July 1 of each year, beginning July 1, 2024. For licenses issued prior to July 1, 2024, the annual fees shall be prorated by multiplying the number of complete and partial months between the anniversary date of the license issuance and July 1, 2024 by the calculated monthly amount of the annual fees due. The resulting calculation of prorated annual fees will be rounded up to the nearest dollar and be due, along with the FY 25 annual fee, on July 1, 2024.

**B.** After July 1, 2024, there will be no proration, and:

(1) new licensees must pay the full amount of annual fees, regardless of the month of license issuance;

(2) existing licensees must pay the full amount of annual fees on July 1 of each year, regardless of the anniversary date of license issuance; and

(3) licensees who terminate their licenses will not receive a refund of annual fees paid.

[20.3.16.13 NMAC - Rp, 20.3.16.13 NMAC 5/1/2024]

#### **20.3.16.14 PAYMENT, COLLECTION AND COSTS:**

**A.** Payments of fees and costs shall be in the form of an online payment or a check or money order made payable to the Radiation Protection Fund at the address shown on the application, license, registration, or the invoice issued by the department or online payments service providers authorized by the department to collect payments.

**B.** In the event that fees and costs are not paid within 30 days of the applicable due date, all outstanding fee balances become due and payable, along with a ten percent penalty cost and the costs of collection, to be charged each month until all fees and costs are paid. The penalty and collection costs shall be calculated from the original due date of the outstanding fee balances.

**C.** Non-compliance with Chapter 3, Title 20 NMAC, the Radiation Protection Act or license requirements, regardless of whether the generator has a current license or generator activities have ceased, requires a generator to cease and desist generator activities and subjects the generator to administrative compliance costs for enforcement of Chapter 3, Title 20 NMAC, civil penalties of up to \$15,000 per day and other remedies available under law and Chapter 3, Title 20 NMAC.

[20.3.16.14 NMAC - Rp, 20.3.16.14 NMAC 5/1/2024]

#### **20.3.16.15 LICENSE TERMINATIONS:**

**A.** For each license termination, the licensee shall inform the department of the intention to terminate the license and shall follow the termination procedures in Chapter 3, Title 20 NMAC and any other requirements set by the department.

**B.** Upon the department's determination that all conditions for termination have been met, the department shall issue an invoice for a termination fee in an amount equal to the application fee that would be charged for the license in the fiscal year of the termination request. The department shall issue a license termination within 30 days of receipt of total payment of owed fees and costs.

**C.** Until the department issues the license termination, annual fees and all other outstanding fees and costs under this Part are the continued obligation of the licensee, regardless of whether the license has expired or the licensed activities have ceased.

[20.3.16.15 NMAC - Rp, 20.3.16.15 NMAC 5/1/2024]

#### **20.3.16.16 ANNUAL REVIEW:**

By October 1 of each year, the department shall perform a review of the fees and costs required by this part and shall provide a report of the review to the chair of the New Mexico radiation technical advisory council (RTAC).

[20.3.16.16 NMAC - Rp, 20.3.16.16 NMAC 5/1/2024]

#### **20.3.16.17 [RESERVED]**

[20.3.16.17 NMAC - Repealed, 5/1/2024]

#### **20.3.16.18 [RESERVED]**

[20.3.16.18 NMAC - Repealed, 5/1/2024]

**PART 17-19: [RESERVED]**

**PART 20: MEDICAL IMAGING AND RADIATION THERAPY LICENSURE**

**20.3.20.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.3.20.1 NMAC - Rp, 20.3.20.1 NMAC, 09/25/2018]

**20.3.20.2 SCOPE:**

All individuals engaged in the practice of medical imaging and radiation therapy.

[20.3.20.2 NMAC - Rp, 20.3.20.2 NMAC, 09/25/2018]

**20.3.20.3 STATUTORY AUTHORITY:**

Medical Imaging and Radiation Therapy Health and Safety Act, Sections 61-14E-1 to 61-14E-12 NMSA 1978, Section 74-1-8 NMSA 1978, and the Uniform Licensing Act, Sections 61-1-1 to 61-1-34 NMSA 1978.

[20.3.20.3 NMAC - Rp, 20.3.30.3 NMAC, 09/25/2018]

**20.3.20.4 DURATION:**

Permanent.

[20.3.20.4 NMAC - Rp, 20.3.20.4 NMAC, 09/25/2018]

**20.3.20.5 EFFECTIVE DATE:**

September 25, 2018, unless a later date is cited at the end of a section.

[20.3.20.5 NMAC - Rp, 20.3.20.5 NMAC, 09/25/2018]

**20.3.20.6 OBJECTIVE:**

To maximize the protection practicable for the citizens of New Mexico from ionizing and non-ionizing radiation in the practice of medical imaging and radiation therapy by establishing requirements for appropriate education and training of individuals operating medical equipment emitting ionizing and non-ionizing radiation, establishing standards of education and training for the individuals who perform medical imaging and radiation therapy procedures, and providing for the appropriate examination and licensure of those individuals.

[20.3.20.6 NMAC - Rp 20.3.20.6 NMAC, 09/25/2018]

### **20.3.20.7 DEFINITIONS:**

As used in this part (20.3.20 NMAC).

**A. "Act"** means the Medical Imaging and Radiation Therapy Health and Safety Act, Sections 61-14E-1 to 61-14E-12 NMSA 1978.

**B. "Advisory council"** means the medical imaging and radiation therapy advisory council (MIRTAC).

**C. "Applying ionizing radiation"** means to use ionizing radiation for diagnostic or therapeutic purposes, including tasks having direct impact on the radiation burden of the patient, such as, but not limited to:

- (1) positioning the patient, image receptor, and beam;
- (2) selection of exposure factors or treatment parameters;
- (3) preparation, calibration, and injection of pharmaceuticals and radiopharmaceuticals in accordance with a licensee's scope of practice; and
- (4) actuating the production of radiation.

**D. "Approved program"** means a medical imaging or radiation therapy educational program that meets the requirements of 20.3.20.200 NMAC.

**E. "Biennial licensure fee"** means the licensure fee for an initial, renewal, and limited radiography license, excluding the temporary license, for a period up to 24 months, and is only applied once per continuing medical education biennium period regardless of the number of licenses granted to that registrant. This fee will be assessed each time a registrant submits an application packet to the department. Upon written request to the department, the registrant may reduce their NM biennium period to match their national continuing medical education biennium period.

**F. "Board"** means the environmental improvement board.

**G. "Cardiac sonography" or "echocardiography"** means an examination using ultrasound to generate an image of the heart or major blood vessels.

**H. "Category A"** means a continuing education activity approved for category A credit by an organization recognized by the American registry of radiologic technologists as a recognized continuing education evaluation mechanism.

**I. "Certificate of licensure"** means a document issued by the department that lists the type or types of license granted to an individual.

**J. "Certificate of limited practice" or "limited practice of radiography license"** means a limited license granted by the department to an individual other than a licensed practitioner or radiographer who performs restricted diagnostic radiography procedures under the direct supervision of a licensed practitioner or radiographer on designated anatomical sites or limited anatomical areas.

**K. "Certified nurse practitioner"** means a person licensed pursuant to Section 61-3-23.2 NMSA 1978.

**L. "Chest and thorax" or "viscera of the thorax"** means radiographic examinations of the ribs and lungs, including anteroposterior, posterior-anterior, lateral, and apical lordotic views, but does not include mammography.

**M. "Clinical instruction"** means hands-on educational experience in a health care setting such as a hospital, clinic, or physician's office, under the supervision requirements consistent with the standards of the program's accrediting agencies.

**N. "Continuing education" (CE) or "continuing medical education" (CME)** means a learning activity that is planned, organized, and administered to enhance the professional knowledge and skill of the licensee.

**O. "Credential" or "certification"** means the recognition awarded to an individual who meets the initial and ongoing requirements of a credentialing or certification organization.

**P. "Credentialing organization" or "certification organization"** means an organization accredited by the national commission for certifying agencies or the American national standards institute and recognized by the board that issues credentials through testing or evaluation and determines that an individual has met defined standards for training and competence in a medical imaging or radiation therapy modality and subspecialty.

**Q. "Department"** means the New Mexico environment department.

**R. "Diagnostic medical sonographer"** means a person, including a vascular technologist or echocardiographer, other than a licensed practitioner, who provides patient care services using ultrasound;

**S. "Diagnostic medical sonography" or "sonogram"** means the use of ultrasound and sonographic equipment to create medical images for interpretation by a licensed practitioner or other qualified health care practitioner that provide diagnostic information about a patient's medical condition and includes obstetrical ultrasound. Obstetrical ultrasound means an ultrasound exam performed for the purpose of fetal

biometry beyond the first trimester, fetal number, anatomic survey, or follow-up examination for a known or suspected anomaly or growth disturbance. It does not mean a procedure using ultrasound on a focused imaging target to assess specific and limited information about a patient's immediate medical condition or to provide real-time visual guidance for another procedure.

**T. "Didactic instruction"** means academic instruction.

**U. "Duplicate certificate of licensure"** means an additional original certificate of licensure issued by the department.

**V. "Extremities"** means the fingers, hand, wrist, radius/ulna, elbow, humerus, pectoral girdle (shoulder joint and clavicle), toes, foot, ankle, calcaneus, tibia/fibula, patella, knee, or distal femur, but does not include the skull, spine, hip, or pelvis.

**W. "Facility"** means a hospital, clinic, medical office, mobile lab, or other location where medical imaging or radiation therapy is provided.

**X. "Focused imaging target"** means a discrete anatomical target, to which ultrasound is applied to create an image for assessment of specific and limited information about a patient's immediate medical condition, or to provide visual guidance for another procedure. An ultrasound procedure on a focused imaging target does not supplant a diagnostic ultrasound examination.

**Y. "General sonography"** means an examination using ultrasound to create an image of the abdomen, chest, pelvis, pregnant uterus, small parts, or superficial structures.

**Z. "Interventional"** means to diagnose or treat patients using medical imaging devices. Interventional procedures may include, but are not limited to: radiation therapy, organ biopsy, angiography, angioplasty, and catheter delivered stents. Interventional does not mean needle or catheter placement for vascular access or delivery of medicine or anesthesia, or the use of non-ionizing energy for non-imaging therapeutic or treatment purposes.

**AA. "Ionizing radiation"** means gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, protons, and other nuclear particles; but not ultrasound, sound, or radio waves, nor visible, infrared or ultraviolet light.

**AB. "License"** means a grant of authority issued by the department for an individual to perform medical imaging or radiation therapy procedures.

**AC. "License term"** means a length of licensure as indicated on the certificate of licensure issued by the department.

**AD. "Licensed practitioner"** means an individual licensed to practice medicine, dentistry, podiatry, chiropractic or osteopathy in this state.

**AE. "Licensee"** means an individual who has met and continues to meet all requirements of the act and this part.

**AF. "Licensure"** means the grant of authority by the department for an individual to perform medical imaging or radiation therapy procedures.

**AG. "Limited practice radiography technologist"** means an individual who has been granted a limited practice in radiography license by the department to perform restricted diagnostic radiography procedures under the direct supervision of a licensed practitioner or radiographer.

**AH. "Lower leg"** means the knee and ankle and portions of the leg between the knee and ankle.

**AI. "Magnetic resonance imaging"** means an examination using magnetic fields and radio frequency signals to generate an image.

**AJ. "Magnetic resonance technologist"** means an individual other than a licensed practitioner who performs magnetic resonance imaging procedures under the supervision of a licensed practitioner using magnetic fields and radio frequency signals.

**AK. "Medical imaging"** means the use of substances or equipment emitting ionizing or non-ionizing radiation on humans for diagnostic or interventional purposes.

**AL. "Medical imaging professional"** means an individual who has been granted a license by the department pursuant to the act in at least one medical imaging modality.

**AM. "Modality"** means the following medical imaging procedures or technologies:

- (1) computed tomography and all of its subspecialties;
- (2) diagnostic medical sonography and all of its subspecialties;
- (3) magnetic resonance imaging and all of its subspecialties;
- (4) nuclear medicine technology and all of its subspecialties;
- (5) radiation therapy and all of its subspecialties; and
- (6) radiography and all of its subspecialties.

**AN. "Musculoskeletal sonography" or "musculoskeletal ultrasound"** means an examination using ultrasound to generate an image of a superficial muscle, tendon, ligament, or joint.

**AO. "Non-ionizing radiation"** means the static and time-varying electric and magnetic fields and radio frequency, including microwave radiation and ultrasound.

**AP. "Nuclear medicine technologist"** means an individual, other than a licensed practitioner, who performs nuclear medicine procedures, venipuncture, and compounds, calibrates, dispenses, and administers pharmaceuticals, radiopharmaceuticals, and radionuclides under the supervision of a licensed practitioner.

**AQ. "Personal identification"** means an applicant's or licensee's full legal name, permanent and mailing address, social security number, date of birth, home phone number, cellular telephone number, work telephone number, electronic mail address, department registration number, and other related information.

**AR. "Phlebology"** means ultrasound examination of superficial veins in the lower extremities for the identification and treatment of venous disease.

**AS. "Physician assistant"** means a person licensed and operating within their scope of practice pursuant to Section 61-6-7 or 61-10A-4 NMSA 1978.

**AT. "Place of employment"** means a location with its own physical address or separated by building structure regardless of ownership, company, nonprofit organization, or business name.

**AU. "Podiatric"** means radiographic examination of the toes, foot, ankle, calcaneus, distal tibia/fibula, but does not include the knee joint.

**AV. "Programmatic accreditation"** means a specialized accreditation process that examines the medical imaging or radiation therapy program within an educational institution.

**AW. "Radiation therapy"** means the use of high-energy particles or waves to destroy or damage cells.

**AX. "Radiation therapy technologist" or "radiation therapist"** means an individual, other than a licensed practitioner, who utilizes ionizing radiation for the planning and delivery of therapeutic procedures to humans under the supervision of a licensed practitioner.

**AY. "Radiographer"** means an individual, other than a licensed practitioner, who applies radiation to humans for diagnostic purposes under the supervision of a licensed practitioner.

**AZ.** "Radiography" means the application of radiation to humans for diagnostic purposes, including adjustment or manipulation of x-ray systems and accessories, including image receptors, positioning of patients, processing of films and any other action that materially affects the radiation dose to patients.

**BA.** "Radiologic technologist" or "radiation therapy technologist" means a medical imaging or radiation therapy professional licensed by the department in one or more of the imaging modalities.

**BB.** "Radiologist" means a licensed practitioner certified by the American board of radiology, the British royal college of radiology, the American osteopathic board of radiology or the American chiropractic board of radiology.

**BC.** "Radiologist assistant" means an individual licensed as a radiographer who holds additional certification as a registered radiologist assistant by the American registry of radiologic technologists and who works under the supervision of a radiologist; provided that a radiologist assistant shall not interpret images, render diagnoses or prescribe medications or therapies.

**BD.** "Recognized continuing education evaluation mechanism (RCEEM)" means a recognition mechanism of the ARRT for evaluating the content, quality, and integrity of a continuing education activity.

**BE.** "Registration number" means a number that is generated by the department to be used as a unique identification number in place of that individual's social security number. This number will remain the same number throughout the individual's lifetime.

**BF.** "Remedial education" or "remedial training" means additional education or training required for an individual to re-qualify to take a state-administered examination for the limited practice of radiography.

**BG.** "Scope of practice" means nationally recognized practice standards as applicable to each medical imaging modality and subspecialty, unless this part is superseded by the act.

**BH.** "Small parts" means superficial structures or anatomy including, but not limited to: axilla, chest or abdominal wall, penis, scrotum or testicles, thyroid, parathyroid, and other non-vascular structures of the neck or extremities.

**BI.** "Sonographer" or "echocardiographer" or "vascular technologist" means an individual other than a licensed practitioner who applies ultrasound to humans for diagnostic and interventional purposes under the supervision of a licensed practitioner.

**BJ.** "Sonography" or "ultrasound" means the use of high frequency sound waves (above 20,000 cycles per second) with specialized equipment to direct the sound waves into an area of the human body to generate an image.

**BK.** "Sonography subspecialty" means an area of specialization recognized by the board, including:

- (1) abdominal sonography;
- (2) breast sonography;
- (3) cardiac sonography;
- (4) musculoskeletal sonography;
- (5) obstetric/gynecology sonography;
- (6) phlebology sonography; and
- (7) vascular sonography.

**BL.** "Student" means an individual enrolled in and attending a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene, an approved program in medical imaging or radiation therapy, or an approved limited radiography program.

**BM.** "Subspecialty" means an area of specialization approved by the board within a medical imaging or radiation therapy modality.

**BN.** "Supervision" means responsibility for and control of quality, radiation safety, and protection and technical aspects of the application of ionizing and non-ionizing radiation to human beings for diagnostic or therapeutic purposes.

(1) "direct supervision" means the medical imaging or radiation therapy procedure is provided under the direction and control of a person authorized to provide supervision and the person's physical presence must be present in the office suite or building and immediately available to furnish assistance and direction throughout the performance of the procedure. It does not mean that the supervisor must be present in the room when the procedure is performed.

(2) "indirect supervision" or "general supervision" means the medical imaging or radiation therapy procedure is provided under the direction and control of a person authorized to provide supervision, but the person's presence is not required during the performance of the procedure. The training of the non-physician personnel and the maintenance of the necessary equipment and supplies are the continuing responsibility of the person authorized to provide supervision.

(3) student supervision requirements must be consistent with the medical imaging and radiation therapy standards of the programmatic accreditation agencies.

**BO. "Temporary license"** means a grant of authority by the department for an individual to perform medical imaging or radiation therapy procedures pursuant to the term and requirements of section 20.3.20.321 NMAC.

**BP. "Vascular sonography"** means an examination using ultrasound to generate an image of the peripheral or neck blood vessels.

**BQ. "Viscera of the thorax"** means radiographic examination of the lungs and mediastinum.

[20.3.20.7 NMAC - Rp, 20.3.20.7 NMAC, 9/25/2018; A, 04/19/2022]

### **20.3.20.8 ABBREVIATIONS AND ACRONYMS:**

**A.** "ANSI" stands for American national standards institute.

**B.** "ARDMS" stands for the American registry for diagnostic medical sonography.

**C.** "ARMRIT" stands for American registry of magnetic resonance imaging technologists.

**D.** "ARRT" stands for the American registry of radiologic technologists.

**E.** "BS" stands for breast sonography.

**F.** "CAAHEP" stands for the commission on accreditation of allied health education programs.

**G.** "CCI" stands for the cardiovascular credentialing international.

**H.** "CHEA" stands for the council of higher education accreditation.

**I.** "CNMT" stands for certified nuclear medicine technologist.

**J.** "CS" stands for cardiac sonography.

**K.** "CT" stands for computed tomography.

**L.** "DMS" stands for diagnostic medical sonography.

**M.** "FUS" stands for fusion imaging.

**N.** "JRCMDS" stands for the joint review committee on diagnostic medical sonography.

**O.** "JRCERT" stands for the joint review committee on education in radiologic technology.

**P.** "JRCNMT" stands for the joint review committee on educational program in nuclear medicine technology.

**Q.** "LXE" stands for limited practice radiography to the extremities.

**R.** "LXP" stands for limited practice radiography to the podiatric.

**S.** "LXT" stands for limited practice radiography to the viscera of the thorax.

**T.** "LXV" stands for limited practice radiography to the axial/appendicular skeleton.

**U.** "MR" stands for magnetic resonance.

**V.** "MRT" stands for magnetic resonance technologist.

**W.** "MSK" stands for diagnostic musculoskeletal technologist.

**X.** "NCCA" stands for national commission for certifying agencies.

**Y.** "NMT" stands for nuclear medicine technologist.

**Z.** "NMTCB" stands for the nuclear medicine technologist certification board.

**AA.** "N" stands for nuclear medicine technology.

**AB.** "PBS" stands for phlebology sonography.

**AC.** "PET" stands for positron emission tomography.

**AD.** "PVL" stands for provisional license.

**AE.** "RCCS" stands for registered congenital cardiac sonographer.

**AF.** "RCS" stands for registered cardiac sonographer.

**AG.** "RDMS" stands for registered diagnostic cardiac sonographer.

**AH.** "RDMS" stands for registered diagnostic medical sonographer.

**AI.** "RMRIT" stands for magnetic resonance imaging technologist.

- AJ.** "RMSK" stands for registered in musculoskeletal sonography.
- AK.** "RPhS" stands for registered phlebology sonographer.
- AL.** "R" stands for radiography.
- AM.** "RRT" stands for radiographic radiologic technologist.
- AN.** "RRA" stands for registered radiology assistant.
- AO.** "R.T." stands for registered technologist.
- AP.** "RTT" stands for radiation therapy technologist.
- AQ.** "RVS" stands for registered vascular specialist.
- AR.** "RVT" stands for registered vascular technologist.
- AS.** "S" stands for sonography.
- AT.** "TMP" stands for temporary.
- AU.** "T" stands for radiation therapy.
- AV.** "USDE" stands for United States department of education.
- AW.** "VS" stands for vascular sonography.

[20.3.20.8 NMAC - Rp, 20.3.20.8 NMAC, 09/25/2018]

#### **20.3.20.9 ADMINISTRATION AND ENFORCEMENT:**

The administration and enforcement of the act and this part (20.3.20 NMAC) is vested in the department.

[20.3.20.9 NMAC - N, 09/25/2018]

#### **20.3.20.10-20.3.20.99 [RESERVED]**

#### **20.3.20.100 LICENSE REQUIRED:**

**A. Unlawful acts.** It is unlawful for an individual, other than an individual licensed by the department, or who is exempt under the provisions of the act, to:

- (1) use ionizing or non-ionizing radiation for diagnostic, interventional, or therapeutic purposes on humans;

(2) use any title, abbreviation, letters, figures, signs, or other devices to indicate the individual is a medical imaging or radiation therapy professional; or

(3) engage in any of the medical imaging or radiation therapy modalities or subspecialties.

**B. Statutory exceptions.** Pursuant to the act, a medical imaging license is not required for:

(1) a licensed practitioner;

(2) a student under the supervision of a licensed practitioner or under the direct supervision of a licensed medical imaging or radiation therapy professional licensed in the modality and subspecialty in which the student is performing the procedure;

(3) a health care practitioner licensed or certified by an independent board as defined by the act that has been approved by the board as provided in Subsection C of this section; or

(4) a registered nurse or certified nurse-midwife performing ultrasound procedures; provided that the registered nurse or certified nurse-midwife has documented demonstration of competency within the registered nurse's scope of practice in compliance with board of nursing rules or certified nurse-midwife's scope of practice in compliance with department of health rules. A registered nurse or certified nurse-midwife shall not perform diagnostic ultrasound examinations or ionizing procedures, including radiography, radiation therapy, nuclear medicine or a non-ionizing magnetic resonance procedure, unless licensed by the department as medical imaging professional or radiation therapist professional. A registered nurse or a certified nurse-midwife may perform ultrasound procedures limited to a focused imaging target. A focused imaging target includes, but is not limited to:

(a) identification of an anatomical landmark or blood vessel;

(b) assessment of presence or absence of fluid in a body cavity;

(c) assessment of fetal presentation or heartbeat; or

(d) assessment of foreign body position or location.

**C.** An independent board or state regulatory body may submit an application for approval of their medical imaging certification and examination program to the MIRTAC for review.

(1) The MIRTAC shall consider whether the medical imaging and certification examination program adequately ensures the appropriate education, training, and

clinical experience while ensuring patient health and safety and shall make a written recommendation to the board.

(2) The board may approve or deny an application based on whether or not it finds adequate evidence that the certification and examination program ensures appropriate education, training, and clinical experience while ensuring health and patient safety.

(3) The independent board or state regulatory body shall reapply to the board for re-approval if substantive changes to the certification and examination program are made subsequent to the board's approval.

**D. Temporary exemption.** The department may temporarily exempt applicants from licensure requirements upon determining that:

(1) the experience or training of the applicant is such that no apparent danger to the public exists;

(2) the people in the area of the state to be served by the applicant would otherwise be denied adequate medical care because of the unavailability of a medical imaging or radiation therapy professional; and

(3) each application for temporary exemption shall be supported by:

(a) an application for temporary exemption;

(b) an application fee; and

(c) written evidence to support the applicant's compliance with Paragraph (1) and (2) of this subsection.

**E. Temporary exemption term.** A temporary exemption approved by the board shall be for a limited period of time, not to exceed one year. A temporary exemption may be renewed if the circumstances have not changed and if deemed warranted by the department.

**F. Temporary exemption application denial.** The board, with the advice of the MIRTAC, shall resolve appeals of a denial of an application for temporary exemption pursuant to 20.3.20.600 NMAC. When making a determination of existence of community hardship, the board will:

(1) consult health agencies;

(2) evaluate availability of alternative medical imaging or radiation therapy services and licensed medical imaging or radiation therapy professionals; and

**(3)** evaluate documentation from the applicant's employer or prospective employer to demonstrate that recruitment of qualified individuals, at competitive compensation, has been attempted and was unsuccessful. Such demonstration may take the form of:

**(a)** documented advertising in publications pertaining to medical imaging professionals;

**(b)** registration of the position with the New Mexico department of workforce solutions or similar state agency; or

**(c)** documentation of current and past contracting with medical imaging or radiation therapy job placement companies.

[20.3.20.100 NMAC - N, 09/25/2018]

### **20.3.20.101 SCOPE OF PRACTICE:**

#### **A. General provisions.**

(1) A licensee's scope of practice is determined based upon the licensee's education, certification, and state and federal law.

(2) The following are the different scopes of practice for a licensee that will be recognized by the department:

(a) Radiography - the current version of the American society of radiologic technologists radiography practice standards;

(b) Radiation therapy - the current version of the American society of radiologic technologists radiation therapy practice standards;

(c) Nuclear medicine technology - the current version of the American society of radiologic technologists nuclear medicine practice standards or society of nuclear medicine and molecular imaging scope of practice for nuclear medicine technologist;

(d) Magnetic resonance technology - the current version of the American society of radiologic technologists magnetic resonance practice standards;

(e) Radiologist assistant - the current version of the American society of radiologic technologists radiologist assistant practice standards;

(f) Sonography - the current version of the American society of radiologic technologists sonography practice standards or the society of diagnostic medical sonography scope of practice and clinical standards for the diagnostic medical sonographer; [or]

(g) Limited practice of radiography license or certificate of limited practice - the current version of the American society of radiologic technologists limited x-ray machine operator practice standards; or

(h) Computed tomography-the current version of the American society of radiologic technologists computer tomography practice standards and the society of nuclear medicine and molecular imaging.

**B. Radiologist assistant.** A radiologist assistant shall practice under the indirect supervision of a radiologist and shall not interpret images, render diagnoses, or prescribe medications or therapies.

[20.3.20.101 NMAC - N, 9/25/2018; A, 04/19/2022]

### **20.3.20.102 - 20.3.20.199 [RESERVED]**

### **20.3.20.200 APPROVED EDUCATIONAL PROGRAMS:**

**A. Approved program for a medical imaging or radiation therapy license:** An approved program for medical imaging or radiation therapy includes:

(1) an educational program in a medical imaging or radiation therapy modality that is programmatically accredited by an accreditation agency recognized by the USDE or the CHEA and also recognized by the board pursuant to 20.3.20.220 NMAC; or

(2) an educational program in a medical imaging or radiation therapy modality that is in the process of preparing for programmatic accreditation by an accreditation agency recognized by the USDE or CHEA and also recognized by the board pursuant to 20.3.20.220 NMAC. This programmatic accreditation by an accreditation agency must be attained within five years of the effective date of this section or within five years of the establishment of a new educational program.

**B. Approved program for a limited practice in radiography license:** A limited radiography program shall be reviewed by the MIRTAC and approved by the board before enrolling students into the educational program. Prior to approval of the educational program, the MIRTAC will consider if the program includes the necessary didactic and clinical education to prepare students for the state examination for a limited practice in radiography license prior to submitting its recommendations to the board. Before enrolling students or offering courses, including clinical instruction, a limited radiography program shall submit an application to the department with supporting documentation to show compliance with this section and alignment with national educational accreditation standards. No fee is required for the application and, if all requirements are met, the department shall issue a letter to the educational program confirming compliance with this section.

[20.3.20.200 NMAC - N, 09/25/2018]

**20.3.20.201-20.3.20.219 [RESERVED]**

**20.3.20.220 RECOGNIZED PROGRAMMATIC ACCREDITATION ORGANIZATIONS:**

**A. Programmatic accreditation.** To be recognized by the board, an educational program accreditation agency must:

- (1) be recognized by the USDE or CHEA; and
- (2) provide programmatic accreditation for the medical imaging or radiation therapy modality offered by the educational program.

**B. Recognized programmatic accreditation organizations.** Medical imaging or radiation therapy programmatic accreditation agencies recognized by the board include:

- (1) CAAHEP;
- (2) JRCERT; and
- (3) JRCNMT.

[20.3.20.220 NMAC - N, 09/25/2018]

**20.3.20.221-20.3.20.299 [RESERVED]**

**20.3.20.300 RECOGNIZED CREDENTIALING ORGANIZATIONS:**

The board recognizes the following medical imaging and radiation therapy credentialing organizations in each modality defined by the act including:

- A.** computed tomography: ARRT.
- B.** diagnostic medical sonography:
  - (1) ARDMS;
  - (2) ARRT; or
  - (3) CCI.
- C.** magnetic resonance imaging:
  - (1) ARMRIT; or
  - (2) ARRT.

**D. nuclear medicine:**

- (1) ARRT; or
- (2) NMTCB.

**E. radiation therapy: ARRT.**

**F. radiography: ARRT.**

[20.3.20.300 NMAC - N, 9/25/2018; A, 04/19/2022]

**20.3.20.301 RECOGNIZED CREDENTIALS AND CERTIFICATIONS:**

The board recognizes the following medical imaging and radiation therapy credentials and certifications for each type of license issued by the department:

**A. fusion imaging- restricted to PET/CT medical imaging procedures only:**

- (1) (CNMT)(NMTCB) and (CT)(NMTCB);
- (2) R.T. (ARRT)(N) and (ARRT)(CT);
- (3) R.T. (ARRT)(N) and (NMTCB)(CT); or
- (4) R.T. (ARRT)(R) and (NMTCB)(PET).

**B. cardiac sonography:**

- (1) (CCI)(RCS);
- (2) (CCI)(RCCS); or
- (3) (ARDMS)(RDMS).

**C. computed tomography: R.T. (ARRT)(CT)**

**D. general sonography:**

- (1) RDMS (ARDMS)(AB);
- (2) RDMS (ARDMS)(BR);
- (3) RDMS (ARDMS)(OB);
- (4) R.T. (ARRT)(S); or

(5) R.T. (ARRT)(BS).

E. limited radiography: none.

F. magnetic resonance imaging:

(1) (ARMRIT)(RMRIT); or

(2) R.T. (ARRT)(MR).

G. musculoskeletal sonography: (ARDMS)(RMSK).

H. nuclear medicine:

(1) certified nuclear medicine technologist (NMTCB); or

(2) nuclear medicine technology R.T. (ARRT)(N).

I. phlebology sonography: RPhS (CCI).

J. radiation therapy: R.T. (ARRT)(T).

K. radiography: R.T. (ARRT)(R).

L. radiology assistant: (ARRT)(RRA).

M. vascular sonography:

(1) R.T. (ARRT)(VS);

(2) RVS (CCI); or

(3) RVT(ARDMS).

[20.3.20.301 NMAC - N, 9/25/2018; A, 04/19/2022]

**20.3.20.302-20.3.20.309 [RESERVED]**

**20.3.20.310 LIMITED PRACTICE OF RADIOGRAPHY LICENSE:**

**A. Limited practice in radiography.** An individual seeking a license for the limited practice of radiography shall submit an application and applicable fee to the department, successfully complete an approved limited radiography program pursuant to Subsection B of 20.3.20.200 NMAC, and take and pass the state examination pursuant to Subsections D and E below. Individuals that are enrolled in an approved limited practice radiography program shall perform their required clinical radiography procedures under

the direct supervision of a licensed physician or licensed radiographer. A licensee with a limited practice of radiography license shall perform restricted diagnostic radiography under direct supervision of a licensed practitioner limited to the following specific procedures:

- (1) the viscera of the thorax;
- (2) extremities;
- (3) radiation to humans for diagnostic purposes in the practice of dentistry;
- (4) axial/appendicular skeleton; or
- (5) the foot, ankle, or lower leg.

**B. Restrictions.** A licensee with a limited practice of radiography license may not:

- (1) perform procedures outside the areas of specialization authorized by or under the individual's license; or
- (2) perform procedures outside their scope of practice including, but not limited to procedures involving the use of contrast media, fluoroscopic equipment, mammography, computed tomography, mobile or bedside radiography, diagnostic medical sonography, magnetic resonance imaging, nuclear medicine, or radiation therapy.

**C. Emergency provision.** A person having a valid limited practice of radiography license may perform diagnostic radiography procedures outside the normal scope of a limited practice of radiography license if the person is employed in an area having a federal designation as a medically underserved area and the person with the limited practice of radiography license is confronted with an emergency situation, where, by order of a licensed practitioner, a certified nurse practitioner or a registered physician assistant, the additional diagnostic radiography procedure is deemed medically necessary for the immediate safety or health of the patient.

**D. Administration of state examinations.** The department will not offer state examinations for medical imaging and radiation therapy professionals except for a limited practice of radiography licensee pursuant to Subsection E of this section. The department may administer and grade the limited practice of radiography examinations, though at its option, the department may contract for such preparation, administration, and grading services.

**E. State examination for limited practice of radiography.** An individual seeking a license for the limited practice of radiography must pass a state examination for limited practice of radiography. To apply for the state examination, the individual must:

(1) submit an examination application with supporting documentation to the department that the individual has:

(a) completed school through the 12th grade or has passed a high school equivalency examination; and

(b) successfully completed an approved limited radiography program in one or more of the body areas of specialization.

(2) submit the required examination fee to the department; and

(3) successfully complete a written or computerized examination administered by the department with a minimum score of seventy-five percent on both the core section and in each attempted body area section of the examination. At its option, the department may contract for such preparation, administration, and grading services for the limited practice of radiography examinations.

#### **F. Failure of state examination for limited practice of radiography:**

(1) If an applicant fails to achieve seventy-five percent on either the core section or a body area specialization section of the examination, it will be considered an examination failure and the applicant must retake the failed section or sections.

(2) The applicant must re-apply and pay the examination fee for each examination attempt.

(3) All sections of the examination taken on the same day are considered one examination attempt.

(4) An individual who attempts and fails the state-administered examination three times will be required to demonstrate to the department the successful completion of remedial education or training following the third attempt that is consistent with the ARRT standards before being eligible to retake the failed section or sections again.

[20.3.20.310 NMAC - N, 09/25/2018]

**20.3.20.311-20.3.20.319 [RESERVED]**

#### **20.3.20.320 LICENSES:**

**A. Licensure Requirements.** An applicant for a medical imaging or radiation therapy license shall submit the required application to the department; the applicable application fee located in 20.3.20.501 NMAC, and shall be currently certified and registered by a medical imaging or radiation therapy credentialing organization recognized by the board.

**B. Registration number.** The department shall assign a department registration number to each licensee regardless of the number of modalities and subspecialties licensed. The department registration number shall be listed on each certificate of licensure issued by the department.

**C. Term for licenses issued prior to the 15th of the month.** The license term for licenses issued prior to the 15th of the month will:

- (1) be for 24 months;
- (2) begin on the date the license is issued; and
- (3) end on the last day of the month the license was issued.

**D. Term for licenses issued after the 15th of the month.** The license term for licenses issued after the 15th of the month will:

- (1) be for 24 months;
- (2) begin on the date the license is issued; and
- (3) end on the last day of the month following the month the license was issued.

**E. Request for coordination of license and credential expiration dates.** At the written request of the licensee, the expiration date of their license or licenses may be reduced to match their current credentialing organization's expiration date. Such reduction in term shall not reduce the applicant or licensee's license fee.

**F. Types of license.** Upon demonstration of compliance with all applicable requirements of the act and this part, the department may grant one or more of the following types of licenses to be recognized by the department:

- (1) (DMS) which includes sonography subspecialties of RDMS (ARDMS)(AB)(BR)(OB) and R.T. (ARRT)(S)(BS);
- (2) (MSK);
- (3) (FUS);
- (4) (LXV);
- (5) (LXE);
- (6) (LXP);

- (7) (LXT);
- (8) (MRT);
- (9) (NMT);
- (10) (PBS);
- (11) (PVL);
- (12) (RTT);
- (13) (RRT);
- (14) (RRA);
- (15) (TMP);
- (16) (VS), which includes sonography subspecialties of (ARDMS)(RVT) and R.T. ARRT (VS);
- (17) (CS) which includes RDCS (ARDMS), RCS (CCI), and RCCS (CCI); and
- (18) (CT).

**G. Certificate of licensure.** Each certificate of licensure issued by the department shall identify all current licenses granted to the licensee.

[20.3.20.320 NMAC - N, 9/25/2018; A, 04/19/2022]

#### **20.3.20.321 TEMPORARY LICENSES:**

**A. Temporary license.** The purpose of a temporary license is to allow an individual who has completed an approved program pursuant to 20.3.20.200 NMAC to practice medical imaging or radiation therapy prior to sitting for their national examination with one of the medical imaging and radiation therapy credentialing organizations outlined in 20.3.20.300 NMAC. The department may grant a temporary license to practice medical imaging or radiation therapy to an individual who:

- (1) provides documentation to the department that the individual has completed an approved program pursuant to 20.3.20.200 NMAC;
- (2) submits an application for a temporary license to the department within one year of the individual's program completion date from an approved program;

(3) submits the applicable fees for a temporary license pursuant to Paragraph G of 20.3.20.501 NMAC to the department within one year of the program completion date from an approved program;

(4) provides the name and contact information of each employer where medical imaging or radiation therapy is performed by the individual; and

(5) meets all other applicable licensure requirements of the act and this part.

**B. Notification.** The individual will be required to notify the department of any changes to his or her employment by providing the department with the contact information for each new employer where medical imaging or radiation therapy is performed by the individual within thirty days after the change occurs.

**C. Examination and notice.**

(1) The department will recognize the credentialing organization's determination of what is considered a pass or fail for an individual's examination score.

(2) The individual shall notify the department of the date the individual plans to take the examination at least 30 days prior to the examination date.

(3) If the credentialing organization determines that an individual has failed his or her examination, the individual's active temporary license issued by the department will expire 90 days after the examination date. The individual will be required to notify the department of a failed examination within 30 days of receiving his or her examination results.

**D. Temporary license term.** A temporary license:

(1) expires on the last day of the 12<sup>th</sup> month from the date of issuance or upon the applicant's failure to pass the examination as outlined in Subsection B of this section; and

(2) may be granted only once and cannot be renewed or extended; however, a duplicate temporary certificate of licensure may be issued by the department for display at another place of employment upon submission of a duplicate certificate of licensure application and fee.

[20.3.20.321 NMAC - N, 09/25/2018]

**20.3.20.322 PROVISIONAL LICENSES:**

**A. Provisional license.** The department may grant a provisional license to practice medical imaging to an individual who:

- (1) submits an application to the department; and
- (2) follows training pathways established by one of the following recognized national certification organizations:

- (a) ARRT;
- (b) ARDMS;
- (c) ARMRIT;
- (d) CCI; or
- (e) NMTCB.

**B. License Term.** A provisional license:

- (1) expires two years from the date of issuance;
- (2) may be renewed one time; and
- (3) the one-time renewal must occur before the license term expires in order to ensure the individual's provisional license remains active for that provisional license's second and last license term.

**C. Term for licenses issued prior to the 15th of the month.** The license term for licenses issued prior to the 15th of the month will:

- (1) be for 24 months;
- (2) begin on the date the license is issued; and
- (3) end on the last day of the month the license was issued.

**D. Term for licenses issued after the 15th of the month.** The license term for licenses issued after the 15th of the month will:

- (1) be for 24 months;
- (2) begin on the date the license is issued; and
- (3) end on the last day of the month following the month the license was issued.

**E.** Applicability to licensee enrolled in an approved program. This section does not apply to a licensee who is currently enrolled in an approved program leading to qualification for another modality and subspecialty license.

**F.** A provisional license to practice medical imaging or radiation therapy utilizing ionizing radiation will not be issued to individuals who are not already licensed by the department in one of the modalities that utilizes ionizing radiation.

[20.3.20.322 NMAC - N, 09/25/2018; A, 04/19/2022]

**20.3.20.323 - 20.3.20.329 [RESERVED]**

**20.3.20.330 CONTINUING EDUCATION:**

**A. Continuing education.**

(1) During the license term, a limited practice of radiography licensee must complete 24 hours or credits of category A or A+ continuing education approved by a RCEEM recognized by the ARRT. Documentation of completion of the required continuing education must be submitted to the department with each renewal application.

(2) During the license term, a medical imaging, a radiation therapy, or a radiologist assistant licensee, other than a limited practice of radiography licensee, must comply with all continuing education, continuing competency, and registration requirements of the credentialing organization for which they hold a credential or certification. The department may require a licensee to certify meeting the credentialing organization's requirements. Failure to meet the credentialing organization's requirements may be grounds for suspension or revocation of a license. This does not apply to individuals with an active temporary license or with an active provisional license that has been issued by the department.

(3) The department may require a licensee to submit documentation from the credentialing organization if online verification is not available at the time the licensee's renewal request is being reviewed.

**B. Audit.** The department may audit a licensee's continuing education and continuing compliance with requirements of the act and this part. A licensee must submit the audit information requested by the department within 30 days of receipt of the notification of audit. No application or fees are required when submitting information requested by the department for an audit.

[20.3.20.330 NMAC - Rp, 20.3.20.500 NMAC, 9/25/2018; A, 04/19/2022]

**20.3.20.331-20.3.20.339 [RESERVED]**

#### **20.3.20.340 DUTIES OF LICENSEE:**

##### **A. Continuing to comply with requirements.** A licensee must:

(1) continue to comply with all licensure requirements of the act and this part throughout the license term;

(2) maintain credential or certification and registration in their licensed imaging modality and subspecialty, if applicable, throughout the licensure period or notify the department in writing within 30 days that a credential or certification is no longer being maintained;

(3) notify the department in writing within 30 days of any pending or final actions by a credentialing organization, state agency, or federal agency against the licensee; and

(4) notify the department in writing within 30 days of lapse, probation, suspension, or revocation of any professional license.

**B. Expired, suspended, or revoked license.** An individual whose license has expired, or has been suspended or revoked by the department, shall not perform medical imaging or radiation therapy procedures.

**C. Duty to cooperate with department.** An applicant or licensee has a duty to cooperate with the department during an investigation or inspection authorized under the act, this part, or other state or federal law.

**D. Reporting violations.** A licensee has a duty to report a violation of the act, this part, or other state or federal law to the department or other appropriate agency.

##### **E. Supervision of students or licensees.**

(1) A limited practice of radiography licensee shall only provide supervision of a limited practice of radiography student or licensee.

(2) A medical imaging or radiation therapy licensee may provide supervision to a medical imaging or radiation therapy student or licensee in the same modality and specialization as the licensee. A radiographer may provide supervision to a limited practice of radiography student or licensee.

[20.3.20.340 NMAC - N, 09/25/2018]

#### **20.3.20.341 CERTIFICATE OF LICENSURE:**

**A. Display of certificate of licensure.** Original certificates of licensure shall be publicly displayed by the licensee at each place of employment.

**B. Photocopying or reproduction prohibited.** Photocopying or other reproduction of a certificate of licensure is prohibited.

**C. Duplicate certificate of licensure or replacement of certificate of licensure.** To obtain a duplicate certificate of licensure or replacement of certificate of licensure, the licensee must submit a duplicate certificate of licensure or replacement certificate of licensure application and required fee to the department.

**D. Legal Name Change.** To obtain a replacement certificate of licensure due to a legal name change, the licensee must submit documentation of the legal name change, a name change application, and required fee to the department.

[20.3.20.341 NMAC - N, 09/25/2018]

**20.3.20.342-20.3.20.399 [RESERVED]**

**20.3.20.400 RENEWAL, REINSTATEMENT, AND REAPPLICATION:**

**A. License renewal and reinstatement.** A licensee is solely responsible for ensuring they maintain a current license. Failure to receive notification by the department prior to the expiration date of the license is not an excuse for failure to file a timely renewal application.

(1) Prior to the expiration date listed on the licensee's current certificate of licensure, a licensee must submit the biennial licensure fee and completed renewal application, including any requested supporting documents to the department.

(2) The department will not process an incomplete renewal application.

(3) The department will process completed applications in the order received.

(4) The department shall not renew a license until it is satisfied the license renewal applicant meets all requirements of the act and this part.

(5) All required items must be received by the department prior to the expiration date on the licensee's current certificate of licensure or else the renewal application shall be considered incomplete. The licensee's failure to submit a complete license renewal application will result in a reinstatement fee. An earlier postmark date shall not excuse the reinstatement fee.

(a) If a reinstatement fee is assessed and all other requirements for renewal are met, the department will issue an invoice to the licensee that will accompany the renewed certificate of licensure.

(b) If an applicant or licensee fails to pay the reinstatement fee within 30 days of the invoice date, the department may take action to suspend the license until the department has received the reinstatement fee.

**B. Reapplication.** Reapplication is required if a license has been expired for more than one year. An applicant for reapplication must meet all of the requirements contained in 20.3.20.320 NMAC.

[20.3.20.400 NMAC - Rp, 20.3.20.501 NMAC, 09/25/2018]

**20.3.20.401-20.3.20.499 [RESERVED]**

**20.3.20.500 DEPARTMENT FORMS, CONFIDENTIALITY, AND RELEASE OF PERSONAL IDENTIFICATION:**

**A. Department forms required.**

(1) An individual seeking licensure or any other services listed in this part shall submit a completed application form and applicable fee to the department.

(2) The department shall create and make available all necessary application forms.

(3) The department's forms may request such personal identification as is required to perform the department's duties under the act and this part including, but not limited to: name, mailing address, telephone numbers, email address, certifications, licenses, date of birth, and social security number.

(4) No application shall be complete unless it is on the form prescribed by the department and includes, in legible format:

(a) all required personal identification;

(b) copies of all supporting documents specified on the form;

(c) full payment of required fees by a method specified on the form; and

(d) date and signature of the applicant.

**B. Confidentiality of personal identification.** Personal identification collected by the department shall not be disclosed except:

(1) in the performance of the department's duties under the act or this part;

(2) as provided in this part or as required by state or federal law; or

(3) in response to a valid subpoena or court order.

**C. Release of licensee personal identification.** Unless otherwise provided by law, the department shall only release a licensee's name, mailing address, department registration number, and verification of license and subspecialty. The department may release information related to an application denial or license revocation or suspension to a credentialing organization. In accordance with federal law, the department shall release any required information related to revocation or suspension of a licensee to the national practitioner data bank.

[20.3.20.500 NMAC - N, 09/25/2018]

### **20.3.20.501 FEES:**

**A. Application fee.** In addition to any other fees, an application fee of \$10.00 must be submitted with each type of application available from the department, unless otherwise provided in this part.

**B. Initial license fee.** An initial license fee of \$100.00 must be submitted with each initial license application, regardless of the number of modality and subspecialty licenses requested on the same application.

**C. Examination fee.** An examination fee of \$150.00 must be submitted with each examination application as required in 20.3.20.310 NMAC.

**D. Biennial licensure fee.** A biennial fee of \$100.00 may be submitted to the department prior to the expiration date of the individual's current license issued by the department. The department will renew an individual's license upon submittal of the fee and the license will be valid for 24 months after the expiration date of their current license issued by the department.

**E. License reinstatement fee.** In addition to any other required fees, a license reinstatement fee of \$25.00 must be submitted with a license reinstatement application or if a licensee fails to submit a complete renewal application before the expiration of a license.

**F. Duplicate certificate of licensure or replacement of certificate of licensure fee.** A fee of \$5.00 will be required for each duplicate certificate of licensure or replacement of certificate of licensure requested in the application and a fee of \$5.00 for each additional duplicate certificate of license or replacement of certificate of licensure ordered from all other application forms that provide the option to request additional original duplicate certificates of licensure or replacement of certificate of licensure.

**G. Temporary license fee.** A temporary license fee of \$50.00 must be submitted with each temporary license application.

**H. Provisional license fee.** A provisional license fee of \$25.00 must be submitted with a provisional license application.

**I. License verification fee.** A license verification fee of \$10.00 for each verification must be submitted with each license verification form.

**J. Legal name change fee.** A legal name change fee of \$15.00 must be submitted with each legal name change application.

**K. Refunds.** Fees submitted to the department are non-refundable and non-transferrable. However, if the department determines that fees have been received in excess of the amount legally due, the department will refund the excess amount portion of the received fee upon receipt of a written request from the individual who paid the excess fee amount, or that individual's legal representative.

**L. Nonsufficient funds fee.** If the department is unable to process the fees submitted by the applicant, then the name of that licensee will be removed from the list of all New Mexico active radiologic technologists, which appears on the New Mexico environment department's radiation control bureau website, and the department will assess a \$25.00 nonsufficient fund fee. That licensee must submit payment to the department in the form of a cashiers' check or money order.

[20.3.20.501 NMAC - Rp, 20.3.20.600 NMAC, 09/25/2018]

#### **20.3.20.502-20.3.20.599 [RESERVED]**

#### **20.3.20.600 DENIAL, REVOCATION, OR SUSPENSION OF LICENSE:**

**A. Denial of application.** The department may not issue a license to an applicant who has failed to meet the requirements of the act or this part.

**B. Suspension, revocation, application of uniform licensing act.** The board, with advice from the advisory council, may deny, revoke, or suspend a license granted or applied for under the act and this part, pursuant to the procedures established in the Uniform Licensing Act Section 61-1-1 through 61-1-34 NMSA 1978, upon grounds that the medical imaging or radiation therapy licensee or applicant:

- (1) is guilty of fraud or deceit in procuring or attempting to procure any type of license or service from the department;
- (2) has been convicted of a felony subsequent to licensure;
- (3) is unfit or incompetent;
- (4) is habitually intemperate or is addicted to the use of habit-forming drugs;

- (5) is mentally incompetent;
- (6) has aided and abetted an individual who is not a licensee in engaging in the activities of a licensee;
- (7) has failed to maintain a credential or certification in the modality and subspecialty for which a license was granted;
- (8) has engaged in any practice beyond the licensee's scope of practice in violation of state or federal law or facility policy;
- (9) is guilty of unprofessional conduct or unethical conduct as defined in Subsection C of this section;
- (10) has interpreted a diagnostic imaging exam for a patient, a patient's family, or the public;
- (11) has willfully or repeatedly violated any provisions of the act or this part;
- (12) has failed to notify the department in writing within 30 days of any final disciplinary action by a licensing board or credentialing organization, including but not limited to sanction, probation, suspension, or revocation; or
- (13) is not in compliance with the terms of the New Mexico Parental Responsibility Act, Section 40-5A-1 to 40-5A-13 NMSA 1978; in taking action under this provision, the board shall follow the procedures in 20.1.7 NMAC named "Parental Responsibility Act Compliance."

**C. Unprofessional or unethical conduct.** With respect to the grounds for denial, revocation, or suspension under Section 61-14E-11 NMSA 1978, the terms "unprofessional conduct" or "unethical conduct" shall refer to, but shall not be limited to any licensee, applicant, medical imaging professional, or radiation therapist who:

- (1) is engaged in the practice of medical imaging or radiation therapy while in an intoxicated condition or under the influence of a narcotic or other drug that impairs consciousness, judgment, or behavior;
- (2) is engaged in unethical conduct while practicing medical imaging or radiation therapy;
- (3) has engaged in the willful falsification of records, or destruction or theft of property or records relating to the practice of medical imaging or radiation therapy;
- (4) fails to exercise due regard for the safety of life or health of the patient;

- (5) has unauthorized access to or disclosure of information relating to a patient's records;
- (6) discriminates against any individual because of race, religion, creed, color, national origin, sex, or sex while practicing medical imaging or radiation therapy;
- (7) has been convicted of a felony subsequent to licensure by the department;
- (8) impersonates a current or former licensee or engages in the activities of medical imaging or radiation therapy under an assumed name;
- (9) is applying ionizing or non-ionizing radiation to a human being without a specific prescription or direction of a licensed practitioner or other health care practitioner authorized to order a medical imaging or radiation therapy;
- (10) is incompetent or negligent in activities related to medical imaging, radiation therapy, or limited practice of radiography;
- (11) is continuing to practice without obtaining a license or renewal as required by the act or this part;
- (12) is using the prefix "Dr.", unless entitled to do so pursuant to a degree granted, the word "doctor", or any suffix or affix to indicate or imply that the individual is a licensed practitioner when not so licensed;
- (13) is providing false, misleading, or deceptive information on any application or supporting documents submitted to the department;
- (14) is failing to conform to nationally recognized practice standards as applicable to each modality or subspecialty;
- (15) fails to disclose in writing to the department any felony conviction or non-compliance with the New Mexico Parental Responsibility Act, Section 40-5A-1 to 40-5A-13 NMSA 1978, within 30 days of the conviction or judgment; or
- (16) fails to disclose in writing to the department any sanction, probation, suspension, or revocation by a state agency or credentialing organization within 30 days of such occurrence.

**D. Opportunity for licensee or applicant to have a hearing.** Any licensee or applicant whose license or license application is denied, revoked, or suspended under this part shall be afforded notice and an opportunity to be heard pursuant to the procedures established in the Uniform Licensing Act, Sections 61-1-1 to -34 NMSA 1978, the Medical Imaging and Radiation Therapy Health and Safety Act, Section 61-14E-11 NMSA 1978, and the adjudicatory procedures for the environmental improvement board in 20.1.2 NMAC.

**E. Application of uniform licensing act.** The department shall comply with the provisions of the Uniform Licensing Act, Section 61-1-1 to 61-1-34 NMSA 1978, and any rules or regulations promulgated thereunder.

[20.3.20.600 NMAC - Rp, 20.3.20.400 NMAC, 09/25/2018]

**20.3.20.601-20.3.20.699 [RESERVED]**

**20.3.20.700 SEVERABILITY:**

If any provision or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.3.20.700 NMAC - Rp, 20.3.20.700 NMAC, 09/25/2018]

**20.3.20.701 AMENDMENT AND SUPERSESION OF PRIOR REGULATIONS:**

This part shall be construed as amending and superseding the regulations on the practice of medical imaging or radiation therapy, EIB/MRHSA 1, filed January 11, 1988, as amended. All references to the regulations on the practice of medical imaging or radiation therapy in any other rule shall be construed as a reference to this part.

[20.3.20.701 NMAC - Rp, 20.3.20.701 NMAC, 09/25/2018]

**20.3.20.702 SAVING CLAUSE:**

Supersession of the regulations on the practice of medical imaging or radiation therapy shall not affect any administrative or judicial enforcement action pending on the effective date of this part nor the validity of any license granted or certificate of licensure issued pursuant to the regulations on the practice of medical imaging or radiation therapy.

[20.3.20.702 NMAC - Rp, 20.3.20.702 NMAC, 09/25/2018]

**20.3.20.703 CONSTRUCTION:**

This part shall be liberally construed to effectuate the purpose of the act.

[20.3.20.703 NMAC - Rp, 20.3.20.703 NMAC, 09/25/2018]

**20.3.20.704 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve an individual from the obligation to comply with other applicable state and federal regulations.

[20.3.20.704 NMAC - Rp, 20.3.20.704 NMAC, 09/25/2018]

# **CHAPTER 4: HAZARDOUS WASTE**

## **PART 1: HAZARDOUS WASTE MANAGEMENT**

### **20.4.1.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.4.1.1 NMAC - Rp, 20 NMAC 4.1.1, 12/1/2018]

### **20.4.1.2 SCOPE:**

All persons that generate, store, transport, or dispose of hazardous waste.

[20.4.1.2 NMAC - Rp, 20 NMAC 4.1.2, 12/1/2018]

### **20.4.1.3 STATUTORY AUTHORITY:**

Sections 74-1-8 and 74-4-4, NMSA 1978 (as amended).

[20.4.1.3 NMAC - Rp, 20 NMAC 4.1.3, 12/1/2018]

### **20.4.1.4 DURATION:**

Permanent

[20.4.1.4 NMAC - Rp, 20 NMAC 4.1.4, 12/1/2018]

### **20.4.1.5 EFFECTIVE DATE:**

December 1, 2018 unless a later date is cited in the history note at the end of a section.

[20.4.1.5 NMAC - Rp, 20 NMAC 4.1.5, 12/1/2018]

### **20.4.1.6 OBJECTIVE:**

The objective of Part 1 of Chapter 4 is to establish regulations for the management of hazardous waste, including standards for the identification and listing of hazardous waste, for generators and transporters of hazardous waste, for owners and operators of hazardous waste treatment, storage, and disposal facilities, for specific wastes and such facilities, for land disposal restrictions, and for issuing, suspending, revoking, or modifying permits.

[20.4.1.6 NMAC - Rp, 20 NMAC 4.1.6, 12/1/2018]

### **20.4.1.7 DEFINITIONS:**

**[RESERVED]**

[20.4.1.7 NMAC - Rp, 20 NMAC 4.1.7, 12/1/2018]

**20.4.1.8-20.4.1.99 [RESERVED]**

[20.4.18 - 20.4.1.99 NMAC - Rp, 20 NMAC 4.1.8 - 4.1.99, 12/1/2018]

**20.4.1.100 ADOPTION OF 40 CFR PART 260:**

Except as otherwise provided, the regulations of the United States environmental protection agency ("EPA") set forth in 40 CFR Part 260, as it may be modified or amended, is hereby incorporated by reference.

[20.4.1.100 NMAC - Rp, 20 NMAC 4.1.100, 12/1/2018]

**20.4.1.101 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions, and omissions are made to the incorporated federal regulations:

**A.** The following terms defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth herein, in lieu of the meanings set forth in 40 CFR Sections 260.10 and 270.2:

**(1)** "administrator" or "regional administrator" means the secretary of the New Mexico environment department or his/her designee;

**(2)** "act" or "RCRA" (Resource Conservation and Recovery Act, as amended) means the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14, NMSA 1978 (as amended).

**B.** The following terms not defined in 40 CFR Sections 260.10 and 270.2 have the meanings set forth herein when the terms are used in this part:

**(1)** "appropriate act or regulation" means the New Mexico Hazardous Waste Act or 20.4.1 NMAC;

**(2)** "board" means the environmental improvement board;

**(3)** "CFR" means the Code of Federal Regulations;

**(4)** "department" means the New Mexico environment department;

**(5)** "environmental protection agency" or "EPA" shall be construed to mean the New Mexico environment department except when used in the phrases "EPA

hazardous waste number," EPA identification number," "EPA region," "EPA acknowledgment of consent," "EPA test methods," and in the definitions set forth in 40 CFR Sections 260.10 and 270.2;

**(6)** "Freedom of Information Act" or "FOIA" means Sections 14-2-1 through 14-2-12, 14-3A-1 through 14-3A-2, and 74-4-4.3D, NMSA 1978 (as amended);

**(7)** "hazardous substance incident" means any emergency incident involving a chemical or chemicals, including but not limited to transportation wrecks, accidental spills or leaks, fires or explosions, which incident creates the reasonable probability of injury to human health or property;

**(8)** "secretary" means the secretary of the New Mexico environment department or his/her designee; and

**(9)** "Subtitle C of RCRA" means the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14, NMSA 1978 (as amended).

**C.** The following provisions of 40 CFR Part 260 are omitted from Section 20.4.1.100 NMAC:

- (1)** Section 260.1(b)(6);
- (2)** Section 260.20;
- (3)** Section 260.22;
- (4)** Section 260.30;
- (5)** Section 260.31;
- (6)** Section 260.32;
- (7)** Section 260.33; and
- (8)** Reference to 40 CFR Part 267.

**D.** Wherever there is any requirement in any of the federal regulations incorporated into this part to report an emergency situation, the requirement shall be construed to mean that the party required to report shall report the incident to the department via the New Mexico 24-hour emergency response number at (505) 827-9329 or such other number designated by the department.

[20.4.1.101 NMAC - Rp, 20 NMAC 4.1.101, 12/1/2018]

**20.4.1.102-20.4.1.199 [RESERVED]**

[20.4.1.102 - 20.4.1.199 NMAC - Rp, 20 NMAC 4.1.102 - 4.1.199, 12/1/2018]

**20.4.1.200 ADOPTION OF 40 CFR PART 261:**

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 261 as it may be modified or amended is hereby incorporated by reference.

[20.4.1.200 NMAC - Rp, 20 NMAC 4.1.200, 12/1/2018]

**20.4.1.201-20.4.1.299 [RESERVED]**

[20.4.1.201 - 20.4.1.299 NMAC - Rp, 20 NMAC 4.1.201 - 4.1.299, 12/1/2018]

**20.4.1.300 ADOPTION OF 40 CFR PART 262:**

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 262 as it may be modified or amended is hereby incorporated by reference.

[20.4.1.300 NMAC - Rp, 20 NMAC 4.1.300, 12/1/2018]

**20.4.1.301 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and modifications are made to the incorporated federal regulations. The substitution of the following terms in Subparts E, F and H of 40 CFR Part 262 does not apply to Section 20.4.1.300 NMAC: "administrator" and "regional administrator" for the term "secretary" and "EPA" or "environmental protection agency" for the term "department."

[20.4.1.301 - Rp, 20 NMAC 4.1.301, 12/1/2018]

**20.4.1.302-20.4.1.399 [RESERVED]**

[20.4.1.302 - 20.4.1.399 NMAC - Rp, 20 NMAC.4.1.302 - 4.1.399, 12/1/2018]

**20.4.1.400 ADOPTION OF 40 CFR PART 263:**

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 263 as it may be modified or amended is hereby incorporated by reference.

[20.4.1.400 NMAC - Rp, 20 NMAC 4.1.400, 12/1/2018]

**20.4.1.401 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporate the federal regulations.

**A.** The following provision of 40 CFR Part 263 is omitted from Section 20.4.1.400 NMAC: Section 263.20(e).

**B.** A transfer facility, which stores manifested shipments of hazardous waste for more than 24 hours but 10 days or less shall notify the New Mexico Environment Department using form 8700-12, as it may be modified by EPA, and obtain an EPA identification number for each transfer facility located in New Mexico. New transfer facilities shall provide a notification 30 days prior to operating. Existing transfer facilities shall provide a notification no more than 90 days after the effective date of the regulations.

[20.4.1.401 NMAC - Rp, 20 NMAC 4.1.401, 12/1/2018]

**20.4.1.402-20.4.1.499 [RESERVED]**

[20.4.1.402 - 20.4.1.499 NMAC - Rp, 20 NMAC 4.1.402 - 4.1.499, 12/1/2018]

**20.4.1.500 ADOPTION OF 40 CFR PART 264:**

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 264 as it may be modified or amended is hereby incorporated by reference.

[20.4.1.500 NMAC - Rp, 20 NMAC 4.1.500, 12/1/2018]

**20.4.1.501 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and omissions are made to incorporate the federal regulations.

**A.** The following provisions of 40 CFR Part 264 are modified in 20.4.1.500 NMAC:

**(1)** the substitution of "secretary" for the term "regional administrator" in 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 264.12(a), as adopted in this section; the owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 264.12(a) to the secretary at the time that notice is provided to the regional administrator;

**(2)** the owner or operator proposing a class 1 permit modification pursuant to 40 CFR 264.15(b)(5) shall submit the request to the director as required in 40 CFR Sections 264.15(b)(5)(i) and 270.42(a);

**(3)** the owner and operator shall submit the reports in 40 CFR Section 264.100(g) on a semi-annual basis to the secretary;

(4) "qualified professional engineer" as provided for in 40 CFR Sections 264.115, 264.120, 264.143(i), 264.145(i), 264.147(e), 264.191(a), 264.191(b)(5)(ii), 264.192(a), 264.192(b), 264.193(i)(2), 264.196(f), 264.280(b), 264.554(c)(2), 264.571(a-c), 264.573(a)(4)(ii), 264.573(g), 264.574(a) and 264.1101(c)(2) shall mean an independent New Mexico licensed professional engineer in accordance with the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 32, NMSA 1978 (as amended).

(5) the requirements of 40 CFR Section 264.73(b) shall be maintained in the operating record by the owner and operator at his facility until closure, except for 40 CFR Sections 264.73(b)(7) and 264.73(b)(9) which shall be kept in the operating record for no less than 3 years;

(6) the requirements of 40 CFR Section 264.347(d) shall be maintained in the operating record by the owner and operator at his facility until closure.

(7) the substitution of "department" for the term "EPA" does not apply to the second occurrence of the term "EPA" in 40 CFR Section 264.1082(c)(4)(ii).

**B.** The following provisions of 40 CFR Part 264 are omitted from Section 20.4.1.500 NMAC:

- (1) Section 264.1(f);
- (2) Section 264.149;
- (3) Section 264.150;
- (4) Section 264.301(1);
- (5) Section 264.1030(d);
- (6) Section 264.1050(g); and
- (7) Sections 264.1080(e), 264.1080(f), 264.1080(g).

[20.4.1.501 NMAC - Rp, 20 NMAC 4.1.501, 12/1/2018]

**20.4.1.502-20.4.1.599 [RESERVED]**

[20.4.1.502 - 20.4.1.599 NMAC - Rp, 20 NMAC 4.1.502 - 4.1.599, 12/1/2018]

**20.4.1.600 ADOPTION OF 40 CFR PART 265:**

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 265 as it may be modified or amended is hereby incorporated by reference.

[20.4.1.600 NMAC - Rp, 20 NMAC 4.1.600, 12/1/2018]

#### **20.4.1.601 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations:

**A.** The following provisions of 40 CFR Part 265 are modified in 20.4.1.600 NMAC:

**(1)** the substitution of "secretary" for the term "regional administrator" in 20.4.1.101 NMAC does not apply to the required notice set forth in 40 CFR Section 265.12(a), as adopted in this section. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must provide a copy of the notice required in 40 CFR Section 265.12(a) to the secretary at the time that notice is provided to the regional administrator;

**(2)** the owner and operator shall submit the reports in 40 CFR Section 264.100(g) on a semi-annual basis to the secretary;

**(3)** "qualified professional engineer" as provided for in 40 CFR Sections 265.115, 265.120, 265.143(h), 265.145(h), 265.147(e), 265.191(a), 265.191(b)(5)(ii), 265.192(a), 265.192(b), 265.193(i)(2), 264.196(f), 265.280(e), 265.441(a) through (c), 265.443(a)(4)(ii), 265.443(g), 265.444(a) and 264.1101(c)(2) shall mean an independent New Mexico licensed professional engineer in accordance with the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 32, NMSA 1978 (as amended);

**(4)** the requirements of 40 CFR 265.73(b) shall be maintained in the operating record by the owner and operator at his facility until closure;

**(5)** the requirements of 40 CFR Section 264.347(d) shall be maintained in the operating record by the owner and operator at his facility until closure.

**(6)** the substitution of "department" for the term "EPA" does not apply to the second occurrence of the term "EPA" in 40 CFR Section 265.1083(c)(4)(ii).

**B.** The following provisions of 40 CFR Part 265 are omitted from Section 20.4.1.600 NMAC:

**(1)** Section 265.1(c)(4);

**(2)** Section 265.149;

**(3)** Section 265.150;

**(4)** Section 265.1030(c);

(5) Section 265.1050(f); and

(6) Sections 265.1080(e), 265.1080(f), 265.1080(g).

[20.4.1.601 NMAC - Rp, 20 NMAC 4.1.601, 12/1/2018]

**20.4.1.602-20.4.1.699 [RESERVED]**

[20.4.1.602 - 20.4.1.699 NMAC - Rp, 20 NMAC 4.1.602 - 4.1.699, 12/1/2018]

**20.4.1.700 ADOPTION OF 40 CFR PART 266:**

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 266 as it may be modified or amended is hereby incorporated by reference.

[20.4.1.700 NMAC - Rp, 20 NMAC 4.1.700, 12/1/2018]

**20.4.1.701 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations. The provision of 40 CFR Section 266.102(e)(10) are modified in 20.4.1.700 NMAC and shall be maintained in the operating record by the owner and operator at his facility until closure.

[20.4.1.701 NMAC - Rp, 20 NMAC 4.1.701, 12/1/2018]

**20.4.1.702 OMISSION OF 40 CFR PART 267:**

The provisions of and any reference to 40 CFR Part 267 are omitted from these regulations.

[20.4.1.702 NMAC - Rp, 20 NMAC 4.1.702, 12/1/2018]

**20.4.1.703-20.4.1.799 [RESERVED]**

[20.4.1.703 - 20.4.1.799 NMAC - Rp, 20 NMAC 4.1.703 - 4.1.799, 12/1/2018]

**20.4.1.800 ADOPTION OF 40 CFR PART 268:**

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 268 as it may be modified or amended is hereby incorporated by reference.

[20.4.1.800 NMAC - Rp, 20 NMAC 4.1.800, 12/1/2018]

**20.4.1.801 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

**A.** The substitution of "department" for the term "EPA" in 20.4.1.101 NMAC does not apply to 40 CFR Section 268.1(e)(3), as adopted in this section.

**B.** The following provisions of 40 CFR Part 268 are omitted from Section 20.4.1.800 NMAC:

- (1) Section 268.5;
- (2) Section 268.6;
- (3) Section 268.42(b); and
- (4) Section 268.44(a) through 264.44(g).

[20.4.1.801 NMAC - Rp, 20 NMAC 4.1.801, 12/1/2018]

#### **20.4.1.802-20.4.1.899 [RESERVED]**

[20.4.1.802 - 20.4.1.899 NMAC - Rp, 20 NMAC 4.1.802 - 4.1.899, 12/1/2018]

#### **20.4.1.900 ADOPTION OF 40 CFR PART 270:**

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 270 as it may be modified or amended is hereby incorporated by reference.

[20.4.1.900 NMAC - Rp, 20 NMAC 4.1.900, 12/1/2018]

#### **20.4.1.901 PERMITTING PROCEDURES:**

**A.** Permit issuance or denial.

(1) Once an application is determined to be administratively and technically complete, the secretary shall prepare and issue either a draft permit or a notice of intent to deny.

(a) A draft permit shall contain all conditions, compliance schedules, monitoring requirements and technical standards for treatment, storage, and/or disposal provided for in 40 CFR Part 270.

(b) A notice of intent to deny shall state the secretary's reasons for the intended denial.

**(2)** Any draft permit or notice of intent to deny prepared by the department under Paragraph one of this subsection shall be accompanied by a fact sheet and shall be based on the administrative file. Copies of the fact sheet shall be sent to the applicant; to any state or federal agency, as applicable; and, upon request, to any other person.

**(3)** The secretary shall give public notice that a draft permit or a notice of intent to deny has been prepared, and shall allow 45 days for review and public comment, including requests for public hearing.

**(4)** If the secretary issues a draft permit, and a timely written notice of opposition to the draft permit and a request for a public hearing is received, the department, acting in conjunction with the applicant, will respond to the request in an attempt to resolve the issues giving rise to the opposition. If such issues are resolved to the satisfaction of the opponent, the opponent may withdraw the request for a public hearing.

**(5)** No ruling shall be made on permit issuance or denial without an opportunity for a public hearing, at which all interested persons shall be given a reasonable chance to submit significant data, views or arguments orally or in writing and to examine witnesses testifying at the public hearing. A public hearing shall be scheduled if:

**(a)** the secretary issues a notice of intent to deny, and a timely request for public hearing is received from the applicant;

**(b)** the secretary issues a draft permit, a timely request for public hearing is received from any person opposed to the granting of a permit, and such person does not subsequently withdraw the request pursuant to Paragraph four of this subsection; or

**(c)** the secretary determines, no later than five days following the end of the comment period specified in Paragraph four of this subsection, that a public hearing should be held notwithstanding the absence of a timely request for public hearing.

**(6)** The comment period specified in Paragraph three of this subsection shall automatically be extended to the close of any public hearing.

**(7)** The secretary shall give due consideration and the weight he/she deems appropriate to all comments received during a public comment period and to all relevant facts and circumstances presented at a public hearing.

**(8)** When ruling on permit issuance or denial, the secretary may disapprove in whole or in part, or make reasonable conditions to any permit, if it appears that the permit applied for will not meet the requirements of these regulations.

**(9)** At the time that any final permit decision is issued, the secretary shall issue a response to comments. This response shall:

**(a)** specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change;

**(b)** briefly describe and respond to all comments on the draft permit or the permit application raised during the public comment period, or during any hearing, and

**(c)** be available to the public.

**(10)** A final permit decision shall become effective 30 days after notice of the decision has been served on the applicant, or such later time as the secretary may specify. This provision shall not be construed to extend the time for appeal of a permit decision as provided by the Hazardous Waste Act.

**(11)** The approval of a permit does not relieve any person from the responsibility of complying with applicable state or federal laws and regulations.

**(12)** The secretary shall notify the applicant by certified mail of any impending permit action and of any scheduled public hearing date.

#### **B. Permit Modifications, Suspension and Revocation.**

**(1)** The secretary may modify, suspend, or revoke a permit issued pursuant to Subsection A of this section for cause set forth in 40 CFR Part 270 and the act.

**(2)** The secretary may modify, suspend, revoke any permit upon his/her initiative, or if, after the department's investigation of the facts and circumstances, pursuant to the request of any interested person, such permit action is deemed warranted.

**(3)** Requests for permit modification, suspension, revocation shall be in writing and shall contain facts or reasons supporting the request.

**(4)** If the secretary decides that the request is not justified, the permittee will be notified in writing explaining the reason for denial. Denial of request of modification, revocation, and reissuance, or termination are not subject to public notice, comment, or hearings.

**(5)** If the secretary decides to modify or revoke and reissue a permit under 40 CFR section 270.41 or 40 CFR section 270.42(c), considered a major modification under the act, a draft permit shall be prepared incorporating the proposed changes. The secretary may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of a revoked and reissued permit the secretary shall require the submission of a new application.

**(6)** Class 1 and 2 modifications under 40 CFR 270.42(a) and (b) shall be considered minor permit modifications under the act.

**(7)** In a permit modification under this section, only those conditions to be modified shall be reopened. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and were being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the exiting permit until a new final permit is reissued.

**(8)** If the secretary decides to terminate a permit under 40 CFR section 270.43, a notice of intent to terminate shall be issued. The secretary shall follow the applicable procedures as required for a draft permit under Section 20.4.1.901 NMAC.

### **C. Public Notices.**

**(1)** Pre-application public meeting and notice. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR Section 124.31 through July 1, 2008 is hereby incorporated by reference.

**(2)** Public notice requirements at the application stage. Except as otherwise provided, the regulation of the EPA set forth in 40 CFR section 124.32 through July 1, 2008 is hereby incorporated by reference.

**(3)** Public notice of issuance of a draft permit or a notice of intent to deny, and of any public hearing scheduled, shall be given by publication of a notice in a newspaper of general circulation in the area affected, broadcasts over local radio stations and by mailing a copy of the notice to the permit applicant, those individuals on the department mailing list of persons interested in hazardous waste permit actions, and to any unit of local, state and federal government as may be applicable.

**(4)** All public notices issued shall contain the following minimum information:

**(a)** the subject, the time and place of any scheduled hearing and the manner in which interested persons may present their views;

**(b)** a brief description of the procedures by which requests for hearings may be made, unless already scheduled;

**(c)** the name and address of the office processing the permit action for which notice is being given;

**(d)** the name and address of the permittee or permit applicant, and, if different, of the facility or activity regulated by the permit;

**(e)** a brief description of the business conducted at the facility or activity described in the permit application or the draft permit;

**(f)** the name, address and telephone number of a person from whom interested persons may obtain further information;

**(g)** in addition, public notice of a scheduled public hearing shall also contain references to the dates of previous public notices relating to the permit;

**(h)** the notice shall state where interested persons may secure copies of any proposed draft permit or notice of intent to deny.

#### **D. Fact Sheet.**

**(1)** A fact sheet shall be prepared for every draft permit for a hazardous waste management facility or activity. The fact sheet shall briefly set forth the principal facts and the significant factual legal, methodological and policy questions considered in preparing the draft permit.

**(2)** The fact sheet shall include, when applicable:

**(a)** a brief description of the type of facility or activity which is the subject of the draft permit;

**(b)** the type and quantity of wastes which are proposed to be or are being treated, stored, disposed, injected, emitted, or discharged;

**(c)** a brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

**(d)** reasons why any request for variance or alternative to require standards do or do not appear justified;

**(e)** a description of the procedures for reaching a final decision on the draft permit, including: the beginning and ending dates of the comment period, the address where comments will be received, procedures for requesting a hearing, the nature of that hearing, any other procedures by which the public may participate in the final decision, and the name and telephone number of a person to contact for additional information.

**(3)** The fact sheet shall be available at the time the public notice is published.

**E. Information repository.** Except as otherwise provided, the regulation of the EPA set forth in 40 CFR section 124.33 through July 1, 2008 is hereby incorporated by reference.

## **F. Hearings.**

**(1)** Public notice of any public hearing shall be given at least 30 days prior to the scheduled date of the hearing and shall state the subject.

**(2)** Hearings shall be held in Santa Fe or within any area of the state substantially affected by the proceedings as specified by the secretary.

**(3)** The secretary may designate a hearing officer to take evidence at the hearing.

**(4)** All hearings shall be recorded by a certified court reporter. A transcript will be furnished to all persons for review at the department's main office. Costs of a copy of a transcript will be borne by those requesting such copies.

**(5)** In hearings, the rules of civil procedure and the technical rules of evidence shall not apply, but the hearings shall be conducted so that all relevant views, arguments, and testimony are amply and fairly received without undue repetition.

**(a)** Testimony for hearings on permit issuance or modification shall be presented in the following order: testimony by the applicant (such testimony is a prerequisite to the granting of the requested permit or modification), testimony by other persons (except the department) supporting issuance or modification of the permit, in any reasonable order, testimony by persons (except the department) opposed to issuance or modification of the permit, in any reasonable order, testimony by the department, and rebuttal testimony, as appropriate.

**(b)** Testimony for hearings on permit suspension or revocation shall be as follows: testimony by the department, testimony by other persons supporting suspension or revocation of the permit, in any reasonable order, testimony by the permittee, testimony by other persons opposed to suspension or revocation of the permit, in any reasonable order, and rebuttal testimony, as appropriate.

**(c)** In all hearings, cross examination of each witness shall be conducted by interested persons, in any reasonable order, immediately after that witness has testified.

**(7)** The burden of proof at hearings shall be as follows:

**(a)** for hearings on permit issuance or modifications, the burden of proof shall be on the applicant or permittee;

**(b)** for hearings on permit suspension or revocation, the burden of proof shall be on the department.

## **G. Secretary's decision.**

(1) Any person heard or represented at the hearing shall be given written notice of the action of the secretary.

(2) The secretary shall notify the applicant or permittee of his/her decision and the reasons therefore by certified mail.

H. Appeals. Appeals of the secretary's decision shall be as provided by the Hazardous Waste Act.

(1) The filing of an appeal does not act as a stay of any action required by the secretary's decision.

(2) The record on appeal shall include the transcript of the hearing, all related correspondence, any responses to comments, and all other information relied upon by the secretary in deciding upon the permit action.

[20.4.1.901 NMAC - Rp, 20 NMAC 4.1.901, 12/1/2018]

#### **20.4.1.902 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

A. "Qualified professional engineer" as provided for in 40 CFR Sections 270.14(a), 270.16(a), and 270.26(c)(15) shall mean an independent New Mexico licensed professional engineer. A professional engineer shall abide by all requirements of the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 32, NMSA 1978 (as amended) and applicable regulations.

B. The substitution of the terms "EPA," "regional administrator" and "administrator" in 20.4.1.101 NMAC does not apply to 40 CFR Sections 270.5, 270.10(f)(2) & (3), 270.10 (g)(1)(i), 270.11 (a) (3), 270.32(c), 270.72(a)(5), and 270.72(b)(5), as adopted in this section.

C. The following provisions of 40 CFR Part 270 are omitted from 20.4.1.900 NMAC:

(1) statement in Section 270.1(b), "treatment, storage, and disposal facilities (TSDs) that are otherwise subject to permitting under RCRA and that meet the criteria in paragraph (b)(1), or paragraph (b)(2) of this section, may be eligible for a standardized permit under subpart J of this part.";

(2) Sections 270.1(b)(1) and 270.1(b)(2);

(3) "and standardized permit (subpart J of this part)" in the definition of "permit" in Section 270.2;

- (4) definition of "standardized permit" in Section 270.2;
- (5) Section 270.10(a)(6);
- (6) Section 270.10(h)(2);
- (7) portion of the first sentence stating, "or as a routine change with prior approval under 40 CFR 124.213" of Section 270.40(b);
- (8) Section 270.41 referencing 270.320 and 40 CFR part 124, subpart G;
- (9) Section 270.41(b)(3);
- (10) Section 270.51(e); and
- (11) Section 270, subpart J.

[20.4.1.902 NMAC - Rp, 20 NMAC 4.1.902, 12/1/2018]

**20.4.1.903-20.4.1.999 [RESERVED]**

[20.4.1.903 -20.4.1.999 NMAC - Rp, 20 NMAC 4.1.903 - 4.1.999, 12/1/2018]

**20.4.1.1000 ADOPTION OF 40 CFR PART 273:**

Except as otherwise provided, the regulations of the EPA set forth in 40 CFR Part 273 as it may be modified or amended is hereby incorporated by reference.

[20.4.1.1000 NMAC - Rp, 20 NMAC 4.1.1000, 12/1/2018]

**20.4.1.1001 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

**A.** The following terms have the meanings set forth herein.

(1) "Aerosol can" means a container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.

(2) "Regional administrator" and "EPA" as used in 40 CFR sections 273.12 and 273.32 shall mean, as applicable to handlers of universal waste pesticides under this part, notification to the secretary of the New Mexico department of agriculture.

(3) "Universal waste" means, in addition to the hazardous wastes listed in 40 CFR Section 273.9, aerosol cans as described in this subsection.

**B.** Alternative universal waste labeling. As an alternative to the labeling requirements for universal waste in 40 CFR sections 273.14 and 273.34, universal waste handlers may use other words that accurately identify the universal waste material, for example, "spent bulbs" or "batteries for recycling." Note that the labeling must be either on the individual piece of universal waste, on the container in which the universal waste is stored, or on a pallet of banded or otherwise bound universal waste being readied for shipment.

**C.** Breaking and crushing universal waste lamps. In addition to the requirements for universal waste lamps contained in Subparts B and C of 40 CFR Part 273, the following requirements shall apply.

**(1)** A handler of universal waste may intentionally break or crush lamps generated on-site to reduce their volume to facilitate management or transport to destination facilities. However, breaking and crushing of lamps and subsequent management of the resulting waste must occur in a safe and controlled manner that minimizes the release of hazardous constituents to the workplace and the environment, and steps must be taken to minimize exposures of children, pregnant women, and other sensitive individuals to mercury releases from these activities. Universal waste destination facilities as defined in 40 CFR Section 273.9 may not intentionally break or crush lamps under this subsection.

**(2)** A handler of universal waste who intentionally breaks or crushes mercury-containing universal waste lamps under this subsection shall comply with the following provisions.

**(a)** Use a mechanical unit specifically designed for the process that results in the breaking or crushing operation to take place in a container or while the lamps are being added to the container, for example, a drum-top lamp crusher. The unit must also incorporate air pollution controls that capture both particulate and vapor phase mercury. At a minimum, these controls must include, or must be equivalent to, the protection provided by a high efficiency particulate air (HEPA) filter, activated charcoal, and a negative air flow (vacuum) through the unit. The unit must have documentation from the manufacturer that demonstrates that the unit is capable of achieving the occupational safety and health administration (OSHA) permissible exposure limit for mercury.

**(b)** Develop and implement a written procedure specifying how to safely break or crush universal waste lamps. This procedure must include: type of equipment to be used to break or crush the lamps, operation and maintenance of the unit in accordance with written procedures developed by the manufacturer of the equipment, safe work practices, decontamination and spill response practices, and proper waste management practices. The handler must document maintenance activities and keep records of maintenance. In addition, the unit operator(s) and assistant(s) must receive training applicable to their duties relating to breaking and crushing operations, waste handling, area and equipment decontamination, spill response, and emergency procedures; this training must be documented.

**(c)** Ensure that the area in which the lamps are broken or crushed is well ventilated and monitored to ensure compliance with applicable OSHA permissible exposure levels for mercury.

**(d)** Ensure that spills of the contents of the universal waste lamps that may occur during breaking or crushing operations are cleaned up in accordance with 40 CFR sections 273.13 or 273.33. A spill clean-up kit must be readily available to immediately clean up spills or leaks of the contents of the universal waste lamps which may occur during lamp breaking or crushing operations.

**(e)** Store the broken and crushed lamps and other solid waste generated as part of the breaking or crushing operation that are being reclaimed for mercury in closed, non-leaking containers that are in good condition. Transfer of the broken or crushed lamps to other containers is not permitted unless the area is well ventilated and monitored to ensure compliance with applicable OSHA permissible exposure levels for mercury.

**(f)** Label drums or containers used for storage of broken or crushed lamps and other solid waste generated as part of the breaking or crushing operation that are being reclaimed for mercury with the words "universal waste-lamps," "waste lamps," "used lamps," or other words that accurately identify the contents, for example, "crushed bulbs."

**(g)** Manage residues, filter media, or other solid waste generated as part of the breaking or crushing operation that are not being reclaimed and that exhibit any characteristics of a hazardous waste identified in Subpart C of 40 CFR Part 261 in accordance with all applicable requirements of this part.

**(3)** The owner or operator of a unit that breaks or crushes mercury-containing universal waste lamps must notify the department's hazardous waste bureau of its intent to operate the unit. The notification shall include the owner and operator name(s), address(es), and phone number(s); manufacturer's documentation describing the unit; documentation that demonstrates that the unit is capable of achieving the occupational safety and health administration (OSHA) permissible exposure limit for mercury; and a description of how and where the unit will be operated.

**(a)** For units in operation before the requirements in this subsection became effective, the owner or operator must submit such notification within 90 days of the effective date of this requirement.

**(b)** For units not in operation before the effective date of the requirements in this subsection, the owner or operator must submit such notification before operating the unit.

**D.** Universal waste aerosol cans. In addition to the requirements for universal waste contained in 40 CFR Part 273, the following requirements shall apply.

**(1)** Applicability. The requirements of this part apply to persons managing aerosol cans as described in Subsection A of this section, except persons managing the following aerosol cans.

**(a)** Aerosol cans that are not yet wastes under this part, including those that do not meet the criteria for waste generation in Subparagraph (c) of Paragraph (1) of this subsection.

**(b)** Aerosol cans that are not hazardous waste. An aerosol can must be managed as a hazardous waste if its contents exhibit one or more of the characteristics identified in Subpart C of 40 CFR Part 261 or if its contents are listed in Subpart D of 40 CFR Part 261.

**(c)** Generation of waste aerosol cans. An aerosol can becomes a waste on the date it is discarded or is no longer useable. For purposes of this part, an aerosol can is considered to be no longer useable when the can is as empty as proper work practices allow, the spray mechanism no longer operates as designed, the propellant is spent, or the product is no longer used. An unused aerosol can becomes a waste on the date the handler decides to discard it. This section does not apply to aerosol cans, including punctured aerosol cans, that are empty as defined in 40 CFR 261.7(b).

**(2)** Waste management. A handler of universal waste must manage universal waste aerosol cans in a way that prevents release of any universal waste or component of a universal waste to the environment as follows.

**(a)** A handler of universal waste must immediately contain any universal waste aerosol can that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a separate individual container. The individual container must be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

**(b)** A handler of universal waste may accumulate universal waste aerosol cans in an accumulation container provided it is clearly marked for such use. The accumulation container must be closed, structurally sound, compatible with the contents of the universal waste aerosol can, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The universal waste aerosol cans must be sorted by type and compatibility of contents to ensure that incompatible materials are segregated and managed appropriately in separate accumulation containers.

**(3)** Puncturing universal waste aerosol cans. A handler of universal waste may puncture aerosol cans containing hazardous waste under this part to remove and collect the contents of the aerosol cans provided the handler complies with the following provisions.

**(a)** Ensure that the universal waste aerosol can is punctured in a manner designed to prevent the release of any universal waste or component of universal waste to the environment.

**(b)** Ensure that the puncturing operations are performed safely by developing and implementing a written procedure detailing how to safely puncture aerosol cans. This procedure must include the type of equipment to be used to puncture the aerosol cans, operation and maintenance of the unit, safe work practices, and proper waste management practices.

**(c)** Ensure that a spill clean-up kit is readily available to immediately clean up spills or leaks of the contents of the aerosol can which may occur during the can-puncturing operation.

**(d)** Immediately transfers the contents of the aerosol can, or puncturing device if applicable, to a container that meets the requirements of 40 CFR Section 262.34.

**(e)** Ensure that the area in which the aerosol cans are punctured is well ventilated.

**(f)** Ensure that employees are thoroughly familiar with the procedure for sorting and puncturing aerosol cans, and proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.

**(g)** Determine whether the contents of the aerosol can, residues, and other solid wastes generated from the aerosol can puncturing activities are a hazardous waste identified in this part.

**(h)** Manage the contents of the universal waste aerosol can, residues, and other solid waste generated from the aerosol can puncturing activities in accordance with all applicable hazardous waste management requirements if they exhibit one or more of the characteristics identified in Subpart C of 40 CFR Part 261 or if its contents are listed in Subpart D of 40 CFR Part 261. The handler is considered the generator of the contents of the universal waste aerosol can and other solid waste generated from the aerosol can puncturing activities. If the contents of the universal waste aerosol can, residues, or other solid waste are not hazardous, the handler may manage the waste in a way that is in compliance with applicable federal, state or local solid waste regulations.

**(4)** Labeling or marking. Each universal waste aerosol can, or each container in which universal waste aerosol cans are contained or accumulated, must be labeled or marked clearly with any one of the following phrases: "universal waste-aerosol can(s)", "waste aerosol can(s)," or other words that accurately identify the contents, for example, "spent aerosol can(s)."

[20.4.1.1001 NMAC - Rp, 20 NMAC 4.1.1001, 12/1/2018]

**20.4.1.1002 ADOPTION OF 40 CFR PART 279:**

Except as otherwise provided, the regulations of the United States environmental protection agency set forth in 40 CFR Part 279 as it may be modified or amended is hereby incorporated by reference.

[20.4.1.1002 NMAC - Rp, 20 NMAC 4.1.1002, 12/1/2018]

**20.4.1.1003 MODIFICATIONS, EXCEPTIONS AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions and omissions are made to the incorporated federal regulations.

**A.** Alternative used oil labeling for generators. As an alternative to the labeling requirements for containers and aboveground tanks used to store used oil in 40 CFR Section 279.22, used oil generators may use other words that accurately identify the used oil, for example, "waste oil" or "oil for recycling."

**B.** Used oil storage.

**(1)** In addition to the requirements for used oil storage in 40 CFR Section 279.22, containers and aboveground tanks used to store used oil outdoors must be closed, except when it is necessary to add or remove used oil.

**(2)** With the exception of the response to releases requirements in 40 CFR 279.22(d), this section does not apply to used oil storage containers, used temporarily in the normal course of maintenance and service activities, where these containers are emptied at the end of each work day or shift.

[20.4.1.1003 NMAC – Rp, 20 NMAC 4.1.1003, 12/1/2018]

**20.4.1.1004-20.4.1.1099 [RESERVED]**

[20.4.1.1004 - 20.4.1.1099 - Rp, 20 NMAC 4.1.1004 - 4.1.1099, 12/1/2018]

**20.4.1.1100 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this Part does not relieve a person of the obligation to comply with all other applicable state and federal regulations. If the EPA should suspend any federal hazardous waste regulation having a direct counterpart to these regulations, the counterpart in these regulations shall be deemed suspended without any further action being taken.

[20.4.1.1100 NMAC - Rp, 20 NMAC 4.1.1100, 12/1/2018]

#### **20.4.1.1101 CONSTRUCTION:**

This Part shall be liberally construed to effectuate the purpose of the Act.

[20.4.1.1101 NMAC - Rp, 20 NMAC 4.1.1101, 12/1/2018]

#### **20.4.1.1102 REFERENCE TO 40 CFR PART 124:**

Reference to any provisions of 40 CFR Part 124 within the text of any other provision of 40 CFR as adopted by this Part shall be construed to mean the corresponding provision of section 901 of this Part with the exception of any reference to 40 CFR sections 124.31 through 124.33 and any reference to any section of 40 CFR Part 124 that is contained within 40 CFR sections 124.31 through 124.33.

[20.4.1.1102 NMAC - Rp, 20 NMAC 4.1.1102, 12/1/2018]

#### **20.4.1.1103 REFERENCE TO 40 CFR PART 280:**

Reference to any provisions of 40 CFR Part 280 within the text of any other provision of 40 CFR as adopted by this Part shall be construed to mean the New Mexico Underground Storage Tank Regulations, 20.5.1 through 20.5.17 NMAC.

[20.4.1.1103 NMAC - Rp, 20 NMAC 4.1.1103, 12/1/2018]

#### **20.4.1.1104 SEVERABILITY:**

If any provision or application of this Part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.4.1.1104 NMAC - Rp, 20 NMAC 4.1.1104, 12/1/2018]

#### **20.4.1.1105 EFFECT OF STAY OR INVALIDATION OF INCORPORATED FEDERAL REGULATION:**

If any federal regulation incorporated by reference in this Part is stayed, invalidated, or otherwise rendered unenforceable by EPA, in whole or in part, by action of a federal court or by the EPA, such incorporated federal regulation shall be enforceable by the department only to the extent it is enforceable by EPA.

[20.4.1.1105 NMAC - Rp, 20 NMAC 4.1.1105, 12/1/2018]

#### **20.4.1.1106 SAVING CLAUSE:**

Amendment and supersession of EIB/HWMR7 and this Part shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to EIB/HWMR-7 or this Part.

[20.4.1.1106 NMAC - Rp, 20 NMAC 4.1.1106, 12/1/2018]

**20.4.1.1107 AVAILABILITY OF MATERIALS INCORPORATED BY REFERENCE:**

Materials incorporated by reference into this Part may be reviewed at the New Mexico Hazardous Waste Bureau, 2905 Rodeo Park Drive East, Bldg. 1, Santa Fe, New Mexico 87505.

[20.4.1.1107 NMAC - Rp, 20 NMAC 4.1.1107, 12/1/2018]

**PART 2: HAZARDOUS WASTE PERMIT AND CORRECTIVE ACTION FEES**

**20.4.2.1 ISSUING AGENCY:**

Environmental Improvement Board.

[12/31/1998; 20.4.2.1 NMAC - Rn, 20 NMAC 4.2.I.101, 8/18/2006]

**20.4.2.2 SCOPE:**

This part applies to all persons who own or operate a permitted facility at which the treatment, storage or disposal of hazardous waste is occurring or has occurred, all persons seeking or required to obtain a permit for the treatment, storage or disposal of hazardous waste or corrective action, all persons subject to an enforceable document under the New Mexico Hazardous Waste Act, and all persons engaging in or required to engage in closure, post closure care and corrective action under the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978.

[12/31/1998; 20.4.2.2 NMAC - Rn, 20 NMAC 4.2.I.102, 8/18/2006; A, 3/5/2020]

**20.4.2.3 STATUTORY AUTHORITY:**

Sections 74-1-8, 74-4-4, 74-4-4.2 and 74-4-4.5 NMSA 1978.

[12/31/1998; 20.4.2.3 NMAC - Rn, 20 NMAC 4.2.I.103 & A, 8/18/2006]

**20.4.2.4 DURATION:**

Permanent.

[12/31/1998; 20.4.2.4 NMAC - Rn, 20 NMAC 4.2.I.104, 8/18/2006]

**20.4.2.5 EFFECTIVE DATE:**

December 31, 1998, unless a later date is cited at the end of a section.

[12/31/1998; 20.4.2.5 NMAC - Rn, 20 NMAC 4.2.I.105 & A, 8/18/2006]

#### **20.4.2.6 OBJECTIVE:**

The objective of this part is to provide a schedule of fees for facilities seeking permits, currently permitted, or undergoing corrective action for past or present hazardous waste management activities. Fees paid are for deposit in the hazardous waste fund to meet necessary expenses in the administration and operation of the state hazardous waste program.

[12/31/1998; 20.4.2.6 NMAC - Rn, 20 NMAC 4.2.I.106, 8/18/2006]

#### **20.4.2.7 DEFINITIONS:**

Unless otherwise defined in this part, the words and phrases used in this part have the same meanings as in 20.4.1 NMAC, Hazardous Waste Management regulations. As used in this part:

##### **A. Terms beginning with the letter "A":**

(1) **"Accelerated corrective action completion report"** or **"accelerated corrective measures completion report"** means a report on implementation of presumptive remedies at small and relatively simple units where groundwater contamination is not a component of the accelerated cleanup, where the remedy is considered to be the final remedy for the unit, and where the field work will be accomplished within 180 days of commencement;

(2) **"Accelerated corrective action work plan"** or **"accelerated corrective measures work plan"** means a work plan to implement presumptive remedies at small and relatively simple units where groundwater contamination is not a component of the accelerated cleanup, where the remedy is considered to be the final remedy for the unit, and where the field work will be accomplished within 180 days of commencement;

(3) **"Act"** means the New Mexico Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978;

(4) **"Administrative authority"** means the secretary of the New Mexico environment department, or the secretary's designee, or, in the case of provisions for which the state is not authorized, the United States environmental protection agency (EPA);

(5) **"Administratively complete"** means a determination made by the secretary that an application contains all the general information required in 40 CFR 270.13, applicable specific information in sections 40 CFR 270.14 through 270.28 and is complete as defined by the regulations of 20.4.1.900 NMAC incorporating 40 CFR 270.10 (c) and (d);

(6) **"Area of concern" or "AOC"** means any area having a known or suspected release of hazardous waste or hazardous constituents that is not from a solid waste management unit and that the secretary has determined may pose a current or potential threat to human health or the environment, pursuant to 20.4.1.500 NMAC (incorporating 40 CFR 270.32 (b) (2)). An area of concern may include buildings, and structures at which releases of hazardous waste or constituents were not remediated, including one-time and accidental events;

**B. Terms beginning with the letter "B":**

(1) **"Background study report"** means a report documenting the results of a study to determine background concentrations of naturally occurring inorganic compounds;

(2) **"Background study work plan"** means a plan proposing the methods to evaluate naturally occurring concentrations of inorganic compounds in environmental media;

**C. Terms beginning with the letter "C":**

(1) **"Certification of completion"** means a report documenting completion of corrective action required at a unit, submitted to the NMED to demonstrate that corrective action requirements for the unit, have been satisfied;

(2) **"Closure certification document"** means all documentation certified by a New Mexico registered professional engineer in a certification of closure that is submitted by an owner or operator;

(3) **"Corrective action"** means any activity related to site assessment, investigation, remediation, characterization or monitoring including reporting and document submittals at SWMUs or AOCs, including activities related to off-site migration;

(4) **"Corrective action complete with controls"** means that NMED has determined that no additional remedial activity is required at a unit, but the unit requires continued performance of operation and maintenance, or monitoring actions for engineering controls, or institutional controls;

(5) **"Corrective action complete without controls"** means that NMED has determined that no additional remedial activity is required at a unit;

(6) **"Corrective measures evaluation" or "CME" or "corrective measures study report" or "CMS report"** means a report or study that evaluates remedial alternatives for the purpose of remedy selection and includes specifications to implement a proposed remedy;

(7) **"Corrective measures evaluation work plan"** or **"CME work plan"** or **"corrective measures study work plan"** or **"CMS work plan"** means a plan to identify, develop and evaluate potential corrective measures (remedy) alternatives;

(8) **"Corrective measures implementation work plan"** or **"CMI work plan"** means plans and specifications to implement the approved remedy at a facility;

(9) **"Corrective measures implementation report"** or **"CMI report"** means a report signifying completion of the remedy approved by NMED for termination of corrective action;

**D. Terms beginning with the letter "D": [RESERVED]**

**E. Terms beginning with the letter "E":**

(1) **"Emergency permit"** means an emergency permit as defined at 40 CFR 270.61;

(2) **"Enforceable document"** means an order, a plan, or other document issued by EPA or the state under an authority that meets the requirements of 40 CFR 271.16 (e);

**F. Terms beginning with the letter "F":**

(1) **"FFCO"** means federal facility compliance order;

(2) **"Frequent monitoring plan"** means a plan that describes proposed periodic monitoring activities for detection compliance or corrective action monitoring, monitoring of a remediation system, or other corrective measure monitoring for a single site or contiguous sites with shared boundaries;

(3) **"Frequent monitoring report"** or **"Frequent progress report"** means a report that describes periodic monitoring activities and results for detection, compliance or corrective action monitoring, monitoring of a remediation system, or other corrective measure monitoring or progress related to a corrective measure for a single site or contiguous sites with shared boundaries;

**G. Terms beginning with the letter "G": [RESERVED]**

**H. Terms beginning with the letter "H":**

(1) **"Hazardous waste management activity"** means the treatment, storage, or disposal of hazardous waste within a hazardous waste management unit at a facility subject to a hazardous waste permit or operated under interim status and subject to permit authorization, or any closure or post-closure care activity required at a hazardous waste management unit;

(2) **"HWMR"** means the New Mexico Hazardous Waste Management regulations, Title 20, Chapter 4, Part 1 of the New Mexico administrative code;

**I. Terms beginning with the letter "I":**

(1) **"Interim measures report"** means a report that describes the results of interim corrective measures conducted to abate, minimize, stabilize, mitigate, or eliminate a release or threat of release, implemented prior to implementation of a final remedy;

(2) **"Interim measures work plan"** means a work plan to implement proposed interim corrective measures conducted to abate, minimize, stabilize, mitigate, or eliminate a release or threat of release, implemented prior to implementation of a final remedy;

(3) **"Investigation report" or "RFI report" or "RCRA facility investigation report" or "phase report"** means a report that summarizes the results of investigation of the nature, rate, movement and extent of contamination at a unit or facility;

(4) **"Investigation work plan" or "RFI work plan" or "RCRA facility investigation work plan"** means a work plan that describes proposed investigation activities to evaluate the nature, rate, movement and extent of contamination at a unit or facility;

**J. Terms beginning with the letter "J": [RESERVED]**

**K. Terms beginning with the letter "K": [RESERVED]**

**L. Terms beginning with the letter "L":**

(1) **"Letter report" or "Supplemental report" or "Report addendum"** means a report summarizing the results of the implementation of a work plan of limited scope where the field work was completed in seven working days or less and that did not constitute the initial field investigation at a site.

(2) **"Letter work plan" or "Supplemental work plan" or "Work plan addendum"** means a work plan of limited scope that describes proposed corrective action activities where the field work can be completed in seven working days or less and does not constitute the initial field investigation of a site.

**M. Terms beginning with the letter "M":**

(1) **"Monitoring plan"** means a plan that describes proposed periodic monitoring activities for detection, compliance or corrective action monitoring, monitoring of a remediation system, or other corrective measure monitoring;

**N. Terms beginning with the letter "N":**

(1) **"Notice of land transfer"** means a notice that initiates NMED evaluation of the results of investigation activities conducted to evaluate the nature, rate, movement and extent of contamination and corrective measures at a property that is anticipated to be transferred to an owner other than the owner regulated by a permit or enforceable document;

(2) **"NMED"** means the New Mexico environment department;

(3) **"Notice of disapproval" or "Disapproval"** means NMED-issued correspondence requiring revision and resubmittal of a deficient document;

**O. Terms beginning with the letter "O": "Operation and maintenance plan"** means a plan that describes operation, maintenance and monitoring of a remediation system or other corrective measure or monitoring activity that requires continued monitoring or upkeep during implementation;

**P. Terms beginning with the letter "P":**

(1) **"Periodic monitoring report"** means a report that summarizes periodic detection, compliance or corrective action ground water monitoring, monitoring of a remediation system, or other corrective measure monitoring;

(2) **"Person"** means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body; and shall include each department, agency and instrumentality of the United States;

(3) **"Petition for corrective action complete review"** means a petition to change the status of a unit from "subject to corrective action" to a different status (e.g., corrective action complete or no further action required) based on the results of corrective action activities or other relevant information

(4) **"Pilot/aquifer test report"** means a report summarizing the results of pilot or aquifer tests conducted to evaluate hydrologic or other conditions for the purpose of site characterization or remedy selection;

(5) **"Pilot/aquifer test work plan"** means a work plan for conducting pilot or aquifer tests to evaluate hydrologic or other conditions for the purpose of site characterization or remedy selection;

**Q. Terms beginning with the letter "Q": [RESERVED]**

**R. Terms beginning with the letter "R":**

(1) **"RCRA facility assessment" or "RFA"** means the first stage in the corrective action process in which information is compiled on conditions at the site, including releases, potential releases, exposure pathways, solid waste management units, and areas of concern;

(2) **"Rejected document"** means a document deemed unreviewable due to deficiencies related to permit or other enforceable document requirements, disorganization, or a substantial amount of missing information, inaccuracies, or unrelated or redundant information;

(3) **"Release assessment" or "SWMU assessment report"** means an assessment of a solid waste management unit or area of concern performed after the RCRA facility assessment but before the initiation of any field investigation or full site characterization to obtain information for use in focusing subsequent investigations or eliminating certain units or areas from further consideration;

(4) **"Remedial action plan" or "RAP"** means a special form of a RCRA permit as defined in 20.4.1.900 NMAC, incorporating 40 CFR 270.80;

(5) **"Remedy completion report"** means a report summarizing the results of completion of the implementation of corrective measures;

(6) **"Revision" or "Document revision"** means a document that is revised and resubmitted by a facility in response to comments issued by the department in a Notice of Disapproval or Disapproval as distinct from revisions submitted in response to an Approval with Modification(s);

(7) **"Risk evaluation/risk assessment report"** means a report summarizing the results of a risk evaluation or assessment for the purpose of evaluating the human health and ecological risks of exposure to contaminants and determining appropriate cleanup levels at a site;

#### **S. Terms beginning with the letter "S":**

(1) **"Secretary"** means the secretary of the New Mexico environment department;

(2) **"Solid waste management unit" or "SWMU"** means any discernible unit at which solid wastes have been placed at any time, irrespective of whether the unit was intended for the management of solid or hazardous waste; such units include any area at a facility at which solid wastes have been routinely and systematically released;

(3) **"Submittal"** means all applications, permit modification requests, plans, reports, studies, and other documents listed in tables 2 through 7 in 20.4.2.205 NMAC through 20.4.2.210 NMAC;

(4) **"Status report"** means a report summarizing the progress of implementation of corrective actions or corrective measures;

**T. Terms beginning with the letter "T": [RESERVED]**

**U. Terms beginning with the letter "U": "Unit"** means "hazardous waste management unit" as defined in 20.4.1.101 NMAC, incorporating 40 CFR 260.10, or solid waste management unit, or area of concern;

**V. Terms beginning with the letter "V": [RESERVED]**

**W. Terms beginning with the letter "W": [RESERVED]**

(1) **"Well completion report"** means a report summarizing the activities related to the drilling and installation of wells.

(2) **"Well abandonment report" or "Well replacement report"** means a report summarizing the activities related to abandonment or replacement of a well;

(3) **"Well abandonment work plan" or "Well replacement work plan"** means a work plan that describes the proposed activities to abandon or replace a well.

[12/31/1998; 20.4.2.7 NMAC - Rn, 20 NMAC 4.2.I.107 & A, 8/18/2006; A, 3/5/2020]

**20.4.2.8-20.4.2.107 [RESERVED]**

**20.4.2.108 GENERAL PROVISIONS:**

Saving clause: Repeal and replacement of hazardous waste fees, New Mexico environmental improvement board, 20.4.2 NMAC, shall not affect any administrative or judicial enforcement action pending on the effective date of this part.

[12/31/1998; 20.4.2.108 NMAC - Rn, 20 NMAC 4.2.I.108, 8/18/2006]

**20.4.2.109-20.4.199[RESERVED]**

**20.4.2.200 PERMIT APPLICATION, INTERIM STATUS, REMEDIAL ACTION PLAN, AND CORRECTIVE ACTION FEES:**

[12/31/1998; 20.4.2.200 NMAC - Rn, 20 NMAC 4.2.II.200 & A, 8/18/2006]

**20.4.2.201 TYPES OF FEES:**

Every owner or operator engaged in hazardous waste management activities or engaged in corrective action shall pay to NMED fees in the amounts specified in Subsections A through L of 20.4.2.201 NMAC. However, if an owner or operator has

paid a fee for any type of permit application, or for the review of a submittal, prior to the effective date of these regulations, the owner or operator shall not be required to pay the fee provided for by these regulations. An owner or operator who has paid a fee provided for in table 2 or table 4 for permit applications or permit modification requests shall be required to pay the applicable fee again if the application or document is resubmitted by the owner or operator after being denied under Section 74-4-4.2 NMSA 1978 and 20.4.1.901 NMAC by NMED. The secretary may in his discretion, based on good cause shown, determine that the fee on resubmission should be reduced or waived.

**A. Annual Fees:** Every owner or operator engaged in hazardous waste management activities or engaged in corrective action shall pay to NMED an annual fee in an amount equal to the sum of the annual unit fees set forth in table 1 of 20.4.2.204 NMAC for each unit as identified in the facility permit, part A application, or enforceable document, or any combination thereof as applicable.

**B. Submittal review process:**

(1) For each submittal, the owner or operator shall pay the associated review fee as listed in the tables in 20.4.2.205 NMAC through 20.4.2.210 NMAC. NMED will conduct the review within the time specified in the tables in 20.4.2.205 NMAC through 20.4.2.210 NMAC. The secretary may grant an extension of time for good cause shown. NMED shall provide notice to the owner or operator of any requested time extension.

(2) NMED will invoice the owner or operator for the applicable review fee:

(a) Within 60 days of receipt of submittal, in the case of interim status fees, corrective action submittal fees, and other fees assessed under tables 3, 5, 6, and 7 of 20.4.2.206 NMAC and 20.4.2.208 NMAC through 20.4.2.210 NMAC.

(b) After an application is deemed administratively complete, in the case of application and permit modification fees under table 2 of 20.4.2.205 NMAC and table 4 of 20.4.2.207 NMAC. For class 2 permit modification requests the invoice shall be issued within 30 days of receipt and the procedures of 40 CFR 270.42, as incorporated by 20.4.1.900 NMAC, shall apply. Unless extended by the secretary, administrative completeness determination shall be made within 270 days of receipt of the submittal. If the application is incomplete, NMED shall provide the owner or operator with written notice that shall list those parts of the application that are missing and describe the specific information needed to process the permit application.

(3) The timeframe for NMED review begins after receipt of payment, except for class 2 permit modification requests, in which case the time frame for NMED's review begins upon receipt of the request.

(4) NMED will provide the owner or operator written notice of approval, approval with modifications, disapproval, denial, or rejection of the submittal. If the

submittal is disapproved, denied or rejected, NMED shall provide the owner or operator with written notice providing the reasons for such action.

(5) The review times specified in the tables in 20.4.2.205 NMAC through 20.4.2.210 NMAC shall be tolled during all periods in which NMED is awaiting a response by the owner or operator to a notice under Paragraph (1) of Subsection B of 20.4.2.201 NMAC and during all time periods in which further action cannot be taken due to public comment and hearing requirements, except for class 2 permit modification requests, in which case the time frame for NMED's review begins upon receipt of the request.

(6) If NMED fails to meet a notice date pursuant to 20.4.2.205 NMAC through 20.4.2.210 NMAC, including an administrative completeness notice date, the NMED shall, within 10 business days after the deadline, notify the secretary and the owner or operator that the deadline was not met. The written notice shall state the reasons that the deadline was not met and propose a new deadline by which the NMED will act. The owner or operator may submit a written response to the secretary regarding its proposed remedy within 10 business days of its receipt of the notification. The secretary, at his or her discretion, shall establish a new notice date and remedy within 30 days after the secretary receives notice that the deadline was not met.

(7) In the event of a conflict between review time and notice dates in these regulations and in an enforceable document, the time-periods and review process in the enforceable documents shall control.

**C. Permit application, remedial action plan, and corrective action section fees:** Every owner or operator seeking a permit for the treatment, storage or disposal of hazardous waste or for post closure care shall pay an application review and permit preparation fee set forth in table 2 of 20.4.2.205 NMAC. The fee for application review and permit preparation shall be in an amount equal to the sum of the fees for each unit included in the permit application. If a corrective action section is required, the owner or operator shall also pay the basic fee for corrective action preparation set forth in table 2 of 20.4.2.205 NMAC plus the additional unit fee for each corrective action unit in excess of one which is addressed by the corrective action section. NMED will perform the review of the application and prepare the draft permit within the time specified in table 2 of 20.4.2.205 NMAC after receipt of the fees.

**D. Permit renewals:** Every owner or operator seeking to renew a previously issued permit for the treatment, storage or disposal of hazardous waste or for post-closure care shall pay an application review and permit preparation fee, and if required, a corrective action section fee, in the amounts and in the manner set forth in table 2 in 20.4.2.205 NMAC.

**E. Interim status closure plan review fees:** Every owner or operator submitting an interim status closure plan for review and approval shall pay a fee set forth in table 3 of 20.4.2.206 NMAC. The fee shall be in an amount equal to the sum of the fees set forth

in table 3 of 20.4.2.206 NMAC for each unit included in the closure plan. An application to modify an approved interim status closure plan is subject to the following fees:

(1) Amendments of plans that are identified as equivalent to a class 1 or a class 2 permit modifications are subject to the corresponding fee in table 4 in 20.4.2.207 NMAC;

(2) Amendments of plans identified as equivalent to class 3 permit modifications are subject to the corresponding fee in table 3 in 20.4.2.206 NMAC.

**F. Permit modification fees:** Every owner or operator who requests a class 1, 2, or 3 modification to a permit, and every owner or operator whose permit is to be modified as a result of a five year land disposal review shall pay the applicable class modification fee for each modification as set forth in table 4 of 20.4.2.207 NMAC. If the permit modification request is to add a new unit to the permit the applicable fee in table 2 of 20.4.2.205 NMAC will apply.

**G. Closure report review fees:** Every owner or operator who submits a closure report for review shall pay a closure report review fee as set forth in table 3 of 20.4.2.206 NMAC.

**H. Corrective action submittal review fees:** Every owner or operator who submits a corrective action submittal for review shall pay a corrective action submittal review fee as set forth in table 5 of 20.4.2.208 NMAC. An additional unit fee shall be paid for each additional unit for submittals that address multiple units. Documents that contain attached documents or attached sections of other documents within the submittal will be assessed a separate document review fee for the attached document or document section corresponding to the document type listed in table 5 of 20.4.2.208 NMAC. Draft documents shall be considered initial submittals subject to the corrective action submittal review fees as set forth in table 5 of 20.4.2.208 NMAC. Rejected documents shall be subject to the corrective action submittal review fees as set forth in table 5 of 20.4.2.208 NMAC upon resubmittal.

**I. Land disposal review fee:** Every owner or operator subject to a review under 20.4.1.900 NMAC (incorporating 40 CFR 270.50 (d)) shall pay a review fee as set forth in table 6 of 20.4.2.209 NMAC. At the time of invoicing, NMED shall notify the owner or operator in writing of any additional information required to process the review.

**J. Audit review fee:** Every owner or operator subject to an audit review required under a facility permit or enforceable document shall pay an audit fee for each audit as set forth in table 6 of 20.4.2.209 NMAC.

**K. FFCO fee:** Every owner or operator subject to a review of amendments, annual reports, and revisions under an FFCO shall pay a fee as set forth in table 6 of 20.4.2.209 NMAC. In the event of a conflict between the review times specified in table 6 and the FFCO, the FFCO shall control.

**L. Change during interim status fee:** Every owner or operator who requests a change during interim status pursuant to 20.4.1.900 NMAC (incorporating 40 CFR 270.72) shall pay the following fees:

(1) Modifications that are identified as being equivalent to class 1 or class 2 permit modifications are subject to the corresponding fee in table 7 in 20.4.2.210 NMAC;

(2) Modifications identified as equivalent to class 3 permit modifications are subject to the corresponding fee in table 7 in 20.4.2.210 NMAC.

**M. Emergency permit fee:** Every facility that requests an emergency permit as required by 40 CFR 270.61 shall pay a fee as set forth in table 6 of 20.4.2.209 NMAC.

**N. Adjustment for inflation:** Beginning January 1 following the effective date of these fee regulations, the fees listed in 20.4.2.204 through 20.4.2.210 shall be adjusted annually to account for inflation. The amounts shall be adjusted by the percentage of the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States Department of Labor. The amount of change in the fee shall be rounded to the nearest fifty dollars (\$50).

[12/31/1998; 20.4.2.201 NMAC - Rn, 20 NMAC 4.2.II.201 & A, 8/18/2006; A, 3/5/2020]

#### **20.4.2.202 ANNUAL FEE REPORT:**

On or before September 30 of every year, NMED shall review the amount of fees collected and the amount of money expended administering the hazardous waste management program for the prior state fiscal year and submit a report on its review to the board. The report shall include for each facility the amount of fees collected, the number and types of permitting actions taken, submittals reviewed, a summary of the time required to conduct each review or permitting action, and an analysis of the cost of regulatory oversight. The report shall include a summary of funds received and expenses required to administer the state hazardous waste program.

[12/31/1998; 20.4.2.202 NMAC - Rn, 20 NMAC 4.2.II.202 & A, 8/18/2006]

#### **20.4.2.203 HEARING FEES:**

**A.** An applicant for issuance, renewal, or modification of a permit, or remedy selection shall be required to pay the following hearing fees if the secretary determines that a public hearing shall be held on the application.

(1) **Hearing fee:** The applicant shall be invoiced a hearing fee of \$25,000 within 30 days of notification by the secretary that a hearing will be scheduled.

**(2) Administrative record preparation fee:** The applicant shall pay an administrative record preparation fee equal to the actual cost of copying the administrative record for the public hearing process.

**(3) Facility fee:** The applicant shall pay a facility fee equal to the actual cost of providing the public facility, including security and other ancillary costs, necessary to conduct the public hearing.

**(4) Recording and Transcription service fee:** The applicant shall pay a recording and transcription service fee equal to the actual cost of providing recording and transcription services for the public hearing and providing three copies of the hearing transcript to NMED.

**(5) Translation service fee:** If the secretary determines that translation services are required for the public hearing, the applicant shall pay a translation service fee equal to the actual cost of providing translation services necessary to conduct the public hearing.

**(6)** The applicant shall be invoiced for the total cost of the hearing within 90 days after the secretary's final decision under Subsection A of 20.4.2.203 NMAC. The hearing fee required under Paragraph (1) of Subsection A of 20.4.2.203 NMAC will be credited against the total cost of the hearing, or if the fee is more than the total cost of the hearing it shall be credited for future actions.

[12/31/1998; 20.4.2.203 NMAC - Rn, 20 NMAC 4.2.II.201.8 & 203 & A, 8/18/2006; A, 3/5/2020]

**20.4.2.204 TABLE 1 -ANNUAL FEES:**

Unit Type	Fee
Disposal	\$5,500
Treatment	\$4,000
Storage	\$3,000
Post Closure	\$5,500
Corrective Action Management (CAMU)	\$5,500
Temporary (TU)	\$4,000
Remedial Action Plan Unit	\$4,000
Corrective Action Only	
SWMU/AOC per Unit:	\$1000
Corrective Action Complete with Controls per Unit	\$350

[12/31/1998; 20.4.2.204 NMAC - Rn, 20 NMAC 4.2.II.204 & A, 8/18/2006; A, 3/5/2020]

**20.4.2.205 TABLE 2- APPLICATION AND CORRECTIVE ACTION SECTION FEES:**

Unit Type	Fee	Fee for Renewal or Modification to add a unit	Review Time
Land Disposal	\$270,000	\$180,000	360 days
Post Closure	\$120,000	\$80,000	360 days
Land Treatment	\$120,000	\$80,000	360 days
Surface Impoundment	\$100,000	\$65,000	360 days
Incinerator	\$100,000	\$65,000	360 days
Boiler or Industrial Furnace	\$100,000	\$65,000	360 days
Subpart X	\$120,000	\$80,000	360 days
Waste Pile	\$144,000	\$96,000	360 days
Treatment in Tanks	\$144,000	\$96,000	360 days
Treatment in Containers	\$144,000	\$96,000	360 days
Storage in Tanks	\$144,000	\$96,000	360 days
Storage in Containers	\$144,000	\$96,000	360 days
Research Demonstration and Development	\$32,000	\$21,500	360 days
Remedial Action Plan	\$32,000	\$21,500	360 days
Permit for Corrective Action Only	\$80,000	\$65,000	360 days
Corrective Action Section	\$10,000	\$7,000	N/A
Additional SWMU/AOC Unit Fee	\$1,300 for each additional unit	N/A	N/A

[12/31/1998; 20.4.2.205 NMAC - Rn, 20 NMAC 4.2.II.205 & A, 8/18/2006; A, 3/5/2020]

**20.4.2.206 TABLE 3 -INTERIM STATUS CLOSURE PLAN AND INTERIM STATUS AND PERMITTED UNIT CLOSURE REPORT REVIEW FEES:**

Unit Type	Fee	Amendment Fee (equivalent to Class 3 permit modification)	Review Time
Land Disposal or Land Treatment	\$20,000	\$10,000	360 days
Surface Impoundment	\$25,000	\$10,000	360 days
Incinerator	\$8,000	\$4,000	270 days
Boiler or Industrial Furnace	\$8,000	\$4,000	270 days
Subpart X	\$30,000	\$15,000	360 days
Waste Pile	\$8,000	\$4,000	270 days
Storage	\$12,000	\$6,000	180 days
Treatment	\$10,000	\$5,000	270 days
Closure Report	\$13,000	NA	180 days

[12/31/1998; 20.4.2.206 NMAC - Rn, 20 NMAC 4.2.II.206 & A, 8/18/2006; A, 3/5/2020]

**20.4.2.207 TABLE 4 - PERMIT MODIFICATION FEES:**

Modification	Fee	Review Time
Class 1 (without prior approval)	\$1,800	N/A
Class 1 (with prior approval)	\$6,500	120 days
Class 2	\$30,000	Refer to 20.4.1.900 NMAC (incorporating 40 CFR 270.42 (b))
Class 3	\$100,000	360 days
Class 3 - Petition for Corrective Action Complete Review/Petition for No Further Action Review	\$30,000  plus \$500 for each additional unit up to 20 units and plus \$750 for every unit over 20 units	270 days (plus 30 days for every 10 units over 20)

[12/31/1998; 20.4.2.207 NMAC - Rn, 20 NMAC 4.2.II.207 & A, 8/18/2006; A, 3/5/2020]

**20.4.2.208 TABLE 5- CORRECTIVE ACTION SUBMITTAL REVIEW FEES:**

Submittal Type	Basic Review Fee	Additional Unit Fee	Review Time
Accelerated Corrective Action Completion Report/Accelerated Corrective Measures Completion Report	\$11,000	\$1,000	120 days
Accelerated Corrective Action Work Plan/Accelerated Corrective Measures Work Plan	\$9,000	\$1,000	120 days
Background Study Report	\$5,000	\$1,000	210 days
Background Study Work Plan	\$4,000	\$1,000	210 days
Certification of Completion per unit	\$3,000	NA	90 days
Corrective Measures Implementation Report	\$10,000	\$1,000	360 days
Corrective Measures Implementation Work Plan	\$18,000	\$1,000	270 days
Corrective Measures Study Report/ Corrective Measures Evaluation	\$30,000	\$1,000	480 days

Corrective Measures Study Report/ Corrective Measures Evaluation with Risk Assessment	\$35,000	\$1,000	480 days
Corrective Measures Study Workplan/ Corrective Measures Evaluation Workplan	\$8,500	\$1,000	360 days
Frequent Monitoring Plan	\$3,500	\$1,000	120 days
Frequent Monitoring Report/Frequent Progress Report	\$3,000	\$1,000	N/A
Interim Measures Report	\$10,000	\$1,000	120 days
Interim Measures Work Plan	\$17,000	\$1,000	90 days
Investigation Report (RFI Report)/Phase Report	\$18,000	\$1,000	270 days
Investigation Report with Risk Assessment	\$20,000	\$1,000	360 days
Investigation Work Plan (RFI Work Plan)	\$15,000	\$1,000	270 days
Letter Report/Supplemental Report/Report Addendum	\$6,000	\$1,000	180 days
Letter Work Plan/Supplemental Work Plan/Work Plan Addendum	\$5,000	\$1,000	180 days
Monitoring Plan	\$10,000	\$1,000	120 days
Notice of Land Transfer	\$2,000	\$1,000	120 days
Operation and Maintenance Plan	\$9,000	\$1,000	150 days
Periodic Monitoring Report	\$5,000	\$1,000	N/A
Pilot/Aquifer Test Report	\$10,000	\$1,000	120 days
Pilot/Aquifer Test Work Plan	\$7,000	\$1,000	90 days
RCRA Facility Assessment (RFA) Report	\$14,500	\$1,000	180 days
Release Assessment/SWMU Assessment Report	\$8,500	\$1,000	90 days
Remedy Completion Report	\$8,500	\$1,000	180 days
Third Revision/Third Document Revision	50% of corresponding Review Fee	N/A	N/A
Risk Evaluation/Risk Assessment Report	\$14,000	\$1,000	180 days
Status Report	\$8,000	\$1,000	N/A
Well Completion Report per well	\$3,000	NA	90 days

Well Abandonment Report/Well Replacement Report per well	\$2,000	N/A	90 days
Well Abandonment Work Plan/Well Replacement Work Plan per well	\$2,000	N/A	90 days

[20.4.2.208 NMAC - N, 8/18/2006; A, 3/5/2020]

**20.4.2.209 TABLE 6 -LAND DISPOSAL, AUDIT REVIEW AND OTHER FEES:**

Activity	Fee	Review Time
Land Disposal Permit Review	\$10,000	360 days
Audit Review	\$30,000	45 days
FFCO Administration	\$2,000	90 days
Emergency Permit	\$1,000	30 days

[20.4.2.209 NMAC - N, 8/18/2006; A, 3/5/2020]

**20.4.2.210 TABLE 7- CHANGE DURING INTERIM STATUS FEES:**

Submittal Type	Fee	Review Time
Change without prior approval	\$1,800	30 days
Change with prior approval (equivalent to Class 1 permit modification)	\$6,500	120 days
Change with prior approval (equivalent to Class 2 permit modification)	\$30,000	120 days
Change with prior approval (equivalent to Class 3 permit modification)	\$100,000	360 days

[20.4.2.210 NMAC - N, 8/18/2006; A, 3/5/2020]

**20.4.2.211 FEE CALCULATION:**

**A.** The annual fee shall be assessed for each unit identified in the facility permit, Part A application, and enforceable document on January 1 of the assessed year. The annual fee shall be waived for hazardous waste management units for which the owner or operator provides documentation to NMED that hazardous waste management activities did not occur at the unit during the previous calendar year. To be considered for the waiver the owner or operator shall submit the documentation to NMED on or before July 1 of each year.

**B.** The owner or operator of the facility is liable for payment of the undisputed part of the assessed fee on the date the annual fee is due. Payments will not be refunded because of a transfer of ownership or operations to a new owner or operator.

[20.4.2.211 NMAC - Rn, 20 NMAC 4.2.II.208 & A, 8/18/2006]

**20.4.2.212-20.4.2.299 [RESERVED]**

**20.4.2.300 PAYMENT, DUE DATES, AND APPEALS:**

[12/31/1998; 20.4.2.300 NMAC - Rn, 20 NMAC 4.2.III.300 & A, 8/18/2006]

**20.4.2.301 MANNER OF PAYMENT AND DUE DATES:**

**A. Annual Fee Invoices:** NMED shall invoice every owner or operator for the annual fee by October 1 of every year.

**B. Review Fees:** Any submittals listed in tables 2 through 7 of 20.4.2.205 NMAC through 20.4.2.210 NMAC submitted by an owner or operator for review shall be invoiced for the corresponding fee by NMED.

**C. Due Date:** Payment of any fee shall be due within 60 days of receipt of the invoice unless the owner or operator submits to NMED a written request seven days prior to the end of the 60 day period and receives written approval to extend the time for payment before the date payment is due. Failure to submit payment within the 60 days, or approved extension, may result in the document being denied, and further enforcement action.

**D.** All fees shall be paid to NMED by certified check or money order payable to the New Mexico-Environment Department or the Hazardous Waste Bureau, by electronic funds transfer (with prior notice to NMED), or by other methods deemed acceptable by NMED. Cash payments are not an acceptable method of payment. All payments must include the invoice number and be addressed to the New Mexico environment department - hazardous waste bureau.

[12/31/1998; 20.4.2.301 NMAC - Rn, 20 NMAC 4.2.III.301 & A, 8/18/2006; A, 3/5/2020]

**20.4.2.302 APPEAL OF FEE ASSESSMENT:**

**A. Mandatory Settlement Conference:**

Any owner or operator seeking to appeal an invoice for fees under this part must first notify the NMED in writing of the intent to appeal the invoice within 30 calendar days of receipt of the invoice. The notice shall set forth the specific matters in dispute, the basis for the dispute, and any matters considered necessary for NMED's consideration. The parties shall have 30 calendar days from NMED's receipt of notification to meet or confer with NMED to attempt to resolve the matters in the dispute. The secretary may extend deadlines under this section upon a determination that good cause exists. If an agreement is reached resolving the dispute, NMED may issue a revised invoice and the owner and operator shall comply with the terms of such agreement and revised invoice.

If an agreement is not reached, NMED shall issue a notification to all parties that an agreement has not been reached. Failure to notify NMED of an appeal in the required timeframe shall prohibit the owner and operator from appeal of the invoice.

**B. Administrative appeal:**

(1) An invoice for fees may be appealed by filing a written request for hearing with the hearing clerk designated by the secretary of environment within 30 days of the date of the notification that an agreement has not been reached. The written request shall be accompanied by a copy of the invoice being contested and shall set forth the grounds upon which the appellant disagrees with the assessment.

(2) Except as otherwise provided, the appeal shall be governed by 20.1.5 NMAC, Adjudicatory Procedures - Environment Department. The hearing officer shall schedule the hearing for no later than 90 days after service of the notice of docketing.

(3) NMED shall not seek collection of an appealed fee or take enforcement action on an appeal of the fee assessment until the secretary has issued a decision on the appeal. Late charges on the amount assessed shall continue to accrue and shall be payable if the assessment is upheld or upheld with modification. If the assessment is modified on appeal, late charges shall be calculated based on the assessment as modified.

(4) If an appeal is not timely filed pursuant to this subsection, the invoice shall constitute a final action of the secretary of environment.

[12/31/1998; 20.4.2.302 NMAC - Rn, 20 NMAC 4.2.III.302 & A, 8/18/2006; A, 3/5/2020]

**20.4.2.303-20.4.2.399 [RESERVED]**

**20.4.2.400 LATE CHARGES AND ENFORCEMENT:**

[12/31/1998; 20.4.2.400 NMAC - Rn, 20 NMAC 4.2.IV.400, 8/18/2006]

**20.4.2.401 LATE CHARGES:**

If any fee required by this part is not paid in full on the date due, which shall be either 60 days after receipt of the invoice or the end of an approved extension of the time for payment, the person owing the fee shall pay a billing charge of \$100, plus late charges in the amount of an additional one percent of all fees owed for every month or part of a month in which the fees remain unpaid beyond the due date. Billing and late charges shall be credited to the Hazardous Waste Fund and are independent of any penalties assessed under the act.

[12/31/1998; 20.4.2.401 NMAC - Rn, 20 NMAC 4.2.IV.401, 8/18/2006; A, 3/5/2020]

**20.4.2.402 FAILURE TO PAY FEES:**

**A.** Failure to pay any fee required by this part may result in enforcement proceedings under the act including but not limited to the revocation or suspension of any permit issued by NMED pursuant to the act to the person failing to pay the fees as required.

**B.** Fees are not refundable and do not guarantee that a permit will be issued or a submittal or action will be approved by the NMED.

[12/31/1998; 20.4.2.402 NMAC - Rn, 20 NMAC 4.2.IV.402 & A, 8/18/2006]

**20.4.2.403-20.4.2.499 [RESERVED]**

**20.4.2.500 MISCELLANEOUS PROVISIONS:**

[12/31/1998; 20.4.2.500 NMAC - Rn, 20 NMAC 4.2.V.500, 8/18/2006]

**20.4.2.501 DEPOSIT IN THE HAZARDOUS WASTE FUND:**

All fees collected pursuant to this part shall be transmitted to the state treasurer for credit to the hazardous waste fund and used for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.

[12/31/1998; 20.4.2.501 NMAC - Rn, 20 NMAC 4.2.V.501, 8/18/2006]

**20.4.2.502 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person of the obligation to comply with other applicable local, state and federal regulations.

[12/31/1998; 20.4.2.502 NMAC - Rn, 20 NMAC 4.2.V.502, 8/18/2006]

**20.4.2.503 CONSTRUCTION:**

This part shall be liberally construed to effectuate the purpose of the act.

[12/31/1998; 20.4.2.503 NMAC - Rn, 20 NMAC 4.2.V.503, 8/18/2006]

**20.4.2.504 SEVERABILITY:**

If any provision or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[12/31/1998; 20.4.2.504 NMAC - Rn, 20 NMAC 4.2.V.504, 8/18/2006]

**20.4.2.505-20.4.2.599 [RESERVED]**

### **PART 3: HAZARDOUS WASTE FEES**

#### **20.4.3.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.4.3.1 - Rp. 20.4.3.1 NMAC, 3/5/2020]

#### **20.4.3.2 SCOPE:**

This part applies to generators of hazardous waste, and to owners and operators of hazardous waste treatment, storage and disposal facilities which receive imported hazardous waste.

[20.4.3.2 - Rp. 20.4.3.2 NMAC, 3/5/2020]

#### **20.4.3.3 STATUTORY AUTHORITY:**

Subsection J of Section 74-4-4.2 NMSA 1978, directs the board to provide a schedule of business fees for businesses engaged in regulated hazardous waste activity and a schedule of generation fees for businesses generating hazardous waste.

[20.4.3.3 - Rp. 20.4.3.3 NMAC, 3/5/2020]

#### **20.4.3.4 DURATION:**

Permanent.

[20.4.3.4 - Rp. 20.4.3.4 NMAC, 3/5/2020]

#### **20.4.3.5 EFFECTIVE DATE:**

March 5, 2020, unless a different date is cited at the end of a section or paragraph

[20.4.3.5 - Rp. 20.4.3.5 NMAC, 3/5/2020]

#### **20.4.3.6 OBJECTIVE:**

The objective of this part is to provide a schedule of annual fees for hazardous waste generators and treatment, storage and disposal facilities which receive imported hazardous waste, as well as business fees for specific activities or events. The annual and business fees collected will be deposited in the hazardous waste fund to meet necessary expenses in the administration and operation of the state hazardous waste program.

[20.4.3.6 - Rp. 20.4.3.6 NMAC, 3/5/2020]

### **20.4.3.7 DEFINITIONS:**

Unless otherwise defined in this part, the words and phrases used in this part have the same meanings as in 20.4.1 NMAC, Hazardous Waste Management. As used in this part:

**A. "Act"** means the New Mexico Hazardous Waste Act, Sections 74-4-1 to 74-4-14 NMSA 1978;

**B. "Annual fee"** means the hazardous waste fee in 20.4.3.200 NMAC through 20.4.3.203 NMAC;

**C. "Annual imported waste compensating fee"** means the fee on imported hazardous waste in 20.4.3.300 NMAC through 20.4.3.302 NMAC;

**D. "Business fee"** means the fee designated for specific activities or events in 20.4.3.400 NMAC through 20.4.3.402 NMAC;

**E. "CFR"** means the most recent Code of Federal Regulations adopted by reference at 20.4.1 NMAC;

**F. "Compliance assistance visit for salvage yards"** means a pre-arranged inspection at a salvage yard in order for the salvage yard to acquire a New Mexico Motor Vehicle Division Auto Recycler's license;

**G. "Cleanup"** means any activities associated with the removal or remediation of hazardous waste at a site, but does not include closure of a solid or hazardous waste management unit;

**H. "Department"** means the New Mexico environment department;

**I. "Episodic generator"** means a generator that has a planned or unplanned event that does not normally occur during generator operations, resulting in an increase in the generation of hazardous waste that exceeds the calendar month quantity limits for the generator's usual category;

**J. "Emergency Environmental Protection Agency ("EPA") identification number"** means a generator that meets the definition of a large quantity or small quantity generator due to an emergency and requires an EPA identification number to dispose of the hazardous waste;

**K. "Generator"** means a generator under 20.4.1 NMAC, Hazardous Waste Management, who is a large quantity generator, small quantity generator, or very small quantity generator of hazardous waste under this part;

**L. "Hazardous waste"** means all waste or material regulated as hazardous waste under 20.4.1 NMAC, Hazardous Waste Management;

**M. "Imported hazardous waste"** means hazardous waste that was generated outside of the state of New Mexico, including waste generated outside the United States, and that has been transported into the state for treatment, storage, or disposal;

**N. "Large quantity generator"** means a generator who generates more than 1,000 kilograms (or more than 2,204 pounds) of hazardous waste during any month in the calendar year; or a generator who generates more than 1 kilogram (or more than 2.2 pounds) of acutely toxic or "p-listed" hazardous waste in any month in the calendar year; or a generator that accumulates more than 6,000 kilograms (or more than 13,227 pounds) of hazardous waste on site in any month in the calendar year;

**O. "Person"** means any individual, trust, firm, joint stock company, federal agency, corporation, including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body;

**P. "Recycled"** means "used or reused" or "reclaimed" as those terms are defined in 40 CFR, Part 261.1(c);

**Q. "Secretary"** means the secretary of environment;

**R. "Site"** means an "individual generation site" as defined in 40 CFR, Part 260.10;

**S. "Small quantity generator"** means a generator who generates more than 100 kilograms (or more than 220 pounds) but less than 1,000 kilograms (or less than 2,204 pounds) of hazardous waste during any month in the calendar year; or a generator that accumulates more than 1,000 kilograms (or more than 2,204 pounds) of hazardous waste on site in any month in the calendar year;

**T. "Very small quantity generator"** means a generator who generates less than 100 kilograms (or less than 220 pounds) in any month in the calendar year and never accumulates more than 1,000 kilograms (or more than 2,204 pounds) of hazardous waste on site in any month in the calendar year.

[20.4.3.7 - Rp. 20.4.3.7 NMAC, 3/5/2020]

#### **20.4.3.8-20.4.3.107 [RESERVED]**

#### **20.4.3.108 SAVING CLAUSE:**

Amendment of these fee regulations shall not affect any administrative or judicial enforcement action pending on the effective date of this part.

[20.4.3.108 - Rp. 20.4.3.108 NMAC, 3/5/2020]

**20.4.3.109 [RESERVED]**

[Repealed, 3/5/2020]

**20.4.3.110 [RESERVED]**

[Repealed, 3/5/2020]

**20.4.3.111 ORPHAN WASTE:**

Nothing in this part is intended to require the payment of annual hazardous waste fees on orphan hazardous waste or waste generated as a result of the cleanup of orphan hazardous waste. "Orphan hazardous waste" means hazardous waste for which a responsible party cannot be identified. The department may collect any fees otherwise owed from the person responsible for the creation of the orphan hazardous waste, if later identified.

[20.4.3.109 - Rp. 20.4.3.109 NMAC, 3/5/2020]

**20.4.3.112-20.4.3.199 [RESERVED]**

**20.4.3.200 ANNUAL FEES:**

Based on activities as defined in 20.4.3.7 NMAC, facilities shall pay fees to the department annually, in accordance with the provisions of this part.

[20.4.3.200 - Rp. 20.4.3.200 NMAC, 3/5/2020]

**20.4.3.201 FEE SCHEDULE:**

Annual fees are set forth below:

- A.** Very small quantity generator: \$100;
- B.** Small quantity generator: \$500;
- C.** Large quantity generators that generate 100,000 pounds or less of hazardous waste annually: \$5,000;
- D.** Large quantity generators that generate more than 100,000 pounds but less than 400,000 pounds of hazardous waste annually: \$10,000;
- E.** Large quantity generators that generate 400,000 pounds or more of hazardous waste: \$20,000.

[20.4.3.201 - Rp. 20.4.3.201 NMAC, 3/5/2020]

#### **20.4.3.202 FEE CALCULATION:**

**A.** Nothing herein is intended to affect the generator's obligations with respect to reporting or record keeping under other applicable laws and regulations.

**B.** The total annual fees due are the cumulative total of the fees for all sites engaged in activities as defined in 20.4.3.7 NMAC during the calendar year prior to the year in which the fee is to be paid, subject to the limits set forth in 20.4.3.109 NMAC;

**C.** Beginning January 1 following the effective date of these fee regulations, the fees listed in 20.4.3.401 NMAC shall be adjusted annually to account for inflation. The amounts shall be adjusted by the percentage of the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States Department of Labor. The amount of change in the fee shall be rounded to the nearest one dollar (\$1.00).

[20.4.3.202 - Rp. 20.4.3.202 NMAC, 3/5/2020]

#### **20.4.3.203 TRANSFER OF OWNERSHIP/OPERATIONS:**

The transferor must report the waste generated during the calendar year in which the transfer takes place on a form obtained from the department. This report and payment shall be submitted to the department at the time of transfer.

[20.4.3.203 - Rp. 20.4.3.203 NMAC, 3/5/2020]

#### **20.4.3.204-20.4.3.299 [RESERVED]**

#### **20.4.3.300 IMPORTED WASTE COMPENSATING FEES:**

**ANNUAL IMPORTED WASTE COMPENSATING FEES:** For waste that is generated out-of-state, but treated, stored, or disposed of in New Mexico, an annual imported waste compensating fee shall be paid in lieu of the fee provided for in 20.4.3.200 NMAC through 20.4.3.203 NMAC. The owner or operator of the facility first receiving the imported hazardous waste shall pay to the department annually one cent (\$0.01) per pound of hazardous waste managed in New Mexico, in accordance with the provisions of this part.

[20.4.3.300 - Rp. 20.4.3.300 NMAC, 3/5/2020]

#### **20.4.3.301 FEE SCHEDULE:**

The annual fee and the exclusions applicable thereto shall apply to imported hazardous waste to the same extent as if the waste had been generated within the state. For purposes of determining the volume of waste and the fees due, all imported hazardous

waste received by a facility, during the calendar year prior to the year in which the fee is to be paid, shall be considered to have been received from a single source.

[20.4.3.301 - Rp. 20.4.3.301 NMAC, 3/5/2020]

#### **20.4.3.302 TRANSFER OF OWNERSHIP/OPERATIONS:**

**A.** If there is a transfer of ownership or operations, the owner or operator of the facility on the date an imported waste compensating fee is due under 20.4.3.500 NMAC is liable for payment of that fee in full.

**B.** The transferor must report the imported waste received during the calendar year in which the transfer takes place to the department, on a form obtained from the department. This report shall be submitted to the department at the time of transfer.

**C.** At the time of transfer, the transferor must also provide a copy of the above report to the person who will be liable for the fee based on the waste reported. In addition to the report, the transferor must provide to that person any manifests prepared on the waste reported, or copies thereof, and any other information used to prepare the report. Manifests and other information need not be sent to the department under this section, unless requested by the department.

[20.4.3.302 - Rp. 20.4.3.302 NMAC, 3/5/2020]

#### **20.4.3.303-2.4.3.399 [RESERVED]**

#### **20.4.3.400 BUSINESS FEES:**

Business fees shall be paid for each of the events outlined in 20.4.3.401 NMAC.

[20.4.3.400 - Rp. 20.4.3.400 NMAC, 3/5/2020]

#### **20.4.3.401 FEE SCHEDULE:**

Business fees are set forth in the schedules below and due at time of request.

- A.** Episodic generators, for each planned or unplanned event: \$500;
- B.** Generators or co-generators requesting temporary or emergency EPA identification number: \$100;
- C.** Salvage yards, for each compliance assistance visit requested: \$100;
- D.** Generators notifying of 40 CFR 262 Subpart K activities: \$100;

E. Generators notifying of 40 CFR 250.10 (hazardous secondary materials activities): \$100;

[20.4.3.401 - Rp. 20.4.3.401 NMAC, 3/5/2020]

**20.4.3.402 FEE CALCULATION:**

A. The business fee shall be paid in full if applicable during any part of the calendar year.

B. The business fees are due for all sites engaged in activities as defined in 20.4.3.7 NMAC during the calendar year prior to the year in which the fees are to be paid, subject to the limits set forth in 20.4.3.109 NMAC.

C. Beginning January 1 following the effective date of these fee regulations, the fees listed in 20.4.3.401 NMAC shall be adjusted annually to account for inflation. The amounts shall be adjusted by the percentage of the preceding calendar year's change in the consumer price index for All Urban Consumers (CPI-U), United States City Average for All Items, published by the United States Department of Labor. The amount of change in the fee shall be rounded to the nearest one dollar (\$1.00).

[20.4.3.402 - Rp. 20.4.3.402 NMAC, 3/5/2020]

**20.4.3.403 - 20.4.3.499 [RESERVED]**

**20.4.3.500 DUE DATES:**

The annual fees for which this part provides are due and payable on August 1 of each year.

[20.4.3.500 - Rp. 20.4.3.500 NMAC, 3/5/2020]

**20.4.3.501 MANNER OF PAYMENT:**

The person paying fees under this part shall complete a fee report form obtained from the department, and submit the report to the department, together with any documentation requested by the department. The report shall include a certification of the truthfulness of all of the matters and facts contained in the report, as provided in 20.4.3.502 NMAC. All fees shall be paid to NMED by certified check or money order payable to the New Mexico Environment Department or the Hazardous Waste Bureau, by electronic funds transfer (with prior notice to NMED), or by other methods deemed acceptable by NMED. Cash payments are not an acceptable method of payment. All payments must include the name, address, and contact information for the facility and must be addressed to the New Mexico Environment Department – Hazardous Waste Bureau.

[20.4.3.501 - Rp. 20.4.3.501 NMAC, 3/5/2020]

**20.4.3.502 CERTIFICATE:**

The certification required by 20.4.3.501 NMAC shall be made on oath or affirmation in accordance with Sections 14-13-1 and 14-13-2 NMSA 1978, by the chief executive officer or his designee in the case of a corporation, the managing partner in the case of a partnership, the proprietor in the case of a sole proprietorship, or the official with authority to execute the certification in the case of a government entity.

[20.4.3.502 - Rp. 20.4.3.502 NMAC, 3/5/2020]

**20.4.3.503-20.4.3.599 [RESERVED]**

**20.4.3.600 LATE CHARGES; ENFORCEMENT:**

**LATE CHARGES:** If any fee for which this part provides is not paid in full when due, the person owing the fee shall pay a billing charge of one hundred dollars (\$100), plus late charges in the amount of an additional one percent of all fees owed for every month or part of a month in which the fees remain unpaid beyond the due date. Billing and late charges shall be considered hazardous waste fees for deposit in the hazardous waste fund, pursuant to Section 74-4-4.5 NMSA 1978, and are independent of any penalties assessed under the act.

[20.4.3.600 - Rp. 20.4.3.600 NMAC, 3/5/2020]

**20.4.3.601 VERIFICATION BY THE DEPARTMENT:**

**A.** The department may at any time verify the accuracy of reports submitted and amounts paid pursuant to this part. It may use any relevant information for verification purposes, including, but not limited to, the biennial reports submitted pursuant to 20.4.1 NMAC, Hazardous Waste Management, or 40 CFR, Parts 262.41, 264.75 or 265.75, and any manifests prepared for waste shipments. Persons who are subject to this part shall make these and other records relating to the waste generated, manifested or managed available to the department upon request.

**B.** If the department determines that a fee report submitted pursuant to 20.4.3.501 NMAC does not accurately state the quantity of waste generated, the quantity of imported hazardous waste treated, stored or disposed of, or the fees owed, it shall notify the person submitting the report of the discrepancy and may recalculate the annual fee based on the department's determination.

**C.** Before assessing a recalculated fee, the department shall send notice of its determination and its intent to reassess the fee to the person who had submitted the report. That person shall have 30 days from the date of the notice to provide the department with any documentation to rebut the determination. Once the department

has reviewed any documentation submitted, it will send notice of fee assessment to the person owing a fee. Any amounts that the department determines were due, together with the billing and late charges on the amounts due and unpaid, shall be paid within 60 days of the date of the notice of fee assessment.

[20.4.3.601 - Rp. 20.4.3.601 NMAC, 3/5/2020]

#### **20.4.3.602 ADMINISTRATIVE APPEAL:**

**A.** A notice of fee assessment issued under Subsection C of 20.4.3.601 NMAC may be appealed by filing a written request for hearing with the hearing clerk designated by the secretary within thirty days of the date of the notice. The written request shall be accompanied by a copy of the fee assessment being contested and shall set forth the grounds upon which the appellant disagrees with the assessment.

**B.** Except as otherwise provided, notice of docketing and hearing officer assignment, motions, pre-hearing procedures and discovery, and hearing and post-hearing procedures shall be governed by 20.1.5 NMAC, Adjudicatory Procedures - Environment Department. The hearing officer shall schedule the hearing for no later than 90 days after service of the notice of docketing.

**C.** The department shall not seek collection of the fee or take enforcement action on the fee assessment until the secretary has issued a decision on the appeal. Late charges on the amount assessed shall continue to accrue and shall be payable if the assessment is upheld or upheld with modifications. If the assessment is modified on appeal, late charges shall be calculated based on the assessment as modified.

[20.4.3.602 - Rp. 20.4.3.602 NMAC, 3/5/2020]

#### **20.4.3.603 FAILURE TO SUBMIT REPORTS OR PAY FEES:**

**A.** Failure to complete or submit a report in the manner required by 20.4.3.501 NMAC, or to pay fees in full when due, may result in enforcement proceedings under the act. Enforcement actions may include, but are not limited to, the revocation or suspension of any permit issued by the department pursuant to the act to the person failing to complete or submit the fee report or pay the fees as required.

**B.** Any person who knowingly omits material information from or makes any false statement or representation in a fee report may be subject to criminal penalties under the act.

[20.4.3.603 - Rp. 20.4.3.603 NMAC, 3/5/2020]

#### **20.4.3.604-20.4.3.699 [RESERVED]**

#### **20.4.3.700 RECORDS AND RECORD KEEPING:**

**RECORDKEEPING REQUIRED:** All persons subject to this part are required to retain the documentation necessary to support their fee calculations, including all records used as a basis for the calculations.

[20.4.3.700 - Rp. 20.4.3.700 NMAC, 3/5/2020]

**20.4.3.701 RETENTION RECORDS:**

The records required by 20.4.3.700 NMAC, together with copies of any fee reports submitted under these regulations, shall be retained for three years from the date of payment of the fees to which the records and reports apply. The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

[20.4.3.701 - Rp. 20.4.3.701 NMAC, 3/5/2020]

**20.4.3.702-20.4.3.799 [RESERVED]**

**20.4.3.800 MISCELLANEOUS PROVISIONS:**

**DEPOSIT IN THE HAZARDOUS WASTE FUND:** All fees collected pursuant to this part shall be transmitted to the state treasurer for credit to the hazardous waste fund, and used for the sole purpose of meeting necessary expenses in the administration and operation of the hazardous waste program.

[20.4.3.800 - Rp. 20.4.3.800 NMAC, 3/5/2020]

**20.4.3.801 ANNUAL REPORT:**

Within 90 days of the end of each state fiscal year, the department shall prepare and submit to the environmental improvement board a report describing the funds received pursuant to these regulations and the activities performed with the use of these funds. This report shall be made available to members of the public upon request. The department may charge a fee for copies to cover its costs in printing or duplicating the report.

[20.4.3.801 - Rp. 20.4.3.801 NMAC, 3/5/2020]

**20.4.3.802 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person of the obligation to comply with other applicable state and federal regulations.

[20.4.3.802 - Rp. 20.4.3.802 NMAC, 3/5/2020]

**20.4.3.803 CONSTRUCTION:**

This part shall be liberally construed to effectuate the purpose of the act.

[20.4.3.803 - Rp. 20.4.3.803 NMAC, 3/5/2020]

**20.4.3.804 SEVERABILITY:**

If any provision or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.4.3.804 - Rp. 20.4.3.804 NMAC, 3/5/2020]

**20.4.3.805-20.4.3.899 [RESERVED]**

**PART 4: HAZARDOUS MATERIALS ACCIDENT RESPONSE TRAINING**

**20.4.4.1 ISSUING AGENCY:**

Hazardous Materials Safety Board.

[10/15/96; 20.4.4.1 NMAC - Rn, 20 NMAC 4.4.I.100, Recompiled 11/27/01]

**20.4.4.2 SCOPE:**

This Part applies to personnel of state agencies who participate as trainers or responders in hazardous material accident responses governed by the Emergency Management Act, NMSA 1978 Sections 74-4B-1 et seq.

[10/15/96; 20.4.4.2 NMAC - Rn, 20 NMAC 4.4.I.101, Recompiled 11/27/01]

**20.4.4.3 STATUTORY AUTHORITY:**

This Part is adopted pursuant to the Emergency Management Act, NMSA 1978, Sections 74-4B-1 to 74-4B-14, specifically Section 74-4B-8(B).

[10/15/96; 20.4.4.3 NMAC - Rn, 20 NMAC 4.4.I.102, Recompiled 11/27/01]

**20.4.4.4 DURATION:**

Permanent.

[10/15/96; 20.4.4.4 NMAC - Rn, 20 NMAC 4.4.I.103, Recompiled 11/27/01]

**20.4.4.5 EFFECTIVE DATE:**

October 15, 1996. This Part amends and replaces the "Curriculum of Hazardous Material Accident Response Training and Certification Program", SP/HMER-2, filed February 5, 1991, as amended.

[10/15/96; 20.4.4.5 NMAC - Rn, 20 NMAC 4.4.I.104, Recompiled 11/27/01]

#### **20.4.4.6 OBJECTIVE:**

This Part is intended to enable state agencies to assure that their respective employees comply with OSHA regulations for training and response to a hazardous materials incident. Courses approved by the Board will meet or exceed the requirements established by 29 CFR 1910.120 as interpreted by the Board. Additionally, the following standards may be used as described in detail in "The Guidelines for Public Sector Hazardous Materials Training" (guidelines) published by the Federal Emergency Management Agency ("FEMA"). Copies of the FEMA guidelines are available from FEMA or from the New Mexico Department of Public Safety, Emergency Management - Planning and Coordination Bureau. The guidelines should be used during the review process when a more in-depth description of any given requirement is necessary.

[10/15/96; 20.4.4.6 NMAC - Rn, 20 NMAC.4.4.I.105, Recompiled 11/27/01]

#### **20.4.4.7 DEFINITIONS:**

[RESERVED]

#### **20.4.4.8 EMPLOYER REQUIREMENTS:**

It is the responsibility of employers whose employees are engaged in emergency response to comply with all requirements established under 29 CFR 1910.120. State employees who must respond as part of their duties to a hazardous materials incident must follow these guidelines where appropriate. The Board has developed these guidelines to assure that the State of New Mexico and its employees are in compliance. Local emergency responders (other than state employees) are strongly encouraged to attend these courses, but their respective employers must certify the responder's ability to meet the regulations. [10/15/96; 20.4.4.8 NMAC - Rn, 20 NMAC 4.4.I.106, Recompiled 11/27/01]

#### **20.4.4.9 INSTRUCTOR REQUIREMENTS:**

Instructors who teach any of the relevant subjects shall have good command of the subject matter of the course they are to teach. Additionally, they should have documented training and/or academic credentials and instructional experience necessary to demonstrate competent instruction.

[10/15/96; 20.4.4.9 NMAC - Rn, 20 NMAC.4.4.I.107, Recompiled 11/27/01]

**20.4.4.10-20.4.4.199 [RESERVED]**

**20.4.4.200 COURSE REQUIREMENTS:**

**A. GENERAL REQUIREMENTS:**

(1) All courses and the instructors of courses under this program will be sponsored by one or more of the following state agencies: Department of Public Safety Law Enforcement Academy, University of New Mexico Emergency Medical Services Academy, Firefighters Training Academy and others deemed appropriate by the Board. The sponsoring academy will screen both courses and trainers prior to submission to the Board. Additionally, the sponsoring Academy will ensure that this program is fully complied with.

(2) OSHA, 29 CFR 1910.120 defines the minimum number of hours at the operations, technician, specialist and incident commander levels. An effective hazardous materials response is based on the competency of the responders, not the number of their training hours. Hours listed for each of the categories is a suggested minimum and courses typically are longer to accommodate the curriculum or student needs.

(3) There are five different course levels. Individuals taking Board approved courses must meet the prerequisites listed before taking a higher level course.

**B. LEVEL I - FIRST RESPONDER AWARENESS:**

(1) Persons trained at this level are those likely to witness or discover a hazardous substance release and who have been trained to initiate an emergency response sequence by notifying the proper authorities of the release. Training must include instruction on the New Mexico Hazardous Materials Emergency Response Plan.

(2) Hours of attendance: Eight (8).

(3) Audience: Very broad; all who may first respond to hazardous materials incidents.

**C. LEVEL II - FIRST RESPONDER OPERATIONS:**

(1) Persons trained at this level are those whose duties include responding to the scene of emergencies that may involve hazardous materials. Training should contain appropriate subject matter which will allow individuals to respond safely to hazardous materials incidents as part of the initial response to the site for the purpose of protecting nearby persons, property, or the environment. Persons trained at this level will be able to respond in a defensive manner by taking appropriate actions.

(2) Hours of attendance: Twenty-four (24).

(3) Audience: Broad; all who may participate in initial operations at a hazardous materials incident.

(4) Prerequisite: Board approved Level I training.

#### D. LEVEL III - HAZARDOUS MATERIALS TECHNICIAN:

(1) This level of training is for personnel whose job duties require them to respond to releases or potential release of hazardous materials for the purpose of stopping the release.

(2) Hours of attendance: Eighty (80).

(3) Prerequisites: Board approved Level I and II training.

#### E. LEVEL IV - HAZARDOUS MATERIALS SPECIALISTS COURSES:

(1) This level of training is for individuals who respond to releases or potential releases to provide support to hazardous materials technicians. This training will contain appropriate subject matter which will allow the student to perform duties requiring a more direct or specific knowledge of the various substances or management techniques required during an emergency response.

(2) Hours of attendance: Varies depending on course content.

(3) Prerequisites: Board approved Levels I, II and III training.

#### F. LEVEL V - ON SCENE COMMANDER:

(1) This level of training is for persons whose job duties require them to assume control of the incident beyond the first responder awareness level. These courses must utilize the National Interagency Incident Management System Incident Command System to meet the executive order of the Governor of the State of New Mexico.

(2) Hours of attendance: Forty (40).

(3) Prerequisites: Board approved Levels I and II training.

[10/15/96; 20.4.4.200 NMAC - Rn, 20 NMAC 4.4.II.200-205, Recompiled 11/27/01]

## **PART 5: CLANDESTINE DRUG LABORATORY REMEDIATION**

### **20.4.5.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.4.5.1 NMAC - N, 1/01/2008]

**20.4.5.2 SCOPE:**

This part applies to all law enforcement agencies who discover a clandestine drug laboratory, all persons who own a clandestine drug laboratory property, and all persons engaging in remediation of a clandestine drug laboratory.

[20.4.5.2 NMAC - N, 1/01/2008]

**20.4.5.3 STATUTORY AUTHORITY:**

Section 74-4-4.B NMSA 1978 and Section 74-1-8.A(7) NMSA 1978 (as amended).

[20.4.5.3 NMAC - N, 1/01/2008]

**20.4.5.4 DURATION:**

Permanent.

[20.4.5.4 NMAC - N, 1/01/2008]

**20.4.5.5 EFFECTIVE DATE:**

January 1, 2008 unless a later date is cited at the end of a section.

[20.4.5.5 NMAC - N, 1/01/2008]

**20.4.5.6 OBJECTIVE:**

Contamination from the operation of clandestine drug laboratories is a serious health and environmental threat. Remediation of the residually contaminated portions of clandestine drug laboratory properties is essential to assure the health, safety and welfare of people and the environment. The objective of this part is to provide for the notice of such contamination to potential occupants of the residually contaminated portion of these properties and standards for the assessment and remediation of such properties.

[20.4.5.6 NMAC - N, 1/01/2008]

**20.4.5.7 DEFINITIONS:**

Unless otherwise defined in this part, the words and phrases used in this part have the same meanings as in Sections 74-4-1 through 74-4-14 NMSA 1978 (as amended), and 20.4.1 NMAC. As used in this part.

**A.** "Certified industrial hygienist" means a person certified in the comprehensive practice of industrial hygiene by the American board of industrial hygiene.

**B.** "Chemicals and equipment" means the bulk or containerized chemicals, illegal drugs and their precursors drugs, equipment and other items that are found in a clandestine drug laboratory that were used in the manufacture of any controlled substance.

**C.** "Clandestine drug laboratory" means property on which any controlled substance is being unlawfully manufactured or on which there is an attempt to unlawfully manufacture, or where a person is arrested for having on any property any chemicals or equipment used in manufacturing any controlled substance. In the case of a space rental mobile home or recreational vehicle park, clandestine drug laboratory means the mobile home or recreational vehicle in which any controlled substance is being manufactured or where a person is arrested for having in the mobile home or recreational vehicle any chemicals or equipment used in manufacturing any controlled substance. Clandestine drug laboratory shall include any place or area where chemicals or other waste materials used in clandestine drug laboratories have been located.

**D.** "Controlled substance" means any drug or substance or counterfeit substance listed in the Controlled Substances Act, 30-31-1 NMSA 1978, or regulations adopted thereunder.

**E.** "Department" means the New Mexico environment department or its successor agency under the Department of Environment Act, 9-7A-1 NMSA 1978.

**F.** "Law enforcement officer" means any employee of a police or public safety department administered by the state or any political subdivision of the state where the employee is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this state as defined in Section 30-20A-2.D NMSA 1978, and specifically includes Albuquerque police department nuisance abatement inspectors.

**G.** "Owner" means any person, firm, corporation or other entity that owns, in whole or in part, the property subject to this part.

**H.** "Owner's agent" means person designated by the owner to act on behalf of the owner.

**I.** "Property" means real or personal property, which includes the following:

**(1)** the area within a structure and the area that surrounds a structure and that is within the land boundary or property lines of any property that can be used for residential purposes or is occupied by people for any length of time for any purpose, and

(2) a vehicle as defined in Section 66-1-4.19 NMSA 1978 (as amended).

J. "Remediation" means the cleanup, removal, or destruction of chemicals and equipment or residual contamination at a clandestine drug laboratory to conform with the remediation standards required by 20.4.5.16 NMAC and any action, including the destruction of property, necessary to investigate, prevent, minimize or mitigate potential damages or injury to human health, the environment, or property that may result from the chemicals or residual contamination.

K. "Remediation firm" means a person or firm that:

(1) performs remediation of residual contamination from the manufacture of any controlled substance or the storage of chemicals or equipment used in manufacturing any controlled substance, or

(2) conducts preliminary assessments or post-remediation assessments, including testing, for the presence of residual contamination from the manufacture of any controlled substance or the storage of chemicals or equipment used in manufacturing any controlled substance.

L. "Residual contamination" means any contaminants associated with manufacturing any controlled substance that are left at a property after the initial removal of chemicals and equipment.

M. "Residually contaminated portion of the property" means the structure or unit where chemicals and equipment were removed and the area of any adjacent structure, unit or land where evidence of residual contamination is observed by a law enforcement agency.

(1) Where chemicals and equipment are removed from a house, mobile home or vehicle, then the entire property, not just the room or rooms in which the chemicals and equipment are found, shall be deemed the residually contaminated portion of the property.

(2) Where chemicals and equipment are removed from a detached shed, garage or other structure and other property on the land are not affected, then the detached structure shall be deemed the residually contaminated portion of the property.

(3) Where chemicals and equipment are removed from a hotel or motel room, apartment unit, storage locker or other similar property with controlled-access units and the adjacent rooms or units are not affected, then the contaminated room or unit shall be deemed the residually contaminated portion of the property.

[20.4.5.7 NMAC - N, 1/01/2008]

#### **20.4.5.8 COMPLIANCE WITH OTHER LAW:**

Compliance with this part does not relieve a person from the obligation to comply with other applicable federal, state and local laws and regulations.

[20.4.5.8 NMAC - N, 1/01/2008]

**20.4.5.9 DECLARATION OF HAZARDOUS SUBSTANCE INCIDENT AND PUBLIC NUISANCE:**

Upon identification by a law enforcement agency of a clandestine drug laboratory where chemicals and equipment were removed or residual contamination was observed, the property is presumed to constitute a site of a hazardous substance incident and a public nuisance until such time as the remediation required by this part is completed.

[20.4.5.9 NMAC - N, 1/01/2008]

**20.4.5.10 NOTICE OF CONTAMINATION:**

**A.** Upon identification of a clandestine drug laboratory by a law enforcement agency where chemicals and equipment were removed or residual contamination was observed, the agency shall take the following actions.

**(1)** Post a notice of contamination in a conspicuous place at the clandestine drug laboratory.

**(2)** Deliver a copy of the notice of contamination to the owner of the property if the owner is on the site at the time of delivery, the on-site manager if the manager is on the site at the time of delivery or the on-site drop box if available. In the case of a tenant-owned unit in a space rental mobile home or recreational vehicle park, the agency shall deliver a copy of the notice of removal to the occupant of the unit if the occupant is on site at the time of delivery and to the on-site park landlord if the park landlord is on site at the time of delivery.

**(3)** Document proof of posting the notice of contamination, which proof of posting shall be considered notice to the owner if the owner of the clandestine drug laboratory cannot be identified.

**(4)** Deliver a copy of the notice of contamination to the department's hazardous waste bureau chief within seven days after identification of the clandestine drug laboratory. The law enforcement agency shall inform the department whether or not the agency was able to personally deliver the notice to the owner or on-site manager of the property.

**B.** Upon receiving a copy of the notice of contamination from a law enforcement agency, the department shall send a copy of the notice of contamination by certified mail, return receipt requested, to the owner at the owner's last known address contained in records of the county assessor where the clandestine drug laboratory is located if the

owner of the clandestine drug laboratory or, if the clandestine drug laboratory is a mobile home or recreational vehicle, the owner of a mobile home or recreational vehicle space-rental or space-purchase park where the clandestine drug laboratory may be located, is not personally provided a copy of the notice of contamination pursuant to Subsection A of this section. Proof of mailing shall be considered notice to the owner. The owner is presumed to have received the notice of contamination five days after the notice is mailed.

[20.4.5.10 NMAC - N, 1/01/2008]

#### **20.4.5.11 CONTENTS OF NOTICE OF CONTAMINATION:**

The notice of contamination required by 20.4.5.10 NMAC shall contain the following in both English and Spanish or other appropriate tribal language.

- A.** The word "warning" in large bold type at the top and bottom of the notice.
- B.** A statement that a clandestine drug laboratory was identified at the property.
- C.** The date of the identification.
- D.** The address or location of the property where the clandestine drug laboratory was identified. A description of the residually contaminated portion of the property, including a structure, room, apartment or unit number if not the entire or a vehicle registration or vehicle identification number if appropriate.
- E.** The name of the law enforcement agency that identified the clandestine drug laboratory and that agency's telephone number.
- F.** A statement that hazardous substances, toxic chemicals, or other residual contamination from operation of the clandestine drug laboratory may still be present.
- G.** A statement that a person other than the owner or the owner's agent may not enter, occupy, or use the clandestine drug laboratory property or otherwise knowingly and intentionally violate the provisions of the notice of contamination until remediation of the residually contaminated portion of the property has taken place in accordance with 20.4.5.16 NMAC and such remediation has been approved by the department.
- H.** A statement that a person may not knowingly and intentionally disturb the notice of contamination posted at the clandestine drug laboratory.
- I.** A statement that the owner of the property shall remediate the residually contaminated portion of the property in compliance with 20.4.5.16 NMAC.
- J.** A statement that until remediation is complete, the owner or the owner's agent shall not sell, lease, rent, loan, assign, exchange, or otherwise transfer the residually

contaminated portion of the property without providing notice of its existence as required by 20.4.5.13 NMAC.

**K.** A statement that failure of the owner to comply with the requirements of this part may result in a fine of up to \$10,000 per day pursuant to Section 74-4-12 NMSA 1978 , and is a petty misdemeanor pursuant to Section 74-1-10 NMSA 1978.

**L.** Contact information for the department.

[20.4.5.11 NMAC - N, 1/01/2008]

#### **20.4.5.12 VACATING NOTICE OF CONTAMINATION:**

**A.** The owner of a clandestine drug laboratory is responsible for providing proof to the department that the property has been remediated in compliance with 20.4.5.16 NMAC.

**B.** Within seven days of the department determining that a clandestine drug laboratory has been remediated in accordance with this part, or that no remediation is required, the department shall notify the owner of the clandestine drug laboratory that the notice of contamination can be removed from the property.

[20.4.5.12 NMAC - N, 1/01/2008]

#### **20.4.5.13 USE AND TRANSFER OF CLANDESTINE DRUG LABORATORY:**

**A.** An owner shall not sell, lease, rent, loan, assign, exchange or otherwise transfer the clandestine drug laboratory property unless the owner does the following:

(1) provides written notice to the purchaser, lessee, renter, borrower, assignee, exchange partner or other transferee, with a copy to the department's hazardous waste bureau, of the existence of the clandestine drug laboratory; and

(2) receives a written acknowledgment, and provides a copy to the department's hazardous waste bureau, that the notice was received by the purchaser, lessee, renter, borrower, assignee, exchange partner or other transferee.

**B.** A person other than the owner or the owner's agent may not enter, occupy, or use the clandestine drug laboratory or otherwise knowingly and intentionally violate the provisions of the notice of contamination until remediation of the residually contaminated portion of the property has taken place in accordance with 20.4.5.16 NMAC. Persons performing work for a law enforcement agency, the department, or a remediation firm are excepted from this prohibition.

[20.4.5.13 NMAC - N, 1/01/2008]

#### **20.4.5.14 CLANDESTINE DRUG LABORATORY LIST:**

**A.** The department shall maintain a list of clandestine drug laboratory sites on the department's web site based on information received from law enforcement agencies.

**B.** Within ten days of the department notifying the owner of its approval pursuant to Subsection B of 20.4.5.18 NMAC, the department shall indicate on its website whether the property has been remediated in accordance with this part.

[20.4.5.14 NMAC - N, 1/01/2008]

#### **20.4.5.15 OWNER RESPONSIBILITIES FOR REMEDIATION:**

**A.** The owner of the property shall retain a remediation firm to perform a preliminary assessment of the residually contaminated portion of the property to determine the extent of the contamination and the nature of the required remediation within seven days of the day of delivery of the notice of contamination to the owner. The preliminary assessment shall be completed within 21 days after delivery of the notice of contamination to the owner.

**(1)** If the preliminary assessment determines that remediation is not required, the owner shall send a copy of the assessment to the department's hazardous waste bureau chief within seven days of receipt of the results of the preliminary assessment, which shall be reviewed in accordance with 20.4.5.18 NMAC.

**(2)** The owner may choose to forego a preliminary assessment and conduct the remediation in accordance with Subsection B of this section.

**B.** The owner shall retain a remediation firm to conduct the remediation within 14 days of receipt of the results of the preliminary assessment when this preliminary assessment determines that remediation is required or, in event where a preliminary assessment was not performed pursuant to Paragraph (2) of Subsection A of this section, within 30 days of the day of delivery of the notice of contamination to the owner.

**C.** The owner shall complete remediation and the post remediation assessment in accordance with the requirements of this part within 90 days of the day of delivery of service of the notice of contamination to the owner or for such other period of time that is approved in writing by the department.

**D.** The owner shall retain a remediation firm to perform a post-remediation assessment of the residually contaminated portion of the property to determine that the requirements for remediation of residual contamination in this part have been met within seven days of receiving notice from the remediation firm that the residually contaminated portion of the property has been remediated.

E. After the department has approved the remediation and vacated the notice of contamination, the owner or owner's agent is not required to comply with 20.4.5.13 NMAC and may remove the notice of contamination and allow any person to enter, use, occupy, rent, or sell the property.

[20.4.5.15 NMAC - N, 1/01/2008]

#### **20.4.5.16 REQUIREMENTS FOR REMEDIATION OF RESIDUAL CONTAMINATION:**

The evaluation and cleanup of residual contamination found at clandestine drug laboratories after chemicals and equipment have been removed shall meet the following standards.

##### **A. Remediation Firms.**

(1) Any preliminary assessment, remediation, and post-remediation assessment of a clandestine drug laboratory for the purpose of complying with this part shall be performed by a remediation firm that meets the requirements of this subsection. The department recommends that the remediation firm performing the preliminary and post-remediation assessments be a different firm than the one that performs the remediation, to ensure independent evaluation of work required and thoroughness of the remediation.

(2) The remediation firm shall be under the direction of a certified industrial hygienist or be approved and currently registered to perform such work with a state, county, or municipal agency during the time the firm participates in the assessment or remediation of residual contamination. A firm's approval, certification, or registration with another state to perform assessments of residually contaminated properties will be accepted as meeting this requirement.

(3) The department may reject or require replacement of a remediation firm if one of the following findings is made:

- (a) criminal activity,
- (b) disregard for public health or the environment,
- (c) failure to comply with this section or local ordinances, or
- (d) noncompliance with health and safety, or environmental rules or standards.

##### **B. Preliminary Assessment of the Property.**

(1) The preliminary assessment shall include, but not be limited to, the following elements.

(a) A review of available information such as law enforcement reports and hazardous materials team reports that provide information regarding the manufacturing method, chemicals present, cooking areas, chemical storage areas, and observed areas of contamination or waste disposal.

(b) A physical inspection of the property, including but not limited to living areas, storage areas, plumbing, ventilation systems, septic systems, and outdoor areas, as necessary based on knowledge of the clandestine drug laboratory operation.

(c) Sampling and testing to determine the residual levels of contamination if the preliminary assessment results in a recommendation that no further remediation is required.

(2) A proposed work plan for remediating the residually contaminated portion of the property shall be prepared by the remediation firm that includes a description of the areas to be remediated and a description of the recommended cleanup methods.

(3) The remediation firm shall provide the owner with a written preliminary assessment report that includes the following elements.

(a) Identification of manufacturing methods, chemicals used, and actual and suspected areas of residual contamination or waste disposal based on law enforcement reports, visual observations, and knowledge of manufacturing method(s).

(b) The results of testing for residual contamination.

(c) A copy of the proposed work plan.

(4) In the event the remediation firm determines that remediation is not required, the firm shall provide the owner and the department's hazardous waste bureau with a written basis for the determination that includes the following statement signed by a certified industrial hygienist or principal in the remediation firm certifying the property meets the requirements in this section and that no remediation is required. **Remediation firm's certification:** "I hereby declare that I am a certified industrial hygienist or a principle in an approved remediation firm and that this report fully and accurately describes the preliminary assessment of the clandestine drug laboratory property named in the report. I certify that I have reviewed the results of the assessment, including the sampling and testing results, and find that the property meets the clearance levels in 20.4.5.17 NMAC for remediation of residual contamination and does not require further remediation."

**C. Remediation of the Residually Contaminated Portion of the Property.** Once chemicals and equipment removal is completed by the law enforcement agency or

hazardous materials team, the owner shall have a remediation firm remove and dispose of, or clean, the portions of the property with residual contamination. Both the interior and exterior residually contaminated portions of the property shall be decontaminated in accordance with this section. Cleanup activities must be repeated until testing indicates that contamination levels are below the clearance levels in 20.4.5.17 NMAC.

**(1) Interior Decontamination.** The decontamination of the interior of the residually contaminated portion of a property that will be occupied by people for any length of time for any purpose shall meet the clearance levels listed in 20.4.5.17 NMAC. At a minimum, the following steps shall be taken to decontaminate the interior of a clandestine drug laboratory property.

**(a)** Ventilate the property to remove or lower levels of residual volatile organic compounds in indoor air.

**(b)** Decontaminate or discard interior furnishings and household contents including, but not limited to, carpets, drapes, and furniture.

**(c)** Decontaminate structural features and surfaces paying particular attention to heavily contaminated areas such as those locations where the manufacturing occurred, or where chemicals were stored, mixed or disposed.

**(d)** Decontaminate interior surfaces of heating, ventilation and air conditioning systems and plumbing drain lines and traps that are impacted by residual contamination.

**(e)** Remove or seal interior surfaces where residual contamination can not be effectively removed by cleaning.

**(2) Exterior Decontamination.** Waste from clandestine drug laboratories are typically disposed of by dumping into indoor plumbing drains that empty either into a city sewer system or an onsite septic system or dumping on the ground into burn or burial pits. If evidence of exterior contamination is found at a clandestine drug laboratory property, the remediation firm shall respond as follows.

**(a)** Collect and analyze soil samples from areas where there is evidence that clandestine drug laboratory wastes have been directly disposed on the ground.

**(b)** Collect and analyze samples from septic tanks and drain fields if present.

**(c)** Collect and analyze samples from all wells within 100 feet of impacted septic systems, drain fields, and disposal areas for contaminants of concern.

**(d)** Contact the department's hazardous waste bureau for information on media-specific cleanup requirements.

**(3) Vehicle Decontamination.** For vehicles, including recreational vehicles, campers and trailers, the remediation firm shall follow the requirements listed in Paragraph (1) of Subsection C of 20.4.5.16 NMAC for interior decontamination. The cost of remediation may not make decontamination cost effective for many vehicles, in which case the entire vehicle shall be demolished.

**(4)** After the remediation is complete, the remediation firm shall notify the owner that the property is ready for post-remediation inspection.

#### **D. Post-Remediation Assessment of the Property.**

**(1)** The post-remediation assessment shall include, but not be limited to, a visual inspection, review of the scope of remediation work performed, and testing necessary to certify compliance with the requirements for remediation of residual contamination in this section.

**(2)** Samples must be collected from the property interior and submitted to a laboratory for analysis. If the results show that the clearance levels listed in 20.4.5.17 NMAC have not been achieved, further remediation shall be performed as necessary to achieve the clearance levels.

**(3)** When the remediation firm determines that the remediation of the residually contaminated portion of the property was completed pursuant to the requirements for remediation of residual contamination in this section, a final remediation report with a statement signed by a certified industrial hygienist or principal in the remediation firm certifying the remediation of the residually contaminated portion of the property was completed pursuant to the requirements for remediation of residual contamination shall be prepared. The remediation firm shall deliver the remediation report or send the report by certified mail to the owner and the department's hazardous waste bureau chief within 21 days of completion of the remediation pursuant to Subsection C of 20.4.5.16 NMAC. The remediation report certifying that remediation of the residually contaminated portion of the property shall not be in lieu of any certificate of occupancy or any building inspection, if required by a county or municipality.

**(4)** The remediation firm preparing the remediation report shall maintain that document and all supporting materials for three years.

**E. Remediation Report.** The remediation report shall include the following information and documentation.

**(1)** Information demonstrating the remediation firm's qualifications, the name and qualifications of the certified industrial hygienist or other principal of the remediation firm, and the names and training records of the onsite supervisor and workers that performed the remediation services on the residually contaminated portion of the real property.

(2) Complete identifying information of the real property such as street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if appropriate.

(3) A copy of the final remediation work plan.

(4) A summary of the remediation services completed on the residually contaminated portion of the real property, and any deviations from the approved work plan.

(5) Photographs documenting the remediation services and showing each of the sample locations, and a drawing or sketch of the residually contaminated areas that depict the sample locations.

(6) Diagram showing locations of all wells on the property and all wells on properties within 250 feet of any septic system, drain field, waste disposal areas on the subject property.

(7) A copy of the sampling and testing results and a copy of the chain-of-custody documents for all samples from the residually contaminated portion of the real property.

(8) A summary of the waste characterization work, any waste sampling and testing results, and transportation and disposal documents, including bills of lading or manifest, weight tickets and waste receipts for all materials removed from the property.

(9) The following statement signed by a certified industrial hygienist or principal in the remediation firm certifying that the residually contaminated portion of the property has been remediated in accordance with 20.4.5.16 NMAC. **Remediation firm's certification:** "I hereby declare that I am a certified industrial hygienist or a principle in an approved remediation firm and that this report fully and accurately describes the remediation of the clandestine drug laboratory property named in the report. I certify that I have reviewed the results of the remediation, including the post-remediation assessment results, and find that the remediation was completed pursuant to the requirements for remediation of residual contamination in 20.4.5.16 NMAC."

[20.4.5.16 NMAC - N, 1/01/2008; A, 1/01/2008]

#### **20.4.5.17 CLEARANCE LEVELS FOR RESIDUAL CONTAMINATION:**

At a minimum, the remediation firm shall conduct sampling and testing for all of the constituents listed below unless evidence indicates that such constituents were not used in the operation of the clandestine drug laboratory. All interior areas of the residually contaminated portion of a property that will be occupied by people for any length of time for any purpose and all furnishings and materials intended for reuse shall meet the following post-remediation clearance levels.

Constituent	Clearance Level
Unlawfully manufactured controlled substance or its precursor drugs	Surface area wipe <1.0 µg/ft <sup>2</sup>
Volatile organic compounds (total)	Indoor air ≤ 1 part per million
Lead (total)	Surface area wipe ≤ 40 µg/ft <sup>2</sup>
Mercury (vapor)	Indoor air < 0.3 µg/m <sup>3</sup>
Corrosives	Surface pH of 6.0 to 8.0

[20.4.5.17 NMAC - N, 1/01/2008]

**20.4.5.18 APPROVAL OF REMEDIATION:**

**A.** Upon receipt of the remediation report, the department shall review the report to determine if the remediation of the residually contaminated portion of the property was completed pursuant to the requirements in this part within 30 days.

**B.** The department shall notify the owner or the owner’s agent whether or not it approves the remediation report and agrees that the remediation is complete within seven days of completion of the department’s review.

**C.** If the department does not approve the remediation report, it shall inform the owner or the owner’s agent and state the reasons for disapproval. The owner shall take the appropriate corrective action within a time period allowed by the department.

[20.4.5.18 NMAC - N, 1/01/2008]

**20.4.5.19 PREEMPTION OF CLANDESTINE DRUG LABORATORY REMEDIATION RULES:**

**A.** Where a county or municipality has adopted an ordinance or other rule regarding the remediation of clandestine drug laboratories before the effective date of this part, the county or municipality may continue to apply and enforce such rules in lieu of the rules in this part.

**B.** Where a county or municipality has adopted an ordinance or other rules regarding the remediation of clandestine drug laboratories and remediation is performed under such ordinance or rule, the cognizant law enforcement agency shall still deliver notice of contamination to the department in accordance with Paragraph (4) of Subsection A of 20.4.5.10 NMAC.

[20.4.5.19 NMAC - N, 1/01/2008]

**20.4.5.20 FAILURE TO COMPLY:**

**A.** Failure to comply with the remediation standards required by this part may result in enforcement proceedings under Section 74-4-10 NMSA 1978, including but not limited to the following actions.

**(1)** Issuing a compliance order requiring compliance immediately or within a specified time period or assessing a civil penalty up to \$10,000 per day of noncompliance for each violation or both.

**(2)** Commencing a civil action in district court for appropriate relief, including a temporary or permanent injunction.

**B.** A person who fails to comply with the remediation standards required by this part is guilty of a petty misdemeanor under Section 74-1-10 NMSA 1978.

[20.4.5.20 NMAC - N, 1/01/2008]

**20.4.5.21 SEVERABILITY:**

If any provision or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.4.5.21 NMAC - N, 1/01/2008]

# **CHAPTER 5: PETROLEUM STORAGE TANKS**

## **PART 1: GENERAL PROVISIONS [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 2: REGISTRATION OF TANKS [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 3: ANNUAL FEE [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 4: NEW AND UPGRADED STORAGE TANK SYSTEMS: DESIGN, CONSTRUCTION AND INSTALLATION [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 5: GENERAL OPERATING REQUIREMENTS [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 6: RELEASE DETECTION [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 7: REPORTING AND INVESTIGATION OF SUSPECTED AND CONFIRMED RELEASES [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 8: OUT-OF-SERVICE SYSTEMS AND CLOSURE [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 9: FINANCIAL RESPONSIBILITY [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 10: ADMINISTRATIVE REVIEW [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 11: LENDER LIABILITY [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 12: CORRECTIVE ACTION FOR STORAGE TANK SYSTEMS CONTAINING PETROLEUM PRODUCTS [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 13: CORRECTIVE ACTION FOR UST SYSTEMS CONTAINING OTHER REGULATED SUBSTANCES [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 14: CERTIFICATION OF TANK INSTALLERS [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 15: CORRECTIVE ACTION FUND USE AND EXPENDITURES [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 16: QUALIFICATION OF PERSONS PERFORMING CORRECTIVE ACTION [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 17: CORRECTIVE ACTION FUND ADMINISTRATION [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 18: OPERATOR TRAINING [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 19: DELIVERY PROHIBITION [REPEALED]**

[This part was repealed on July 24, 2018.]

## **PART 20-100: RESERVED**

## **PART 101: GENERAL PROVISIONS**

### **20.5.101.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.101.1 NMAC - N, 07/24/2018]

### **20.5.101.2 SCOPE:**

**A.** This part applies to 20.5.101 through 20.5.125 NMAC.

**B.** Any UST system holding hazardous wastes that are listed or identified under Subtitle C of the federal Resource Conservation and Recovery Act, or a mixture of such hazardous waste and other hazardous regulated substances, is excluded from these regulations. This subsection does not apply to any UST system containing petroleum.

**C.** Previously deferred storage tank systems: Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet all applicable requirements of 20.5 NMAC, including those in 20.5.114 NMAC, and storage tank systems that store fuel for use by emergency power generators must meet all applicable requirements of 20.5 NMAC, including those in 20.5.112 NMAC or 20.5.113 NMAC.

**D.** The following types of storage tank systems are excluded from the requirements of 20.5.102 through

20.5.125 NMAC:

**(1)** any wastewater treatment tank systems and any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the federal Clean Water Act;

**(2)** equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks;

**(3)** any UST system with a capacity of 110 gallons or less or any AST system with a capacity of 1,320 gallons or less, or any AST system with a capacity of 55,000 gallons or more not associated with an airport hydrant fuel distribution system or a UST system with a field-constructed tank;

**(4)** any UST system that contains a de minimis concentration of regulated substances;

**(5)** any emergency spill or overflow containment UST system that is expeditiously emptied after use;

**(6)** any storage tank systems containing radioactive material that are regulated under the Atomic Energy Act of 1954;

(7) any storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 CFR Part 50 Appendix A;

E. Partial Exclusions. 20.5.103 NMAC through 20.5.116 NMAC, 20.5.120 NMAC through 20.5.123 NMAC, and 20.5.125 NMAC do not apply to:

(1) wastewater treatment tanks that do not fall under Paragraph (1) of Subsection C of this section;

(2) ASTs with a capacity of 55,000 gallons or more associated with airport hydrant fuel distribution systems;

(3) ASTs with a capacity of 55,000 gallons or more associated with UST systems with field-constructed tanks;

F. Notwithstanding the foregoing exclusions, no person may install a storage tank system listed in Subsection D of this section for the purpose of storing regulated substances unless such storage tank system (whether of single- or double-walled construction):

(1) will prevent releases due to corrosion or structural failure for the operational life of the storage tank system; and

(2) is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) the material used in the construction or lining of the tank is compatible with the substance to be stored.

G. 20.5.106 NMAC, 20.5.107 NMAC, 20.5.108 NMAC, 20.5.115 NMAC, 20.5.117 NMAC, and 20.5.118 NMAC shall not apply to an existing AST or UST system which has never contained a regulated substance until the system is placed in service.

[20.5.101.2 NMAC - N, 07/24/2018]

### **20.5.101.3 STATUTORY AUTHORITY:**

20.5.1 through 20.5.25 NMAC are promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.101.3 NMAC - N, 07/24/2018]

#### **20.5.101.4 DURATION:**

Permanent.

[20.5.101.4 NMAC - N, 07/24/2018]

#### **20.5.101.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.1.5 NMAC -N, 07/24/2018]

#### **20.5.101.6 OBJECTIVE:**

The purpose of this part is to provide definitions for use in 20.5.101 through 20.5.125 NMAC.

[20.5.101.6 NMAC - N, 07/24/2018]

#### **20.5.101.7 DEFINITIONS:**

##### **A. Terms beginning with numerals or the letter "A."**

**(1)** "Above ground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above ground portion of an underground storage tank system and releases associated with overfills and transfer operations during regulated substance deliveries to or dispensing from an UST system.

**(2)** "Above ground storage tank" or "AST" means a single tank or combination of manifolded tanks, including pipes connected thereto, that is 1,320 gallons or more, and less than 55,000 gallons, is permanently installed, and is used to contain petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure of 60 degrees fahrenheit and fourteen and seven-tenths pounds per square inch absolute, and the volume of which is more than ninety percent above the surface of the ground. Tanks in vaults and special enclosures are ASTs. A compartment tank with combined total capacity greater than 1,320 gallons and less than 55,000 gallons is an AST and for purposes of these regulations is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. Above ground storage tank does not include (regardless of size) any:

**(a)** farm, ranch or residential tank used for storing motor fuel for noncommercial purposes;

**(b)** pipeline facility, including gathering lines regulated under the federal Natural Gas Pipeline Safety Act of 1968 or the federal Hazardous Liquid Pipeline Safety Act of 1979, or that is an intrastate pipeline facility regulated under state laws comparable to either act;

**(c)** surface impoundment, pit, pond or lagoon;

**(d)** storm water or wastewater collection system;

**(e)** flow-through process tank;

**(f)** liquid trap, tank or associated gathering lines or other storage methods or devices related to oil, gas or mining exploration, production, transportation, refining, processing or storage, or to oil field service industry operations;

**(g)** tank used for storing heating oil for consumptive use on the premises where stored;

**(h)** tanks, bulk terminals, or related pipelines and facilities owned or used by a refinery, natural gas processing plant or pipeline company in the regular course of their refining, processing or pipeline business; bulk plants are not included in the exemption;

**(i)** multiple tanks at a facility, that are individually less than 1,320 gallons, unless tanks that are siphoned together have a cumulative total capacity greater than 1,320 gallons;

**(j)** pipes connected to any tank exempted by Subparagraphs (a) through (i) of this paragraph.

**(3)** "Accidental release" means any sudden or non-sudden release neither expected nor intended by the tank owner or operator of petroleum or other regulated substance from a storage tank that results in a need for corrective action or compensation for bodily injury or property damage.

**(4)** "Airport hydrant fuel distribution system" (also called airport hydrant system) means an AST or UST system or a combination thereof which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more regulated tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier. AST systems with a capacity of 55,000 gallons or more associated with airport hydrant fuel distribution systems must comply with 20.5.101 NMAC, 20.5.102 NMAC, 20.5.117 NMAC, 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.124 NMAC.

**(5)** "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps associated with a storage tank.

**(6)** "Applicable standards" means the most relevant target concentrations that legally apply to a site.

**(7)** "AST system" means an above ground storage tank and its associated ancillary equipment and containment system, if any.

**B.** Terms beginning with the letter "B."

**(1)** "Basin sump" means a liquid-tight collection container with no valves, joints or other penetrations.

**(2)** "Below ground release" means any release to the subsurface of the land or to groundwater. This includes, but is not limited to, releases from the below ground portions of a storage tank system and releases associated with overfills and transfer operations as the regulated substance is delivered to or dispensed from a storage tank.

**(3)** "Beneath the surface of the ground" means beneath the ground surface or otherwise covered with materials so that physical inspection is precluded.

**(4)** "Bodily injury" shall have the meaning given to this term by applicable state law; however, this term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

**(5)** "Bulk plant" means a facility which is not a bulk terminal, and which is used for the temporary storage of petroleum products prior to delivery to gasoline stations, convenience stores, and commercial accounts, which is smaller than a bulk terminal and is not equipped with any processing equipment.

**(6)** "Bulk terminal" means a large facility for storing and handling petroleum products that receives and stores bulk deliveries of gasoline and other products from a pipeline, barges, or directly from a nearby refinery. Equipment at the terminal facility is usually capable of further processing the product, including but not limited to: injection of additives or conversion of gasoline vapors received from transports after making deliveries using stage one vapor recovery back to liquid form.

**(7)** "Bureau" means the New Mexico petroleum storage tank bureau.

**C.** Terms beginning with the letter "C."

**(1)** "Cathodic protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell through the application of either galvanic anodes or impressed current.

**(2)** "Certified installer" refers generally to both AST and UST certified installers.

**(3)** "Certified installer-AST" means an individual who has been certified by the department under 20.5.105 NMAC to install, replace, repair, and modify AST systems in this state.

**(4)** "Certified installer-UST" means an individual who has been certified by the department under 20.5.105 NMAC to install, replace, repair, and modify UST systems in this state.

**(5)** "Certified junior installer" refers generally to both AST and UST certified junior installers.

**(6)** "Certified junior installer-AST" means an individual who has been certified by the department under 20.5.105 NMAC to install, replace, repair, and modify spill prevention equipment and overfill prevention equipment on AST systems regulated under 20.5 NMAC.

**(7)** "Certified junior installer-UST" means an individual who has been certified by the department under 20.5.105 NMAC to install, replace, repair, and modify spill prevention equipment and overfill prevention equipment on UST systems regulated under 20.5 NMAC.

**(8)** "Certified operator" means a class A, B, or C operator trained and certified according to the requirements of 20.5.105 NMAC.

**(9)** "Change in service" means removing a regulated substance from a storage tank system and placing something in the system that is not a regulated substance.

**(10)** "Chief financial officer," in the case of local government owners and operators, means the individual with the overall authority and responsibility for the collection, disbursement, and use of funds by the local government.

**(11)** "Class A operator" means the individual who has primary responsibility to operate and maintain the storage tank system in accordance with 20.5 NMAC. The class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

**(12)** "Class B operator" means the individual who has day-to-day responsibility for implementing the requirements of 20.5 NMAC. The class B operator typically implements in-field aspects of operation, maintenance, and associated recordkeeping for the storage tank system.

**(13)** "Class C operator" means the individual responsible for initially addressing emergencies presented by a spill or release from a storage tank system. The class C operator typically controls or monitors the dispensing or sale of regulated substances.

**(14)** "Class I liquid" means any flammable liquid having a flashpoint below 100.0 degrees fahrenheit (37.8 degrees celsius) and that meets one of the following sub classes:

**(a)** Class IA liquids include those having flashpoints below 73 degrees fahrenheit (22.8 degrees celsius) and boiling points below 100 degrees fahrenheit (37.8 degrees celsius);

**(b)** Class IB liquids include those having flashpoints below 73 degrees fahrenheit (22.8 degrees celsius) and boiling points at or above 100 degrees fahrenheit (37.8 degrees celsius); or

**(c)** Class IC liquids include those having flash points at or above 73 degrees fahrenheit (22.8 degrees celsius) but below 100 degrees fahrenheit (37.8 degrees celsius).

**(15)** "Class II Liquid" means a combustible liquid having flash points at or above 100 degrees fahrenheit (37.8 degrees celsius) and below 140 degrees fahrenheit (60 degrees), except any mixture having components with flashpoints of 200 degrees fahrenheit (93.3 degrees celsius) or higher, the volume of which make up ninety-nine percent or more of the total volume of the mixture.

**(16)** "Class III Liquid" means a combustible liquid having flashpoints at or above 140 degrees fahrenheit (60 degrees celsius) and that meets one of the following sub classes. Where the term "Class III liquid" is used, it shall mean only Class IIIA liquids.

**(a)** Class IIIA liquids include those having flash points at or above 140 degrees fahrenheit (60 degrees celsius) and below 200 degrees fahrenheit (93.3 degrees celsius) except any mixture having components with flashpoints of 200 degrees fahrenheit (93.3 degrees celsius), or higher, the total volume of which make up ninety-nine percent or more of the total volume of the mixture;

**(b)** Class IIIB liquids include those having flash points at or above 200 degrees fahrenheit (93.3 degrees celsius);

**(c)** any liquid that has a flash point at or above 200 degrees fahrenheit or 93 degrees celsius.

**(17)** "Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

**(18)** "Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the storage tank system and under varied environmental conditions (i.e., at different temperatures).

**(19)** "Connected piping" means all above ground and underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual storage tank system, the piping which joins the two storage tank systems should be allocated equally between them.

**(20)** "Consumptive use" with respect to heating oil means the oil is burned on the premises.

**(21)** "Contain" means the stopping of further migration of a regulated substance from a release into or through groundwater, surface water or soil.

**(22)** "Containment" means that contamination from a release has been contained and is not spreading, migrating, spilling, infiltrating or otherwise traveling into uncontaminated areas. Verification of containment requires the performance of physical measurements that provide positive proof that contamination is contained.

**(23)** "Containment sump" means a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at other points in the piping run (transition or intermediate sump). Containment sumps may have valves, joints or penetrations, such as piping penetrations.

**(24)** "Contaminant" means any regulated substance as defined in this section, any constituent of a regulated substance, or any combination of a regulated substance or constituent thereof with any other substance or matter.

**(25)** "Contaminant of concern" means any contaminant which is suspected of being released at the site based on site history for which:

**(a)** the New Mexico water quality control commission has adopted standards pursuant to the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978;

**(b)** the New Mexico environmental improvement board has adopted standards, action levels, risk-based screening levels or site-specific target levels pursuant to the Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act; or

**(c)** the New Mexico environment department has established or approved site-specific target levels pursuant to the Hazardous Waste Act, the Ground Water Protection Act, or the Environmental Improvement Act.

**(26)** "Contaminant saturated soil" means soil exclusive of the water table and capillary fringe in which non-aqueous phase liquid is observable in the soil or, if sufficiently liquid, drains from the soil when the soil is suspended on filter paper or its equivalent.

**(27)** "Contaminated soil" means soil containing detectable quantities of contaminants of concern.

**(28)** "Contractor" means a person who has an agreement to perform corrective action on behalf of the state or owners or operators.

**(29)** "Controlling interest" means direct ownership or other legal control of at least fifty percent of the voting stock of another entity.

**(30)** "Corrective action" means an action taken to investigate, minimize, eliminate, or clean up a release to protect the public health, safety, and welfare or the environment.

**(31)** "Corrective action fund" or "fund" means the fund created pursuant to the Ground Water Protection Act, Section 74-6B-7 NMSA 1978, to pay or reimburse for corrective action performed pursuant to 20.5 NMAC and the Ground Water Protection Act.

**(32)** "Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the national association of corrosion engineers international (NACE). A corrosion expert shall only perform the specific activities required by these rules for which he is qualified, certified, registered or licensed; for example, a NACE licensed cathodic protection tester shall not design a cathodic protection system unless he is also a NACE licensed cathodic protection technologist, specialist or has another equivalent qualification, certification, registration or license.

**(33)** "Corrosion prevention plan" means a plan approved in writing by a corrosion expert for a UST or AST or associated piping, or secondary containment, which plan is designed to maintain the integrity of the tank or piping for its useful life.

**(34)** "Corrosion protection" means a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell through the application of either galvanic anodes or impressed current, or by isolating the metal surface from soil, water, or other elements that can cause corrosion, including but not limited to application of a paint or coating material approved for use as corrosion protection.

**(35)** "Critical junctures" means the steps of an installation, replacement, modification, repair or removal of a storage tank system or any part of a storage tank system, which are important to the prevention of releases and which are more specifically described in 20.5.106, 20.5.107, 20.5.109, 20.5.110 and 20.5.115 NMAC.

**D.** Terms beginning with the letter "D."

**(1)** "Deductible" means the first ten thousand dollars (\$10,000) of minimum site assessment costs, or any lesser amount determined in accordance with 20.5.123 NMAC.

**(2)** "Department" means the New Mexico environment department, also known as the New Mexico department of environment.

**(3)** "Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate storage tank systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of storage tank systems, such as tank from piping.

**(4)** "Director" means the secretary of the New Mexico environment department also known as the secretary of the environment or as delegated to the director of the resource protection division of the department.

**(5)** "Direct responsible supervisory control" means responsibility for the direction, control, or supervision of investigation and remediation activities to assure that the work is performed in accordance with appropriate industry and regulatory quality standards.

**(6)** "Dispenser" means equipment located above ground that dispenses regulated substances from the storage tank system.

**(7)** "Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the storage tank system.

**E.** Terms beginning with the letter "E."

**(1)** "Effectively mitigating" means that the approach taken to corrective action has contained the release and is achieving reductions in contamination levels such that the standards described in 20.5.119 and 20.5.120 NMAC will be met in a manner protective of public health, safety and welfare and the environment, within the period of time specified in the plan for remediation by monitored natural attenuation or otherwise.

**(2)** "EIB" means the environmental improvement board.

**(3)** "EIB standards" means standards set forth in 20.5.119, 20.5.120 and 20.7.10 NMAC.

**(4)** "Electrical equipment" means equipment which contains dielectric fluid which is necessary for the operation of equipment such as transformers and buried electrical cable.

**(5)** "Emergency generator system" means any UST or AST system that stores any regulated substance for use by emergency power generators.

**(6)** "Emergency repair" means a repair required by immediate danger of a release, or by an immediate threat to public health, safety and welfare, or to the environment.

**(7)** "Environmental improvement board" (EIB) means the board created in the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

**(8)** "Environmental Improvement Act" means the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

**(9)** "Excavation zone" means the area containing the storage tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

**(10)** "Existing AST system" means an AST system which is used to contain an accumulation of regulated substances or for which installation commenced on or before June 14, 2002. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank system, and if either:

**(a)** a continuous on-site physical construction or installation program has begun, or

**(b)** the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

**(11)** "Existing UST system" means a UST system which is used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction of the site or installation of the tank system, and if either:

**(a)** a continuous on-site physical construction or installation program has begun, or

**(b)** the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

**(12)** "Exposed petroleum products" means petroleum that is present in the non-aqueous phase (i.e. not dissolved in water) on the surface of the ground, on surface water, or in any surface or subsurface structures such as utility corridors, basements and manholes.

**(13)** "Exposed hazardous substance" means a regulated substance other than petroleum that is present on the surface of the ground, on surface water, or in any surface or subsurface structures such as utility corridors, basements or manholes.

**F.** Terms beginning with the letter "F."

**(1)** "Facility" means a property location that contains storage tanks.

**(2)** "Facility ID number" is a department-issued facility identification number.

**(3)** "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, range land and nurseries with growing operations.

**(4)** "Field-constructed tank" means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field. AST systems with a capacity of 55,000 gallons or more associated with UST systems with field-constructed tanks must comply with 20.5.101 NMAC, 20.5.102 NMAC, 20.5.117 NMAC, 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.124 NMAC.

**(5)** "Financial reporting year" means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared:

**(a)** a 10-K report submitted to the SEC;

**(b)** an annual report of tangible net worth submitted to Dun and Bradstreet; or

**(c)** annual reports submitted to the energy information administration or the rural utilities service; "financial reporting year" may thus comprise a fiscal or a calendar year period.

**(6)** "Flow restrictor" means an overfill prevention device that decreases the flow of a regulated substance into a UST during a delivery at a preset height by decreasing the flow of vapors out of the UST.

**(7)** "Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

**(8)** "Free product" refers to a regulated substance that is present as a non-aqueous phase liquid (for example, liquid not dissolved in water).

**(9)** "Functionality test" means a test for automatic line leak detectors which determines whether they are operating correctly.

**(10)** "Fund" means the corrective action fund which was created pursuant to Section 74-6B-7 NMSA 1978, to pay or reimburse for corrective action required at leaking storage tank sites.

#### **G.** Terms beginning with the letter "G."

**(1)** "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

**(2)** "Ground Water Protection Act" means the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978.

#### **H.** Terms beginning with the letter "H."

**(1)** "Hazardous substance UST system" or "hazardous substance UST" means an underground storage tank system that contains an accumulation of hazardous substances defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act (RCRA). Hazardous substance UST includes a tank with a mixture of such substances and petroleum, but which is not a petroleum UST system.

**(2)** "Hazardous Waste Act" means the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978.

**(3)** "Heating oil" means petroleum that is No. 1; No. 2; No. 4--light; No. 4-heavy; No. 5-light; No. 5-heavy; and No. 6 technical grades of fuel oil; other residual fuel oils (including navy special fuel oil and bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

**(4)** "Hybrid storage tank system" means a storage tank system where any combination of above ground and underground storage tank systems are connected in a manner where fuel enters one tank from the other tank under pressure or gravity flow but is not part of a siphon system.

**(5)** "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

**I.** Terms beginning with the letter "I".

**(1)** "Imminent threat to public health and the environment" means a condition that creates a substantial probability of harm, when the probability and potential extent of harm make it reasonably necessary to take immediate action to prevent, reduce, or mitigate the actual or potential damages to public health and the environment.

**(2)** "Incurred" means billed to the owner or operator.

**(3)** "Initiation of containment" means the point in time at which a system designed to achieve containment is put into continuous operation.

**(4)** "Install" or "installation" means the work involved in placing a storage tank system or any part thereof in, on or above the ground and preparing it to be placed in service.

**(5)** "Installation Date" means for existing storage tank systems, the date when a regulated substance was placed in the tank, or where the date is unknown, the approximate date the installation was completed. For a new installation, the date a regulated substance is first placed in each tank.

**(6)** "Installation of a new or replaced motor fuel dispenser system" means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the storage tank system, but shall not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the storage tank system. The equipment necessary to connect the motor fuel dispenser to the storage tank system may include check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the underground piping.

**(7)** "Integrity test" means an evaluation process that has been independently tested and approved by a nationally recognized association or independent testing laboratory to determine, in the case of a UST, the suitability of the tank for continuous containment of a regulated substance, or, in the case of an AST, both the suitability of the tank for continuous containment of a regulated substance and the necessary hydraulic properties of the tank to contain the outward pressure of the regulated substance.

**(8)** "Internal inspection" means a formal inspection of an AST by an inspector authorized by the American petroleum institute or certified by the steel tank institute. The inspection shall determine whether the AST tank bottom or shell is severely corroded and leaking, and shall include an evaluation of the tank bottom and shell thickness to see whether they meet minimum thickness requirements. The inspector shall visually examine all tanks included in the inspection and, if applicable, check for tank bottom settlement.

**(9)** "Interstitial monitoring" is a leak detection method which surveys the space between a storage tank system's walls and the secondary containment system for a change in steady state conditions.

**(10)** "Inventory controls" are techniques used to identify a loss of product that are based on volumetric measurements in the tank and reconciliation of those measurements with product delivery and withdrawal records.

**J.** Terms beginning with the letter "J." **[RESERVED]**

**K.** Terms beginning with the letter "K." **[RESERVED]**

**L.** Terms beginning with the letter "L."

**(1)** "Landfarming" is the remediation of petroleum contaminated soils on or at ground surface using natural aeration and volatilization, disking and natural and enhanced bioremediation to reduce the concentrations of petroleum hydrocarbons to regulatory levels; requires a groundwater discharge permit.

**(2)** "Leak" means any spilling, emitting, discharging, escaping, or disposing of a regulated substance due to the failure of components of a storage tank system to contain a regulated substance as designed. A leak may or may not result in a release to the environment.

**(3)** "Legal defense cost" is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought:

**(a)** by EPA or a state to require corrective action or to recover the costs of corrective action;

**(b)** by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

**(c)** by any person to enforce the terms of a financial assurance mechanism.

**(4)** "Liquid" means any material that has a fluidity greater than that of 300 penetration asphalt when tested in accordance with *ASTM D 5, "Test for Penetration for*

*Bituminous Materials*". When not otherwise identified, the term liquid shall mean both flammable and combustible liquids.

(5) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. Such liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(6) "Loading rack" means the area around and including loading arms, pumps, meters, shutoff valves, relief valves, and other equipment used to load and unload fuel cargo tanks, trucks, tank trucks, railroad cars, cars, other distribution containers or other transport vehicles, if the loading rack services or is attached to one or more storage tank(s) regulated in 20.5 NMAC.

(7) "Local government" shall have the meaning given this term by applicable state law. The term is generally intended to include counties, municipalities, school districts, and special districts, including flood control and conservancy districts.

(8) "Lower explosive limit" means the lowest percentage of a substance in an airspace that is explosive.

(9) "LST ranking system" means the leaking storage tank ranking system, the ranking or site prioritization system developed for and modified by the department using the analytical hierarchy process to rank sites where a release from a storage tank has occurred based upon public health, safety and welfare and environmental concerns.

**M. Terms beginning with the letter "M."**

(1) "Magnitude of contamination" means the maximum concentrations of contaminants of concern that resulted from a release.

(2) "Maintenance" means the normal operational upkeep to prevent a storage tank system from releasing product.

(3) "Minimum site assessment" or "MSA" means the sum total of all of the following activities:

(a) reporting, investigating and confirming a release pursuant to 20.5.118 NMAC; and

(b) determining the on-site extent, magnitude and impact of contamination by conducting investigations and reporting to the department pursuant to 20.5.119.1902 NMAC or 20.5.120.2002 NMAC (initial abatement), 20.5.119.1903 NMAC or 20.5.120.2003 NMAC (report on initial abatement), 20.5.119.1907 NMAC or

20.5.120.2007 NMAC (preliminary investigation), and 20.5.119.1909 NMAC or 20.5.120.2009 NMAC (report on the preliminary investigation).

**(4)** "Mining" means the process of obtaining useful minerals from the earth's crust or from previously disposed or abandoned mining wastes, including exploration, open-cut mining and surface operation, the disposal of refuse from underground and in situ mining, mineral transportation, concentrating, milling, evaporation, leaching and other processing. "Mining" does not mean the exploration and extraction of potash, sand, gravel, caliche, borrow dirt and quarry rock used as aggregate in construction, the exploration and extraction of natural petroleum in a liquid or gaseous state by means of wells or pipes, the development or extraction of coal, the extraction of geothermal resources, smelting, refining, cleaning, preparation, transportation or other off-site operations not conducted on permit areas or the extraction, processing or disposal of commodities, byproduct materials or wastes or other activities regulated by the federal nuclear regulatory commission.

**(5)** "Mobile AST" means an above ground storage tank that is not field-erected, and which is capable of changes in location.

**(6)** "Modification" means any change to any portion of a storage tank system that is not a repair. For purposes of 20.5.105 NMAC, the term does not include the process of relining a tank through the application of such materials as epoxy resins.

**(7)** "Monitored natural attenuation" means a methodology for remediation that relies upon a variety of naturally occurring chemical, physical and biological processes to achieve target concentrations in a manner that is equally as protective of public health, safety and welfare, and the environment as other methods, and that is accompanied by a program of monitoring to document the progress and results of the above-mentioned processes.

**(8)** "Monthly" means once per month, not to exceed 30 days.

**(9)** "Motor fuel" means a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (for example: motor gasoline blended with alcohol).

**(10)** "Motor fuel dispenser system" or "dispenser system" means a motor fuel dispenser and the equipment necessary to connect the dispenser to a storage tank system. The equipment necessary to connect the motor fuel dispenser to the storage tank may include check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are beneath the dispenser and connect the dispenser to the piping.

**N.** Terms beginning with the letter "N."

**(1)** "NAPL" means non-aqueous phase liquid as defined in this section.

**(2)** "New AST system" means an AST system for which installation has commenced after June 14, 2002. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals or permits necessary to begin physical construction at the site or installation of the tank, and if either:

**(a)** a continuous on-site physical construction or installation program has begun, or

**(b)** the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

**(3)** "New storage tank system" means a new AST system or a new UST system.

**(4)** "New UST tank system" means an UST system for which installation has commenced after December 22, 1988. Installation will be considered to have commenced if the owner or operator has obtained all federal, state and local approvals, or permits necessary to begin physical construction at the site or installation of the tank, and if either:

**(a)** a continuous on-site physical construction or installation program has begun, or

**(b)** the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction at the site or installation of the tank system to be completed within a reasonable time.

**(5)** "Non-aqueous phase liquid" (NAPL) means an interstitial body of liquid oil, petroleum product or organic solvent or other organic substance, including an emulsion containing such material; in the case of liquid oil or a petroleum product, the term is synonymous with "phase separated hydrocarbon" and "free product."

**(6)** "Non-commercial purposes" with respect to motor fuel means not for resale.

**(7)** "Non-community water system" means a public water system that is not a community water

system.

**(8)** "Normal maintenance" means an activity involving work on a storage tank system that is not a repair, replacement, or installation, which may include but is not

limited to: painting, replacing fuses, or touchup. Any time an activity involves disconnecting or affecting the integrity of the piping, tank, spill or overfill systems, or work on line or tank leak detection systems, then the activity is not normal maintenance but is instead a repair.

**O.** Terms beginning with the letter "O."

**(1)** "Occurrence" means an accident, including continuous or repeated exposure to conditions, which results in a release from a storage tank. This definition is intended to assist in the understanding of 20.5.123 NMAC and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

**(2)** "On the premises where stored" with respect to heating oil means storage tank systems located on the same property where the stored heating oil is used.

**(3)** "Operational life" is the period beginning from the time when the installation of the tank system is commenced until it is properly closed pursuant to 20.5.115 NMAC.

**(4)** "Operator" means any person in control of, or having responsibility for, the daily operation of a storage tank system.

**(5)** "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

**(6)** "Owner" means, in the case of a storage tank in use on November 8, 1984 or brought into use after that date, any person who owns a storage tank used for storage, use, or dispensing of regulated substances; and in the case of a storage tank in use before November 8, 1984 but no longer in use after that date, any person who owned such tank immediately before the discontinuation of its use. For purposes of the registration requirements of 20.5.102

NMAC only, the term "owner" excludes any person who:

**(a)** had a UST taken out of operation on or before January 1, 1974;

**(b)** had a UST taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984; or

**(c)** had an AST taken out of operation on or before July 1, 2001.

**(7)** "Owner ID number" means a department issued owner identification number.

**P.** Terms beginning with the letter "P."

**(1)** "Permanently installed AST" means an AST or mobile AST that is on site for more than 365 consecutive days and dispensing or storing a regulated substance for distribution at any time during that period.

**(2)** "Person" means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

**(3)** "Petroleum" means crude oil, crude oil fractions, and refined petroleum fractions, including gasoline, kerosene, heating oils, and diesel fuels.

**(4)** "Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

**(5)** "Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with storage tank systems as well as petroleum marketing facilities are considered to be petroleum marketing firms.

**(6)** "Petroleum tank system," "petroleum storage tank" or "petroleum UST" means a storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

**(7)** "Pipe" or "piping" means the hollow cylinder or the tubular conduit constructed of non-earthen materials that routinely contains and conveys regulated substances within a storage tank system. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the storage tank to the dispenser or other end-use equipment.

**(8)** "Pipeline facilities, including gathering lines," are new and existing pipe rights-of-way and any equipment, facilities, or buildings regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act.

**(9)** "Positive sampling, testing or monitoring results" refers to the results of sampling, testing or monitoring using a method described in 20.5.108 NMAC or 20.5.111 NMAC that indicate a release from a storage tank system has occurred.

**(10)** "Potable drinking water well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which may supply water for a community water system, a non-community public water system, or otherwise may

supply water for human consumption (consisting of drinking, bathing, cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.

**(11)** "Potentially explosive levels of petroleum hydrocarbon vapors" means vapors which register in excess of ten percent LEL (lower explosive limit) on a combustible gas indicator properly calibrated for pentane.

**(12)** "Potentially harmful petroleum hydrocarbon vapors" means vapors which register a reading of five whole units above ambient concentrations total aromatic hydrocarbons in any structure in the vicinity of the release site, on a photoionization detector, flame ionization detector or an equivalent device properly calibrated to detect hydrocarbon vapors at a minimum detection limit of at least one ppm.

**(13)** "Product" means a regulated substance.

**(14)** "Product deliverer" means any person who delivers or deposits product into a storage tank system. This term includes, but is not limited to, major oil companies, jobbers, petroleum transportation companies, brokers and other product delivery entities.

**(15)** "Professional engineer" is an individual licensed in New Mexico to engage in the practice of engineering under the New Mexico Engineering and Surveying Practices Act, Sections 61-23-1 through 61-23-32 NMSA 1978.

**(16)** "Project drawings" means schematic drawings of tanks, piping, and ancillary equipment, which need not be prepared, stamped or signed by a professional engineer.

**(17)** "Property damage" shall have the meaning given this term by applicable state law. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, such exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

**(18)** "Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of a storage tank system through one of the mechanisms listed in 20.5.117.1705 through 20.5.117.1716 NMAC, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, issuer of a state-required mechanism, or a state.

**(19)** "Public water system" means a system for the provision to the public of piped water for human consumption (consisting of drinking, bathing, cooking, or other similar uses) if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term

includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a "community water system" or a "non-community water system."

**Q.** Terms beginning with the letter "Q".

**(1)** "Qualified firm" means a person, as defined in this section, qualified by the department under 20.5.122 NMAC to undertake corrective action.

**(2)** "Qualified tester" means an individual who has the training, testing equipment manufacturer's certifications, and experience to test spill and overflow prevention equipment, containment sumps, interstitial and sump sensors, automatic line leak detectors, cathodic protection systems, and to conduct precision tank and line tightness testing on any above ground or underground storage tank systems. Also, the individual meets the requirements for testers in 20.5.105 NMAC and has submitted the information required in 20.5.105 NMAC to the department.

**R.** Terms beginning with the letter "R".

**(1)** "RBSL" means risk-based screening level as used in 20.5.119 NMAC.

**(2)** "Receptor" means a person, plant or animal community, structure, utility, surface water, designated wellhead or source water protection area or water supply well that is or may be adversely affected by a release.

**(3)** "Red tag" means a tamper-resistant tag on a storage tank system's fill pipes that clearly identifies a storage tank system as ineligible for product delivery, deposit or acceptance. The tag shall be easily visible and state that it is unlawful to deliver to, deposit into, or accept product into, the ineligible storage tank system.

**(4)** "Regulated substance" means:

**(a)** for USTs: any substance defined in Section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act, but not including any substance regulated as a hazardous waste under Subtitle C of the federal Resource Conservation and Recovery Act, as amended; and

**(b)** for ASTs and USTs: petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure of 60 degrees fahrenheit and fourteen and seven-tenths pounds per square inch absolute; asphalt is not a regulated substance; the term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion,

upgrading and finishing, such as motor fuels (including ethanol-based motor fuels), jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

**(5)** "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of a regulated substance from a storage tank system into groundwater, surface water or soil.

**(6)** "Release detection" means determining whether a release of a regulated substance has occurred from a storage tank system into the environment or a leak has occurred into the interstitial area between a storage tank system and a secondary barrier around it.

**(7)** "Remediation" is the process of reducing the concentration of contaminants in air, water or soil to a level that poses an acceptable risk to public health, safety and welfare and the environment.

**(8)** "Repair" means to restore to proper operating condition any defective or damaged part of a storage tank system. Repair does not include normal maintenance. For these purposes, normal maintenance shall include but is not limited to: painting, replacing fuses, or touchup. Any time an activity involves disconnecting or affecting the integrity of the piping, tank, spill or overfill systems, or work on line or tank leak detection systems, then the activity is not normal maintenance and is a repair.

**(9)** "Replace" or "replaced" means:

**(a)** for a storage tank or dispenser system, to remove an existing tank or dispenser system and install a new tank or dispenser; and

**(b)** for piping, to remove either 20 feet or more or fifty percent or more of piping, whichever is less, and install other piping, excluding flex connectors and other transitional components, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

**(10)** "Residential tank" is a tank located on property used primarily for dwelling purposes.

**(11)** "Responsible party-lead site" means a site where the owner or operator takes corrective action and applies to the fund for payment of corrective action costs, as distinct from a site where the state takes corrective action.

**(12)** "Return to service" means to bring a storage tank into operation after the tank has been in temporary or permanent closure.

**(13)** "Risk-based screening level" (RBSL) means an action level or target level for a contaminant of concern determined using default criteria set by the department and

site-specific data for thickness of the contaminated zone and depth to groundwater in accordance with 20.5.119 NMAC.

**(14)** "Rural and remote area" means that a storage tank facility is located in an area that is more than 20 miles from another facility that sells fuel to the public and that is open year-round.

**S.** Terms beginning with the letter "S."

**(1)** "Secondary containment" or "secondarily contained" means:

**(a)** for USTs and ASTs: a release prevention and release detection system for a storage tank, its piping and associated ancillary equipment that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, synthetic impervious liners. This term includes containment sumps when used for interstitial monitoring of piping.

**(b)** For USTs: a release prevention and release detection system for a tank or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks.

**(2)** "Secretary" means the secretary of the New Mexico environment department also known as the secretary of the environment.

**(3)** "Septic tank" is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

**(4)** "Siphon system" means two or more storage tanks where the tops of the tanks are installed at the same level, the fuel levels equalize by atmospheric pressure, and the piping connecting them is installed through penetrations on the tops of the tanks.

**(5)** "Site" means a place where there is or was at a previous time one or more storage tanks and may include areas contiguous to the actual location or previous location of the tanks.

**(6)** "Site conceptual exposure scenario" means a qualitative evaluation of exposure information for a site that identifies the relevant contaminant source, release mechanisms, media of concern, complete and incomplete exposure pathways, and receptors.

**(7)** "Site-specific target level" (SSTL) means an action level or target level for a contaminant of concern determined using more site-specific data as used in 20.5.119 NMAC.

**(8)** "Source water" means water that could be used for domestic purposes, including but not limited to ground water, natural springs, and surface water, even if such water is not currently being used for domestic purposes.

**(9)** "Special enclosure" means an above or below grade AST installation that surrounds an AST or ASTs, including but not limited to pits, cellars, and basements.

**(10)** "Spill" means:

**(a)** any spill or overflow of a regulated substance that exceeds its reportable quantity under 40 CFR 302 in accordance with CERCLA;

**(b)** any spill or overflow of petroleum that exceeds 25 gallons or causes a sheen on surface water or reaches groundwater; or

**(c)** any spill or overflow of petroleum of 25 gallons or less, the cleanup of which cannot be accomplished within 24 hours.

**(11)** "SSTL" means site-specific target level as used in 20.5.119 NMAC.

**(12)** "State-lead site" means a site where the department takes corrective action using the fund because the owners and operators are unknown, unable or unwilling to take corrective action as described in 20.5.121.2102 NMAC or because the department determines that a single entity is necessary to lead the corrective action.

**(13)** "Storage tank" means any above ground storage tank or underground storage tank.

**(14)** "Storage tank fee" means fees required by Section 74-4-4.4 NMSA 1978 and Section 74-6B-9 NMSA 1978.

**(15)** "Storage tank system" means a storage tank and its associated ancillary equipment and containment system, if any.

**(16)** "Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur.

**(17)** "Substantial business relationship" means the extent of a business relationship necessary under applicable state law to make a guarantee contract issued

incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.

**(18)** "Substantial governmental relationship" means the extent of a governmental relationship necessary under applicable state law to make an added guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from a clear commonality of interest in the event of a storage tank release such as coterminous boundaries, overlapping constituencies, common groundwater aquifer, or other relationship other than monetary compensation that provides a motivation for the guarantor to provide a guarantee.

**(19)** "Sump" means any pit or reservoir that meets the definition of tank (including troughs or trenches connected to it that serves to temporarily collect regulated substances.

**(20)** "Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of regulated substances and that is not an injection well.

**T.** Terms beginning with the letter "T".

**(1)** "Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

**(2)** "Tank" is a stationary device designed to contain an accumulation of regulated substances which is constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

**(3)** "Tank chart" means a table that converts the number of inches of liquid in the tank into the number of gallons.

**(4)** "Target concentrations" means any concentration of a contaminant to which a medium is required to be remediated under any provision of 20.5 NMAC protective of human health, safety and welfare, and the environment. For purposes of 20.5.120 NMAC, target concentrations as they apply to soil contamination shall be based on standards prescribed by applicable law or, if there are no applicable standards, the standard set forth in 20.6.3.10 NMAC.

**(5)** "Temporary closure" is the state of a storage tank system that is not receiving deliveries, has no regulated substance being transmitted through its piping,

and whose owner or operator has notified the department that it is in temporary closure. Temporary closure shall not exceed 12 months unless the owner or operator receives an extension from the department and meets the requirements of 20.5.115 NMAC.

**(6)** "Termination" under Subsections A and B of 20.5.117.1757 NMAC means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

**(7)** "Tester" means an individual who has the training, testing equipment manufacturer's certifications, and experience to test spill and overflow prevention equipment, containment sumps, interstitial and sump sensors, automatic line leak detectors, cathodic protection systems, and to conduct precision tank and line tightness testing on any above ground or underground storage tank systems.

**(8)** "Third party" means an independent entity that is not affiliated with the owner and operator of a storage tank system.

**(9)** "Third party certified" means a process whereby release detection equipment or a method of release detection has been evaluated by an independent third-party testing laboratory which has published a report stating the equipment or method meets the claims made by the manufacturer.

**(10)** "Tightness testing" means a procedure for testing the ability of a storage tank system to prevent an inadvertent release of any stored substance into the environment (or, in the case of an UST system, intrusion of groundwater into a storage tank system).

**(11)** "Training program" means any program that meets the requirements of 20.5.104 NMAC and provides information to and evaluates the knowledge of a class A, class B, or class C operator through testing, practical demonstration, or another approach acceptable to the department regarding requirements for storage tank systems.

**(12)** "Trap door" means a device installed on the fill riser above the connection of remote fill line on a UST system that is designed to prevent a regulated substance from escaping the fill riser in the event of an overflow, and it allows for the manual gauging of the tank through this riser.

**U.** Terms beginning with the letter "U".

**(1)** "Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater.

**(2)** "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

**(3)** "Underground release" means any below ground release.

**(4)** "Underground storage tank" or "UST" means a single tank or combination of tanks, including pipes connected thereto, that are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is ten percent or more beneath the surface of the ground. A compartment tank with combined total capacity greater than 110 gallons is a UST and for purposes of these regulations is considered to be one tank regardless of the number of compartments and the number of regulated substances contained. The term does not include any:

**(a)** farm, ranch or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

**(b)** septic tank;

**(c)** pipeline facility, including gathering lines which are regulated under the federal Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. App. 1671, et seq., or the federal Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. App. 2001, et seq., or which is an intrastate pipeline facility regulated under state laws comparable to either act;

**(d)** surface impoundment, pit, pond or lagoon;

**(e)** storm water or wastewater collection system;

**(f)** flow-through process tank;

**(g)** liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;

**(h)** storage tank situated in an underground area, such as a basement, cellar, mineworking, drift, shaft or tunnel, if the storage tank is situated upon or above the surface of the undesignated floor;

**(i)** tank used for storing heating oil for consumptive use on the premises where stored;

**(j)** tank exempted by rule of the EIB after finding that the type of tank is adequately regulated under another federal or state law; or

(k) pipes connected to any tank exempted by Subparagraphs (a) through (j) of this paragraph.

(5) "Un-manned facility" means a storage tank system without a sales office, store or other business establishment associated with it. Examples of un-manned facilities include, but are not limited to, a card-lock fueling station with no attendant and a tank serving an emergency generator at a utility transfer station.

(6) "Unsaturated zone" is the subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary forces within the soil and containing air or gases generally under atmospheric pressure. This zone is limited above by the ground surface and below by the upper surface of the zone of saturation (i.e., the water table).

(7) "Upgrade" means the addition, modification, or retrofit of some systems such as but not limited to cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

(8) "USTR" means the version of the environmental improvement board's underground storage tank regulations in effect prior to adoption of the standard format in the New Mexico Administrative Code in 1995.

(9) "UST system" means an underground storage tank and its associated ancillary equipment and containment system, if any.

#### V. Terms beginning with the letter "V."

(1) "Vault" means a liquid-tight structure that completely surrounds a tank that is above, below or partially above or below the ground surface.

#### W. Terms beginning with the letter "W."

(1) "Wastewater treatment tank" means a tank that is designed to receive and treat an influent of wastewater through physical, chemical, or biological methods.

(2) "Workplan" means a written plan for corrective action, including, but not limited to, a scope of work, schedule for implementation, and description of qualifications of persons who will perform the work.

(3) "WQCC" means the New Mexico water quality control commission.

(4) "WQCC standards" means standards set forth in 20.6.4 NMAC, standards for interstate and intrastate streams, and 20.6.2 NMAC, ground and surface water protection.

X. Terms beginning with the letter "X." **[RESERVED]**

Y. Terms beginning with the letter "Y." **[RESERVED]**

Z. Terms beginning with the letter "Z." **[RESERVED]**

[20.5.101.7 NMAC - N, 07/24/2018]

**20.5.101.8-20.5.101.99 [RESERVED]**

**20.5.101.100 SAVINGS CLAUSE:**

This rule shall not affect any administrative or judicial enforcement action pending on the effective date of 20.5.101 through 20.5.125 NMAC.

[20.5.101.100 NMAC - N, 07/24/2018]

**20.5.101.101 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with 20.5 NMAC does not relieve a person of the obligation to comply with other applicable state and federal regulations.

[20.5.101.101 NMAC - N, 07/24/2018]

**20.5.101.102 CONSTRUCTION:**

The petroleum storage tank regulations, 20.5 NMAC, shall be liberally construed to effectuate the purposes of the Hazardous Waste Act and the Ground Water Protection Act.

[20.5.101.102 NMAC - N, 07/24/2018]

**20.5.101.103 SEVERABILITY:**

If any part, section or application of 20.5 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.5.101.103 NMAC - N, 07/24/2018]

**PART 102: REGISTRATION OF TANKS**

**20.5.102.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.102.1 NMAC - N, 07/24/2018]

#### **20.5.102.2 SCOPE:**

This part applies to any owner and operator of a storage tank as provided in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice, reporting and payment requirements; however, both parties are liable in the event of noncompliance.

[20.5.102.2 NMAC - N, 07/24/2018]

#### **20.5.102.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.102.3 NMAC - N, 07/24/2018]

#### **20.5.102.4 DURATION:**

Permanent.

[20.5.102.4 NMAC - N, 07/24/2018]

#### **20.5.102.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.102.5 NMAC - N, 07/24/2018]

#### **20.5.102.6 OBJECTIVE:**

The purpose of this part is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.102.6 NMAC - N, 07/24/2018]

#### **20.5.102.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.102.7 NMAC - N, 07/24/2018]

**20.5.102.8 TO 20.5.102.199 [RESERVED]**

**20.5.102.200 EXISTING TANKS:**

**A.** The owner of any underground storage tank, as those terms are defined in 20.5.101 NMAC, must have registered such tank or tanks with the petroleum storage tank bureau of the department within three months after April 14, 1988, the effective date of this part as first adopted, except that any owner who has filed the form of notice entitled "notification for underground storage tanks," prescribed by the United States environmental protection agency and described in 40 CFR 280 Appendix I (EPA form 7530-1), is not required to register a tank for which a notice has been filed, provided that the information as stated therein is still current.

**B.** The owner of any above ground storage tank, as those terms are defined in 20.5.101 NMAC, must have registered such tank or tanks with the petroleum storage tank bureau of the department no later than June 14, 2002.

**C.** The owner of any storage tank emergency generator system must have registered such tank with the petroleum storage tank bureau of the department no later than June 15, 2012.

**D.** Registration becomes effective upon receipt of the first year's annual fee described in 20.5.103 NMAC. Registration shall be renewed annually by payment of the annual fee until the permanent closure of the tank pursuant to 20.5.115 NMAC.

**E.** If owners and operators do not have a current and valid registration certificate because of the failure to pay tank fees in accordance with 20.5.102.207 NMAC, the storage tank system shall not be operated and owners and operators shall comply with the temporary closure requirements of 20.5.115 NMAC or shall immediately permanently close the storage tank system in accordance with 20.5.115.1502 NMAC.

[20.5.102.200 NMAC - N, 07/24/2018]

**20.5.102.201 TRANSFER OF OWNERSHIP:**

**A.** No purported transfer of any storage tank system shall be effective to create, alter or extinguish any right or responsibility of any person subject to this part, unless the following transfer requirements are met.

**(1)** Prior to any transfer of ownership, control or possession, whether by lease, conveyance or otherwise, of a property with a regulated storage tank system, the transferor shall notify the department and shall provide the name, address and phone number of the transferee, as well as the date and type of transfer (sale or lease, for example). The transferor shall also notify the transferee, prior to the transfer, of the

existence of the storage tank system, of the transferee's registration obligations under this part, and of these rules.

**(2)** Upon receipt of such notification, the transferee shall re-register the tank with the department within 30 days of transfer of ownership, and shall provide all information required for registration in 20.5.102.206 NMAC. The transferee also shall have the duty to inquire into all of the provisions and requirements of this part.

**(3)** A transferor shall pay the tank fees for storage tank systems on the transferred property for the fiscal year of the transfer. A transferee shall pay the tank fees for storage tank systems on the transferred property starting the first July 1 after the transfer.

**B.** Nothing in this section or in this part shall be construed to relieve any person of responsibility or liability for any act or omission which occurred while that person owned, controlled or was in possession of the storage tank system.

[20.5.102.201 NMAC - N, 07/24/2018]

#### **20.5.102.202 NEW STORAGE TANK SYSTEMS:**

The owner shall notify the department in writing at least 30 days before any new above ground or underground storage tank system is installed, and shall register any new tank or storage tank system with the department within 60 days of placing a regulated substance in the tank, unless the owner applies for an extension in writing and an extension is granted in writing by the department. Annual registration certificates required for operation will be issued in accordance with 20.5.102.207 NMAC.

[20.5.102.202 NMAC - N, 07/24/2018]

#### **20.5.102.203 SUBSTANTIALLY MODIFIED STORAGE TANK SYSTEMS:**

Except as provided in 20.5.102.205 NMAC below, when an existing storage tank system is substantially modified or replaced, the owner shall notify the department in writing of such modification or replacement, at least 30 days prior to the modification or replacement. Emergency repairs or replacements made pursuant to 20.5.102.205 NMAC are exempt from the notification requirements of this section.

[20.5.102.203 NMAC - N, 07/24/2018]

#### **20.5.102.204 NOTIFICATION OF SPILL OR RELEASE:**

Notice of any known or suspected release from a storage tank system, any spill or any other emergency situation shall be given to the department in accordance with 20.5.118 NMAC.

[20.5.102.204 NMAC - N, 07/24/2018]

### **20.5.102.205 EMERGENCY REPAIRS AND TANK REPLACEMENT:**

The owner or operator may make immediate repairs or replacement of a storage tank system in the event an emergency situation presents a threat to the public health, provided the owner or operator gives notice to the department as set forth in 20.5.102.204 NMAC and complies with the requirements of 20.5.107 NMAC for UST systems and 20.5.110 NMAC for AST systems.

[20.5.102.205 NMAC - N, 07/24/2018]

### **20.5.102.206 REGISTRATION:**

**A.** Required information. An owner or operator shall register all storage tanks unless EPA form 7530-1 entitled "notification for underground storage tanks" has been submitted to the department and all information contained thereon is still accurate. The registration shall contain at a minimum the following for each location with tanks:

- (1) facility name and address, including county, zip code and telephone number, and whether the tanks are located on Indian lands;
- (2) the department issued owner ID number and facility ID number for existing facilities;
- (3) whether the facility is currently listed as a leaking petroleum storage tank site;
- (4) storage tank system owner's name and address, including county, zip code and telephone number;
- (5) property owner's name and address, including county, zip code and telephone number;
- (6) storage tank system operator's name and address, including county, zip code and telephone number (if operator is different from owner);
- (7) facility contact person, job title and phone number;
- (8) type of facility: government (federal, state, county, municipality or other); individual; retail or non-retail (petroleum producer, petroleum refiner, school district, construction company, manufacturer);
- (9) whether a suspected or confirmed release as described in 20.5.118 NMAC has been reported at the facility to the bureau;

**(10)** type of tank (list all that apply): AST, UST, steel double-wall, steel with cathodic protection, horizontal, vertical, compartment, with secondary containment, convault, field erected, shop built, vaulted, fiberglass, fiberglass double wall;

**(11)** for each tank, (list all that apply): type of internal protection (cathodic protection, interior lining or other), type of external protection (asphalted, painted, epoxy coated, fiberglass reinforced plastic, cathodically protected or other), and type of corrosion protection (impressed current, sacrificial anode, internal lining or other);

**(12)** type of piping (list all that apply): bare or galvanized steel, coated steel, fiberglass reinforced plastic, pressurized, suction, cathodically protected or unknown;

**(13)** products stored (list all that apply): diesel, unleaded or leaded gasoline, alcohol-enriched gasoline, used oil, lubricating oil, heating oil, kerosene, aviation gas, jet fuel, hazardous substance, other or unknown;

**(14)** use of tank (list all that apply): bulk fuel storage, retail fuel sales, aviation, fleet fuel supply, emergency generator, on-site heating, other (please specify);

**(15)** method of release detection for each tank: visual inspection, tank tightness testing with inventory control, automatic tank gauging, vapor monitoring, groundwater monitoring, interstitial monitoring, statistical inventory reconciliation, secondary containment or other (please specify);

**(16)** method of release detection for piping: visual inspection, secondary containment, vapor monitoring, interstitial monitoring, automatic line leak detectors, line tightness testing or other (please specify);

**(17)** installation date of each tank;

**(18)** status of each tank (list all that apply): new installation, upgraded or modified, currently in service or out of service less than 12 months, change in service and for tanks out of use: estimated date last used, estimated quantity of substance remaining in tank in gallons, date tank filled with solid material (if applicable), and date tank removed (if applicable);

**(19)** certifications required in 20.5.106 NMAC, 20.5.107 NMAC, 20.5.109 NMAC, 20.5.110 NMAC, and 20.5.105 NMAC;

**(20)** whether any part of the storage tank system is within 1,000 feet of any water supply well;

**(21)** a description of the method and provider of financial responsibility meeting the requirements of 20.5.117 NMAC;

(22) a description of the spill and overfill prevention systems for each tank (product level sensor/alarm, automatic tank fill shut-off and type, spill catchment basin, less than 25 gallons at a time transferred to tank, none, or other); and

(23) the name of the class A or B operator, if available. If the name of the class A or B operator is not available at the time of registration, this information shall be provided within 60 days of placing the storage tank system in service.

**B. Signature required.** A registration submitted by a corporation shall be signed by a principal executive officer of at least the level of vice president or a duly authorized agent of the corporation with authority to represent the corporation in these matters. A registration submitted by a partnership or a sole proprietorship shall be signed by a general partner or proprietor. A registration submitted by a municipal, state or other public facility shall be signed by either a principal executive officer, ranking elected official or other duly authorized employee.

**C.** Registrations shall be sent or delivered to the petroleum storage tank bureau.

[20.5.102.206 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for registration. The form is available on the Petroleum Storage Tank Bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.102.207 REGISTRATION CERTIFICATE:**

**A.** No person shall operate a storage tank system without a current and valid registration certificate.

(1) The operator of any storage tank system shall display a current and valid registration certificate on the premises of the storage tank system at all times.

(2) Upon submittal to the department of a complete registration application or EPA form 7530-1 and payment of the annual fee, the department shall issue an initial registration certificate. An initial registration certificate shall expire on the next succeeding June 30, regardless of its date of issuance.

(3) After issuance of the initial registration certificate, except as provided in Paragraph (5) of this subsection, the department shall issue a renewed registration certificate upon payment of the annual fee on or before July 1 of each year. A renewed registration certificate shall expire on June 30 of each year.

(4) After receiving a registration form for a transfer as provided in Paragraph (2) of Subsection A of 20.5.102.201 NMAC, the department shall issue a registration

certificate within 30 days for the transferee if the annual fees for the current fiscal year have been paid as required in 20.5.102.201 NMAC.

**(5)** When fees, including late fees, for any of an owner's tanks are delinquent as of June 30 of any year, no registration certificate for any of that owner's tanks shall be renewed until:

**(a)** all past due annual fees and late fees for all of the owner's tanks have been paid; or

**(b)** the department and the owner or operator have agreed to a schedule for payment, provided any renewed certificate issued to an owner or operator who has agreed to such a schedule shall be valid only so long as the owner or operator continues to make payments in accordance with the payment schedule.

**B.** In the event any information provided on the registration form or EPA form 7530-1 changes or is no longer accurate, the owner or operator shall report the change within 30 days to the department.

[20.5.102.207 NMAC - N, 07/24/2018]

#### **20.5.102.208 REQUIREMENT FOR A CORRECT MAILING ADDRESS:**

All registration forms, inspection reports, correspondence, or other documents sent by owners or operators to the department shall include the correct mailing address of the owner or operator, and the owner and operator shall advise the department, in writing, within seven days of any change in mailing address.

[20.5.102.208 NMAC - N, 07/24/2018]

### **PART 103: ANNUAL FEE**

#### **20.5.103.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.103.1 NMAC - N, 07/24/2018]

#### **20.5.103.2 SCOPE:**

This part applies to any owner and operator of a storage tank as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirement of this part, including any notice, reporting and payment requirements; however, both parties are liable in the event of noncompliance.

[20.5.103.2 NMAC - N, 07/24/2018]

**20.5.103.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; provisions of the Ground Water Protection Act, 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-16 NMSA 1978.

[20.5.103.3 NMAC - N, 07/24/2018]

**20.5.103.4 DURATION:**

Permanent.

[20.5.103.4 NMAC - N, 07/24/2018]

**20.5.103.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.103.5 NMAC - N, 07/24/2018]

**20.5.103.6 OBJECTIVE:**

The purpose of this part is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state, and to interpret, implement and enforce the provisions of the Hazardous Waste Act relating to storage tank systems.

[20.5.103.6 NMAC - N, 07/24/2018]

**20.5.103.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.103.7 NMAC - N, 07/24/2018]

**20.5.103.8-20.5.103.299 [RESERVED]**

**20.5.103.300 PAYMENT OF FEE:**

**A.** The owner or operator shall pay an annual per tank fee to the department on July 1 for each current fiscal year (July 1 through June 30) or portion of a year that a tank is in use. A storage tank shall be deemed "in use" until notice is received by the

department that the storage tank has been permanently closed in a manner acceptable to the department.

**B. Schedule for payment.**

**(1)** For USTs, the owner or operator shall pay the annual fee:

**(a)** for a UST in use on June 1, 1988, for calendar year 1988, the fee was due on June 1, 1988;

**(b)** for the period from January 1, 1989 through June 30, 1990, the fee was due on May 1, 1989;

**(c)** for each subsequent fiscal year (July 1 to June 30) on the July 1 that is the first day of each fiscal year;

**(d)** for a new UST, within 60 days after a regulated substance has been placed in the UST.

**(2)** For ASTs, the owner or operator shall pay the annual fee:

**(a)** for an AST in use on July 1, 2002, for fiscal year 2003, the fee was due on September 14, 2002; or within 30 days after the AST was placed in use for any AST installed after September 14, 2002;

**(b)** for each subsequent fiscal year (July 1 to June 30) on the July 1 that is the first day of each fiscal year;

**(c)** for a new AST, within 60 days after a regulated substance has been placed in the AST.

**C.** The department shall waive the annual tank fee for the current fiscal year for a storage tank system permanently closed in accordance with 20.5.115 NMAC on or before July 31.

**D.** When there is a transfer of ownership, control or possession, whether by lease, conveyance or otherwise, of a property with a registered storage tank system, the transferor shall pay the tank fees for storage tank systems on the transferred property for the fiscal year of the transfer. The transferee shall pay the tank fees for storage tank systems on the transferred property starting the first July 1 after any transfer. In addition, both parties shall comply with 20.5.102.201 NMAC.

[20.5.103.300 NMAC - N, 07/24/2018]

**20.5.103.301 AMOUNT OF FEE:**

**A.** The annual fee for all underground storage tanks shall be:

(1) \$28.00 per UST in calendar year 1988;

(2) \$75.00 per UST in calendar year 1989; and

(3) for subsequent years, \$100 per UST as established by Section 74-6B-9 NMSA 1978 and Section 74-4-4.4 NMSA 1978.

**B.** The annual fee for all above ground storage tanks shall be \$100 per AST as established by Section 74-6B-9 NMSA 1978 and Section 74-4-4.4 NMSA 1978, beginning July 1, 2002.

[20.5.103.301 NMAC - N, 07/24/2018]

### **20.5.103.302 TIMELINESS AND LATE FEES:**

**A.** Due date. A tank owner and operator become liable for a fee as soon as the event generating the fee occurs, such as a due date. The fact that the owner has not registered a tank is not material to the owner's and operator's liability for payment of a fee.

**B.** Late fee. In the event the annual fee is not paid when due, the department shall impose a late fee of \$25.00 or twenty-five percent of the unpaid balance, whichever is greater, which shall accumulate on the entire unpaid balance until all annual fees and all accrued late fees are paid. The department may waive the late fees if payment is made within 15 days of the due date.

**C.** Determination of timeliness.

(1) Fees and late fees are timely if the postmark on the envelope made by the United States postal service bears the date on or before the date the payment is due. The date affixed on an envelope by a postage meter stamp will be considered the postmark date if it is not superseded by a postmark made by the United States postal service.

(2) Illegible postmark. If the postmark on the envelope is not legible and the department receives the contents by the second business day following the due date, the payment will be deemed timely. If the department receives the contents after the second business day following the due date, the owner or operator who is liable for the fees has the burden of proving the time when the postmark was made.

(3) If an envelope is improperly addressed and is returned to the sender by the post office, there has been no timely mailing within the meaning of these rules. The postmark date on the improperly addressed envelope will not be deemed the date of receipt by the department.

(4) If the payment is sent or delivered to the department by any means other than by mailing with the United States postal service, it must be received by the department on or before the payment due date. Received by the department means received at the department or bureau during the department's normal business hours.

**D. Saturday, Sunday or holiday due date.**

(1) If a payment due date falls on a Saturday, Sunday or a state of New Mexico or national holiday, the payment shall be considered timely if postmarked on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(2) Example: The due date for payment of annual fees is July 1. If July 1 is a Saturday, the due date for payment of annual fees is Monday July 3. In this example, the department will consider any payment postmarked on July 3 to be timely.

[20.5.103.302 NMAC - N, 07/24/2018]

**20.5.103.303 DESIGNATION OF FEES:**

All fees described in this part shall be deposited in the storage tank fund.

[20.5.103.303 NMAC - N, 07/24/2018]

**PART 104: OPERATOR TRAINING**

**20.5.104.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.104.1 NMAC - N, 07/24/2018]

**20.5.104.2 SCOPE:**

This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirement of this part, including any notice, reporting, designation of certified operators, and payment requirements; however, both parties are liable in the event of noncompliance.

[20.5.104.2 NMAC - N, 07/24/2018]

**20.5.104.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act,

Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.104.3 NMAC - N, 07/24/2018]

**20.5.104.4 DURATION:**

Permanent.

[20.5.104.4 NMAC - N, 07/24/2018]

**20.5.104.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.104.5 NMAC - N, 07/24/2018]

**20.5.104.6 OBJECTIVE:**

The purpose of this part is to ensure that operators of regulated storage tanks are effectively trained to manage and prevent environmental and public health emergencies and other situations requiring on-site response, in order to protect public health, safety and welfare and the environment of the state.

[20.5.104.6 NMAC - N, 07/24/2018]

**20.5.104.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part. The terms operator and certified operator as used in this part are different terms, as defined in 20.5.101.7 NMAC.

[20.5.104.7 NMAC - N, 07/24/2018]

**20.5.104.8-20.5.104.399 [RESERVED]**

**20.5.104.400 CLASSES OF OPERATORS:**

There shall be three classes of operators identified as class A, class B, and class C.

**A. Designation.** Owners and operators shall identify and designate, for each storage tank system or group of storage tank systems at a facility, at least one named individual for each class of operator and provide the department the name(s) and certificate number(s) of the designated class A and B operator in writing within 30 days of a change in the designated operator.

(1) Owners and operators may designate different individuals for each class of operator, or one individual for more than one of the operator classes.

(2) Any individual designated for more than one operator class shall be trained and certified for each class of operator.

**B. Training.** All individuals designated as a class A, B or C operator shall, at a minimum, be trained and certified according to these regulations by the applicable deadlines in this part. Class A and B operators shall receive department approved training that applies to both AST systems and UST systems.

[20.5.104.400 NMAC - N, 07/24/2018]

### **20.5.104.401 CLASS A OPERATOR:**

A class A operator has primary responsibility to operate and maintain the storage tank system. The class A operator's responsibilities include managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

**A. General requirements.** The class A operator focuses on the broader aspects of the statutory and regulatory requirements and standards necessary to operate and maintain the storage tank system (20.5 NMAC). For example, the class A operator ensures that appropriate individuals:

- (1) properly operate and maintain the storage tank system;
- (2) maintain appropriate records;
- (3) are trained to operate and maintain the storage tank system and keep records;
- (4) properly respond to emergencies caused by releases or spills from storage tank systems at the facility; and
- (5) make financial responsibility documents available to the department as required.

**B. Minimum training requirements.** At a minimum, the class A operator shall be trained in:

- (1) a general knowledge of storage tank system requirements so he can make informed decisions regarding compliance and ensure appropriate individuals are fulfilling operation, maintenance, and recordkeeping requirements and standards of 20.5 NMAC regarding:

- (a) spill prevention;
  - (b) overfill protection;
  - (c) release detection;
  - (d) corrosion protection;
  - (e) emergency response; and
  - (f) product compatibility;
- (2) financial responsibility documentation requirements;
  - (3) notification requirements;
  - (4) release and suspected release reporting requirements;
  - (5) temporary and permanent closure requirements; and
  - (6) operator training requirements.

[20.5.104.401 NMAC - N, 07/24/2018]

#### **20.5.104.402 CLASS B OPERATOR:**

A class B operator implements applicable storage tank regulatory requirements and standards (20.5 NMAC) in the field. This individual implements the day-to-day aspects of operating, maintaining, and recordkeeping for storage tanks at one or more facilities.

**A. General requirements.** The class B operator monitors, maintains and ensures:

- (1) release detection method, recordkeeping and reporting requirements are met;
- (2) release prevention equipment, recordkeeping and reporting requirements are met;
- (3) all relevant equipment complies with performance standards; and
- (4) appropriate individuals are trained to properly respond to emergencies caused by releases or spills from storage tank systems at the facility.

**B. Minimum training requirements.** Compared with training for the class A operator, training for the class B operator shall provide a more in-depth understanding of

operation and maintenance aspects, but may cover a more narrow breadth of applicable regulatory requirements. At a minimum, class B operator training shall include:

- (1) components of storage tank systems;
- (2) materials of storage tank system components;
- (3) methods of release detection and release prevention applied to storage tank system components;
- (4) operation and maintenance requirements of 20.5 NMAC that apply to storage tank systems and include:
  - (a) spill prevention;
  - (b) overfill protection;
  - (c) release detection;
  - (d) corrosion protection;
  - (e) emergency response; and
  - (f) product compatibility;
- (5) reporting and recordkeeping requirements; and
- (6) class C operator training requirements.

[20.5.104.402 NMAC - N, 07/24/2018]

#### **20.5.104.403 CLASS C OPERATOR:**

A class C operator is an employee and is, generally, the first line of response to events indicating emergency conditions. This individual is responsible for responding to alarms or other indications of emergencies caused by spills or releases from storage tank systems. This individual notifies the class B or class A operator and appropriate emergency responders when necessary. Not all employees of a facility are necessarily class C operators.

**A.** General requirements. The class C operator:

- (1) controls or monitors the dispensing or sale of regulated substances; and
- (2) is responsible for initial response to alarms or releases.

**B.** Minimum training requirements. At a minimum, the class C operator shall be trained to take action in response to emergencies (such as situations posing an immediate danger or threat to the public or to the environment and that require immediate action) and alarms potentially caused by spills or releases from a storage tank system.

**C.** Training elements for class C.

**(1)** Trained class A or class B operators shall:

**(a)** provide training to class C operators on emergency response procedures and on contacts for alarms potentially caused by spills or releases;

**(b)** provide simple written instructions on these procedures and contacts; and

**(c)** post signage with these procedures and contacts in prominent areas of the storage tank facility that are easily visible to any person dispensing a regulated substance.

**(2)** For purposes of this subsection, emergency response procedures shall include but are not limited to:

**(a)** procedures for overfill protection during delivery of regulated substances;

**(b)** operation of the emergency shut off system and alarm response;

**(c)** release reporting; and

**(d)** any site-specific emergency procedures.

[20.5.104.403 NMAC - N, 07/24/2018]

#### **20.5.104.404 TRAINING AND CERTIFICATION DEADLINES AND SCHEDULES:**

**A.** Owners and operators of storage tank systems shall post at each facility owned a list of designated and certified class A and B operators and provide the department the name(s) and certificate number(s) of the designated class A and B operator(s) in writing within 30 days of a change in the designated operator.

**B.** When requested and at any inspection conducted by the department, owners and operators shall provide to the department a list of designated certified class A and B operators for each facility owned.

**C.** Owners shall maintain documentation identifying designated and certified class C operators, with proof of training, at each facility.

**D.** All designated certified class A, B and C operators shall be trained and possess a current certificate issued by a trainer approved pursuant to this part.

**E.** New operators shall be trained and certified within the following timeframes:

**(1)** Class A and class B operators shall be trained and certified within 60 days of assuming full operation and maintenance responsibilities of a storage tank system. Owners and operators in rural and remote areas of the state may apply in writing for a 60-day deferral of this requirement. To apply for this deferral, owners and operators must demonstrate to the department that they are located in a rural and remote area, as defined in 20.5.101.7 NMAC.

**(2)** Class C operators shall be trained before assuming responsibility for responding to emergencies and before dispensing a regulated substance.

**F.** Owners and operators shall provide the department the name(s) and certificate number(s) of the designated class A and B operator(s) within 30 days of when they assume full operation and maintenance responsibilities of a storage tank system.

[20.5.104.404 NMAC - N, 07/24/2018]

**20.5.104.405 OPERATOR PRESENT:**

Owners and operators shall ensure that every facility has either a class A, class B, or class C operator on-site whenever it is open for business and dispensing any regulated substance, except:

**A.** pursuant to Paragraph 1 of Subsection E of 20.5.104.404 NMAC;

**B.** at un-manned facilities, which shall conspicuously post signage required in Paragraph 1 of Subsection C of 20.5.104.403 NMAC, and shall either:

**(1)** be visited by a class A or B operator every week; or

**(2)** have a remote monitoring system that:

**(a)** meets the requirements for UST systems in 20.5.108 NMAC and for AST systems in 20.5.111 NMAC;

**(b)** will automatically shut off the delivery or transfer of regulated substances if a suspected release is detected; and

**(c)** is visited monthly by a class A or B operator;

**C.** at emergency generator systems, which shall comply with the requirements of Subsection B above, unless an owner or operator requests an alternate method and such request is approved by the department.

[20.5.104.405 NMAC - N, 07/24/2018]

**20.5.104.406 RE-TRAINING AND RE-CERTIFICATION:**

**A.** Class A and B operators shall be re-certified every five years, in the same manner as original training and certification required in this part. It is the responsibility of owners, operators and certified operators to track certification dates and expiration, and to ensure that a certified operator as required by this part is designated and on-site for every storage tank system by the deadlines in this part and as required in this part. Owners and operators shall provide the department with the certificate number and expiration date of their designated class A and B operators upon their certification.

**B.** In addition to the requirements of Subsection A, if the department finds that a storage tank system is out of compliance, the class A and class B operator shall be re-trained within 60 days unless they meet the requirements in Subsection C of this section. The class A and B operator may select training specific only to the area of non-compliance (if available) or attend a training program that includes all training elements required by this part. Owners and operators shall provide the department with verification of department approved re-training. At a minimum, a storage tank system is out of compliance for purposes of this section if the system is in violation of:

- (1) release detection requirements in 20.5 NMAC; or
- (2) release prevention requirements (spill, overfill, or corrosion prevention) requirements in 20.5 NMAC.

**C.** An owner may elect to certify class A and B operators annually for a storage tank system. Class A and B operators that are certified annually need not re-train as required in Subsection B of this section if the department finds the storage tank system is out of compliance. Owners and operators shall provide the department with the certificate number and expiration date of their designated class A and B operators upon their certification.**D.** No re-training or re-certification is required for class C operators. Class C operators must be trained and certified each time they are designated for a particular storage tank system.

**E.** Owners and operators of storage tank systems that have been placed in temporary closure in compliance with 20.5.115.1501 NMAC and have a designated trained class A or class B operator are exempt from re-training requirements unless one or both of the following conditions is present:

- (1) the storage tank contains greater than one inch of regulated substance; or

(2) the storage tank system has steel components that are in contact with soil, water or concrete.

[20.5.104.406 NMAC - N, 07/24/2018]

**20.5.104.407 DEFERRAL OF RE-TRAINING:**

**A.** An owner or operator that is a certified operator may apply in writing to the department for a one-time five-year deferral of re-training required in 20.5.104.406 NMAC if he can demonstrate the following:

(1) he owns no more than two facilities;

(2) no significant changes, modifications or upgrades to either of the facilities have been made during the five-year period immediately preceding the deferral application, including changes to spill prevention equipment, overfill protection equipment, leak detection equipment or corrosion protection equipment;

(3) the average monthly throughput at each facility is less than 20,000 gallons over the last 12 months; and

(4) the facility has not been out of compliance as defined in 20.5.104.406 NMAC during the five-year period immediately preceding the deferral application.

**B.** The department shall promptly evaluate applications for deferral of re-training, and shall respond in writing within 60 days of receipt whether the application is granted, denied, or whether more information is needed. The department shall not unreasonably withhold approval if the applicant meets all requirements of Subsection A of this section. It is the responsibility of owners and operators to timely apply for deferrals of re-training so that they may be processed and evaluated well before the expiration of operator certification.

**C.** The department shall place facilities where the owner or operator has received a deferral of re-training on a priority list for technical assistance and inspection.

**D.** Owners and operators that receive a deferral of re-training shall complete re-training as required in 20.5.104.406 NMAC within five years after the deferral is granted. In other words, if approved, these owners and operators shall re-certify class A and B operators after 10 years.

[20.5.104.407 NMAC - N, 07/24/2018]

[The department provides an optional form for application for deferral of re-training, available on the Petroleum Storage Tank Bureau's pages on the department website or by calling the department at 505-476-4397 or by writing to the Petroleum Storage Tank

Bureau at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505. Owners should submit applications for deferral to the bureau.]

#### **20.5.104.408 APPROVAL OF TRAINERS AND TRAINING:**

**A.** Training elements. Training materials must be updated within 90 days of the effective date of the regulations. The following topics shall be covered in approved training courses for class A and class B operators:

**(1)** general overview of department UST and AST program, to include emergency generator systems, airport hydrant systems, USTs with field-constructed tanks, hybrid storage tank systems, any other storage tank system regulated under 20.5 NMAC, and administrative requirements, including:

**(a)** registration forms and certificates, and process for filing and modifying them;

**(b)** notification process and general technical requirements for new installations, repairs, replacements and modifications;

**(c)** confirmed and suspected releases (including confirmation steps for suspected releases), monthly monitoring or release detection test failures, and other system failures that may indicate a release of regulated substance has or is occurring;

**(d)** annual tank fees and invoicing process;

**(e)** general requirements for maintaining and demonstrating financial responsibility;

**(f)** department process for inspections and technical assistance resources available, including written checklists required in 20.5.104.409 NMAC; and

**(g)** enforcement process for violations;

**(2)** general overview of other regulations pertaining to ASTs, USTs, and any other storage tank systems regulated under 20.5 NMAC, including but not limited to, fire codes, occupational health and safety, and any related industry practices pertaining to safety;

**(3)** spill prevention and overfill protection:

**(a)** rule requirements, including record keeping;

**(b)** equipment requirements;

**(c)** periodic inspection and testing requirements; and



(d) change in service;

(10) general requirements for tank installer and junior installer certification and tester requirements:

(a) rule requirements, including record keeping;

(b) when certified installers are required;

(c) qualification for testers; and

(d) how to find certified installers and verify certified status.

**B.** Training standards. In determining whether to approve any trainer or training, the department shall consider the following:

(1) whether the trainer is a third-party, in-house, educational institution or other;

(2) whether the trainer will offer training in multiple locations throughout the state, regionally or locally;

(3) how often the trainer will offer training;

(4) what fee (if any) the trainer will charge;

(5) whether the trainer will offer classes only to employee or in-house operators, to the general public, or to independent contract operators.

**C.** Training options may cover all or a portion of the required elements, and may include:

(1) live training sessions in a classroom setting or at a storage tank system;

(2) internet or computer training program; or

(3) any other equivalent training method approved by the department.

**D.** Application for approval of training class. Trainers shall apply to the department for approval of training classes. An application for approval of training class shall include at a minimum:

(1) name, address and contact information of the proposed trainer;

(2) detailed description of the proposed trainer's experience, education and qualifications to conduct training;

(3) agenda and materials to be used for the proposed class that shall include the elements required in this section;

(4) final tests or other proposed methods of evaluating attendee success;

(5) copies of proposed documentation to certify successful attendees as certified operators as required in 20.5.104.412 NMAC and to be used for the monthly and annual inspections required in 20.5.104.409 NMAC;

(6) the proposed fee schedule for the training class; and

(7) the proposed calendar for the proposed training classes that includes location and frequency.

**E.** Applications for approval of training classes shall only be accepted during the months of January and October.

**F.** The department shall evaluate applications for approval of training classes and provide a written approval, denial or request for additional information within the following timeframes:

(1) within 90 days of receipt of the original application;

(2) if the original application is denied and a second application is submitted, within 60 days of receipt of the second application; and

(3) if the second application is denied and a third application is submitted, within 60 days of receipt of the third application.

**G.** If the department has denied an application three times pursuant to Subsection F above, the applicant shall not re-submit an application for a period of one year from the date of receipt of the third denial.

**H.** The department may periodically audit or review any training class, and the trainer shall allow a maximum of two department employees to attend any training class on request without charge and without certification (except a reasonable charge for copying and materials). Upon an audit, the department may require the trainer to update or amend the training material.

**I.** The department may revoke approval of a training class if it determines that the trainer is not performing adequately or has misrepresented information about the content of the course material.

[20.5.104.408 NMAC - N, 07/24/2018]

[The department provides a form for application for approval of a training class, available on the petroleum storage tank bureau's pages on the department website or by calling the department at 505-476-4397 or by writing to the Petroleum Storage Tank Bureau at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505, Santa Fe, New Mexico. Owners shall submit applications for approval of the training to the bureau.]

#### **20.5.104.409 RESPONSIBILITIES OF CERTIFIED OPERATORS:**

**A.** A certified operator shall not represent himself or herself as certified unless the person has a current valid certificate from an approved trainer.

**B.** Monthly inspections. Each class A or class B operator shall perform a monthly inspection of each storage tank system for which he is designated, and shall record the results of each inspection on a checklist.

**(1)** At a minimum, monthly inspections shall be conducted and shall include an inspection of the following:

**(a)** release detection methods, including monitoring systems and all associated sensors, and whether they appropriately responded to all alarms and any conditions that might have indicated a release of regulated substance had occurred;

**(b)** integrity of spill prevention equipment (for cracks, holes, or bulges), and for the presence of regulated substance, water, or debris in the spill prevention equipment;

**(c)** dispenser and dispenser sumps for the presence of regulated substances, water, and debris;

**(d)** containment sumps, such as those which contain the submersible pump on the top of underground tanks, for the presence of regulated substances or any indication a release may have occurred; and

**(e)** overfill prevention equipment for proper operation and if maintenance is required.

**(2)** The certified operator(s) shall ensure that all inspections as outlined in the operations and maintenance plan, required in 20.5.107.701 NMAC for UST systems and 20.5.110.1001 NMAC for AST systems, are properly performed and conducted by qualified personnel.

**(3)** Certified operators may use checklists contained in the operations and maintenance plan, required in 20.5.107.701 NMAC for UST systems and 20.5.110.1001 NMAC for AST systems, to document monthly inspections only if the checklists meet the requirements of this section.

(4) The certified operator(s) shall provide the owner and operator with a copy of each inspection checklist, and alert the owner or operator of any condition discovered during the monthly inspection that may require follow-up actions.

(5) Owners and operators shall maintain a copy of inspection checklists and all attachments for the previous 12 months at all attended facilities or, if approved in writing by the department, off-site at a readily available location.

(6) Owners and operators shall provide monthly inspection reports and all attachments for the previous 12 months to the department on request.

C. The certified operator(s) shall be present or available during compliance inspections at the request of the department.

[20.5.104.409 NMAC - N, 07/24/2018]

[The department provides an optional checklist for compliance with this section. The checklist is available on the petroleum storage tank bureau's pages on the department website, or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or at 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.104.410 RECIPROCITY:**

No reciprocity, training, or certification from any other state or territory shall qualify an operator to be certified pursuant to this part.

[20.5.104.410 NMAC - N, 07/24/2018]

#### **20.5.104.411 ALTERNATE METHODS:**

A. If owners and operators want to propose an alternate method of operator presence at facilities with either AST emergency generator systems or UST emergency generator systems, other than that specified by this part, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the proposed method unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county), and telephone number;
- (3) owner name, owner ID number, address, and telephone number;
- (4) citation to regulation for which alternate method is requested;

(5) brief description of the proposed alternate method;

(6) justification of proposed alternate method, including citation to a standard or code supporting its use, if available; and

(7) demonstration of its equivalent protection of public health, safety, and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety, and welfare and the environment.

[20.5.104.411 NMAC - N, 07/24/2018]

#### **20.5.104.412 DOCUMENTATION AND RECORDKEEPING:**

**A.** Approved trainers shall provide written verification of training completion for class A, B and C operators that shall include:

(1) the operator's name;

(2) the date and location where training was completed;

(3) the facility name, address and department facility ID number for each facility for which the operator is trained; and

(4) the name, address and phone number of the approved trainer that conducted the training.

**B.** Written verification of training shall include a certificate of training and wallet card.

**C.** Owners and operators shall maintain written verification of training for class A, B, and C operators at every storage tank system for all designated certified operators, and make the written verification available for review when requested by the department.

**D.** Approved trainers shall maintain records of successful completion of training, including examination results, for at least 10 years, and shall make the records available to the department on request.

[20.5.104.412 NMAC - N, 07/24/2018]

### **PART 105: CERTIFICATION OF TANK INSTALLERS AND JUNIOR INSTALLERS; REQUIREMENTS FOR TESTERS**

#### **20.5.105.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.105.1 NMAC - N, 07/24/2018]

**20.5.105.2 SCOPE:**

This part applies to persons installing, replacing, repairing, modifying, testing, or removing storage tank systems. The requirements for persons installing, replacing, repairing, or modifying airport hydrant systems, USTs with field-constructed tanks, and hybrid storage tank systems can be found in 20.5.114 NMAC.

[20.5.105.2 NMAC - N, 07/24/2018]

**20.5.105.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the

Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the

Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.105.3 NMAC - N, 07/24/2018]

**20.5.105.4 DURATION:**

Permanent.

[20.5.105.4 NMAC - N, 07/24/2018]

**20.5.105.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.105.5 NMAC - N, 07/24/2018]

**20.5.105.6 OBJECTIVE:**

The purpose of this part is to provide for the regulation of persons installing, replacing, repairing, modifying, testing, and removing storage tank systems that contain regulated substances in order to assure that storage tank systems are being installed, replaced, repaired, modified, tested, and removed in a manner which shall not encourage or facilitate leaking, and which shall protect the public health, safety and welfare and the environment of the state.

[20.5.105.6 NMAC - N, 07/24/2018]

### **20.5.105.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part. Additionally, "entirely above ground piping" means all portions of the piping are completely above ground, are completely visible, and are not in contact with the ground or soil. This definition does not include piping for a system where any portion of the piping is within a transition sump or is below ground.

[20.5.105.7 NMAC - N, 07/24/2018]

### **20.5.105.8-20.5.105.499 [RESERVED]**

### **20.5.105.500 GENERAL REQUIREMENTS FOR INSTALLER OF UST SYSTEMS:**

**A.** Beginning September 16, 1989, no person may install, replace, repair or modify UST systems in this state unless the person is, or employs, an individual who has been certified by the department to perform that work on UST systems. This provision requires certification of the individual who exercises supervisory control over the installation, replacement, repair or modification work, whether as an officer or employee of the UST system owner or operator performing its own installation, replacement, repair or modification, or as an officer or employee of the person agreeing to perform the installation, replacement, repair or modification for the owner or operator.

Exceptions to this requirement for a certified installer include:

- (1)** internal lining of a tank through the application of such materials as epoxy resins;
- (2)** installation, replacement, repair or modification of cathodic protection systems;
- (3)** any other installation, replacement, repair or modification specifically approved in writing by the department as an exception to the requirement for a certified installer;
- (4)** an applicant for UST installer certification pursuant to Subsection C of 20.105.5.510 NMAC;
- (5)** normal maintenance;
- (6)** work on line or tank leak detection systems performed by technicians trained to work on line or tank leak detection systems by the manufacturer of the systems, or other equivalent training approved by the department; and
- (7)** persons closing storage tank systems pursuant to 20.5.115 NMAC.

**B.** Beginning September 16, 1989, no person may install, replace, repair or modify an UST system in this state unless the person is or employs a certified installer who shall control and supervise a given installation, replacement, repair or modification and who shall be physically present on-site at the critical junctures in the installation, replacement, repair or modification.

**C.** An individual who has met the requirements for certified UST installer may perform the work of a UST certified junior installer.

**D.** The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a certified installer exercises responsible supervisory control and is physically present on-site at the critical junctures in the installation, replacement, repair or modification.

**E.** The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

**F.** The provisions of this part are not intended to relieve owners and operators of UST systems of their obligations and liabilities under applicable state and federal laws and regulations.

**G.** The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978.

[20.5.105.500 NMAC - N, 07/24/2018]

#### **20.5.105.501 GENERAL REQUIREMENTS FOR INSTALLER OF AST SYSTEMS:**

**A.** Beginning August 15, 2004, no person may install, replace, repair or modify AST systems in this state unless the person is, or employs, an individual who has been certified by the department to perform that work on AST systems. This provision requires certification of the individual who exercises supervisory control over the installation, replacement, repair or modification work, whether as an officer or employee of the AST system owner or operator performing its own installation, replacement, repairs or modification, or as an officer or employee of the person agreeing to perform the installation, replacement, repair or modification for the owner or operator.

Exceptions to this requirement for a certified installer include:

- (1)** internal lining of a tank through the application of such materials as epoxy resins;
- (2)** coating or lining of secondary containment for AST systems;

- (3) installation, replacement, repair or modification of cathodic protection systems;
- (4) any other installation, replacement, repair or modification specifically approved in writing by the department as an exception to the requirement for a certified installer;
- (5) an applicant for AST installer certification pursuant to Subsection C of 20.5.105.510 NMAC;
- (6) normal maintenance;
- (7) work on line or tank leak detection systems performed by technicians trained to work on line or tank leak detection systems by the manufacturer of the systems, or other equivalent training approved by the department; and
- (8) persons closing storage tank systems pursuant to 20.5.115 NMAC.

**B.** Beginning August 15, 2004, no person may install, replace, repair or modify an AST system in this state unless the person is or employs a certified installer who shall control and supervise a given installation, replacement, repair or modification and who shall be physically present on-site at the critical junctures in the installation, replacement, repair or modification.

**C.** An individual who has met the requirements for certified AST installer may perform the work of an AST certified junior installer.

**D.** The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a certified installer exercises responsible supervisory control and is physically present on-site at the critical junctures in the installation, replacement, repair or modification.

**E.** The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

**F.** The provisions of this part are not intended to relieve owners and operators of AST systems of their obligations and liabilities under applicable state and federal laws and regulations.

**G.** The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978.

[20.5.105.501 NMAC - N, 07/24/2018]

### **20.5.105.502 GENERAL REQUIREMENTS FOR JUNIOR INSTALLER OF AST SYSTEMS:**

**A.** Beginning July 24, 2019, no person may install, replace, repair or modify spill and overfill prevention equipment on AST systems in this state unless the person is an individual who has been certified by the department to perform that work on AST systems. Exceptions to the requirement for an AST certified junior installer are listed in Paragraphs (1) through (8) of Subsection A of 20.5.105.501 NMAC.

**B.** An individual who is an AST junior installer shall be certified to perform installations, repairs, replacements, and modifications of spill and overfill prevention equipment.

**C.** Individuals who are AST junior installers shall be certified to repair and replace entirely above ground piping on ASTs if they are licensed by the New Mexico construction industries division in accordance with 14.6.6 NMAC as a journeyman pipe fitter (JPF), MM-4, or MM-98.

**D.** The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as an AST certified junior installer exercises responsible supervisory control and is physically present on-site during the replacement, repair or modification.

**E.** The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

**F.** The provisions of this part are not intended to relieve owners and operators of AST systems of their obligations and liabilities under applicable state and federal laws and regulations.

**G.** The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978.

[20.5.105.502 NMAC - N, 07/24/2018]

### **20.5.105.503 GENERAL REQUIREMENTS FOR JUNIOR INSTALLER OF UST SYSTEMS:**

**A.** Beginning July 24, 2019, no person may install, replace, repair or modify spill and overfill prevention equipment on UST systems in this state unless the person is an individual who has been certified by the department to perform that work on UST systems. Exceptions to the requirement for a UST certified junior installer are listed in Paragraphs (1) through (7) of Subsection A of 20.5.105.500 NMAC.

**B.** An individual who is an UST junior installer shall be certified to perform installations, repairs, replacements, and modifications of spill and overfill prevention equipment. An UST junior installer shall not repair or replace piping that routinely contains a regulated substance.

**C.** A UST certified junior installer shall not install UST systems or piping.

**D.** The requirements of this part are not intended to prohibit the employment of apprentices or helpers so long as a UST certified junior installer exercises responsible supervisory control and is physically present on-site at the critical junctures in the installation, replacement, repair or modification of spill and overfill prevention equipment.

**E.** The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

**F.** The provisions of this part are not intended to relieve owners and operators of UST systems of their obligations and liabilities under applicable state and federal laws and regulations.

**G.** The department may deny an application or renewal and may suspend or revoke certification pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978.

[20.5.105.503 NMAC - N, 07/24/2018]

**20.5.105.504 GENERAL REQUIREMENTS FOR PERSONS PERFORMING TESTS ON STORAGE TANK SYSTEMS AND EQUIPMENT:**

**A.** Beginning on July 24, 2019, owners and operators shall demonstrate that persons who perform tests on storage tank systems regulated under 20.5 NMAC have the experience, training, and education to perform the following:

(1) periodic testing of spill prevention equipment and containment sumps as required in 20.5.107.704 NMAC, 20.5.107.706 NMAC, 20.5.110.1005 NMAC, and 20.5.110.1007 NMAC;

(2) periodic functionality testing and inspections of overfill prevention equipment as required in 20.5.107.704 NMAC and 20.5.110.1005 NMAC;

(3) functionality testing and inspections of automatic tank gauging systems as required in 20.5.108.805 NMAC and 20.5.111.1104 NMAC;

(4) precision tank tightness tests and line tightness tests;

(5) functionality testing of automatic line leak detectors, interstitial sensors, and sump sensors; and

(6) periodic testing of cathodic protection systems as required in 20.5.107.705 NMAC and 20.5.110.1006 NMAC.

**B.** Owners and operators shall ensure information on the tester's education, experience, and training is submitted to the department for each required test conducted on storage tank systems regulated under 20.5 NMAC. Testers may submit this information on the owner's and operator's behalf prior to conducting any testing on regulated storage tank systems and subsequently after changes to the information required in Paragraphs (1) through (5) of this subsection. The information to be submitted is as follows:

(1) any business name used by the tester, with the business address, telephone number, electronic mail address, and facsimile transmission number;

(2) name of the tester;

(3) tester's certification number from each testing equipment manufacturer and the expiration date for the certification;

(4) name of the manufacturer, association, or institute where they gained their certification or education.

(5) testers who use the testing procedures from petroleum equipment institute's *Recommended Practice, PEI RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"* shall include the date they took and passed the test from the petroleum equipment institute.

(6) Number of years of experience in each of the testing protocols or procedures the tester will use.

**C.** Owners and operators shall ensure testers meet the following:

(1) perform only those tests and inspections for which they have training, experience, and certification from either the manufacturer of the testing equipment or the manufacturer of the equipment being tested or inspected.

(2) maintain certification with the equipment manufacturer for the tester and any testing apparatus they use, if they have a certification process or requirements. If the testing equipment manufacturer has periodic calibration and maintenance requirements the tester shall meet them.

**D.** A person shall not perform any test on storage tank systems for which they are also the owner and operator as defined in 20.5.101 NMAC or they are an employee of the owner or operator.

**E.** A tester who is trained and certified to functionality test automatic line leak detectors may replace line leak detectors that no longer meet the requirements in Subsection A of 20.5.108.810 NMAC or Subsection A of 20.5.111.1105 NMAC.

**F.** A person who has met the requirements for either AST or UST certified installer may perform non-precision integrity tests of the storage tank systems during the installation, modification, repair, or replacement without having to meet the requirements of a tester.

**G.** The requirements of this part are in addition to and not in lieu of any other licensing and registration requirements imposed by law, including any applicable requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

**H.** The provisions of this part are not intended to relieve owners and operators of storage tank systems of their obligations and liabilities under applicable state and federal laws and regulations.

[20.5.105.504 NMAC - N, 07/24/2018]

#### **20.5.105.505 INDIVIDUAL CERTIFICATION FOR INSTALLER OF UST SYSTEMS:**

**A.** An applicant for an individual's UST installer certification shall meet all of the following requirements in order to receive certification from the department.

**(1)** The applicant shall file an application with the department accompanied by a nonrefundable fee of \$50. At a minimum the application shall contain the following information:

- (a)** applicant's name, permanent residence address and telephone number;
- (b)** applicant's business address and any business name used by the applicant, with the business address, telephone number and facsimile transmission number;
- (c)** applicant's date of birth;
- (d)** applicant's social security number;
- (e)** construction industries division license number, type of license, name of license holder under which applicant is working and expiration of license;

**(f)** whether the construction industries division license in subparagraph (e) of Paragraph **(1)** of this subsection has ever been suspended or revoked; if so, an explanation of the circumstances of the suspension or revocation;

**(g)** the supervisor's name, business name, address and telephone number with whom the applicant apprenticed as a tank installer;

**(h)** a description of the number of years of experience the applicant has as a tank installer (specify USTs and ASTs);

**(i)** a description of the types and number of tanks the applicant has installed (specify USTs and ASTs) in the past four years;

**(j)** a description of the types and number of piping systems the applicant has installed, replaced, repaired or modified (specify USTs and ASTs) in the past four years; and

**(k)** whether applicant owes child support in New Mexico.

**(2)** The applicant shall be an individual and at least 18 years of age.

**(3)** The applicant need not, for purposes of this part, be a resident of the state.

**(4)** The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

**(5)** Applicants shall demonstrate in the application that they have met the experience requirements of 20.5.105.509 NMAC.

**(6)** The applicant shall pass the on-site examination for which 20.5.105.510 NMAC provides. The installation for an on-site examination shall include the on-site installation of a tank, dispenser system or meter, venting, ancillary equipment and initial testing.

**(7)** The applicant shall provide the department with evidence in the application that, within the prior three months, the applicant has passed:

**(a)** a New Mexico laws and rules UST test administered by the department pursuant to 20.5.105.514 NMAC; and

**(b)** a national technical UST installer's test administered by an approved certification educator and has been certified by that educator. For purposes of this section, the international code council is an approved certification educator.

**(8)** As an alternative to the tests required in Paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall not be approved for the requirements in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical installation requirements.

**(9)** The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

**B.** Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair, or modify UST systems.

[20.5.105.505 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to apply for certification. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505. Applicants should submit application forms to the Petroleum Storage Tank Bureau, attention: Application for Certified Installer, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.105.506 INDIVIDUAL CERTIFICATION FOR INSTALLER OF AST SYSTEMS:**

**A.** An applicant for an individual's AST installer certification shall meet all of the following requirements in order to receive certification from the department.

**(1)** The applicant shall file an application with the department with the information required in Paragraph **(1)** of Subsection A of 20.5.105.505 NMAC, accompanied by a nonrefundable fee of \$50.00.

- (2)** The applicant shall be an individual and at least 18 years of age.
- (3)** The applicant need not, for purposes of this part, be a resident of the state.
- (4)** The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.
- (5)** Applicants shall demonstrate in the application that they have met the experience requirements of 20.5.105.509 NMAC.
- (6)** The applicant shall pass the on-site examination for which 20.5.105.510 NMAC provides. The installation for an on-site examination shall include the on-site installation of a tank and tank foundation, dispenser system or meter, venting, ancillary equipment and initial testing. Installation of a self-contained, concrete-encased or self-contained, skid-mounted AST system is not an AST system installation for purposes of this requirement.
- (7)** The applicant shall provide the department with evidence in the application that, within the prior three months, the applicant has passed:

  - (a)** a New Mexico laws and rules AST test administered by the department pursuant to 20.5.105.514 NMAC; and
  - (b)** a national technical AST installer's test administered by an approved certification educator and has been certified by that educator. For purposes of this section, the international code council is an approved certification educator.
- (8)** As an alternative to the tests required in Paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall not be approved for the requirements in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical installation requirements.
- (9)** The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

**B.** Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair or modify AST systems.

[20.5.105.506 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to apply for certification. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the petroleum storage tank bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505. Applicants should submit application forms to the Petroleum Storage Tank Bureau, attention: Application for Certified Installer, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

### **20.5.105.507 INDIVIDUAL CERTIFICATION FOR JUNIOR INSTALLER OF AST SYSTEMS:**

**A.** An applicant for an individual's AST junior installer certification shall meet all of the following requirements in order to receive certification from the department.

**(1)** The applicant shall file an application with the department with the information required in Paragraph (1) of Subsection A of 20.5.105.508 NMAC, accompanied by a nonrefundable fee of \$50.00.

**(2)** The applicant shall be an individual at least 18 years of age.

**(3)** The applicant need not, for purposes of this part, be a resident of the state.

**(4)** The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

**(5)** Applicants shall demonstrate in the application that they have met the experience requirements of Subsection B of 20.5.105.509 NMAC.

**(6)** Applicants shall demonstrate certification by the manufacturer of the spill and overfill equipment they install, repair, replace, or modify.

**(7)** Applicants shall submit a copy of their journeyman pipe fitter (JPF), MM-4, or MM-98 license if they are applying to repair and replace entirely above ground piping in addition to activities listed in Subsection B of 20.5.105.502 NMAC.

**(8)** The applicant shall provide the department with evidence in the application that, within the prior three months, the applicant has passed:

**(a)** a New Mexico laws and rules AST test for junior installer certification administered by the department pursuant to 20.5.105.514 NMAC; and

**(b)** a national technical AST test administered by a certification educator approved by the department and has been certified by that educator.

**(9)** As an alternative to the tests required in Paragraph (8) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall not be approved for the requirements in Paragraph (8) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical AST requirements.

**(10)** The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

**B.** Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair or modify AST spill and overflow prevention equipment.

[20.5.105.507 NMAC - N, 07/24/2018]

### **20.5.105.508 INDIVIDUAL CERTIFICATION FOR JUNIOR INSTALLER OF UST SYSTEMS:**

**A.** An applicant for an individual's UST junior installer certification shall meet all of the following requirements in order to receive certification from the department.

**(1)** The applicant shall file an application with the department accompanied by a nonrefundable fee of \$50.00. At a minimum the application shall contain the following information:

**(a)** applicant's name, permanent residence address and telephone number;

**(b)** applicant's business address and any business name used by the applicant, with telephone number and facsimile transmission number;

**(c)** applicant's date of birth;

**(d)** applicant's social security number;

**(e)** construction industries division license number, type of license, name of license holder under which applicant is working and expiration of license;

**(f)** whether the construction industries division license in Subparagraph (e) of Paragraph (1) of this subsection has ever been suspended or revoked; if so, an explanation of the circumstances of the suspension or revocation;

**(g)** the supervisor's name, business name, address and telephone number with whom the applicant worked as a junior installer;

**(h)** a description of the number of years of experience the applicant has installing, replacing, modifying, and repairing spill and overfill prevention equipment (specify USTs and ASTs);

**(i)** a description of the number of spill and overfill prevention equipment installations, repairs, replacements, or modifications the applicant has performed (specify USTs and ASTs) in the past four years; and

**(j)** whether applicant owes child support in New Mexico.

**(2)** The applicant shall be an individual and at least 18 years of age.

**(3)** The applicant need not, for purposes of this part, be a resident of the state.

**(4)** The applicant shall demonstrate that the applicant is in good standing with all licensing authorities by whom licensing is required, given the nature and scope of the applicant's work, and that the applicant has not had a business or occupational license or certificate suspended or revoked in this or any other state, except as provided in Subsection B of this section.

**(5)** Applicants shall demonstrate in the application that they have met the experience requirements of Subsection B of 20.5.105.509 NMAC.

**(6)** Applicants shall demonstrate certification by the manufacturer of the spill and overfill equipment they install, repair, replace, or modify.

**(7)** The applicant shall provide the department with evidence in the application that, within the prior three months, the applicant has passed:

(a) a New Mexico laws and rules UST test for junior installer certification administered by the department pursuant to 20.5.105.514 NMAC; and

(b) a national technical UST test administered by a certification educator approved by the department and has been certified by that educator.

(8) As an alternative to the tests required in Paragraph (7) of this subsection, applicants may propose alternate tests and approved certification to the department for consideration, including a tank installer certification program sponsored by another state or organization, but these courses shall not be approved for the requirements in Paragraph (7) of this subsection unless approved by the department in writing. Applicants seeking approval of alternate courses and alternate certification shall provide the department with all information about the course and the proposed educator to allow the department to determine whether to approve them, in the department's sole discretion. In determining whether to approve an alternate course and alternate certification, the department shall determine whether the alternate course and alternate certification provide an equivalent demonstration of knowledge of New Mexico petroleum storage tank regulations, 20.5 NMAC, and technical UST requirements.

(9) The applicant shall provide to the department a notarized affidavit from the applicant stating that all information submitted in the application is true and correct.

**B.** Notwithstanding the provisions of Paragraph (4) of Subsection A of this section, the department may grant certification to an applicant who has had a business or occupational license or certificate suspended or revoked where the suspension or revocation, by reason of its date, nature or other considerations, is not directly relevant to the applicant's competence to install, replace, repair, or modify UST spill and overfill prevention equipment.

[20.5.105.508 NMAC - N, 07/24/2018]

#### **20.5.105.509 EXPERIENCE REQUIREMENTS:**

##### **A.** Installer:

(1) To qualify for individual certification under 20.5.105.505 NMAC or 20.5.105.506 NMAC, an applicant shall demonstrate that the applicant has had two years of experience, within the three years immediately prior to making the application, of field experience in the installation, replacement, repair or modification of the type of storage tank systems for which the applicant is applying for certification or, with the approval of the department, closely related work. Additionally, the applicant shall demonstrate they have hands-on supervised experience in the installation of two petroleum storage tank systems of the tank type (AST or UST) they are applying for within the two years of experience. The applicant's demonstration shall include copies of inspection reports (or other similar documents) for the work performed, which shall include the name, phone number and email contact of the supervising inspector. For

purposes of this part, the applicant's field experience may be demonstrated in New Mexico or other states.

(2) An engineering degree or a license to practice engineering may substitute for six months of the experience required by Subsection A of this section.

**B. Junior installer:**

(1) To qualify for individual certification under 20.5.105.507 NMAC or 20.5.105.508 NMAC, an applicant shall demonstrate that the applicant has had one year, within the three years immediately prior to making the application, of field experience with storage tank spill and overflow equipment installations, replacements, modifications, or repairs.

(2) To qualify for individual certification under 20.5.105.507 NMAC as an AST junior installer who can repair or replace entirely above ground piping, applicants shall demonstrate that they meet the requirements in Subsection C of 20.5.105.502 NMAC in addition to the requirements in Paragraph (1) of this subsection.

(3) The applicant's demonstration shall include copies of inspection reports (or other similar documents) for the work performed which shall include the name, phone number and email contact of the supervising inspector. For purposes of this part, the applicant's field experience may be demonstrated in New Mexico or other states.

[20.5.105.509 NMAC - N, 07/24/2018]

**20.5.105.510 ON-SITE EXAMINATION FOR INSTALLER:**

**A.** To qualify for individual certification under 20.5.105.505 NMAC or 20.5.105.506 NMAC, an applicant shall pass an on-site examination consisting of a successful installation of the regulated and applicable (AST or UST) type of storage tank system in the presence of a designated employee of the department. The applicant shall complete each aspect of the installation successfully in order to pass the examination, including use of proper materials, proper assembly of materials and proper testing of the tank and piping at the appropriate times during the installation.

**B.** An applicant may request an on-site examination for UST or AST certification any time within 180 days of the date of submission of the application provided for in Paragraph (1) of Subsection A of 20.5.105.505 NMAC or Paragraph (1) of Subsection A of 20.5.105.506 NMAC and shall accompany the request with a nonrefundable \$300 fee. The applicant shall notify the department of the date and the site of the on-site examination 30 days prior to the examination. For good cause shown, the department may, in its sole discretion, grant an applicant one 180-day extension of the time period during which the applicant must take the on-site examination. The department shall not grant more than one extension. If the applicant does not schedule an on-site examination within these time periods, the applicant shall file a new application for

certification and comply with all the application requirements in 20.5.105.505 NMAC or 20.5.105.506 NMAC as applicable.

**C.** The applicant shall be responsible, subject to approval by department staff, for identifying a satisfactory site and date(s) for the on-site examination. The applicant is also responsible for ensuring that all necessary equipment and appropriate materials necessary for the installation are on site. Department staff shall fail any applicant who has three significant errors during the on-site examination. For purposes of this section, significant errors include, but are not limited to, use of materials or installation practices that violate these regulations, manufacturer's installation instructions, or other industry standards. As long as a department staff member responsible for assessing the on-site exam is present, the applicant may perform the activities involved in the exam even though the applicant is not a certified installer.

**D.** The installation shall be assessed by the department employee present at the examination who shall present findings to the department, with a recommendation as to whether or not the applicant passed the on-site examination. The department shall make the determination as to the success of the installation and notify the applicant by mail within 30 days of completion of the installation. If the applicant did not pass the examination, the department shall inform the applicant that the applicant may retake the examination upon payment of a nonrefundable \$300.00 fee and upon such conditions as the department may impose to ensure that the applicant is prepared to perform a more successful installation. If the applicant does not retake the examination within 180 days of being notified that the applicant did not pass the examination or if the applicant fails the on-site examination a second time, the applicant shall file a new application for certification with the department if the applicant desires to become a certified installer.

**E.** The department employee may stop an on-site examination if the employee determines that the installation being conducted constitutes a threat to public health, safety or welfare or the environment. If the examiner stops the installation, the examiner's findings shall be presented to the department with a "do not pass" recommendation. The department shall notify the applicant of its decision as provided in Subsection D of this section.

[20.5.105.510 NMAC - N, 07/24/2018]

#### **20.5.105.511 DENIAL OF CERTIFICATION:**

An applicant whose application for certification is denied shall be afforded an opportunity for a hearing before the secretary under 20.5.5.519 NMAC, in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-33 NMSA 1978, and the department's adjudicatory procedures in 20.1.5 NMAC.

[20.5.105.511 NMAC - N, 07/24/2018]

#### **20.5.105.512 RENEWAL OF CERTIFICATION FOR INSTALLER:**

**A.** A certification shall expire March 16 of the fourth calendar year after it was issued. Applications for renewal of certification issued under 20.5.105.505 NMAC and 20.5.105.506 NMAC shall be submitted no later than February 16 of the fourth year after the certification was granted to ensure renewal by March 16. Certification for installers who do not submit a timely renewal application shall be considered lapsed and invalid on March 16; the department shall not accept applications for renewal after February 16. Any installer whose certification has lapsed as provided in this subsection shall submit an application for new certification under 20.5.105.505 NMAC or 20.5.105.506 NMAC and comply with the requirements thereof.

**B.** At least 90 days before the expiration date of certification, the department shall mail a renewal application reminder to the installer, at the installer's address of record with the department. It is the duty and responsibility of the installer to timely submit the renewal application for certification pursuant to Subsection A whether or not an application reminder has been received from the department.

**C.** To qualify for renewal, a UST certified individual or installer shall:

**(1)** file an application with the department with the information required in Paragraphs (1), (4) and (9) of Subsection A of 20.5.105.505 NMAC, accompanied by a nonrefundable \$50.00 fee;

**(2)** demonstrate as required by 20.5.105.509 NMAC that the installer has completed at least two UST system installations, replacements, repairs or modifications during the four-year period preceding the renewal application; and

**(3)** demonstrate that the installer has passed a New Mexico laws and rules UST test administered by the department pursuant to 20.5.105.514 NMAC, within the prior three months.

**D.** To qualify for renewal, an AST certified installer shall:

**(1)** file an application with the department with the information required in Paragraphs (1), (4) and (9) of Subsection A of 20.5.105.506 NMAC, accompanied by a nonrefundable \$50.00 fee;

**(2)** demonstrate as required by 20.5.105.509 NMAC that the installer has completed at least two AST system installations, replacements, repairs or modifications during the four-year period preceding the renewal application; and

**(3)** demonstrate that the installer has passed a New Mexico laws and rules AST test administered by the department pursuant to 20.5.105.514 NMAC, within the prior three months.

**E.** An applicant for renewal shall be afforded opportunity for hearing before the secretary, as provided in 20.5.105.519 NMAC, in the event the department

contemplates withholding renewal for any cause other than failure to pay the required renewal fee.

**F.** For purposes of this section, "demonstrate" means provide copies of registration forms, inspection reports, installation checklists, written statements or other documents verifying the certified installer's on-site, physical, hands-on participation in critical junctures of a particular installation, replacement, repair or modification.

[20.5.105.512 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to apply for renewal of certification. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505. Applicants should submit renewal forms to the Petroleum Storage Tank Bureau, attention: Application for Certified Installer, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.105.513 RENEWAL OF CERTIFICATION FOR JUNIOR INSTALLER:**

**A.** A certification for junior installer shall expire March 16 of the fourth calendar year after it was issued. Applications for renewal of certification issued under 20.5.105.507 NMAC and 20.5.105.508 NMAC shall be submitted no later than February 16 of the fourth year after the certification was granted to ensure renewal by March 16. Certification for junior installers who do not submit a timely renewal application shall be considered lapsed and invalid on March 16; the department shall not accept applications for renewal after February 16. Any junior installer whose certification has lapsed as provided in this subsection shall submit an application for new certification under 20.5.105.507 NMAC or 20.5.105.508 NMAC and comply with the requirements thereof.

**B.** At least 90 days before the expiration date of certification, the department shall mail a renewal application reminder to the junior installer, at the junior installer's address of record with the department. It is the duty and responsibility of the junior installer to timely submit the renewal application for certification pursuant to Subsection A whether or not an application reminder has been received from the department.

**C.** To qualify for renewal, a UST certified junior installer shall:

**(1)** file an application with the department with the information required in Paragraphs (1), (4) and (9) of Subsection A of 20.5.105.508 NMAC, accompanied by a nonrefundable \$50 fee;

**(2)** demonstrate as required by 20.5.105.509 NMAC that the junior installer has completed at least two spill and overfill prevention equipment installations,

replacements, repairs or modifications on UST systems during the four-year period preceding the renewal application; and

(3) demonstrate that the junior installer has passed a New Mexico laws and rules UST test for junior installer certification administered by the department pursuant to 20.5.105.514 NMAC, within the prior three months.

D. To qualify for renewal, AST certified junior installers shall:

(1) file an application with the department with the information required in Paragraphs (1), (4) and (10) of Subsection A of 20.5.105.507 NMAC, accompanied by a nonrefundable \$50.00 fee;

(2) demonstrate as required by 20.5.105.509 NMAC that the junior installer has completed at least two replacements, repairs or modifications of spill and overflow prevention equipment on AST systems during the four-year period preceding the renewal application;

(3) demonstrate that the junior installer has passed a New Mexico laws and rules AST test for junior installer certification administered by the department pursuant to 20.5.105.514 NMAC, within the prior three months; and

(4) if seeking to renew their certification to repair and replace entirely above ground piping, demonstrate that they have completed at least two repairs or replacements of above ground piping on AST systems during the four-year period preceding the renewal application or submit a current journeyman pipe fitter (JPF), MM-4, or MM-98 license from the New Mexico construction industries division in accordance with 14.6.6 NMAC.

E. An applicant for renewal shall be afforded opportunity for hearing before the secretary, as provided in 20.5.105.519 NMAC, in the event the department contemplates withholding renewal for any cause other than failure to pay the required renewal fee.

F. For purposes of this section, "demonstrate" means provide copies of registration forms, inspection reports, installation checklists, written statements or other documents verifying the certified junior installer's on-site, physical, hands-on participation in critical junctures of a particular installation, replacement, repair or modification of spill and overflow prevention equipment.

[20.5.105.513 NMAC - N, 07/24/2018]

#### **20.5.105.514 NEW MEXICO LAWS AND RULES TEST:**

A. The department shall create and administer written tests on the rules contained in 20.5 NMAC, petroleum storage tanks. Tests for AST and UST installer applicants and

AST and UST junior installer applicants may be different tests. The department shall offer tests at least monthly at a charge of \$45 per installer or junior installer applicant per test, paid to the storage tank fund.

**B.** Applicants may apply to take the New Mexico laws and rules test at any office of the bureau, at least 15 days before a test is given. The department shall post on its webpage dates, times and locations that tests will be offered. The department shall not administer any test until payment is received.

**C.** An applicant must pass a test by a grade of seventy percent or higher. The department will notify applicants in writing of a passing or failing grade no later than 15 working days after they took a test.

**D.** An applicant may re-take the New Mexico laws and rules test for each type of test once within 30 days of receipt of notice of a failing grade. If the applicant does not pass a test the second time, the applicant must reapply for certification complying with the requirements for initial certification in the applicable sections of this part.

[20.5.105.514 NMAC - N, 07/24/2018]

#### **20.5.105.515 INSTALLER DUTIES AND OBLIGATIONS:**

**A.** No person shall agree to perform installation, replacement, repair or modification services unless the person is or employs a certified installer competent to perform the particular installation, replacement, repair or modification involved.

**B.** A certified installer shall have adequate knowledge of appropriate materials, technical requirements and installation, replacement, repair or modification procedures for any storage tank system that the installer undertakes to install, replace, repair or modify. A certified installer shall not perform any installation, replacement, repair or modification, or affix an installer signature or certification number to any installation, replacement, repair or modification for which the installer lacks competence.

**C.** A certified installer shall:

**(1)** exercise responsible supervisory control over any installation, replacement, repair or modification undertaken;

**(2)** at a minimum, be physically present on-site at all critical junctures in the installation, replacement, repair or modification; and

**(3)** give notice as required by these regulations, 20.5 NMAC.

**D.** A certified installer shall not certify to an owner or operator of a storage tank system that an installation, replacement, repair or modification is complete unless the installation, replacement, repair, or modification complies with the New Mexico

Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the petroleum storage tank regulations promulgated pursuant to the act, 20.5 NMAC. The certified installer is responsible for the accuracy of any representations made to the owner or operator.

**E.** Certified installers have a duty to report to the department any and all suspected or confirmed releases, as those terms are used in 20.5.118 NMAC, detected at a site or the surrounding area by the installer or persons working under the installer's supervisory control, as required by 20.5.118 NMAC.

**F.** Certified installers shall not perform any installation, replacement, repair, modification or removal without providing notice as required by the provisions of 20.5 NMAC, except for emergency repairs as described in

20.5.107 NMAC and 20.5.110 NMAC, and defined in 20.5.101 NMAC. Certified installers shall not perform any activity described as a critical juncture in 20.5.105 NMAC, without providing the 24-hour notice required by that part, except for emergency repairs.

**G.** Certified installers shall comply with all of the provisions of the petroleum storage tank regulations, 20.5 NMAC.

[20.5.105.515 NMAC - N, 07/24/2018]

#### **20.5.105.516 CERTIFIED JUNIOR INSTALLER DUTIES AND OBLIGATIONS:**

**A.** No individual shall agree to perform an installation, replacement, repair or modification of spill and overfill prevention equipment unless the individual is a certified junior installer and is competent to perform the installation, replacement, repair or modification.

**B.** Junior installers shall acquire and maintain certification from the manufacturers of the spill and overfill prevention equipment they modify, install, replace, or repair, as applicable.

**C.** A junior installer of AST systems who is certified to repair or replace entirely above ground piping shall maintain all certifications and licenses as required by 20.5.105 NMAC.

**D.** A junior installer shall exercise responsible supervisory control when helpers are used.

**E.** A junior installer has a duty to report to the department any and all suspected or confirmed releases, as those terms are used in 20.5.118 NMAC, detected at a site or the surrounding area by the junior installer or persons working under the junior installer's supervisory control, as required by 20.5.118 NMAC.

**F.** A junior installer shall not perform any installation, replacement, repair, modification or removal of spill and overfill prevention equipment without providing notice as required by the provisions of 20.5 NMAC.

**G.** A junior installer shall comply with all of the provisions of the petroleum storage tank regulations, 20.5 NMAC.

[20.5.105.516 NMAC - N, 07/24/2018]

**20.5.105.517 COMPLAINTS:**

**A.** When the department receives a signed written complaint from any person which indicates an apparent violation of applicable law by an individual certified under this part, the department shall provide a copy of the complaint to the certified individual along with a letter from the department specifying the statute, regulation, order or license alleged to be violated. The letter shall include a reasonable description of the acts or practices alleged to be in violation of applicable law. The department shall provide a copy of the letter to the complainant.

**B.** The certified individual may, but need not, file a response to the complaint with the department. After reviewing the complaint together with any other matter in the certified individual's record, the department shall determine whether further action is to be taken.

[20.5.105.517 NMAC - N, 07/24/2018]

**20.5.105.518 INVESTIGATIONS, ENFORCEMENT, PENALTIES:**

**A.** The department may undertake such investigations and take such actions as it deems necessary to ensure compliance with the provisions of this part, including the issuance of compliance orders and the commencement of civil actions under the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978. The department may also initiate proceedings to revoke certification of an individual certified under Subsection C of Section 74-4-4.4 NMSA 1978 and 20.5.114 NMAC. The department may revoke certification upon grounds that the certified individual:

**(1)** exercised fraud, misrepresentation or deception in obtaining the certification;

**(2)** exhibited gross incompetence in the installation, replacement, repair, modification or removal of a storage tank system; or

**(3)** was derelict in the performance of a duty as a certified installer or junior installer, as required in the applicable sections of this part (including repeated failure to provide notice of releases or of the installation, replacement, repair, modification or removal of storage tank systems as required in the applicable sections of this part).

**B.** Persons violating the provisions of this part may be subject to the imposition of penalties under the Hazardous Waste Act.

[20.5.105.518 NMAC - N, 07/24/2018]

**20.5.105.519 DEPARTMENT ACTIONS AGAINST CERTIFIED INSTALLERS AND CERTIFIED JUNIOR INSTALLERS:**

**A.** When the department contemplates denying an application for or revoking certification, it shall serve upon the applicant or certified individual a written notice of contemplated action as required by the Uniform Licensing Act, Sections 61-1-1 through 61-1-33 NMSA 1978.

**B.** Proceedings under this section shall be conducted in accordance with the provisions of the

Uniform Licensing Act, Sections 61-1-1 through 61-1-33 NMSA 1978 and in accordance with the department's adjudicatory procedures in 20.1.5 NMAC.

**C.** If the department revokes certification pursuant to this section, the certified individual may not apply for certification for a minimum of two years for the type of certification revoked. However, if the certified individual is certified for another type of certification in this part, the certified individual shall not be affected by the revocation of the certification for the other type of certification.

[20.5.105.519 NMAC - N, 07/24/2018]

**20.5.105.520 AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND HYBRID STORAGE TANK SYSTEMS:**

**A.** Certified installers shall only install, modify, repair, or replace airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems if they also meet the requirements in 20.5.114.1400 NMAC.

**B.** Certified installers and junior installers shall only install, replace, modify, or repair spill and overfill prevention equipment associated with airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems if they also meet the requirements in 20.5.114.1400 NMAC.

[20.5.105.520 NMAC - N, 07/24/2018]

**PART 106: NEW AND UPGRADED UNDERGROUND STORAGE TANK SYSTEMS: DESIGN, CONSTRUCTION AND INSTALLATION**

**20.5.106.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.106.1 NMAC - N, 07/24/2018]

**20.5.106.2 SCOPE:**

This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.106.2 NMAC - N, 07/24/2018]

**20.5.106.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the

Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the

Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.106.3 NMAC - N, 07/24/2018]

**20.5.106.4 DURATION:**

Permanent.

[20.5.106.4 NMAC - N, 07/24/2018]

**20.5.106.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.106.5 NMAC - N, 07/24/2018]

**20.5.106.6 OBJECTIVE:**

The purpose of 20.5.106 NMAC is to set forth the requirements for the design, construction, installation and upgrading of underground storage tank systems in a manner that will prevent releases and to protect the public health, safety and welfare and the environment of the state.

[20.5.106.6 NMAC - N, 07/24/2018]

### **20.5.106.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.106.7 NMAC - N, 07/24/2018]

### **20.5.106.8-20.5.106.599 [RESERVED]**

### **20.5.106.600 GENERAL PERFORMANCE STANDARDS FOR UST SYSTEMS:**

**A.** In order to prevent releases due to structural failure, corrosion or spills and overfills for as long as a UST system is used to store regulated substances, owners and operators of any UST system shall:

- (1) properly design, construct, and initially test each new UST system;
- (2) provide project drawings to the bureau 30 days prior to installation; and
- (3) ensure that any portion of a UST system that routinely contains regulated substances and is in contact with the ground, water, or other electrolyte shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

**B.** Owners and operators shall ensure that the entire UST system is compatible with any regulated substance conveyed, as required by 20.5.107.708 NMAC.

**C.** Tanks and piping installed or replaced after April 4, 2008 must be secondarily contained in accordance with 20.5.106.606 NMAC and use interstitial monitoring in accordance with 20.5.108.808 NMAC, 20.5.108.811 NMAC, and 20.5.108.813 NMAC, except for suction piping that meets the requirements of Subsection B of 20.5.108.813 NMAC.

**D.** Secondary containment must be able to contain regulated substances leaked from the primary containment until they are detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the UST.

[20.5.106.600 NMAC - N, 07/24/2018]

### **20.5.106.601 PERFORMANCE STANDARDS FOR FIBERGLASS-REINFORCED PLASTIC USTS:**

If a UST is constructed of fiberglass-reinforced plastic, owners and operators shall comply with the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing

laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

**A.** *Underwriters Laboratories Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures";* or

**B.** *Underwriters' Laboratories of Canada Standard 615, "Standard for Fibre Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids".*

[20.5.106.601 NMAC - N, 07/24/2018]

### **20.5.106.602 PERFORMANCE STANDARDS FOR STEEL USTS:**

**A.** Owners and operators shall cathodically protect steel USTs by:

- (1)** coating the tank with a suitable dielectric material;
- (2)** ensuring that field-installed cathodic protection systems are designed by a corrosion expert;
- (3)** designing and installing impressed current or galvanic systems to allow ready determination of current operating status as required in Subsection C of 20.5.107.705 NMAC; and
- (4)** operating and maintaining cathodic protection systems in accordance with 20.5.107 NMAC.

**B.** If a UST is constructed of steel, owners and operators shall comply with the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the applicable requirements of this section:

- (1)** *Steel Tank Institute, "STI-P3 Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";*
- (2)** *Underwriters Laboratories Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks";*
- (3)** *Underwriters Laboratories of Canada Standard 603, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids";*
- (4)** *Underwriters Laboratories of Canada Standard 603.1, "External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids";*

(5) *Underwriters' Laboratories of Canada S631, "Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems";*

(6) *NACE International Standard Practice SP0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";*

(7) *Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Steel Storage Tanks";* or

(8) *Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids".*

[20.5.106.602 NMAC - N, 07/24/2018]

#### **20.5.106.603 PERFORMANCE STANDARDS FOR USTS CONSTRUCTED OF STEEL AND CLAD OR JACKETED WITH A NON-CORRODIBLE MATERIAL:**

If a UST is constructed of steel and clad or jacketed with a non-corrodible material, owners and operators shall meet the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

**A.** *Underwriters Laboratories Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks";*

**B.** *Steel Tank Institute ACT-100® Specification F894, "Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks";*

**C.** *Steel Tank Institute ACT-100-U® Specification F961, "Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks";* or

**D.** *Steel Tank Institute Specification F922, "Specification for Permatank®".*

[20.5.106.603 NMAC - N, 07/24/2018]

#### **20.5.106.604 PERFORMANCE STANDARDS FOR METAL USTS WITHOUT CORROSION PROTECTION:**

If a UST is constructed of metal without additional corrosion protection measures, owners and operators shall only install the tank at a site that is approved in writing in advance of installation by a corrosion expert not to be corrosive enough to cause the UST to have a release due to corrosion during its operational life. Owners and operators shall maintain records that demonstrate compliance with this paragraph for the remaining life of the tank.

[20.5.106.604 NMAC - N, 07/24/2018]

**20.5.106.605            INSTALLATION OF UST SYSTEMS:**

**A.** Owners and operators shall properly install all USTs and piping:

**(1)** in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; and

**(2)** in accordance with the manufacturer's instructions.

**B.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

**(1)** *American Petroleum Institute RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

**(2)** *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";* or

**(3)** *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code" and Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages".*

[20.5.106.605 NMAC - N, 07/24/2018]

**20.5.106.606            SECONDARY CONTAINMENT FOR UST SYSTEMS:**

**A.** Owners and operators shall install secondary containment as follows:

**(1)** for any new or replaced UST system;

**(2)** for any new or replaced dispenser system. A dispenser system is considered replaced when both the dispenser and the equipment needed to connect the dispenser to the underground storage tank system are installed at a UST facility. The equipment necessary to connect the dispenser to the underground storage tank system includes check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping. Under-dispenser containment shall allow for access to the components in the containment system for visual inspections; and

**(3)** for any UST piping replaced after April 4, 2008.

**B.** Owners and operators shall design, provide project drawings for, and construct the entire new UST system with the secondary containment system in compliance with

the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. The project drawings shall be approved in advance by the department. The secondary containment system shall:

- (1) include all tanks, piping, dispenser systems, and all containment sumps for any piping and ancillary equipment that routinely contains regulated substances;
- (2) include containment sumps, including under-dispenser containment, transition sumps, and containment sumps for submersible turbine pumps, that are liquid-tight on their sides, bottoms, and at any penetrations; and
- (3) be interstitially monitored in accordance with the requirements in 20.5.108 NMAC.

**C.** If owners and operators:

- (1) replace a UST, they shall install a double-walled tank with an inner and outer barrier and a release detection system that meets the requirements of 20.5.108 NMAC;
- (2) replace a dispenser system, they shall install, in accordance with manufacturer's recommendations, an under-dispenser containment system that shall be hydrostatically tested and approved by the department prior to use; types of under-dispenser containment systems include, but are not limited to, dispenser liners, containment sumps, dispenser pans and dispenser sump liners; or
- (3) replace piping, they shall install only double-walled piping with an inner and outer barrier and a release detection system that meets the requirements of 20.5.108 NMAC for the replaced piping.

**D.** Owners and operators shall use one or more of the following to comply with secondary containment requirements:

- (1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*
- (2) *American Petroleum Institute RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*
- (3) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";* or
- (4) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages".*

**E.** The secondary containment requirements of this section shall not apply to:

(1) existing USTs in a manifolded system (as secondary containment is only required for a new or replaced UST in a manifolded system);

(2) repairs meant to restore a UST, piping or dispenser system to operating condition;

(3) piping runs that are not new or replaced for USTs with multiple piping runs;

(4) suction piping that meets the requirements of Subsection B of 20.5.108.813 NMAC; and

(5) non-pressurized piping that manifoldes two or more underground tanks together, such as a siphon piping system;

[20.5.106.606 NMAC - N, 07/24/2018]

#### **20.5.106.607 PERFORMANCE STANDARDS FOR EXISTING UST SYSTEMS:**

**A.** All existing UST systems (installed on or before December 22, 1988), by the effective date of these regulations, must have complied with one of the following requirements:

(1) new UST performance standards in 20.5.106 NMAC;

(2) upgrade requirements in Subsection B of 20.5.106.607 NMAC; or

(3) closure requirements in 20.5.115 NMAC.

**B.** UST upgrading requirements. Owners and operators must have upgraded existing steel USTs by the effective date of these regulations to meet one of the following requirements in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Steel USTs that have not been upgraded by the effective date of these regulations shall be immediately permanently closed in accordance with 20.5.115 NMAC.

(1) Internal lining.

(a) USTs upgraded by internal lining must meet the following:

(i) the lining was installed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory that was approved in advance by the department, and

(ii) within 10 years after installation of internal lining and every five years thereafter, the lined UST is required to be internally inspected in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, or manufacturer's recommendation, approved in advance by the department.

(b) One of the following shall be used to comply with internal lining upgrading requirements:

(i) *National Leak Prevention Association Standard 631, Chapter B, "Future Internal Inspection Requirements for Lined Tanks";*

(ii) *American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";* or

(iii) *Ken Wilcox Associates Recommended Practice, "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera".*

(c) Owners and operators shall permanently close USTs in accordance with the requirements of 20.5.115 NMAC if the internal lining is not performing in accordance with the original design specifications and cannot be repaired in accordance with one of the following codes:

(i) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(ii) *American Petroleum Institute Recommended Practice RP 2200, "Repairing Hazardous Liquid Pipelines";*

(iii) *American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";*

(iv) *National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair" or;*

(v) *National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks".*

(2) Cathodic protection. USTs upgraded by cathodic protection shall meet the requirements of 20.5.106.602 NMAC and owners and operators must have ensured the integrity of the tank by:

(a) performing internal inspections and assessments to ensure that the tank was structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

**(b)** if the tank had been installed for less than 10 years, by either having monitored monthly for releases in accordance with 20.5.108 NMAC or by having assessed for corrosion holes by conducting two tightness tests that met the requirements of 20.5.108 NMAC and that were approved in advance by the department. Owners and operators must have conducted the first tightness test prior to installing the cathodic protection system. Owners and operators must have conducted the second tightness test between three and six months following the first operation of the cathodic protection system.

**(c)** Owners and operators shall use one or more of the following to comply with cathodic protection upgrade requirements:

**(i)** *Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® USTs";*

**(ii)** *NACE International Standard Practice SP0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";* or

**(iii)** *American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems".*

**(3)** Internal lining combined with cathodic protection. USTs upgraded by internal lining combined with cathodic protection must have met the following:

**(a)** the lining was installed in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, as follows:

**(i)** *National Leak Prevention Association Standard 631, Chapter B, "Future Internal Inspection Requirements for Lined Tanks";*

**(ii)** *American Petroleum Institute Recommended Practice 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";*

**(iii)** *National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair",* or

**(iv)** *National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";* and

**(b)** the cathodic protection meets the requirements of 20.5.106.602 NMAC and has complied with one of the following:

**(i)** *Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3®USTs";* or

(ii) *NACE International Standard Practice SP0285, "External Control of Underground Storage Tank Systems by Cathodic Protection";* or

(iii) *American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems".*

**C.** Piping upgrade requirements. Owners and operators shall cathodically protect and upgrade metal piping in existing UST systems that routinely contain regulated substances and are in contact with an electrolyte, such as soil, to meet the requirements of 20.5.106.609 NMAC or 20.5.106.610 NMAC.

**D.** Spill and overflow prevention equipment. Owners and operators shall comply with the spill and overflow prevention requirements in 20.5.106.613 NMAC. Owners and operators of existing UST systems who installed oil/water separators to meet spill prevention requirements shall discontinue their use in meeting these requirements and shall install new spill prevention equipment that meets the requirements in Subsection F of 20.5.106.613 NMAC no later than three years after the effective date of these regulations.

**E.** Owners and operators of existing fiberglass reinforced plastic UST systems may install an internal lining in order to address compatibility issues in accordance with *Fiberglass Tank and Pipe Institute Recommended Practice T-95-1, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks"*.

[20.5.106.607 NMAC - N, 07/24/2018]

#### **20.5.106.608 GENERAL PERFORMANCE STANDARDS FOR PIPING:**

**A.** Owners and operators shall properly design and construct new piping, provide project drawings, initially test piping, and ensure that any steel portion of piping that routinely contains regulated substances and is in contact with an electrolyte, such as soil or water, shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) third party certification from a nationally recognized laboratory;
- (2) *American Society of Mechanical Engineering Standard B31.3, "Process Piping";*
- (3) *American Society of Testing and Materials A53, "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless";*

(4) *American Society of Testing and Materials A106, "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service";* or

(5) *American Society of Testing and Materials A135, "Standard Specification for Electric-Resistance-Welded Steel Pipe".*

**B.** Owners and operators shall ensure that piping is compatible with any regulated substance conveyed in accordance with 20.5.107.708 NMAC.

**C.** Owners and operators shall protect all piping from impact, settlement, vibration, expansion, corrosion, and damage by fire.

**D.** Owners and operators shall install a containment sump at any point where piping transitions from above the surface of the ground to below the ground surface.

**E.** If owners and operators install more than one type of piping at an underground storage tank system, then owners and operators shall comply with the requirements applicable to each type of piping for that run of piping.

[20.5.106.608 NMAC - N, 07/24/2018]

**20.5.106.609 PERFORMANCE STANDARDS FOR PIPING CONSTRUCTED OF NON-CORRODIBLE MATERIAL:**

**A.** If owners and operators construct or operate piping of fiberglass-reinforced plastic or flexible piping, the piping shall:

(1) be completely underground;

(2) be within secondary containment that includes a release detection system that meets the requirements of 20.5.108 NMAC;

(3) have a suitable cover approved by the piping manufacturer; or

(4) have equivalent protection approved by the piping manufacturer and approved by the department prior to installation.

**B.** Owners and operators shall ensure that the piping meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and that the piping is approved by the manufacturer for the application for which it is to be used. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Underwriters Laboratories Standard 971, "Standard for Nonmetallic Underground Piping for Flammable Liquids";* or

(2) *Underwriters Laboratories of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids".*

[20.5.106.609 NMAC - N, 07/24/2018]

**20.5.106.610 PERFORMANCE STANDARDS FOR STEEL PIPING FOR UST SYSTEMS:**

**A.** If owners and operators construct or operate piping of steel for a UST system, owners and operators shall:

- (1) coat the piping with a suitable dielectric material;
- (2) field-install a cathodic protection system designed by a corrosion expert;  
and
- (3) design any impressed current system to allow ready determination of current operating status as required in Subsection C of 20.5.107.705 NMAC.

**B.** Owners and operators shall ensure that the piping meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and that the piping is approved by the manufacturer for the application for which it is to be used. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *American Petroleum Institute Recommended Practice 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";*
- (2) *Underwriters Laboratories Subject 971A, "Outline of Investigation for Metallic Underground Fuel Pipe";*
- (3) *Steel Tank Institute Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems";*
- (4) *NACE International Standard Practice SP0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";* or
- (5) *NACE International Standard Practice SP0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection".*

**C.** If owners and operators construct piping of steel for a UST system without additional corrosion protection measures, owners and operators shall only install the piping at a site that is approved, in writing, in advance of installation, by a corrosion expert, to not be corrosive enough to cause the piping to have a release due to

corrosion during its operational life. Owners and operators shall maintain records that demonstrate compliance with this requirement for the remaining life of the piping.

**D.** If owners and operators install or operate steel piping above ground that connects to an emergency generator or loading rack, they shall:

- (1) meet the requirements in Subsection D of 20.5.106.608 NMAC;
- (2) meet the requirements in Subsection A of 20.5.106.610 NMAC; and
- (3) meet the requirements in 20.5.109.915 NMAC for the above ground steel portion of the piping.

[20.5.106.610 NMAC - N, 07/24/2018]

#### **20.5.106.611 UNDERGROUND STORAGE TANK SYSTEMS AT MARINAS:**

**A.** Owners and operators of underground storage tank systems at marinas shall install an automatic break-away device to shut off flow of fuel from on-shore piping, which shall be located at the connection of the on-shore piping and the piping leading to the dock. Owners and operators shall install another automatic break-away device to shut off flow of fuel located at any connection between flexible piping and hard piping on the dispenser system and dock. The automatic break-away devices shall be easily accessible, and their location shall be clearly marked.

**B.** Owners and operators of underground storage tank systems at marinas shall electrically isolate dock piping where excessive stray electrical currents are encountered.

**C.** Owners and operators of underground storage tank systems at marinas shall protect piping from stress due to tidal action.

**D.** Owners and operators shall use *Petroleum Equipment Institute Publication RP1000, "Recommended Practices for the Installation of Marina Fueling Systems"*, or, if applicable, the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

[20.5.106.611 NMAC - N, 07/24/2018]

#### **20.5.106.612 VENTING FOR UNDERGROUND STORAGE TANK SYSTEMS:**

**A.** Owners and operators shall design and construct venting for all underground storage tank systems, following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

**B.** Vent pipes that are provided for normal tank venting shall be located so that the discharge point is outside of buildings higher than the fill pipe opening. Vent pipes shall be installed not less than 15 feet from power ventilation air intake devices and not less than five feet from a building opening. Vent outlets and devices shall be designed and installed to minimize blockage.

**C.** Types of vent pipes.

(1) Vent pipes that are provided for normal tank venting shall extend at least 12 feet above ground level.

(2) If attached to a structure, vent pipes shall extend at least 5 feet above the highest projection of the canopy or roof.

(3) Vent pipes for normal tank venting shall be of appropriate size for the capacity and operating conditions of the tank.

**D.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(3) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";*

(4) *Underwriters Laboratories Standard 142, "Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids";* or

(5) *International Code Council, "International Fire Code".*

[20.5.106.612 NMAC - N, 07/24/2018]

**20.5.106.613 SPILL AND OVERFILL PREVENTION:**

**A.** Except as provided in subsection B of this section, to prevent spilling and overfilling associated with transfers of regulated substances to underground storage tank systems, owners and operators shall use the following spill and overfill prevention equipment:

(1) spill prevention equipment that will prevent release of regulated substances to the environment when the transfer hose is detached from the fill pipe; and

**(2)** overfill prevention equipment for USTs that will:

**(a)** automatically shut off flow into the tank when the tank is no more than ninety-five percent full; or

**(b)** alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level audible alarm.

**B.** Owners and operators are not required to use the spill and overfill prevention equipment specified in Subsection A of this section if approved in writing in advance by the department where:

**(1)** alternative equipment is used that is determined by the department to be no less protective of public health, safety and welfare and the environment than the equipment specified in Paragraphs (1) and (2) of Subsection A of this section; or

**(2)** the underground storage tank system is filled by transfers of no more than 25 gallons at one time;

**C.** Flow restrictors or ball float valves used in vent lines shall not be used as overfill prevention equipment for USTs when overfill prevention is installed or replaced after[the effective date of these rules.

**D.** Spill and overfill prevention equipment must be periodically tested or inspected in accordance with 20.5.107.704 NMAC.

**E.** Owners and operators of UST systems with remote fill piping shall install a trap door or equivalent device and shall meet the following:

**(1)** Flow restrictors or ball float valves shall not be installed or used on a UST system with a remote fill pipe.

**(2)** Owners and operators who install or modify remote fill piping shall install a containment sump where remote fill piping connects to the UST.

**F.** Overfill prevention and spill prevention equipment for new UST systems shall be either listed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory for use with flammable and combustible liquids.

**G.** Owners and operators shall not install oil/water separators to meet spill prevention requirements for UST systems.

[20.5.106.613 NMAC - N, 07/24/2018]

**20.5.106.614 LOADING RACKS:**

**A.** Owners and operators who install loading racks shall design and construct them in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements in this section:

(1) *American Petroleum Institute Standard 2610, "Design, Construction, Operation, Maintenance & Inspection of Terminal and Tank Facilities";*

(2) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(3) *International Code Council, "International Fire Code";* or

(4) *Petroleum Equipment Institute RP 800, "Recommended Practices for Installation of Bulk Storage Plants."*

**B.** Owners and operators of aviation fuel storage tank systems who install loading racks shall comply with *National Fire Protection Association Standard 407, "Standard for Aircraft Fuel Servicing"*.

**C.** Owners and operators shall install a containment system that is designed to contain all releases of regulated substances that occur during loading and unloading operations at the loading rack. For all loading racks, owners and operators shall install either:

(1) a drainage system, or secondary containment system meeting the requirements of 20.5.106 NMAC, with a catchment basin capable of containing the largest compartment of a tank car or tanker truck that is loaded or unloaded at the facility; or

(2) a drainage system that is connected to a treatment facility designed to receive releases of regulated substances that occur during loading and unloading operations.

**D.** Owners and operators shall ensure that loading racks are at least 25 feet from ASTs containing class I liquids (such as gasoline), buildings, and property lines. Owners and operators shall ensure that loading racks are at least 15 feet from ASTs containing class II or class III liquids.

[20.5.106.614 NMAC - N, 07/24/2018]

**20.5.106.615            REQUIRED NOTIFICATION PRIOR TO INSTALLATION:**

To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and

certified tank installers shall give the department notice of the dates on which critical junctures in the installation of an underground storage tank system are to take place. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

**A.** For installations, the term "critical junctures" means:

(1) preparation of the excavation immediately prior to receiving backfill and a UST or piping for a UST;

(2) installation of any tank pad, vault, or secondary containment for a storage tank system;

(3) setting of a storage tank and piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(4) placing a regulated substance in the tank;

(5) any time during the installation in which components of piping are connected;

(6) all pressure testing or integrity testing of an underground storage tank system, including associated piping, performed during the installation; and

(7) completion of backfill and filling of the excavation.

**B.** Owners, operators and certified tank installers shall give at least 30 days written notice before the installation of an underground storage tank system. At a minimum, the installation notice shall contain the following information:

(1) date the form is completed;

(2) facility name, facility ID number, address (with county), and telephone number;

(3) owner name, owner ID number, address, and telephone number;

(4) contractor name, address, and telephone number;

(5) tank details (number and size, type and materials, products to be stored);

(6) piping material and type of leak detection;

(7) type of spill and overfill prevention;

(8) type of corrosion protection (sacrificial, impressed current, or none with explanation why corrosion protection not required);

(9) method of leak detection (statistical inventory reconciliation, automatic tank gauges, visual, vapor monitoring, interstitial monitoring, inventory control with tightness testing);

(10) approximate date installation will take place; and

(11) the signature of the owner or owner's representative filling out the form.

**C.** Owners, operators and certified tank installers shall provide required project drawings with the 30 day written notice.

**D.** In addition to the written notice described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

**E.** If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.106.615 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for notification of installation. The form is available

on the petroleum storage tank bureau's pages on the department's website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.106.616 REQUIRED CERTIFICATIONS:**

**A.** Certification of compliance. All owners and operators of new underground storage tank systems shall certify in the registration form required by 20.5.102 NMAC compliance with the following requirements:

(1) installation of tanks and piping in 20.5.106.605 NMAC for UST systems;

(2) cathodic protection of steel tanks and piping in 20.5.106.602 NMAC and 20.5.106.610 NMAC for UST systems, or 20.5.106.604 NMAC for UST systems;

(3) financial responsibility under 20.5.117 NMAC; and

- (4) release detection in 20.5.108 NMAC.

**B.** Installer certification. All owners and operators of new underground storage tank systems shall ensure that the installer certifies in the registration form required by 20.5.102 NMAC that the methods used to install the storage tanks and piping comply with the requirements in 20.5.106 NMAC.

**C.** Certification of installation. Owners and operators shall demonstrate compliance with the installation standards in 20.5.106 NMAC. Owners and operators shall provide a certification of installation on the UST registration form required by 20.5.102 NMAC, which asserts that all of the following methods of certification, testing, and inspection were used to demonstrate compliance with installation requirements of the UST system:

- (1) the installer has been certified by the tank and piping manufacturers;
  - (2) the installer has been certified or licensed as required in 20.5.105 NMAC;
- and
- (3) the installer has notified, submitted required documentation to, and the installation has been inspected by the department; and
  - (4) all work listed in the manufacturer's installation checklists has been completed.

[20.5.106.616 NMAC - N, 07/24/2018]

#### **20.5.106.617 ALTERNATE METHODS:**

**A.** If owners and operators want to install tanks, piping, underground storage tank systems, spill and overfill equipment, secondary containment, or any other requirement of this part with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;

- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.106.617 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to request approval of an alternate method. The form is available on the petroleum storage tank bureau's pages on the department's website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

## **PART 107: GENERAL OPERATING REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS**

**New Mexico Register / Volume XXIX, Issue 14 / July 24, 2018**

### **20.5.107.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.107.1 NMAC - N, 07/24/2018]

### **20.5.107.2 SCOPE:**

This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.107.2 NMAC - N, 07/24/2018]

### **20.5.107.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.107.3 NMAC - N, 07/24/2018]

**20.5.107.4 DURATION:**

Permanent.

[20.5.107.4 NMAC - N, 07/24/2018]

**20.5.107.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.107.5 NMAC - N, 07/24/2018]

**20.5.107.6 OBJECTIVE:**

The purpose of 20.5.107 NMAC is to ensure that the operation and maintenance of storage tanks will prevent releases and to protect the public health, safety and welfare and the environment of the state.

[20.5.107.6 NMAC - N, 07/24/2018]

**20.5.107.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.107.7 NMAC - N, 07/24/2018]

**20.5.107.8-20.5.107.699 [RESERVED]**

**20.5.107.700 OPERATION AND MAINTENANCE OF UNDERGROUND STORAGE TANK SYSTEMS:**

Owners and operators shall properly maintain all tanks, piping, secondary containment and other associated equipment required in 20.5.106 NMAC, and shall ensure that all tanks, piping, secondary containment and other associated equipment for all storage tank systems are fully operational at all times. Owners and operators shall notify the department in accordance with 20.5.118 NMAC if a visual inspection, other inspection or testing conducted in accordance with this part or 20.5.108 NMAC indicates that a release may have occurred.

**A.** Owners and operators shall mark fill port lids of USTs in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *American*

*Petroleum Institute RP 1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gas Dispensing Facilities and Distribution Terminals".* Owners and operators shall clearly label the contents of all storage tanks.

**B.** If any steel piping installed in a trench is used in a UST system, owners and operators shall visually inspect the trench monthly. Owners and operators shall draw off any liquid that has accumulated in the trench within one week of the accumulation, and shall remove any other debris that has accumulated inside the trench. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. If a basin sump is located in the trench, owners and operators shall keep the basin sump free of accumulated liquid and debris. Owners and operators shall not install any valves in any basin sump in a piping trench.

[20.5.107.700 NMAC - N, 07/24/2018]

#### **20.5.107.701 OPERATIONS AND MAINTENANCE PLAN:**

Owners and operators of all storage tank systems shall adopt and implement a written operations and maintenance plan, which they shall keep at the facility for the life of the storage tank system. Owners and operators of unmanned storage tank systems may keep the operations and maintenance plan at an alternate location as long as it is made readily available to the department upon request. The operations and maintenance plan shall be as specific as possible for each facility and shall include the piping and ancillary equipment that routinely contains regulated substances, or controls the flow of regulated substances. Owners and operators may use, by reference, operational and maintenance guidance from the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. Owners and operators who reference a current edition of an industry standard or code of practice shall maintain a copy of the code or standard they reference. Owners and operators shall not implement the plan until it has been approved by the department.

**A.** At a minimum, the operations and maintenance plan shall include the following:

**(1)** a detailed plan showing inspections, operations, testing and maintenance to be done on a daily, monthly, quarterly and annual basis; the plan shall include tank charts for each tank, a description of how owners and operators properly dispose of regulated substances spilled at the facility, and any water or soil removed from any part of the storage tank system where there is any indication it might be or have been contaminated with a regulated substance;

**(2)** a description of periodic operation and maintenance walk-through inspections in accordance with 20.5.107.707 NMAC; and

(3) responses to emergency situations; this information shall be readily accessible at the facility; responses to emergency situations shall include the following:

(a) the location of equipment to be shut down during an emergency and how to safely perform these tasks;

(b) actions to be taken in the event of a fire, flooding, a spill, or a release of regulated substances;

(c) a site diagram; and

(d) a list of whom to notify or call during or after an emergency situation.

B. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems",*

(2) *U.S. Environmental Protection Agency #510-R-05-001, "UST Systems: Inspecting and Maintaining Sumps and Spill Buckets"; or*

(3) *U.S. Environmental Protection Agency #510-R-05-002, "Operating and Maintaining Underground Storage Tank Systems: Practical Help and Checklists".*

C. Owners and operators may submit to the department for approval an alternate plan which contains all the information requested in this section.

D. Owners and operators of storage tank systems that have been placed in temporary closure in compliance with 20.5.115.1501 NMAC shall not be required to have an operations and maintenance plan, unless one or both of the following conditions is present:

(1) the storage tank contains greater than one inch of regulated substance; or

(2) the storage tank system has steel components that are in contact with an electrolyte, such as soil, water or concrete.

[20.5.107.701 NMAC - N, 07/24/2018]

### **20.5.107.702 OPERATION, REPAIR, AND MAINTENANCE OF SECONDARY CONTAINMENT FOR USTS:**

A. Owners and operators of underground storage tank systems shall operate, maintain and repair secondary containment in accordance with the manufacturer's instructions or specifications, or with the current edition of an industry standard or code

of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) U.S. Environmental Protection Agency #510-R-05-001, "UST Systems: Inspecting and Maintaining Sumps and Spill Buckets"; or

(2) U.S. Environmental Protection Agency #510-R-05-002, "Operating and Maintaining Underground Storage Tank Systems: Practical Help and Checklists";

(3) *National Leak Prevention Association Publication RP823, "Standard for Preventative Maintenance, Repair, and In-situ Construction of Petroleum Sumps".*

**B.** Owners and operators shall draw off liquid that has accumulated in the secondary containment, including all sumps, within one week of any accumulation of liquid, and shall remove any other debris that has accumulated inside the secondary containment. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen.

**C.** Under-dispenser containment must allow for access to the components in the containment system for visual inspections in accordance with 20.5.107.707 NMAC.

**D.** Under-dispenser containment for UST systems installed after April 4, 2008 shall be maintained to meet requirements in 20.5.106.606 NMAC.

**E.** Owners and operators shall operate, maintain, and repair containment sumps on UST systems in order to prevent any leaks or spills from escaping the containment sumps.

[20.5.107.702 NMAC - N, 07/24/2018]

#### **20.5.107.703 OPERATION, REPAIR, AND MAINTENANCE OF VENTING SYSTEMS:**

Owners and operators shall operate, maintain and repair venting systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. At least monthly, owners and operators shall check emergency vents to ensure they are operational. The following shall be used to comply with this requirement: *National Fire Protection Association Standard 91, "Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Particulate Solids".*

[20.5.107.703 NMAC - N, 07/24/2018]

#### **20.5.107.704 OPERATION AND MAINTENANCE OF SPILL AND OVERFILL PREVENTION:**

Owners and operators shall ensure that releases due to spilling or overfilling do not occur.

**A.** Owners and operators shall ensure that the volume available in a tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. Owners and operators shall comply with the transfer procedures described in the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";*

(2) *International Code Council, "International Fire Code";*

(3) *Petroleum Equipment Institute Publication RP600, "Recommended Practices for Overfill Prevention for Shop-Fabricated Aboveground Tanks";* or

(4) *American Petroleum Institute Standard 2350, "Overfill Protection for Storage Tanks in Petroleum Facilities".*

**B.** For additional guidance on Subsection A, see the following:

(1) *National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids";*

(2) *American Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles";*

(3) *American Petroleum Institute Bulletin 1621, "Recommended Good Practices for Bulk Liquid-Loss Control in Service Stations";* or

(4) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code".*

**C.** Owners and operators of UST systems shall ensure that spill prevention equipment required in 20.5.106.613 NMAC is liquid tight, maintained, and fully operational at all times. In order to ensure the equipment meets these requirements, owners and operators shall, no later than three years after the effective date of these rules, meet the following requirements:

(1) Single walled spill prevention equipment shall be tested every three years either by a vacuum, pressure, or liquid test method that meets one of the following:

(a) the equipment manufacturer's developed and published testing requirements; or

(b) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*.

(2) Single walled spill prevention equipment installed in a containment sump shall be tested every three years or the containment sump shall be tested every three years. Testing shall either be by a vacuum, pressure, or liquid method that meets one of the following:

(a) the equipment manufacturer's developed and published testing requirements; or

(b) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*.

(3) Double walled spill prevention equipment that is periodically monitored every 30 days shall have records of the monitoring maintained in accordance with the requirements in 20.5.107.714 NMAC. If monthly monitoring is not being conducted or records of the monitoring cannot be produced, a test in accordance with Subsection C of this section shall be conducted within the next thirty days of discontinuing periodic monitoring of the equipment.

(4) Single walled containment sumps installed to meet spill prevention requirements shall be tested every three years. Testing shall be by a vacuum, pressure, or liquid method that meets one of the following:

(a) the equipment manufacturer's developed and published testing requirements; or

(b) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*.

(5) Double walled containment sumps that are installed to meet spill prevention requirements shall either be tested every three years or monitored as follows:

(a) Testing shall be by a vacuum, pressure, or liquid method that meets one of the following:

(i) the equipment manufacturers developed and published testing requirements; or

(ii) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities";*

(b) Monitoring shall be performed either continuously or monthly with a sensor or visual inspection as follows:

(i) continuous monitoring by liquid, pressure, or vacuum shall be done electronically and shall activate an alarm when liquid is detected in the interstice of the sump;

(ii) monthly monitoring with a sensor shall be conducted at least every 30 days and in accordance with either the manufacturer's instructions or the current edition of a national code or standard;

(iii) monthly monitoring by visual inspection may be used if a leak from the inner wall of the sump can be detected by a visual check of the interstice;

(6) Containment sumps installed prior to the effective date of these regulations shall be tested in accordance with Paragraph (2) of Subsection C of this section prior to the beginning of monthly monitoring, if applicable;

(7) Sensors used for monthly monitoring of spill prevention equipment or containment sumps associated with spill prevention equipment shall be functionality tested annually in accordance with the requirements in Subsection B of 20.5.108.808 NMAC;

(8) If evidence is found during the monthly monitoring that containment sumps or spill prevention equipment are no longer liquid tight, owners and operators shall have the equipment repaired or replaced in accordance with the requirements in 20.5.107.709 NMAC;

(9) A report shall be produced which includes the results of any vacuum, pressure, or liquid testing conducted on spill prevention equipment and the report shall be submitted to the department in accordance with the requirements in 20.5.107.715 NMAC and maintained in accordance with the requirements in 20.5.107.714 NMAC.

D. Spill prevention equipment that either fails when tested or is found to be damaged during periodic monitoring shall be repaired or replaced in accordance with 20.5.107.709 NMAC.

E. Owners and operators of UST systems shall ensure that overfill prevention equipment required in 20.5.106.613 NMAC is maintained and fully operational at all times. Owners and operators shall either use the methods and procedures for the inspection as listed in *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and*

*Secondary Containment Equipment at UST Facilities,"* or those developed and published by the equipment manufacturer. In order to ensure the equipment meets these requirements, owners and operators shall, no later than three years after the effective date of these regulations, and every three years thereafter, have the overfill prevention equipment inspected or tested and shall meet the following:

**(1)** The inspection shall verify the equipment meets the requirements in 20.5.106.613 NMAC, and if the equipment fails to meet these requirements, it shall be repaired or replaced. The repair or replacement shall be in accordance with 20.5.107.709 NMAC.

**(2)** Prior to the inspection of flow restrictors on vent lines on existing USTs, either a vacuum or pressure decay test shall be conducted in order to ensure all of the penetrations on top of the tank are vapor tight. If the tank fails the test it shall be repaired prior to placing the tank back into service.

**(3)** Flow restrictors on vent lines that are found to be inoperable during the inspection shall be replaced with different type of overfill prevention equipment. Flow restrictors shall not be installed or replaced with another flow restrictor on or after the effective date of these regulations.

**(4)** Drop tube style overfill prevention equipment shall be removed from the tank and inspected for operability.

**(5)** If more than one type of overfill prevention equipment is installed on a UST, owners and operators shall ensure that none of them will interfere with the proper operation of any of the others.

**(6)** A report on tests and inspections of overfill prevention equipment shall be produced which meets the requirements in Subsection D of 20.5.107.715 NMAC, and the report shall be maintained in accordance with the requirements in 20.5.107.714 NMAC. The report shall be submitted to the department in accordance with the requirements in Subsections B and C of 20.5.107.715 NMAC.

**F.** Owners and operators shall report, investigate, and clean up any spills and overfills in accordance with 20.5.118 NMAC.

**G.** Owners and operators of a storage tank system that meets the requirements for temporary closure where the tank is empty as defined in 20.5.115.1501 NMAC shall not be required to periodically test the spill and overfill prevention equipment.

**H.** Owners and operators of storage tank systems shall ensure that tests of all spill and overfill prevention equipment as required in this section are performed by a qualified tester. The requirements for testers can be found in 20.5.105 NMAC.

[20.5.107.704 NMAC - N, 07/24/2018]

## **20.5.107.705 OPERATION AND MAINTENANCE OF CORROSION PROTECTION:**

Owners and operators of metal storage tank systems with any metal tank or piping with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented until the storage tank system is permanently closed pursuant to 20.5.115 NMAC.

**A.** Owners and operators shall operate and maintain corrosion protection systems to continuously provide corrosion protection to all metal components of the storage tank system that routinely contain regulated substances and are in contact with an electrolyte, to include, but not limited to, soil or water. Owners and operators shall operate and maintain corrosion protection systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *Steel Tank Institute, "STI-P3 Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks";*
- (2) *Underwriters Laboratories Standard 1746, "Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks";*
- (3) *Underwriters' Laboratories of Canada CAN4-S603-14-ER1, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids";*
- (4) *Underwriters' Laboratories of Canada CAN4-603.1, "Standard for External Corrosion Protection Systems for Underground Steel Tanks for Flammable and Combustible Liquids";*
- (5) *Underwriters' Laboratories of Canada CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems";*
- (6) *NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection";* or
- (7) *Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."*

**B.** Owners and operators shall ensure that all storage tank systems equipped with cathodic protection are inspected for proper operation by a qualified corrosion expert in accordance with the following requirements:

- (1) Frequency: owners and operators shall test all cathodic protection systems as follows:

- (a) within six months of installation and at least every three years thereafter;
  - (b) within six months of a modification or repair; or
  - (c) another reasonable time frame approved in advance in writing by the department;
- (2) Inspection criteria: the criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;
- (3) Owners and operators of storage tank systems shall provide the department a report on the cathodic protection system test that includes the following:
- (a) name of facility, facility address, and facility ID number;
  - (b) name of the technician who performed the test;
  - (c) certification of the technician in the type of test performed, including certification numbers, national association where the certification was obtained, and expiration date of the certification;
  - (d) description of cathodic protection system, for example impressed current, galvanic;
  - (e) description of storage tank system including tank ID number, product, capacity, tank type, piping, flex connectors;
  - (f) type of test conducted, such as: three-year test; test within six months of installation; test within six months after repair or modification; test within three months after failed test;
  - (g) whether all flex connectors or metal risers that routinely contain a regulated substance and are in contact with an electrolyte are protected from corrosion. If isolation boots, jackets, or other non-corrodible materials are used to protect this equipment from corrosion, it shall be determined if they are still providing protection from corrosion.
  - (h) tester's pass/fail evaluation and actions to be taken after evaluation;
  - (i) facility drawing of the storage tank system and cathodic protection system, indicating location of test points on the storage tank system, cathodic protection test stations, and reference electrode placement; and

(j) description of cathodic protection system repair or modification.

(4) Owners and operators of storage tank systems shall provide the department a report on impressed current systems that includes all requirements listed in Paragraph (3) of Subsection B of this section and:

(a) rectifier manufacturer, model, serial number, and what the rectifier is rated for in direct current output voltage and amperage;

(b) rectifier tap settings, direct current output voltage and amperage, and hour meter readings;

(c) description of structure tested, contact point of test lead, and reference electrode placement;

(d) structure to soil potential with current applied in millivolts;

(e) structure to soil potential with current interrupted, instant OFF in millivolts;

(f) 100 millivolts polarization shift, end voltage and voltage change;  
and

(g) test results.

(5) Owners and operators of storage tank systems shall provide the department a report on galvanic systems that includes all requirements listed in Paragraph (3) of Subsection B of this section and:

(a) description of structure tested, contact point of test lead, and reference electrode placement;

(b) structure to soil potential measured locally in millivolts;

(c) structure to soil potential measured remotely in millivolts; and

(d) test results.

(6) Owners and operators shall use one or more of the following to comply with the requirements of this section:

(a) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(b) *National Fire Protection Association Standard 30A "Code for Motor Fuel Dispensing Facilities and Repair Garages";*

**(c)** American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems";

**(d)** American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";

**(e)** International Code Council, "International Fire Code";

**(f)** NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";

**(g)** NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";

**(h)** Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs";

**(i)** NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection"; or

**(j)** NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

**C.** Owners and operators shall inspect storage tank systems with impressed current cathodic protection systems every 60 days to ensure the equipment is running properly. Owners and operators shall record the date, time, readings and results of each inspection in a log kept at the facility, and indicate who performed each inspection.

**D.** Owners and operators shall monthly inspect any equipment or materials used to isolate metal components of UST systems and shall repair or replace equipment and materials used to meet corrosion protection requirements in this section.

**E.** For storage tank systems using cathodic protection, owners and operators shall maintain records of the operation of the cathodic protection in accordance with 20.5.107.714 NMAC to demonstrate compliance with the performance standards in this section. These records shall provide the following:

**(1)** the results of the last three inspections required in Subsection C of this section; and

**(2)** the results of testing from the last two inspections required in Subsection B of this section.

[20.5.107.705 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for the cathodic protection system test report required in Subsection B. The form is available on the Petroleum Storage Tank Bureau's pages on the department website, or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.107.706 OPERATION AND MAINTENANCE OF CONTAINMENT SUMPS FOR UST SYSTEMS:**

**A.** Owners and operators shall maintain all containment sumps (including but not limited to turbine sumps, under dispenser sumps, and transition sumps) and draw off liquid that has accumulated in the containment sumps within one week of the accumulation, and shall remove any other debris that has accumulated inside the containment sumps. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations.

**B.** Owners and operators shall maintain all containment sumps associated with interstitial monitoring of underground piping; the sumps shall be liquid tight and kept free of water.

**C.** Owners and operators of UST systems with single walled containment sumps associated with interstitial monitoring shall have the integrity of the sump tested no later than three years after the effective date of these regulations, and every three years thereafter, in accordance with the following:

**(1)** Hydrostatic or other test methods shall be conducted to ensure the containment sumps are liquid tight including at all penetrations in accordance with one of the following:

**(a)** the equipment manufacturers developed and published testing requirements;

**(b)** *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*; or

**(c)** the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

**(2)** Hydrostatic test methods using a test apparatus developed specifically for testing containment sumps shall ensure the containment sumps are liquid tight including at all penetrations and comply with one of the following:

**(a)** protocols developed by the manufacturer of the test apparatus and the certification as listed on <http://www.nwglde.org>, the web site of the national work group on leak detection evaluation; or

**(b)** protocols developed and published by the manufacturer of the containment sump; or

**(c)** *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*; or

**(3)** A low liquid level hydrostatic test method may be conducted if all of the following conditions are met:

**(a)** test method used shall be in accordance with the following:

**(i)** the liquid level meets the third-party certification for the sensor installed in the sump;

**(ii)** the duration of the test shall be a minimum of one hour unless a different test period is specified by the containment sump manufacturer or in Item (iii) below;

**(iii)** the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

**(b)** either a hydrostatic test shall be conducted every 12 years in accordance with Paragraph (1) and (2) of Subsection C or a site check shall be conducted every 12 years in accordance with in Subsection B of 20.5.118.1801 NMAC.

**(c)** a sump sensor that automatically shuts off equipment associated with the sump and meets the requirements for placement and testing of sensors used for interstitial monitoring in Paragraph 2 of Subsection B of 20.5.108.811 NMAC;

**(4)** A low liquid level test per Paragraph (3) of this subsection shall not be conducted if the following conditions exist:

**(a)** a liquid is discovered in the sump or evidence is found that a liquid has been at a level equal to or higher than the lowest penetration in the sump then testing has to be conducted in accordance with Paragraph (1) of this subsection;

**(b)** sensors in containment sumps are discovered to be located higher than the lowest part of the sump a test shall be conducted in accordance with Paragraph (1) of this subsection and owners and operators shall report and investigate a suspected release in accordance with the requirements in 20.5.118 NMAC; or

(c) a site check conducted in accordance with Paragraph (3) of this subsection indicates there has been a release from the containment sump.

D. Owners and operators of UST systems with double-walled containment sumps associated with interstitial monitoring shall have the integrity of the sumps tested no later than three years after the effective date of these regulations, and every three years thereafter, in accordance with one of the following:

(1) interstices under vacuum, pressure, or brine filled, are continuously monitored by use of interstitial sensors or visually inspected every 30 days, and the monitoring records are maintained in accordance with 20.5.107.714 NMAC. Owners and operators shall ensure that annual functionality testing or annual inspections of the monitoring equipment are conducted in accordance with 20.5.108.805 NMAC. Owners and operators who cannot demonstrate that the interstices of the containment sumps are continuously monitored or inspected every 30 days shall have the sumps tested in accordance with Subsection C above; or

(2) containment sumps with dry interstices that are not continuously monitored are integrity tested in accordance with Subsection C of this section.

E. All sensors and equipment used to monitor containment sumps shall be functionality tested annually in accordance with Subsection B of 20.5.108.805 NMAC.

F. A report shall be produced which includes the results of the testing, and the report shall be submitted in accordance with 20.5.107.715 NMAC and maintained in accordance with the requirements in 20.5.107.714 NMAC.

G. Owners and operators of storage tank systems shall ensure that tests of containment sumps as required in this section are performed by qualified testers. The requirements for testers can be found in 20.5.105 NMAC.

H. Owners and operators of storage tank systems shall dispose of water or other test media used in testing of components of petroleum storage tank systems, or any accumulated liquid with a visible sheen, and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. Owners and operators who temporarily store the test media or water on-site shall do so in accordance with all federal, state, and local statutes, ordinances, and regulations.

[20.5.107.706 NMAC - N, 07/24/2018]

#### **20.5.107.707 PERIODIC OPERATION AND MAINTENANCE WALK-THROUGH INSPECTIONS:**

A. Owners and operators shall conduct walk-through inspections that, at a minimum, check equipment as specified below:

**(1)** For spill and overfill prevention equipment, every 30 days (exception: spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):

**(a)** visually check all spill and overfill prevention equipment for damage;

**(b)** remove liquid or debris;

**(c)** check for and remove obstructions in the fill pipe;

**(d)** check all fill and vapor caps to verify a tight seal; and

**(e)** for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and

**(f)** check overfill prevention equipment for proper operation and determine whether maintenance is required.

**(2)** For release detection equipment, every 30 days:

**(a)** check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and

**(b)** ensure records of release detection testing are reviewed and current.

**(3)** For containment sumps, every 30 days:

**(a)** visually check the containment sump for damage, liquid in or leaks into the containment area, and releases to the environment;

**(b)** remove liquid and debris from containment sumps; and

**(c)** for double walled sumps with interstitial monitoring, check for liquid or a leak in the interstitial area.

**(4)** Annually: check hand held release detection equipment, such as, but not limited to, tank gauge sticks or groundwater bailers for operability and serviceability;

**B.** Owners and operators shall conduct these walk-through inspections in accordance with one of the following:

**(1)** *Petroleum Equipment Institute Recommended Practice RP 900, "Recommended Practices for the Inspection and Maintenance of UST Systems";*

(2) the current edition of a national code of practice or standard developed by a nationally recognized association or independent testing laboratory that checks equipment included in Subsection A of 20.5.107.707 NMAC; or

(3) a checklist developed by the department.

C. Owners and operators must maintain records of operation and maintenance walkthrough inspections in accordance with 20.5.107.714 NMAC. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

[20.5.107.707 NMAC - N, 07/24/2018]

### **20.5.107.708 COMPATIBILITY:**

Owners and operators shall use a storage tank system made of or lined with materials that are compatible with the substance stored in the storage tank system.

A. Owners and operators must notify the department at least 30 days prior to changing the substance in any of their tanks to a regulated substance containing greater than ten percent ethanol, greater than twenty percent biodiesel, or any other regulated substance identified by the department.

B. In addition, owners and operators with storage tank systems storing the regulated substances identified in Subsection A of this section must meet one of the following:

(1) demonstrate compatibility of the storage tank system, including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment. Owners and operators may demonstrate compatibility of the storage tank system by using one of the following options:

(a) certification or listing of storage tank system equipment or components by a nationally recognized, independent testing laboratory approved in advance by the department for use with the regulated substance stored; or

(b) equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer.

(2) for storage tank systems or system components that contain, but are not compatible with, one of the regulated substances listed in Subsection A of this section, or for those storage tank systems where compatibility cannot be determined, remove all

regulated substances from the storage tank system by the effective date of these regulations and comply with one of the following:

(a) replace the storage tank system or system components in accordance with the requirements for a new storage tank system in 20.5.106 NMAC; or

(b) prior to putting the tank back in service, repair the storage tank system in accordance 20.5.107.702 NMAC and comply with one of the following:

(i) install an internal lining in the tank in accordance with the requirements in Subsection E of 20.5.106.607 NMAC to address compatibility issues; or

(ii) comply with tank or equipment manufacturer's instructions;

(c) change the regulated substance stored to one that is compatible with the storage tank system; or

(d) permanently close the storage tank system within 12 months of the effective date of these regulations in accordance with the permanent closure requirements in 20.5.115 NMAC; or

(3) use another option determined by the department to be no less protective of human health and the environment than the options listed in this subsection.

**C.** Owners and operators must maintain records documenting compliance with this section for as long as the storage tank system is used to store the regulated substance.

**D.** Owners and operators shall use the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department to comply with the compatibility requirements of this section. *American Petroleum Institute Recommended Practice RP 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"*, shall be used to comply with the requirements of this section as they pertain to storage of ethanol blends.

[20.5.107.708 NMAC - N, 07/24/2018]

### **20.5.107.709 REPAIRS, REPLACEMENTS AND MODIFICATIONS:**

Owners and operators of a storage tank system shall ensure that repairs, replacements, and modifications will prevent releases due to structural failure or corrosion as long as the storage tank system is used to store regulated substances.

**A.** Determining whether repair, replacement or modification is necessary. Owners and operators shall determine whether a repair, replacement or modification to a

storage tank system is necessary in consultation with a department inspector, after providing notice required by this part.

**(1)** If owners and operators are repairing, replacing or modifying piping of any kind that is connected to a storage tank, the determination shall be made during an on-site inspection that provides the inspector the opportunity to view the piping while it is exposed.

**(2)** If, during an on-site inspection, the inspector determines that:

**(a)** any steel piping connected to a tank indicates corrosion; or

**(b)** any non-corrodible piping connected to a tank shows signs of deterioration or failure;

**(3)** Then the owner and operator shall replace all piping connected to that tank, and shall inspect all other piping at the same facility that is made of the same material to determine its condition prior to returning the facility to operation.

**B.** Owners and operators shall properly conduct repairs, replacements and modifications to storage tank systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and in accordance with the manufacturer's instructions and recommended practices. Owners and operators shall use one or more of the following to comply with the requirements of this section:

**(1)** *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

**(2)** *American Petroleum Institute Recommended Practice RP 2200, "Repairing Hazardous Liquid Pipelines";*

**(3)** *American Petroleum Institute Recommended Practice RP 1631, "Interior Lining and Periodic Inspection of Underground Storage Tanks";*

**(4)** *National Leak Prevention Association Standard 631, Chapter A, "Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks";*

**(5)** *National Leak Prevention Association Standard 631, Chapter D, "Lining of Fiberglass Tanks for Compatibility and Repairs That Are Allowed";*

**(6)** *National Leak Prevention Association Publication RP823, "Standard for Preventative Maintenance, Repair, and In-situ Construction of Petroleum Sumps";*

- (7)** *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";*
- (8)** *Petroleum Equipment Institute Publication RP200, "Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling";*
- (9)** *American Society for Testing and Materials ES40, "Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection";*
- (10)** *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration Piping Systems";*
- (11)** *American Society of Mechanical Engineering Standard B31.1, "Power Piping";*
- (12)** *International Code Council, "International Fire Code";*
- (13)** *Steel Tank Institute Recommended Practice R972, "Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks";*
- (14)** *NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection";*
- (15)** *Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, "Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks";*
- (16)** *Petroleum Equipment Institute Publication RP100, "Recommended Practices for the Installation of Underground Storage Tank Systems for Motor Vehicle Fueling";*
- (17)** *Petroleum Equipment Institute Publication RP800, "Recommended Practices for Installation of Bulk Storage Plants";*
- (18)** *Petroleum Equipment Institute Publication RP1000, "Recommended Practices for the Installation of Marina Fueling Systems";*
- (19)** *Petroleum Equipment Institute Publication RP1300, "Recommended Practices for the Design, Installation, Service, Repair, and Maintenance of Aviation Fueling Systems"; or*
- (20)** *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems".*

**C.** Owners and operators shall tightness test a storage tank system that has been replaced, modified or repaired, prior to returning the system to service, in accordance with 20.5.108.804 NMAC and Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC except as provided below:

(1) the repaired or modified tank is internally inspected in accordance with the current edition of an industry standard or code of practice approved in advance by the department; or

(2) owners and operators shall use an equivalent test method, which complies with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department.

**D.** The following codes of practice shall be used to comply with Subsection C of this section:

(1) *Steel Tank Institute Recommended Practice R012, "Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks";*

(2) *Fiberglass Tank and Pipe Institute Publication RP 2007-2, "Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space";* or

(3) *Petroleum Equipment Institute Recommended Practice RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment of UST Facilities".*

**E.** Upon completion of a modification or repair of any cathodically protected storage tank system, owners and operators shall test the cathodic protection system in accordance with Subsections B and C of 20.5.107.705 NMAC to ensure that it is operating properly.

**F.** Owners and operators of a storage tank system shall maintain records of each repair, replacement and modification until the storage tank system is permanently closed pursuant to 20.5.115 NMAC.

**G.** Owners and operators shall meet all applicable installation requirements of 20.5.106 NMAC, including testing requirements, when repairing, replacing or modifying a storage tank system involves installing new components. If any tank or piping of a storage tank system is replaced, owners and operators shall follow all requirements for properly assessing the site for contamination in compliance with 20.5.115 NMAC prior to installing the new components.

**H.** Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness according to the manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or according to requirements established by the implementing agency within 30 days following the date of completion of the repair.

**I.** Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with 20.5.107.704 NMAC to ensure it is operating properly.

[20.5.107.709 NMAC - N, 07/24/2018]

### **20.5.107.710 INSPECTIONS, MONITORING AND TESTING:**

**A.** For the purpose of enforcing the provisions of these regulations, all owners and operators of storage tanks shall, upon the request of the secretary or authorized department representatives, furnish information relating to such tanks, including tank equipment and contents, conduct monitoring or testing, and permit any department representative at all reasonable times to have access to, and to copy all records relating to such tanks. Owners and operators shall comply with all applicable and appropriate Occupational Health and Safety Act requirements, Sections 50-9-1 through 50-9-25 NMSA 1978, so that storage tanks may be safely inspected. For the purpose of enforcing these regulations, department officers, employees, or representatives are authorized to:

- (1)** enter at reasonable times any establishment or place where a storage tank is located;
- (2)** inspect the storage tank system and obtain samples of its contents;
- (3)** conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater; and
- (4)** retrieve all data from any electronic release detection equipment or device.

**B.** The department shall commence and complete each inspection with reasonable promptness. If the secretary or department representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.

**C.** Owners and operators shall permit the department or authorized department representative to be present at and inspect all storage tank system installations, replacements, repairs, substantial modifications, installations of leak detection systems and storage tank system closures.

**D.** Owners and operators shall not intentionally delete any history from any electronic release detection equipment or device.

[20.5.107.710 NMAC - N, 07/24/2018]

**20.5.107.711 REQUIRED NOTIFICATION PRIOR TO REPLACEMENT, REPAIR AND MODIFICATION:**

To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the replacement, repair, and modification of the storage tank system are to take place. Notice need not be provided for normal maintenance. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

**A.** For replacements, modifications (including internal lining or changes to cathodic protection systems), and repairs, the term "critical junctures" means:

- (1) completion of the excavation of existing tanks or piping;
- (2) actual performance of the repair, lining or modification;
- (3) any time during the project in which components of piping are connected;
- (4) any time during the project in which a tank, its associated piping, spill prevention equipment, or secondary containment sumps are tested; and
- (5) any time during the project when overflow prevention equipment is inspected to ensure it meets the requirements in 20.5.106.613 NMAC.

**B.** Owners, operators and certified tank installers shall give at least 30 days written notice before the replacement, modification or repair of a storage tank system. It may not be feasible for owners, operators, and certified tank installers to provide advance notice of emergency repairs; however, owners, operators, and certified tank installers shall provide notice of emergency repairs as soon as possible after completing emergency repairs. At a minimum, the notice for replacements, modifications, and repairs shall contain the following information:

- (1) date the form is completed;

- (2) facility name, facility ID number, address (with county), and telephone number;
- (3) owner name, owner ID number, address, and telephone number;
- (4) contractor name, address, and telephone number;
- (5) description of type of replacement, modification or repair to be performed (such as spill containment, overspill prevention, release detection, piping or other);
- (6) expected date on which replacement, modification or repair will be performed; and
- (7) whether any part of the storage tank system is within 1,000 feet of a community water system or a potable drinking water well; and
- (8) signature of owner, operator or an authorized representative.

**C.** In addition to the written notices described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

**D.** If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.107.711 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used for notification of replacement, repair and modification. The form is available on the petroleum storage tank bureau's pages on the department website, or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Santa Fe, NM 87505.]

#### **20.5.107.712 DEPARTMENT REVIEW AND APPROVAL OF PLANS, INSTALLATION, OPERATION, AND MAINTENANCE:**

Owners and operators shall view any inspection, review or approval by the department as permission to proceed in accordance with all applicable rules, codes and standards. Review and approval by the department shall not relieve any owner, operator, or certified tank installer of his responsibility for compliance. If the department overlooks any deficiencies or violations in the course of plan review or inspection provided in 20.5 NMAC, the department may later require correction and compliance.

[20.5.107.712 NMAC - N, 07/24/2018]

## **20.5.107.713 ALTERNATE METHODS:**

**A.** If owners and operators want to operate, maintain, replace, repair or modify any part of a storage tank system with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin to operate, maintain, replace, repair or modify the storage tank system, unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.107.713 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used to request approval of an alternate method. The form is available on the Petroleum Storage Tank Bureau's pages on the department website, or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, NM 87505.]

## **20.5.107.714 RECORD KEEPING:**

**A.** Owners and operators shall maintain the following information for the life of the storage tank system:

- (1) a corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used, in accordance with 20.5.106.604 NMAC and 20.5.106.610 NMAC;
- (2) documentation of operation of corrosion protection equipment that demonstrates compliance with 20.5.107.705 NMAC;
- (3) documentation of storage tank system repairs, replacements and modifications that demonstrates compliance with 20.5 NMAC;
- (4) documentation of compliance with release detection requirements in accordance with 20.5.108 NMAC;
- (5) inspection logs required by 20.5.107 NMAC and 20.5.108 NMAC;
- (6) tank tightness, internal inspection and integrity test documents required by 20.5 NMAC;
- (7) any document approving any alternate method;
- (8) spill and overfill prevention equipment testing/inspection records;
- (9) containment sump testing records;
- (10) documentation of compatibility for UST systems;
- (11) documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping;
- (12) documentation of periodic walkthroughs;
- (13) documentation of operator training in accordance with 20.5.104 NMAC;
- (14) the operation and maintenance plan and related documentation as required by 20.5.107.701 NMAC; and
- (15) any other record or written approval required in 20.5 NMAC.

**B.** Availability and maintenance of records. Owners and operators shall keep the required records for the operational life of a tank, piping and storage tank system either:

- (1) at the storage tank site and immediately available for inspection by the department; or
- (2) at a readily available alternative site and the records shall be provided for inspection to the department upon request; if records are not available at a site during

inspection, owners and operators shall send to the inspector within 10 working days all records requested by the inspector.

**C.** Owners and operators shall maintain permanent closure records required under 20.5.115 NMAC. Owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

**D.** If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this section; however, both parties are liable in the event of noncompliance.

[20.5.107.714 NMAC - N, 07/24/2018]

### **20.5.107.715 REPORTING:**

Owners and operators of a storage tank system shall cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the federal Solid Waste Disposal Act, as amended.

**A.** Owners and operators shall provide the following information to the department:

**(1)** registration for all storage tank systems in accordance with 20.5.102 NMAC, which includes certification of installation for new UST systems in accordance with Subsection C of 20.5.106.616 NMAC;

**(2)** reports of all releases in accordance with 20.5.102 NMAC and the requirements in 20.5.118 NMAC for reporting suspected releases, spills and overfills and confirmed releases;

**(3)** corrective actions planned or taken as required by 20.5.119 NMAC and 20.5.120 NMAC;

**(4)** notification before storage tank system installation, replacement, repair or modification in accordance with 20.5.106 NMAC and 20.5.107 NMAC; notification when any person assumes ownership of a storage tank system in accordance with 20.5.102 NMAC and notification before permanent closure or change in service in accordance with 20.5.115 NMAC; it may not be feasible for owners and operators to provide advance notice of emergency repairs; however, owners and operators shall provide notice of emergency repairs as soon as possible after completing emergency repairs;

**(5)** notification prior to storage tank systems changing to certain regulated substances in accordance with Subsection A of 20.5.107.708 NMAC; and

**(6)** updated project drawings for any addition, replacement or modification of a storage tank system;

**B.** Owners and operators shall provide to the department all reports as required in 20.5.107 NMAC within 60 days of completion of the tests.

**C.** Owners and operators shall report any failed tests or inspections to the department within 24 hours of completion of the test or inspection in accordance with 20.5.118 NMAC.

**D.** Owners and operators shall ensure all reports required in 20.5.107 NMAC contain, at a minimum, the following:

- (1)** facility name and address;
- (2)** facility ID number;
- (3)** owner and operator name and address;
- (4)** owner ID number;
- (5)** date report was completed;
- (6)** date of the test;
- (7)** duration of the test;
- (8)** brand name and model number of equipment being tested or sufficient description to allow identification of the equipment;
- (9)** type of equipment being tested;
- (10)** type of test, including test procedures and methods;
- (11)** results of the test;
- (12)** name of the person who performed the inspection or test, and their qualifications as specified in 20.5.105 NMAC;
- (13)** name of the regulated substance stored in the tank associated with the equipment being tested; and
- (14)** for the inspections and testing of spill prevention equipment, overflow prevention equipment, and containment sumps include the information from the following forms, as applicable, from *Petroleum Equipment Institute Publication RP 1200*,

*"Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities":*

(a) spill bucket integrity testing, hydrostatic test method, single and double-walled vacuum method;

(b) containment sump integrity testing, hydrostatic testing method;

(c) UST overfill equipment inspection, automatic shutoff device and ball float valve; or

(d) automatic tank gauge operation inspection.

[20.5.107.715 NMAC - N, 07/24/2018]

## **PART 108: RELEASE DETECTION FOR UNDERGROUND STORAGE TANK SYSTEMS**

### **20.5.108.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.108.1 NMAC - N, 07/24/2018]

### **20.5.108.2 SCOPE:**

This part applies to owners and operators of underground storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.108.2 NMAC - N, 07/24/2018]

### **20.5.108.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.108.3 NMAC - N, 07/24/2018]

### **20.5.108.4 DURATION:**

Permanent.

[20.5.108.4 NMAC - N, 07/24/2018]

**20.5.108.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.108.5 NMAC - N, 07/24/2018]

**20.5.108.6 OBJECTIVE:**

The purpose of 20.5.108 NMAC is to ensure that releases from underground storage tanks are detected early to minimize potential harmful resulting effects, and to regulate underground storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.108.6 NMAC - N, 07/24/2018]

**20.5.108.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.108.7 NMAC - N, 07/24/2018]

**20.5.108.8-20.5.108.799 [RESERVED]**

**20.5.108.800 GENERAL RELEASE DETECTION REQUIREMENTS FOR UST SYSTEMS:**

Owners and operators of all UST systems shall comply with the following:

**A.** Owners and operators of UST systems shall provide a method or combination of methods of release detection that:

**(1)** can detect a release from any portion of the tank, connected piping and ancillary equipment that routinely contains a regulated substance;

**(2)** is installed and calibrated in accordance with the manufacturer's instructions;

**(3)** is operated and maintained in accordance with one of the following, beginning on the effective date of these regulations:

**(a)** manufacturer's instructions;

**(b)** the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; or

**(c)** requirements determined by the implementing agency to be no less protective of human health and the environment than Paragraph (1) and (2) of this subsection.

**(4)** has electronic and mechanical components that are tested to ensure proper operation;

**(5)** with the exceptions of inventory control in 20.5.108.802 NMAC and manual tank gauging in 20.5.108.803 NMAC, meets the performance requirements in 20.5.108 NMAC in accordance with a third party certified method as listed by the national work group on leak detection evaluations; and

**(6)** is capable of detecting the leak rate or quantity specified for that method in 20.5.108 NMAC with a probability of detection of 0.95 and a probability of false alarm of 0.05.

**B.** Owners and operators shall maintain written confirmations of performance claims and their method of determination. These statements shall be written by the equipment manufacturer or installer and shall confirm that the equipment meets the applicable requirements of 20.5.108 NMAC.

**C.** Prior to implementing a new method or combination of methods of release detection, owners and operators shall have the UST system components tested to ensure the new method is capable of detecting a release.

**D.** When a release detection method indicates a release may have occurred, owners and operators shall notify the department in accordance with 20.5.102.204 and 20.5.118 NMAC.

**E.** Owners and operators of underground storage tank systems installed prior to April 4, 2008 that meet the performance standards in 20.5.106 NMAC shall provide release detection for storage tank systems by monitoring monthly for releases using one of the methods listed in Sections 20.5.108.805 NMAC through 20.5.108.809 NMAC with the following exceptions:

**(1)** Monthly inventory control may be used in accordance with the requirements in 20.5.108 NMAC, in conjunction with tank tightness testing conducted in accordance with this part at least every five years until 10 years after the tank was installed.

(2) UST systems that do not meet the performance standards in 20.5.106 NMAC shall upgrade under 20.5.106 NMAC or permanently close under 20.5.115 NMAC.

(3) Manual tank gauging may be used if conducted in accordance with 20.5.108.803 NMAC.

(4) Underground pressurized piping that was installed prior to April 4, 2008 may use annual line tightness testing in conjunction with automatic line leak detectors in accordance with 20.5.108.810 NMAC, and

(5) Underground suction piping that was installed prior to April 4, 2008 may use line tightness testing every three years in accordance with 20.5.108.812 NMAC.

F. Owners and operators of UST systems installed or replaced after April 4, 2008 shall monitor the UST system monthly for releases using interstitial monitoring in accordance with 20.5.108.808 NMAC and either 20.5.108.811 or 20.5.108.813 NMAC.

G. Owners and operators shall ensure that any person who performs a test on their UST system in order to meet the requirements of 20.5.108 NMAC shall comply with the requirements in 20.5.105 NMAC.

H. Owners and operators shall ensure that equipment used to perform a test on their storage tank system is calibrated and maintained according to the manufacturer's requirements.

I. Owners and operators of UST systems shall maintain and provide to the department all reports required in 20.5.108 NMAC in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC.

[20.5.108.800 NMAC - N, 07/24/2018]

#### **20.5.108.801 REQUIREMENTS FOR HAZARDOUS SUBSTANCE UST SYSTEMS:**

A. Owners and operators of hazardous substance UST systems installed before April 4, 2008 shall provide containment that meets the requirements in Subsection C of 20.5.108.801 NMAC, and these UST systems shall be monitored every 30 days using one or more of the UST methods allowed in 20.5.108 NMAC. Owners and operators may request to use an alternate method in accordance with the requirements of 20.5.108.814 NMAC and shall provide the department with information in writing on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance along with the characteristics of the UST site.

B. Owners and operators of hazardous substance UST systems installed on or after April 4, 2008 shall provide containment that meets the requirements in Subsection C of 20.5.108.801 NMAC, and shall monitor these UST systems at least every 30 days using

interstitial monitoring in accordance with 20.5.108.808 NMAC and either 20.5.108.811 NMAC or 20.5.108.813 NMAC.

**C.** Release detection of hazardous substance UST systems shall meet the following requirements.

**(1)** Owners and operators shall design, construct and install secondary containment systems to:

**(a)** contain regulated substances that escape the primary containment until they are detected and removed;

**(b)** prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

**(c)** be checked for evidence of a release monthly; the provisions of 40 CFR 265.193, containment and detection of releases, may be used to comply with these requirements for storage tank systems installed on or before the effective date of these regulations.

**(2)** Double-walled tanks shall be designed, constructed, and installed to:

**(a)** contain a release from any portion of the inner tank within the outer wall; and

**(b)** detect the failure of the inner wall.

**(3)** External liners (including vaults) shall be designed, constructed and installed to:

**(a)** contain one hundred percent of the capacity of the largest tank within its boundary;

**(b)** prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

**(c)** surround the tank completely, thereby preventing lateral as well as vertical migration of regulated substances.

**(4)** Underground piping shall be equipped with secondary containment that satisfies the requirements of this section (for example: trench liners or double-walled pipe). In addition, underground piping that conveys regulated substances under pressure shall be equipped with an automatic line leak detector in accordance with Subsection A of 20.5.108.810 NMAC.

[20.5.108.801 NMAC - N, 07/24/2018]

## **20.5.108.802 INVENTORY CONTROL WITH TANK TIGHTNESS TESTING REQUIREMENTS FOR USTS:**

Owners and operators of underground storage tanks installed on or before April 4, 2008 may use inventory control in conjunction with tank tightness testing every five years as release detection for 10 years after the storage tank system is installed. After the 10-year anniversary of the storage tank system installation, owners and operators shall use one of the methods in 20.5.108.805 NMAC through 20.5.108.809 NMAC. Inventory control with tank tightness testing shall meet the following requirements:

**A.** Inventory control or another test of equivalent performance shall be conducted monthly to detect a release of at least one percent of flow-through plus 130 gallons on a monthly basis.

**B.** Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the UST are recorded each operating day.

**C.** The equipment used is capable of measuring the level of regulated substance over the full range of the UST's height to the nearest one-eighth of an inch.

**D.** The regulated substance inputs are reconciled with delivery receipts by measurement of the UST inventory volume before and after delivery.

**E.** Deliveries are made through a drop tube that extends to within one foot of the UST bottom.

**F.** Regulated substance dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six cubic inches for every five gallons of regulated substance withdrawn.

**G.** The measurement of any water level in the bottom of the UST is made to the nearest one-eighth of an inch at least once a month.

**H.** Practices described in the *American Petroleum Institute Publication RP 1621, "Bulk Liquid Stock*

*Control at Retail Outlets"* may be used, where applicable, as guidance in meeting the requirements of 20.5.108.802 NMAC.

**I.** Owners and operators shall meet all the requirements for tank tightness testing in 20.5.108.804 NMAC.

**J.** At least annually, owners and operators shall check the operability and serviceability of any measuring device or equipment used for inventory control in accordance with Subsection A of 20.5.108.800 NMAC.

**K.** Measurements and results of each monthly monitoring period shall be maintained in accordance with the recordkeeping requirements in 20.5.108.815 NMAC and shall be provided to the department upon request.

[20.5.108.802 NMAC - N, 07/24/2018]

### **20.5.108.803 MANUAL TANK GAUGING REQUIREMENTS FOR USTS:**

#### **A.** Manual tank gauging:

**(1)** may be used as the sole method of release detection for regulated underground tanks of 550 gallons or less nominal capacity and tanks with a nominal capacity of 551 to 1,000 gallons that meet the tank diameter of 48 inches or 64 inches for the life of these tanks;

**(2)** may be used as a method of release detection for regulated underground tanks with a nominal capacity of 551 to 1,000 gallons, with a diameter other than either 48 inches or 64 inches, for 10 years after installation in conjunction with periodic tank tightness testing in accordance with 20.5.108.802 NMAC and 20.5.108.804 NMAC;

**(3)** may be used as a method of release detection for regulated underground tanks with a nominal capacity of 1,001 to 2,000 gallons with any diameter for 10 years after installation in conjunction with periodic tank tightness testing in accordance with 20.5.108.802 NMAC and 20.5.108.804 NMAC;

**(4)** shall not be used after the 10<sup>th</sup> year of the installation for tanks described in Paragraphs (2) and (3) of this subsection; after the 10<sup>th</sup> year, owners and operators shall change to a method described in 20.5.108.805 NMAC through 20.5.108.809 NMAC; and

**(5)** shall not be used to meet the requirements of this part for tanks of greater than 2,000 gallons nominal capacity.

**B.** Owners and operators of underground storage tanks who use manual tank gauging as release detection shall ensure the following:

**(1)** tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

**(2)** level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

**(3)** the equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

**(4)** a suspected release is reported in accordance with the requirements of 20.5.118 NMAC if the variation between beginning and ending measurements exceeds any of the weekly or monthly standards as follows:

**(a)** underground storage tank with a nominal capacity of 550 gallons or less, with a minimum test duration of 36 hours, where the weekly standard for one test exceeds 10 gallons, or the monthly standard for a four-test average exceeds five gallons;

**(b)** underground storage tank with a nominal capacity of 551 gallons through 1,000 gallons with a tank diameter of 64 inches and a minimum test duration of 44 hours, where the weekly standard for one test exceeds nine gallons or the monthly standard for a four-test average exceeds four gallons;

**(c)** underground storage tank with a nominal capacity of 551 gallons through 1,000 gallons with a tank diameter of 48 inches and a minimum test duration of 58 hours, where the weekly standard for one test exceeds 12 gallons or the monthly standard for a four-test average exceeds six gallons;

**(d)** underground storage tank with a nominal capacity of 551 gallons through 1,000 gallons, with a minimum test duration of 36 hours, where the weekly standard for one test exceeds 13 gallons or the monthly standard for a four-test average exceeds seven gallons;

**(e)** underground storage tank with a nominal capacity of 1,001 gallons through 2,000 gallons, with a minimum test duration of 36 hours, where the weekly standard for one test exceeds 26 gallons or the monthly standard for a four-test average exceeds 13 gallons.

**C.** At least annually, owners and operators shall check the operability and serviceability of any measuring device or equipment used for manual tank gauging in accordance with Subsection A of 20.5.108.800 NMAC.

**D.** Measurements and results of each monthly monitoring period shall be maintained in accordance with the recordkeeping requirements in 20.5.108.815 NMAC and shall be provided to the department upon request.

[20.5.108.803 NMAC - N, 07/24/2018]

#### **20.5.108.804 TANK TIGHTNESS TESTING FOR USTS:**

**A.** Tank tightness testing (or another test of equivalent performance) shall be capable of detecting a one-tenth gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or

condensation, and the location of the water table. Owners and operators may not use tank tightness testing alone as a method of release detection.

**B.** Owners and operators shall ensure any person conducting this testing shall meet the tester requirements in 20.5.105 NMAC.

**C.** Owners and operators of UST systems shall maintain and provide the department with reports for all tank tightness testing conducted on their storage tank systems in accordance with 20.5.108.815 NMAC and 20.5.8.816 NMAC.

**D.** An automatic tank gauge system conducting a one-tenth gallon per hour leak test does not meet the requirements for tank tightness testing in this section.

[20.5.108.804 NMAC - N, 07/24/2018]

### **20.5.108.805 AUTOMATIC TANK GAUGING REQUIREMENTS FOR USTS:**

**A.** Owners and operators of underground storage tanks may use automatic tank gauging as a method of release detection if the automatic tank gauging system:

(1) tests for the loss of product and can detect a two-tenths gallon per hour leak rate from any portion of the storage tank system that routinely contains regulated substances;

(2) meets inventory control or another test of equivalent performance requirements in accordance with 20.5.108.802 NMAC; and

(3) tests the storage tank system using one of the following modes:

(a) in-tank static testing conducted at least once every 30 days;

(b) continuous in-tank leak detection operating on an uninterrupted basis to determine the leak status of the tank at least once every 30 days; or

(c) continuous in-tank leak detection operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every 30 days.

**B.** Owners and operators shall at least annually test the automatic tank gauging system for proper operation beginning three years after the effective date of these regulations. Inspections and testing shall be conducted by a person who is certified as a technician by the manufacturer of the automatic tank gauging system and meets the tester requirements in 20.5.105 NMAC. The annual tests shall, at a minimum and as applicable, include the following:

(1) automatic tank gauge and other controllers: test alarm; verify system programming and configuration; test battery backup;

(2) probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller; and

(3) vacuum pumps and pressure gauges: ensure proper communication with sensors and controller.

C. Owners and operators shall use one of the following to comply with Paragraph B of this section:

1) Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"; or

2) The manufacturer's testing or inspection instructions.

D. Owners and operators shall review the monitoring reports on a monthly basis and notify the department in accordance with 20.105.18 NMAC if there is a failed or inconclusive result.

E. Owners and operators shall maintain records for all inspections and testing required in this section in accordance with 20.5.108.815 NMAC. Owners and operators shall provide the department with a report of each annual test of the automatic tank gauge system in accordance with 20.5.108.816 NMAC.

F. A one tenth gallon per hour leak test conducted by an automatic tank gauge system does not meet the requirements for tank tightness testing in 20.5.108.804 NMAC.

[20.5.108.805 NMAC - N, 07/24/2018]

#### **20.5.108.806 VAPOR MONITORING REQUIREMENTS FOR USTS:**

Owners and operators of underground storage tanks may use vapor monitoring or testing as a method of release detection as long as the testing or monitoring for vapors within the soil gas of the excavation zone meets all of the following requirements:

A. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area.

B. The stored regulated substance, or a tracer compound placed in the UST system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable

by the monitoring devices located in the excavation zone in the event of a release from the UST.

**C.** The measurement of vapors by the monitoring device is not rendered inoperative by groundwater, rainfall, soil moisture or other known interferences so that a release could go undetected for more than 30 days.

**D.** The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the UST, and

**E.** The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the UST system, a component or components of that substance, or a tracer compound placed in the UST system.

**F.** In the UST excavation zone, the site is assessed:

**(1)** to ensure compliance with the requirements in Subsections A through D of this section; and

**(2)** to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains a regulated substance.

**G.** Site assessments conducted after the effective date of these regulations are signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department and approved in advance by the department.

**H.** Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

**I.** Hand-held electronic sampling equipment that is used for vapor monitoring is:

**(1)** annually checked to ensure that the equipment is functioning properly; and

**(2)** calibrated prior to each sampling event in accordance with the manufacturer's instructions.

**J.** All records of the site assessment and vapor monitoring system are maintained in accordance with 20.5.108.815 NMAC, and

**K.** Monthly reports of vapor monitoring and annual reports of functionality checks of electronic sampling equipment are maintained and provided to the department in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC.

[20.5.108.806 NMAC - N, 07/24/2018]

### **20.5.108.807 GROUNDWATER MONITORING REQUIREMENTS FOR USTS:**

Owners and operators of underground storage tanks may use groundwater monitoring as a method of release detection as long as the testing or monitoring for liquids on the groundwater meets all of the following requirements:

**A.** The regulated substance stored is immiscible in water and has a specific gravity of less than one.

**B.** Groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil between the UST system and the monitoring wells or devices is not less than one one-hundredth centimeters per second (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials).

**C.** The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions.

**D.** Monitoring wells shall be sealed from the ground surface to the top of the filter pack.

**E.** Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible.

**F.** The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of non-aqueous phase liquid on top of the groundwater in the monitoring wells.

**G.** Within and immediately below the UST system excavation zone, the site is assessed to:

**(1)** ensure compliance with the requirements in Subsections A through E of this section; and

**(2)** establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product.

**H.** Site assessments conducted after the effective date of these regulations are signed by a qualified professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department and approved in advance by the department.

I. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

J. Owners and operators shall ensure that hand-held electronic and field equipment that is used for groundwater monitoring is:

- (1) annually checked to ensure that the equipment is functioning properly; and
- (2) calibrated prior to each sampling event in accordance with the manufacturer's instructions.

K. All records of the site assessment and groundwater monitoring system are maintained in accordance with 20.5.108.815 NMAC.

L. Monthly reports of groundwater monitoring and annual reports of functionality checks of electronic sampling equipment are maintained and provided to the department in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC.

[20.5.108.807 NMAC - N, 07/24/2018]

#### **20.5.108.808 INTERSTITIAL MONITORING REQUIREMENTS FOR USTS:**

A. Owners and operators of underground storage tanks may use interstitial monitoring between the UST and a secondary barrier immediately around and underneath the tank, but only if the system is designed, constructed and installed to detect a leak from any portion of the storage tank system that routinely contains any regulated substance and also meets one of the following requirements:

(1) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains a regulated substance, and the sampling or testing method complies with the requirements of the current edition of an industry code or standard approved in advance by the department; *Steel Tank Institute Standard F841, "Standard for Dual Wall Underground Storage Tanks"* may be used to meet this requirement.

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier; the monitoring system shall meet all of the following requirements:

(a) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least one X 10(-6)) centimeters per second for the regulated substance stored) to direct a release to the monitoring point and permit its detection.

**(b)** The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected.

**(c)** For cathodically protected USTs, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system.

**(d)** The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty days.

**(e)** The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions.

**(f)** Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering, or

**(3)** For USTs with an internally fitted liner, an automated device can detect a release between the inner wall of the UST and the liner, and the liner is compatible with the regulated substance stored.

**B.** For all interstitially monitored USTs, owners and operators shall have all sensors tested by a qualified tester at least annually to ensure proper operation and functionality, including for alarm operability and communication with controller or monitoring equipment, and sensors shall be verified as set to the proper height, placement, and location in accordance with Subsection A of 20.5.108.800 NMAC and 20.5.107 NMAC. At a minimum, these tests shall follow either:

**(1)** liquid sensor functionality testing procedures described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

**(2)** the equipment manufacturer's published testing procedures.

**C.** Owners and operators shall ensure the requirements in 20.5.108.800 NMAC are met prior to implementing interstitial monitoring.

**D.** Owners and operators shall maintain and provide the department reports relating to the requirements of this section in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC.

[20.5.108.808 NMAC - N, 07/24/2018]

## **20.5.108.809 STATISTICAL INVENTORY RECONCILIATION (SIR) FOR UST SYSTEMS:**

**A.** Owners and operators of underground storage tanks may use release detection methods based on the application of statistical principles to inventory data similar to those described in 20.5.108.802 NMAC. Owners and operators who use SIR shall:

- (1)** comply with the requirements in Subsections B through G of 20.5.108.802 NMAC;
- (2)** use a third-party certified quantitative method;
- (3)** use a third-party vendor to analyze the data and include the name of the SIR provider and the name and version of the SIR method used for analysis;
- (4)** use a method that is capable of detecting a leak rate of two-tenths gallon per hour or a release of 150 gallons within 30 days;
- (5)** use a method with a threshold that does not exceed one-half the minimum detectable leak rate; and
- (6)** use a method that reports a quantitative result with a calculated leak rate.

**B.** Owners and operators shall ensure that the data is collected, analyzed, and reported within the same 30-day period in order to check for releases at least monthly.

**C.** Owners and operators shall:

- (1)** notify the department within 24 hours of discovery of an inconclusive or fail result;
- (2)** provide the department all data collected for the statistical analysis where the results are either inconclusive or fail and identify any further investigation necessary to determine whether there is a suspected release as part of the seven-day report required in 20.5.118 NMAC;
- (3)** perform an investigation within 14 days of receiving an inconclusive result, or another time frame approved in advance by the department to determine whether a suspected release should be investigated under 20.5.118 NMAC; and
- (4)** report a suspected release to the department within 24 hours in accordance with 20.5.118 NMAC if the investigation indicates a fail result.

**D.** Owners and operators shall inspect all mechanical equipment and test all electronic equipment annually to ensure proper operation and calibration.

E. Qualitative SIR methods are no longer accepted as meeting the requirements for monthly monitoring.

F. Owners and operators shall maintain results and records of monthly monitoring in accordance with 20.5.108.815 NMAC and 20.5.108.816 NMAC, and shall provide them to the department upon request.

[20.5.108.809 NMAC - N, 07/24/2018]

**20.5.108.810 REQUIREMENTS FOR UST UNDERGROUND PRESSURIZED PIPING INSTALLED PRIOR TO APRIL 4, 2008:**

Owners and operators of underground storage tank systems with piping installed prior to April 4, 2008, except those used for emergency power generation, shall provide release detection for underground pressurized piping that routinely contains regulated substances by following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

A. Owners and operators of UST systems shall:

(1) use automatic line leak detectors (including mechanical or electronic detectors) that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping when a leak is detected at three gallons per hour at 10 pounds per square inch line pressure within one hour;

(2) perform an annual test of the operation of the leak detector which includes a simulated leak, is conducted in accordance with the manufacturer's testing protocol, and confirms the automatic line leak detector detects a leak at three gallons per hour at 10 pounds per square inch line pressure within one hour; and

(3) use a method, or combination of methods, for monitoring the piping for releases that complies with one of the following:

(a) A precision line tightness test is conducted every 12 months that is capable of detecting a leak of 0.1 gallons per hour at one and one-half times the operating pressure.

(b) The method is capable of detecting a two-tenths gallon per hour leak and is used every 30 days.

(c) One of the methods in 20.5.108.805 NMAC through 20.5.108.809 NMAC is used, if it is capable of detecting a release from any portion of the underground piping that routinely contains a regulated substance.

(d) Interstitial monitoring is used in accordance with all of the requirements in 20.5.108.808 NMAC and 20.5.108.811 NMAC.

B. Owners and operators who use statistical inventory reconciliation for monthly monitoring of underground pressurized piping shall conduct annual line tightness testing in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC.

C. Automatic line leak detectors and sensors required in this section that either fail a test or are found to be damaged shall be repaired or replaced and tested in accordance with 20.5.108.800 NMAC and Paragraph (1) of Subsection A of 20.5.108.810 NMAC. A line tightness test shall be conducted in accordance with Subsection A of this section after an automatic line leak detector has been replaced.

D. Equipment and methods used to monitor the piping shall be appropriate for the type and length of piping.

E. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";* or

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems".*

F. Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.108.815 NMAC and provide to the department reports for all leak detector testing, line tightness testing, and sensor testing in accordance with 20.5.108.816 NMAC.

[20.5.108.810 NMAC - N, 07/24/2018]

#### **20.5.108.811 REQUIREMENTS FOR UST UNDERGROUND PRESSURIZED PIPING INSTALLED ON OR AFTER APRIL 4, 2008:**

Owners and operators of underground storage tank systems with piping installed on or after April 4, 2008 shall use interstitial monitoring as release detection for underground pressurized piping that routinely contains regulated substances by following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

A. Owners and operators of UST systems shall:

(1) use automatic line leak detectors (including mechanical or electronic detectors) that alert the operator to the presence of a leak by restricting or shutting off

the flow of regulated substances through piping when a leak is detected at three gallons per hour at 10 pounds per square inch line pressure within one hour; and

(2) perform an annual test of the operation of the leak detector which includes a simulated leak, is conducted in accordance with the manufacturer's testing protocol, and confirms the automatic line leak detector detects a leak at three gallons per hour at 10 pounds per square inch line pressure within one hour.

**B.** Owners and operators shall use interstitial monitoring that complies with all of the requirements in 20.5.108.808 NMAC and the following:

(1) Sensors shall be installed in all containment sumps associated with the piping, including under-dispenser containment, transition sumps, and submersible turbine pump containment sumps used to monitor the interstice.

(2) Sensors shall:

(a) monitor the interstice;

(b) monitor all containment sumps associated with the piping;

(c) sound an alarm and automatically shut off the submersible turbine pump when a regulated substance or water is detected;

(d) be positioned in the lowest point of the containment sump; and

(e) be tested annually in accordance with Subsection B of 20.5.108.805 NMAC.

(3) Containment sumps used for interstitial monitoring shall be tested every three years starting three years after the effective date of the regulations. The testing of the containment sumps shall comply with one of the following:

(a) the testing procedures as described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(b) the equipment manufacturer's published testing procedures.

**C.** Automatic line leak detectors and sensors required in this section that either fail a test or are found to be damaged shall be repaired or replaced and tested in accordance with 20.5.108.800 NMAC and Paragraph (1) of Subsection A of 20.5.108.811 NMAC. A line tightness test shall be conducted in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC after an automatic line leak detector has been repaired or replaced.

D. Equipment and methods used to monitor the piping shall be appropriate for the type and length of piping.

E. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems";* or

(3) *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".*

F. Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.108.815 NMAC and provide to the department reports for all release detector testing, line tightness testing, containment sump testing, and sensor testing in accordance with 20.5.108.816 NMAC.

[20.5.108.811 NMAC - N, 07/24/2018]

#### **20.5.108.812 REQUIREMENTS FOR UST UNDERGROUND SUCTION PIPING INSTALLED PRIOR TO APRIL 4, 2008:**

A. Owners and operators of underground storage tank systems with piping installed prior to April 4, 2008 that conveys regulated substances under suction where the piping system does not meet the requirements in Subsection B of 20.5.108.812 NMAC shall use one of the following methods. These methods shall be designed to detect a release from any portion of underground piping.

(1) A line tightness test shall be conducted every three years and the tightness test shall be capable of detecting a one-tenth gallon per hour leak rate.

(2) Interstitial monitoring shall be used in accordance with all of the requirements in 20.5.108.808 NMAC and 20.5.108.813 NMAC.

(3) Statistical inventory reconciliation shall be used in accordance with 20.5.108.809 NMAC for monthly monitoring of underground suction piping in conjunction with line tightness testing in accordance with Paragraph (1) of Subsection A of this section.

(4) Vapor monitoring shall be used in accordance with 20.5.108.806 NMAC.

(5) Groundwater monitoring shall be used in accordance with 20.5.108.807 NMAC.

B. Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

- (1) The below-grade piping operates at less than atmospheric pressure.
- (2) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.
- (3) Only one check valve is included in each suction line.
- (4) The check valve is located directly below and as close as practical to the suction pump.
- (5) Compliance with Paragraphs (2) through (4) of Subsection B of this section is demonstrated.

C. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";* or
- (2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems".*

D. Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.108.15 NMAC and provide to the department reports for all release detector testing, line tightness testing, and sensor testing in accordance with 20.5.108.816 NMAC.

[20.5.108.812 NMAC - N, 07/24/2018

**20.5.108.813 REQUIREMENTS FOR UST UNDERGROUND SUCTION PIPING INSTALLED ON OR AFTER APRIL 4, 2008:**

A. Owners and operators of underground storage tank systems with piping installed on or after April 4, 2008 where the piping conveys regulated substances under suction shall meet the requirements for interstitial monitoring in 20.5.108.808 NMAC and the following:

- (1) Sensors shall be installed in all containment sumps associated with the piping, including under-dispenser containment, transition sumps, and secondary containment sumps used to monitor the interstice.

**(2)** Sensors shall:

- (a)** monitor the interstice;
- (b)** monitor all containment sumps associated with the piping;
- (c)** sound an alarm and automatically shut off the pump when a regulated substance or water is detected;
- (d)** be positioned in the lowest point of the containment sump; and
- (e)** be tested annually in accordance with Subsection B of 20.5.108.805 NMAC.

**(3)** Containment sumps used for interstitial monitoring shall be tested every three years beginning three years after the effective date of the regulations. The testing of the containment sumps shall comply with one of the following:

- (a)** the testing procedures as described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or
- (b)** the equipment manufacturer's published testing procedures.

**B.** Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

- (1)** The below-grade piping operates at less than atmospheric pressure.
- (2)** The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.
- (3)** Only one check valve is included in each suction line.
- (4)** The check valve is located directly below and as close as practical to the suction pump.
- (5)** Compliance with Paragraphs (2) through (4) of Subsection B of this section is demonstrated.

**C.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1)** *Petroleum Equipment Institute Publication RP 100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*;

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems";* or

(3) *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities".*

D. Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.108.815 NMAC and provide to the department reports for all containment sump testing, line tightness testing, and sensor testing in accordance with 20.5.108.816 NMAC.

[20.5.108.813 NMAC - N, 07/24/2018]

#### **20.5.108.814 ALTERNATE METHODS:**

A. If owners and operators want to install materials or methods of release detection equipment for tanks or piping required in 20.5.108 NMAC that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

B. Another type of release detection method, or combination of methods, may be used if approved pursuant to this section, and if it can detect a two-tenths gallon per

hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

**C.** The department may approve another method if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.108 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide protection of public health, safety and welfare and the environment equivalent to the protection provided by the methods in this part.

**D.** In addition to the requirements in Subsections B and C of this section, any request for an alternate method of release detection for hazardous substance UST systems shall also include information on effective corrective action technologies, health risks and chemical and physical properties of the stored substance, and the characteristics of the UST site.

[20.5.108.814 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to request approval of an alternate method. The form is available on the Petroleum Storage Tank Bureau's pages on the department's website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.108.815 RELEASE DETECTION RECORDKEEPING:**

**A.** All storage tank system owners and operators shall maintain records in accordance with 20.5.107 NMAC demonstrating compliance with all applicable requirements of 20.5.108 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to maintain the records required by this section; however, both parties are liable in the event of noncompliance.

**B.** Records to be maintained shall include, but not be limited to:

(1) all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer;

(2) the results of any sampling, testing, or monitoring;

(3) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site and any schedules of calibration and maintenance required by the release detection equipment manufacturer;

(4) no later than three years after the effective date of these rule, records of site assessments required under 20.5.108.806 NMAC and 20.5.108.807 NMAC. Records of site assessments developed after the effective date of these rules must be signed by a professional engineer, professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the department; and

(5) the results of annual operational tests of release detection equipment. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria for the specified equipment or needs to have action taken, and describe any action taken to correct an issue.

[20.5.108.815 NMAC - N, 07/24/2018]

#### **20.5.108.816 REPORTING:**

**A.** Owners and operators shall provide to the department all reports as required in 20.5.108 NMAC within 60 days of completion of the tests.

**B.** Owners and operators shall report any test or inspection results that are anything other than a "pass" or "normal" result to the department within 24 hours of completion of the test or inspection in accordance with 20.5.118 NMAC.

**C.** Owners and operators shall ensure all reports required in 20.5.108 NMAC contain, at a minimum, the following:

- (1) facility name and address;
- (2) facility ID number;
- (3) owner and operator name and address;
- (4) owner ID number;
- (5) date report was completed;
- (6) date of the test;
- (7) duration of the test;

(8) brand name and model number of equipment being tested or sufficient description to allow identification of the equipment;

- (9)** type of equipment being tested;
- (10)** type of test, including test procedures and methods;
- (11)** results of the test;
- (12)** name of the person who performed the inspection or test, and their qualifications as specified in 20.5.105 NMAC;
- (13)** brand name and model number of the testing equipment used during the test and the date the testing equipment was last calibrated (only applies to tests performed in accordance with 20.5.108.800 NMAC, 20.5.108.804 NMAC, 20.5.108.806 NMAC, 20.5.108.807 NMAC, 20.5.108.808 NMAC, 20.5.108.810 NMAC through 20.5.108.813 NMAC);
- (14)** monitoring well number and instrument reading in parts per million (only applies to tests performed in accordance with 20.5.108.807 NMAC);
- (15)** monitoring well number, depth to groundwater and confirmation that free product was observed or not (only applies to tests performed in accordance with 20.5.108.807 NMAC);
- (16)** a completed copy of the automatic tank gauge operation inspection form in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"* (only applies to tests performed in accordance with 20.5.108.805 NMAC);
- (17)** for testing of automatic line leak detectors:
  - (a)** serial number of the leak detector;
  - (b)** description of storage tank system;
  - (c)** detected leak rate in gallons per hour;
  - (d)** line pressure and functional element holding pressure in pounds per square inch;
  - (e)** type, diameter and length of piping;
  - (f)** test results, including the following:
    - (i)** whether flow is restricted by a mechanical line leak detector when a leak is detected;

(ii) whether the turbine shuts down when a leak is detected by an electronic line leak detector;

(18) for testing of sensors used for monitoring secondary containment and interstitial spaces:

(a) the information in the liquid sensor functionality testing form in the *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; and

(b) information on whether each individual sensor meets automatic shutdown requirements in 20.5.108.811 NMAC and 20.5.108.813 NMAC; and

(19) for line tightness testing:

(a) leak rate;

(b) testing pressure;

(c) bleed back;

(d) piping type;

(e) piping diameter; and

(f) length of piping.

**D.** Owners and operators may use forms and checklist developed by the department, when available, to meet the reporting requirements in 20.5.108 NMAC.

[20.5.108.816 NMAC - N, 07/24/2018]

[Provide reports as required in Subsection A of this section as directed at the department's website. The forms or checklists referred to in Subsection D of this section are available on the Petroleum Storage Tank Bureau's pages on the department's website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

## **PART 109: NEW AND UPGRADED ABOVE GROUND STORAGE TANK SYSTEMS: DESIGN, CONSTRUCTION AND INSTALLATION**

### **20.5.109.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.109.1 NMAC - N, 07/24/2018]

**20.5.109.2 SCOPE:**

This part applies to owners and operators of above ground storage tanks as provided in 20.5.101 NMAC. If the owner and operator of an above ground storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.109.2 NMAC - N, 07/24/2018]

**20.5.109.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.109.3 NMAC - N, 07/24/2018]

**20.5.109.4 DURATION:**

Permanent.

[20.5.109.4 NMAC - N, 07/24/2018]

**20.5.109.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.109.5 NMAC - N, 07/24/2018]

**20.5.109.6 OBJECTIVE:**

The purpose of 20.5.109 NMAC is to set forth the requirements for the design, construction, installation and upgrading of above ground storage tank systems in a manner that will prevent releases and to protect the public health, safety and welfare and the environment of the state.

[20.5.109.6 NMAC - N, 07/24/2018]

**20.5.109.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.109.7 NMAC - N, 07/24/2018]

**20.5.109.8-20.5.109.899 [RESERVED]**

**20.5.109.900 INSTALLATION OF AST SYSTEMS:**

**A.** Owners and operators shall properly install all ASTs and piping in accordance with the manufacturer's instructions and in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, or in accordance with 20.5.109.920 NMAC. Installations shall address the following:

(1) support, if required in the sole discretion of the department, by the use of saddles or longitudinal supports;

(2) a foundation that is of sufficient thickness and reinforcement to support the tank when the tank is filled to maximum capacity with a regulated substance and that is constructed of concrete with a minimum compression strength of 3,000 pounds per square inch at 28 days (or other comparable material approved by the department), and shall be used for:

(a) double-walled or double-bottomed above ground storage tanks;

(b) horizontal tanks with saddles, which shall be placed at a minimum on footings constructed of concrete or other comparable material approved in advance by the department;

(c) horizontal tanks with longitudinal supports, which shall be placed on a concrete slab that extends at least 12 inches beyond the perimeter of the tank and is constructed of concrete or other comparable material approved in advance by the department;

(d) vertical tanks, which shall be placed on a concrete slab that extends at least 12 inches beyond the perimeter of the tank and is constructed of concrete or other comparable material approved in advance by the department; and

(e) single-walled above ground storage tanks, which shall be installed inside secondary containment that meets the requirements of 20.5.109.904 NMAC;

(3) anchorage;

(4) fills, gauges and vents;

(5) environmental protection; and

(6) testing and inspection.

**B.** Tanks and underground piping installed or replaced after July 1, 2013 must be secondarily contained in accordance with 20.5.109.903 NMAC or 20.5.109.904 NMAC, except for any piping that meets the requirements for safe suction in 20.5.111.1108 NMAC.

**C.** Secondary containment must be able to contain regulated substances leaked from the primary containment until they are detected and removed and prevent the release of regulated substances to the environment at any time during the operational life of the AST.

**D.** Owners and operators shall provide an approval from the New Mexico state fire marshal's office to the department for any exceptions to the requirements of the international fire code, including any AST at a retail fueling facility that exceeds the size limit on ASTs;

**E.** In addition to other requirements of this section, if owners or operators want to place into service any shop-fabricated AST that has been permanently closed at any location, owners and operators shall:

**(1)** not use the AST until they have provided to the department:

**(a)** the age and type of tank;

**(b)** the tank manufacturer;

**(c)** a list of regulated and non-regulated substances previously stored in the tank and for what duration;

**(d)** a description of any unusual circumstances involving the AST; and

**(e)** any other information requested by the bureau based on the circumstances; and

**(2)** install the system in compliance with all requirements for new AST systems in this part.

**F.** Based on the information received in Subsection D of this section, the department may require owners and operators who want to relocate an AST that has been temporarily or permanently closed to have the tank recertified by a certified tank inspector, the tank manufacturer, or a professional engineer prior to use.

**G.** Owners and operators shall use the applicable national code or standard listed below to comply with the requirements for the installation of above ground storage tank systems in this part:

- (1) *American Petroleum Institute Standard 650, "Welded Tanks for Oil Storage";*
- (2) *American Petroleum Institute Standard 2610, "Design, Construction, Operation, Maintenance, and Inspection of Terminal & Tank Facilities";*
- (3) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*
- (4) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";*
- (5) *Petroleum Equipment Institute Publication RP200, "Recommended Practices for Installation of Above Ground Storage Tank Systems for Motor Vehicle Fueling";*
- (6) *Petroleum Equipment Institute Publication RP700, "Recommended Practices for the Design and Maintenance of Fluid Distribution Systems at Vehicle Maintenance Facilities";*
- (7) *Petroleum Equipment Institute Publication RP800, "Recommended Practices for the Design and Installation of Bulk Storage Plants";*
- (8) *Petroleum Equipment Institute Publication RP1000, "Recommended Practices for the Installation of Marina Fueling Systems";*
- (9) *Petroleum Equipment Institute Publication RP1300, "Recommended Practices for the Design, Installation, Service, Repair, and Maintenance of Aviation Fueling Systems";*
- (10) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems";*
- (11) *Steel Tank Institute RP R912, "Installation Instructions for Shop Fabricated Aboveground Storage Tanks for Flammable, Combustible Liquids";* or
- (12) *International Code Council, "International Fire Code".*

[20.5.109.900 NMAC - N, 07/24/2018]

#### **20.5.109.901 REQUIRED NOTIFICATION PRIOR TO INSTALLATION:**

To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical

junctures in the installation of a storage tank system are to take place. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

**A.** For installations, the term "critical junctures" means:

(1) installation of any tank pad, vault, or secondary containment for a storage tank system;

(2) setting of a storage tank and piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(3) placing a regulated substance in the tank;

(4) any time during the installation in which components of piping are connected;

(5) preparation of any excavation immediately prior to receiving backfill for piping or containment sumps;

(6) all pressure testing or integrity testing of a storage tank system, including associated piping, spill prevention equipment, and containment sumps performed during the installation;

(7) completion of backfill and filling of any excavation;

(8) installation and testing of overfill prevention equipment and release detection equipment.

**B.** Owners, operators and certified tank installers shall give at least 30 days written notice before the installation of a storage tank system. At a minimum, the installation notice shall contain the following information:

(1) date the form is completed;

(2) facility name, facility ID number, address (with county), and telephone number;

(3) owner name, owner ID number, address, and telephone number;

(4) contractor name, address, and telephone number;

(5) tank details (number and size, type and materials, products to be stored);

(6) piping material and type of leak detection;

- (7) type of spill and overflow prevention;
- (8) type of corrosion protection (sacrificial, impressed current, or none with explanation why corrosion protection not required);
- (9) method of leak detection (automatic tank gauges, visual, interstitial monitoring);
- (10) approximate date installation will take place; and
- (11) the signature of the owner or owner's representative filling out the form.

**C.** Owners, operators and certified tank installers shall provide required project drawings with the 30-day written notice.

**D.** In addition to the written notice described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

**E.** If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.109.901 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for notification of installation. The form is available

on the Petroleum Storage Tank Bureau's pages on the department' website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.109.902 PERFORMANCE STANDARDS FOR AST SYSTEMS:**

**A.** In order to prevent releases due to structural failure, corrosion or spills and overfills for as long as an AST system is used to store regulated substances, owners and operators of new AST systems shall properly design, construct and initially test each new AST system, provide project drawings in accordance with 20.5.109.901 NMAC, and ensure that any portion of an AST system that routinely contains regulated substances and is in contact with an electrolyte, such as soil, concrete or water shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall ensure that the entire AST system is compatible with any regulated substance

conveyed. Owners and operators shall use the applicable national code or standard listed below to meet the requirements of this section:

(1) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(2) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";*

(3) *National Fire Protection Association Standard 407, "Standard for Aircraft Fuel Servicing";* or

(4) *International Code Council, "International Fire Code".*

**B.** Owners and operators shall install and operate only ASTs made of steel that are constructed in accordance with one or more of the following, as applicable:

(1) *Underwriters Laboratories 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids";*

(2) *Underwriters Laboratories 2085, "Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids";*

(3) *Underwriters Laboratories 2245, "Standard for Below-Grade Vaults for Flammable Liquid Storage Tanks";*

(4) *American Petroleum Institute Standard 650, "Welded Tanks for Oil Storage";* or

(5) *International Code Council, "International Fire Code".*

**C.** Owners and operators shall protect newly installed ASTs from corrosion in accordance with one or more of the following:

(1) *American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";*

(2) *National Association of Corrosion Engineers International Standard RP0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";*

(3) *Steel Tank Institute R892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems";*

(4) *Steel Tank Institute R893, "Recommended Practice for External Corrosion Protection of Shop Fabricated Aboveground Storage Tank Floors";*

(5) *American Petroleum Institute Publication RP651, "Cathodic Protection of Aboveground Petroleum Storage Tanks".*

**D.** Above ground tanks located at an elevation so as to produce a gravity head on the dispenser system or piping shall be equipped with an anti-siphon or solenoid valve which meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall install and adjust the anti-siphon or solenoid valve so that fuel cannot flow by gravity or siphon from the tank to the dispenser system, loading rack, or other equipment, if the piping fails when the dispensing or transferring equipment is not in use. One of the following shall be used to meet the requirements of this Subsection:

(1) National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages"; or

(2) International Code Council, "International Fire Code".

[20.5.109.902 NMAC - N, 07/24/2018]

#### **20.5.109.903 AST SECONDARY CONTAINMENT:**

**DOUBLE WALLED AST SYSTEMS:** Owners and operators shall design, provide project drawings for, and install double walled above ground storage tank systems in accordance with the following:

**A.** Double-walled above ground storage tanks shall be installed in accordance with the applicable installation requirements in this part and shall use one or more of the following, as applicable, to comply with the requirements of this section:

(1) *Underwriters Laboratories 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids";*

(2) *Underwriters Laboratories 2085, "Standard for Protected Aboveground Tanks for Flammable and Combustible Liquids"; or*

(3) *Underwriters Laboratories 2245, "Standard for Below-Grade Vaults for Flammable Liquid Storage Tanks".*

**B.** Above ground piping shall meet the requirements in 20.5.109.913 NMAC and 20.5.109.915 NMAC;

C. Underground piping shall be double-walled and meet the requirements for underground piping in this part. Owners and operators shall use one or more of the following, as applicable, to meet these requirements:

(1) *Underwriters Laboratories Standard 971, "Standard for Nonmetallic Underground Piping for Flammable Liquids";*

(2) *Underwriters Laboratories Standard 567, "Standard for Emergency Breakaway Fittings, Swivel Connectors and Pipe-Connection Fittings for Petroleum Products and LP-gas";*

(3) *Underwriters' Laboratories of Canada Guide ULC-107.7, "Glass-fibre Reinforced Plastic Pipe and Fittings for Flammable Liquids";*

(4) *ULC Standards CAN/ULC-S633:2017, "Standard for Flexible Connector Piping for Fuels".*

D. Containment sumps shall be installed in accordance with the requirements in this part.

E. Owners and operators shall base all secondary containment systems on the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. One or more of the following shall be used, as applicable, to comply with these requirements:

(1) *Petroleum Equipment Institute Publication RP 200, "Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling";*

(2) *Society of Protective Coatings SSPC-TU2/NACE6G197, "Design, Installation and Maintenance of Coating Systems for Concrete used in Secondary Containment";*

(3) *American Concrete Institute Publication ACI 350-06, "Code Requirements for Environmental Engineering Concrete Structures";*

(4) *American Petroleum Institute Standard 650, "Welded Tanks for Oil Storage";* or

(5) *Steel Tank Institute RP R912, "Installation Instructions for Shop Fabricated Aboveground Storage Tanks for Flammable, Combustible Liquids".*

[20.5.109.903 NMAC - N, 07/24/2018]

**20.5.109.904 AST SECONDARY CONTAINMENT: SINGLE-WALLED TANKS AND PIPING:**

Owners and operators shall construct a containment area under and around single-walled ASTs and piping, except for piping that meets the requirements of Paragraph (1) of Subsection A of 20.5.109.915 NMAC. Internal lining of ASTs shall not be used as a method of secondary containment.

**A. General requirements:**

(1) Owners and operators shall design and construct secondary containment to minimize damage to the surfaces of the tanks due to corrosion, accumulation of water, and stray electrical current.

(2) Owners and operators shall ensure that any regulated substance stored in an AST system is chemically compatible with the secondary containment material. If owners and operators store more than one type of regulated substance within a single containment area, owners and operators shall ensure that the substances are chemically compatible with each other and with the containment material.

(3) Owners and operators shall construct a containment area which has a capacity of at least one hundred ten percent of the size of the largest AST in the containment area plus the volume displaced by the other AST(s).

(4) Owners and operators shall not use clay for the construction of secondary containment.

(5) Owners and operators may use a vault which complies with the requirements of this section as secondary containment.

**B. Concrete secondary containment.** Owners and operators may use concrete for construction of the containment area except for masonry or cinder block which shall not be used.

(1) If owners and operators use concrete for construction of secondary containment installed on or after July 1, 2011, the concrete containment shall be designed and constructed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, which shall be approved in advance of construction by the department. New concrete secondary containment shall comply with Subparagraph (a), (b) or (c) below:

(a) be coated or internally lined with a material which, in conjunction with the concrete, has a demonstrated permeability rate to the regulated substance stored of  $1 \times 10^{-7}$  centimeters per second or less;

(b) be installed in accordance with a set of plans that have been stamped by a professional engineer demonstrating that the secondary containment system is able to contain a release of regulated substances for seven days and properly support the above ground storage tank systems within the secondary containment; or

(c) be installed in accordance with an alternate method for concrete secondary containment design and construction that is approved in advance by the department pursuant to 20.5.109.920 NMAC.

(2) One of the following shall be used to comply with the concrete secondary containment requirements:

(a) *American Concrete Institute 350-06, "Code Review for Environmental Engineering Concrete Structures";*

(b) *American Concrete Institute 350.2R-04, "Concrete Structures for Containment of Hazardous Materials";*

(c) *American Concrete Institute 224R-01, "Control of Cracking in Concrete Structures";*

(d) *National Association of Corrosion Engineers International RP0892-2007, "Coatings and Linings Over Concrete for Chemical Immersion and Containment Service";*

(e) *Society of Protective Coatings TU2/NACE6G197, "Design, Installation and Maintenance of Coating Systems for Concrete Used in Secondary Containment";*

(f) *National Association of Corrosion Engineers International Standard Number 6/SSPC-SP 13, "Surface Preparation of Concrete";*

(g) *National Association of Corrosion Engineers International RP0281, "Method for Conducting Coating (Paint) Panel Evaluation Testing in Atmospheric Exposures";* or

(h) *American Society for Testing and Materials D4258, "Standard Practice for Surface Cleaning Concrete for Coating".*

(3) Owners and operators of existing AST systems shall have the option of fulfilling the requirements of this subsection by submitting to the department a report stamped by a professional engineer demonstrating that the secondary containment system is able to contain a release of regulated substances for seven days and properly support the above ground storage tank systems within the secondary containment.

### C. Liners as secondary containment.

(1) If owners and operators use geo-synthetic membrane for secondary containment, the geo-synthetic membranes or liners shall have a minimum thickness of 60 mils.

**(2)** Owners and operators shall install liners in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, or in accordance with the manufacturer's specifications. Owners and operators shall submit to the department a report on the installation of the geo-synthetic membrane which shall certify that the geo-synthetic membrane has been installed in accordance with the manufacturer's recommendations or an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. The report shall contain the date of the inspection and installation of the geo-synthetic membrane, the test methods used during the inspection, data collected during the inspection, and the standard or code of practice according to which the installation was conducted. An installer or inspector with appropriate certification or experience (which shall be documented in the report) shall prepare the report.

**(3)** Earthen dike fields shall be lined with a geo-synthetic membrane to qualify as secondary containment.

**D.** Steel as secondary containment. If owners and operators use steel for construction of the secondary containment area, and if the steel is routinely in contact with soil, water, concrete, or another electrolyte, owners and operators shall cathodically protect the containment area in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

[20.5.109.904 NMAC - N, 07/24/2018]

**20.5.109.905 USTS USED AS ASTS:**

Effective July 1, 2013, the use of USTs as ASTs is prohibited.

[20.5.109.905 NMAC - N, 07/24/2018]

**20.5.109.906 [RESERVED]**

**20.5.109.907 ADDITIONAL PERFORMANCE STANDARDS FOR FIELD-ERECTED ASTS:**

**A.** If owners and operators install a field-erected tank, owners and operators shall comply with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

**B.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Petroleum Institute Standard 620, "Design and Construction of Large, Welded, Low Pressure Storage Tanks";*

(2) *American Petroleum Institute Standard 650, "Welded Tanks for Oil Storage";*

(3) *American Petroleum Institute Specification 12B, "Bolted Tanks for Storage of Production Liquids";*

(4) *American Petroleum Institute Specification 12D, "Field Welded Tanks for Storage of Production Liquids";* or

(5) *American Society of Mechanical Engineers B96.1, "Welded Aluminum-Alloy Storage Tanks".*

[20.5.109.907 NMAC - N, 07/24/2018]

#### **20.5.109.908 PERFORMANCE STANDARDS FOR EXISTING AST SYSTEMS:**

**A.** Owners and operators of existing single walled AST systems (installed on or before July 1, 2001), must have complied with the following requirements:

(1) New AST performance standards in 20.5.109 NMAC by July 1, 2011;

(2) Upgrade requirements in Subsections C, D, and E of 20.5.109.908 NMAC by the deferred date of July 1, 2013; or

(3) Closure requirements in 20.5.115 NMAC by July 1, 2011.

(4) Any good faith upgrades to an AST system secondary containment made in compliance with this part prior to December 3, 2010 shall be deemed in compliance with this section.

**B.** Owners and operators of existing AST systems that do not comply with the requirements of the International Fire Code shall provide approval from the state fire marshal's office to the department no later than three years after the effective date of these regulations.

**C.** Tank Upgrade Requirements. Owners and operators must have upgraded existing single walled ASTs by installing secondary containment or replaced them with double walled ASTs by July 1, 2013 in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. ASTs that have not been upgraded by the effective date of these regulations shall be permanently closed in accordance with 20.5.115 NMAC.

**(1)** Owners and operators of ASTs must have met secondary containment requirements either by the installation new concrete secondary containment in accordance with 20.5.109.904 NMAC or upgraded the existing concrete secondary containment to meet the general requirements in Subsection A of 20.5.109.904 NMAC along with one of the following:

**(a)** submit to the department a report stamped by a professional engineer for the existing concrete secondary containment that demonstrates the secondary containment system is able to contain a release of regulated substance for seven days and properly supports the AST systems within the secondary containment; or

**(b)** coat the interior of, or install an internal lining in, the existing concrete secondary containment in accordance with the manufacturer's instructions or in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

**(2)** Owners and operators of ASTs must have upgraded the secondary containment by the installation of liners that meet the following:

**(a)** requirements for liners as secondary containment in Subsection C of 20.5.109.904 NMAC; and

**(b)** requirements for installation of AST systems in 20.5.109.900 NMAC; or

**(3)** Owners and operators of ASTs must have met the secondary containment requirements by the installation of steel secondary containment in accordance with the requirements in Subsection D of 20.5.9.904 NMAC.

**D.** Piping upgrade requirements. Owner and operators of ASTs must have met the requirements of 20.5.109.916 NMAC for secondary containment of piping.

**E.** Owners and operators must have used one or more of the following to comply with the existing secondary containment requirements:

**(1)** *American Concrete Institute 350-06, "Code Review for Environmental Engineering Concrete Structures";*

**(2)** *American Concrete Institute 350.2R-04, "Concrete Structures for Containment of Hazardous Materials";*

**(3)** *American Concrete Institute 224R-01, "Control of Cracking in Concrete Structures";*

(4) *National Association of Corrosion Engineers International RP0892-2007, "Coatings and Linings Over Concrete for Chemical Immersion and Containment Service";*

(5) *Society of Protective Coatings TU2/NACE6G197, "Design, Installation and Maintenance of Coating Systems for Concrete Used in Secondary Containment";*

(6) *National Association of Corrosion Engineers International Standard Number 6/SSPC-SP 13, "Surface Preparation of Concrete";*

(7) *National Association of Corrosion Engineers International RP0281, "Method for Conducting Coating (Paint) Panel Evaluation Testing in Atmospheric Exposures";* or

(8) *American Society for Testing and Materials D4258, "Standard Practice for Surface Cleaning Concrete for Coating".*

[20.5.109.908 NMAC - N, 07/24/2018]

#### **20.5.109.909 ABOVE GROUND STORAGE TANKS AT MARINAS:**

**A.** Owners and operators of AST systems at marinas shall install an automatic break-away device to shut off flow of fuel from on-shore piping, which shall be located at the connection of the on-shore piping and the piping leading to the dock. Owners and operators shall install another automatic break-away device to shut off flow of fuel located at any connection between flexible piping and hard piping on the dispenser system and dock. The automatic break-away devices shall be easily accessible, and their location shall be clearly marked.

**B.** Owners and operators of AST systems at marinas shall electrically isolate dock piping where excessive stray electrical currents are encountered.

**C.** Owners and operators of AST systems at marinas shall protect piping from stress due to tidal action.

**D.** Owners and operators of AST systems at marinas shall install spill catchment basins in addition to a system that will allow the level of regulated substance in the AST to be monitored during a delivery of fuel to the AST. Unless the AST system is equipped with an audible overfill alarm that will alert the transfer operator at ninety percent of capacity, and overfill protection which will shut off flow of product during a fuel delivery to the tank at ninety-five percent, owners and operators shall visually monitor the delivery of fuel.

**E.** Owners and operators shall use one or more of the following to comply with the requirements in this section:

(1) *Petroleum Equipment Institute Publication RP 1000, "Recommended Practices for the Installation of Marina Fueling Systems"; or*

(2) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages".*

[20.5.109.909 NMAC - N, 07/24/2018]

#### **20.5.109.910 SPILL AND OVERFILL PREVENTION:**

**A.** Except as provided in Subsection B of this section, to prevent spilling and overfilling associated with transfers of regulated substances to above ground storage tank systems, owners and operators shall use the following spill and overfill prevention equipment:

(1) spill prevention equipment that will prevent release of regulated substances to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket); and

(2) overfill prevention equipment for ASTs that will:

(a) automatically shut off flow into the tank when the tank is no more than ninety-five percent full; or

(b) alert the transfer operator when the tank is no more than ninety percent full by restricting the flow into the tank or triggering a high-level audible and visual alarm.

**B.** Owners and operators are not required to use the spill and overfill prevention equipment specified in Subsections A and G of this section if approved in writing in advance by the department where:

(1) alternative equipment is used that is determined by the department to be no less protective of public health, safety and welfare and the environment than the equipment specified in Paragraphs (1) or (2) of Subsection A of this section; or

(2) the above ground storage tank system is filled by transfers of no more than 25 gallons at one time;

**C.** Flow restrictors shall not be used in vent lines and shall not be used as overfill prevention equipment for ASTs.

**D.** Spill and overfill prevention equipment must be periodically tested or inspected in accordance with 20.5.110.1005 NMAC.

**E.** Owners and operators of AST systems that were previously exempt from spill and overfill requirements shall install no later than three years after the effective date of these regulations, spill and overfill prevention equipment required in Paragraphs (1) and (2) of Subsection A of this section for any AST system at retail and fleet refueling facilities where the fill port is located within a secondary containment system.

**F.** Overfill prevention and spill prevention equipment shall be either listed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory for use with flammable and combustible liquids or approved prior to installation in accordance with Paragraph (1) of Subsection B of this section.

[20.5.109.910 NMAC - N, 07/24/2018]

### **20.5.109.911 VENTING FOR ABOVE GROUND STORAGE TANK SYSTEMS:**

**A.** Owners and operators shall design and construct venting for all above ground storage tank systems, following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

**B.** Normal atmospheric tank vents shall be located so that the discharge point is outside of buildings and higher than the fill pipe opening. Vent pipes shall be installed not less than 15 feet from power ventilation air intake devices and not less than five feet from a building opening. Vent outlets and devices shall be designed and installed to minimize blockage. Normal vent piping on AST systems installed after the effective date of these regulations shall not be used for any purpose other than venting the tank.

**C.** Types of vent pipes.

**(1)** Vent pipes that are provided for normal tank venting shall extend at least 12 feet above ground level.

**(2)** If attached to a structure, vent pipes shall extend at least five feet above the highest projection of the canopy or roof.

**(3)** Vent pipes for normal tank venting shall be of appropriate size for the capacity and operating conditions of the tank.

**(4)** Emergency vents shall be of appropriate size for the capacity of the AST and shall be installed on the primary tank and on the interstice of all double-walled tanks.

**D.** One of the following shall be used to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP200 "Recommended Practices for Installation of Above Ground Storage Tank Systems for Motor Vehicle Fueling";*

(2) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(3) *Underwriters Laboratories 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids";* or

(4) *International Code Council, "International Fire Code".*

[20.5.109.911 NMAC - N, 07/24/2018]

### **20.5.109.912 VAULTS:**

**A.** Owners and operators shall provide project drawings for and install new AST systems which include vaults in accordance with the following requirements:

(1) A vault must completely enclose each tank, with no openings in the vault enclosure except those necessary for access to, inspection of, and filling, emptying, and venting of the tank. Each tank shall be enclosed in its own vault, although adjacent vaults may share a common wall. However, for good cause shown, the department, in its sole discretion, may grant a variance from the one-tank-one-vault requirement, for existing tanks only, if owners and operators demonstrate that the variance will provide equivalent protection of health, safety and welfare and the environment.

(2) Every vault shall be liquid tight or sealed with no backfill around the tank. If a vault is constructed of concrete, owners and operators shall ensure it meets the requirements of Subsection B of 20.5.109.904 NMAC.

(3) There shall be adequate space between the tank and the vault for inspection of the tanks and its appurtenances.

(4) Above-grade vaults shall be resistant to damage from the impact of a motor vehicle, or suitable collision barriers shall be installed.

(5) A vault shall include connections to permit venting of each vault to dilute, disperse, and remove any vapors prior to personnel entering the vault.

(6) A vault shall be equipped with a detection system capable of detecting liquids, including water, and capable of activating an audible alarm.

(7) A vault shall include a means for recovering liquid from the vault.

(a) If a pump is used to meet this requirement, it shall not be permanently installed in the vault.

(b) Electric-powered portable pumps shall meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

(c) *National Fire Protection Association Standard 70, "National Electrical Code"* shall be used to comply with the requirements of this paragraph.

**B. Vault construction.** Owners and operators shall design and construct:

(1) the walls and floor of a vault of reinforced concrete at least six inches thick;

(2) the top of an above-grade vault of noncombustible material, and shall design and construct the top:

(a) to be weaker than the walls of the vault, to ensure that the thrust of any explosion occurring inside the vault is directed upward before significantly high pressure can develop within the vault; and

(b) to safely relieve or contain the force of any explosion occurring inside the vault.

(3) the top and floor of the vault and the tank foundation to withstand the anticipated loading, including loading from vehicular traffic, where applicable; and

(4) the walls and floor of any vault installed below grade in compliance with good engineering practice to withstand anticipated soil and hydrostatic loading.

**C.** All tanks, piping and other associated equipment in the interior of a vault shall meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. One of the following shall be used to comply with this requirement:

(1) *National Fire Protection Association Standard 70, "National Electrical Code"*; or

(2) *Underwriters Laboratories 2245, "Standard for Below-Grade Vaults for Flammable Liquid Storage Tanks"*.

**D.** Venting of vaults.

(1) Vent pipes that are provided for normal tank venting shall extend at least 12 feet above ground level.

(2) Emergency vents shall be vapor tight and may be permitted to discharge inside the vault.

(3) Owners and operators shall not use long-bolt manhole covers for this purpose.

(4) Owners and operators shall ensure that all vault vents meet the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *National Fire Protection Association Standard 91, "Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids"*.

**E. Vault entry.**

(1) A vault shall include a method of personnel entry.

(2) Owners and operators shall post a warning sign indicating procedures for safe entry at each entry point.

(3) Owners and operators shall secure each entry point against unauthorized entry and vandalism.

(4) Owners and operators shall provide each vault with a suitable means for admission of a fire suppression agent.

[20.5.109.912 NMAC - N, 07/24/2018]

**20.5.109.913 GENERAL PERFORMANCE STANDARDS FOR PIPING:**

**A.** Owners and operators shall properly design and construct new piping, provide project drawings, initially test piping, and ensure that any steel portion of piping that routinely contains regulated substances and is in contact with an electrolyte, such as soil or water, shall be protected from corrosion, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) third party certification from a nationally recognized laboratory;

(2) *American Society of Mechanical Engineering Standard B31.3, "Process Piping";*

(3) *American Society of Testing and Materials A53, "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless";*

(4) *American Society of Testing and Materials A106, "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service"; or*

(5) *American Society of Testing and Materials A135, "Standard Specification for Electric-Resistance-Welded Steel Pipe".*

**B.** Owners and operators shall ensure that piping is compatible with any regulated substance conveyed in accordance with 20.5.110.1009 NMAC.

**C.** Owners and operators shall protect all piping from impact, settlement, vibration, expansion, corrosion, and damage by fire.

**D.** Owners and operators shall install a containment sump at any point where piping transitions from above the surface of the ground to below the ground surface. Containment sumps shall be either listed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory for use with flammable and combustible liquids or approved prior to installation by the Department in accordance with the alternate methods requirements in 20.5.109.920 NMAC.

**E.** If owners and operators install more than one type of piping at a storage tank system, then owners and operators shall comply with the requirements applicable to each type of piping for that run of piping.

[20.5.109.913 NMAC - N, 07/24/2018]

#### **20.5.109.914 PERFORMANCE STANDARDS FOR PIPING CONSTRUCTED OF NON-CORRODIBLE MATERIAL:**

**A.** If owners and operators construct or operate piping of fiberglass-reinforced plastic or flexible piping, the piping shall:

(1) be completely underground;

(2) be within secondary containment that includes a release detection system that meets the requirements of 20.5.111 NMAC;

(3) have a suitable cover approved by the piping manufacturer; or

(4) have equivalent protection approved by the piping manufacturer and approved by the department prior to installation.

**B.** If owners and operators install non-corrodible piping in an AST system, the piping shall be double-walled.

**C.** Owners and operators shall ensure that the piping meets the requirements of the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department, and that the piping is approved by the manufacturer for the application for which it is to be used. Owners and operators shall use one or more of the following to comply with this requirement:

(1) *Underwriters Laboratories Standard 971, "Standard for Nonmetallic Underground Piping for Flammable Liquids";* or

(2) *Underwriters Laboratories of Canada Standard S660, "Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids".*

[20.5.109.914 NMAC - N, 07/24/2018]

#### **20.5.109.915 PERFORMANCE STANDARDS FOR STEEL PIPING FOR AST SYSTEMS:**

If owners and operators construct or operate piping of steel for an AST system, owners and operators shall properly design and construct and provide project drawings for piping that routinely contains regulated substances in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall install all piping in accordance with the piping manufacturer's recommendations.

**A.** Steel piping for ASTs shall be coated with a suitable material approved by the piping manufacturer and shall be either:

(1) totally above the ground with all surfaces visible; or

(2) entirely contained in secondary containment that complies with the requirements of 20.5.109.916 NMAC.

**B.** Steel piping with an internal diameter greater than two inches shall be welded or flanged together.

**C.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Society of Mechanical Engineering Standard B31.3, "Process Piping";*

(2) *American Society of Testing and Materials A53, "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless"; or*

(3) *American Society of Testing and Materials A 135, "Standard Specification for Electric-Resistance-Welded Steel Pipe".*

[20.5.109.915 NMAC - N, 07/24/2018]

#### **20.5.109.916 SECONDARY CONTAINMENT FOR AST PIPING:**

To install new piping or replace existing piping in an AST system, owners and operators shall only use piping that is:

- A. double-walled in compliance with 20.5.109.903 NMAC;
- B. designed and constructed with secondary containment that meets the requirements of 20.5.109.904 NMAC; or
- C. steel piping that meets the requirements of 20.5.109.915 NMAC.

[20.5.109.916 NMAC - N, 07/24/2018]

#### **20.5.109.917 SECONDARY CONTAINMENT FOR AST DISPENSERS:**

Owners and operators shall install a containment sump underneath each dispenser system associated with an AST, unless the dispenser is located within secondary containment.

- A. Owners and operators shall hydrostatically test the sump upon installation, in accordance with manufacturer's recommendations.
- B. The following may be used to comply with this containment sump requirement: dispenser liners, under-dispenser containment, dispenser pans, and dispenser sump liners.
- C. Under-dispenser containment sumps shall be either listed in accordance with an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory for use with flammable and combustible liquids or approved prior to installation by the department in accordance with the alternate methods requirements in 20.5.109.920 NMAC.

[20.5.109.917 NMAC - N, 07/24/2018]

## **20.5.109.918 LOADING RACKS:**

**A.** Owners and operators shall design, construct and install loading racks following the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Petroleum Institute Standard 2610, "Design, Construction, Operation, Maintenance & Inspection of Terminal and Tank Facilities";*

(2) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(3) *International Code Council, "International Fire Code";* or

(4) *Petroleum Equipment Institute RP 800, "Recommended Practices for Installation of Bulk Storage Plants".*

**B.** Owners and operators of aviation fuel storage tank systems who install loading racks shall comply with *National Fire Protection Association Standard 407, "Standard for Aircraft Fuel Servicing".*

**C.** Owners and operators shall install a containment system that is designed to contain all releases of regulated substances that occur during loading and unloading operations at the loading rack. For all loading racks, owners and operators shall install either:

(1) a drainage system, or secondary containment system meeting the requirements of 20.5.109 NMAC, with a catchment basin capable of containing the largest compartment of a tank car or tanker truck that is loaded or unloaded at the facility; or

(2) a drainage system that is connected to a treatment facility designed to receive releases of regulated substances that occur during loading and unloading operations.

**D.** Owners and operators shall ensure that loading racks are at least 25 feet from ASTs containing class I liquids (such as gasoline), buildings, and property lines. Owners and operators shall ensure that loading racks are at least 15 feet from tanks containing class II or class III liquids.

[20.5.109.918 NMAC - N, 07/24/2018]

## **20.5.109.919 REQUIRED CERTIFICATIONS:**

**A.** Certification of compliance. All owners and operators of new above ground storage tank systems shall certify in the registration form required by 20.5.102 NMAC compliance with the following requirements:

- (1) installation of tanks and piping in 20.5.109 NMAC;
- (2) installation of cathodic protection of steel tanks and piping in 20.5.109.902 NMAC and Subsection D of 20.5.109.904 NMAC;
- (3) financial responsibility under 20.5.117 NMAC; and
- (4) release detection in 20.5.111 NMAC.

**B.** Installer certification. All owners and operators of new above ground storage tank systems shall ensure that the installer certifies in the registration form required by 20.5.102 NMAC that the methods used to install the tanks and piping comply with the requirements in 20.5.109 NMAC.

**C.** Certification of installation. For installations after August 15, 2003, owners and operators shall demonstrate compliance with the installation standards in 20.5.109.900 NMAC. Owners and operators shall provide a certification of installation on the AST registration form required by 20.5.102 NMAC, which asserts that all of the following methods of certification, testing, and inspection were used to demonstrate compliance with installation requirements of the AST system:

- (1) the installer has been certified by the tank and piping manufacturers;
- (2) the installer has been certified or licensed as required in 20.5.105 NMAC;
- (3) the installer has notified, submitted required documentation to, and the installation has been inspected by the department; and
- (4) all work listed in the manufacturer's installation checklists has been completed.

[20.5.109.919 NMAC - N, 07/24/2018]

#### **20.5.109.920 ALTERNATE METHODS:**

**A.** If owners and operators want to install tanks, piping, storage tank systems, spill and overfill equipment, secondary containment, or any other requirement of this part with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation

unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.109.920 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to request approval of an alternate method. The form is

available on the Petroleum Storage Tank Bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

## **PART 110: GENERAL OPERATING REQUIREMENTS FOR ABOVE GROUND STORAGE TANK SYSTEMS**

### **20.5.110.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.110.1 NMAC - N, 07/24/2018]

### **20.5.110.2 SCOPE:**

This part applies to owners and operators of above ground storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.110.2 NMAC - N, 07/24/2018]

**20.5.110.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.110.3 NMAC - N, 07/24/2018]

**20.5.110.4 DURATION:**

Permanent.

[20.5.110.4 NMAC - N, 07/24/2018]

**20.5.110.5 EFFECTIVE DATE:**

July 24, 2018 unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.110.5 NMAC - N, 07/24/2018]

**20.5.110.6 OBJECTIVE:**

The purpose of 20.5.110 NMAC is to ensure that the operation and maintenance of above ground storage tanks will prevent releases and to protect the public health, safety and welfare and the environment of the state.

[20.5.110.6 NMAC - N, 07/24/2018]

**20.5.110.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.110.7 NMAC - N, 07/24/2018]

**20.5.110.8-20.5.110.999 [RESERVED]**

**20.5.110.1000 OPERATION AND MAINTENANCE OF ABOVE GROUND STORAGE TANK SYSTEMS:**

Owners and operators shall properly maintain all tanks, piping, secondary containment and other associated equipment required in 20.5.109 NMAC, and shall ensure that all tanks, piping, secondary containment and other associated equipment for all storage tank systems are fully operational at all times. Owners and operators shall notify the department in accordance with 20.5.118 NMAC if a visual inspection, other inspection or testing conducted in accordance with 20.5.110 NMAC or 20.5.111 NMAC indicates that a release may have occurred.

**A.** Owners and operators shall visually inspect monthly an AST and all its components that are readily accessible to visual inspection.

**B.** Owners and operators shall maintain the exterior coating of an AST and ancillary equipment not in contact with soil in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following may be used to comply with this requirement:

(1) *Society of Protective Coatings SSPC-PA 1, "Shop, Field, and Maintenance Painting of Steel";*

(2) *Society of Protective Coatings, "The Inspection of Coatings and Linings: A Handbook of Basic Practice for Inspectors, Owners and Specifiers";*

(3) *Society of Protective Coatings SSPC-PA Guide 4, "Guide to Maintenance Repainting with Oil Base or Alkyd Painting Systems";* or

(4) *Society of Protective Coatings SSPC-PA Guide 5, "Guide to Maintenance Coating of Steel Structures in Atmospheric Service".*

**C.** Owners and operators shall mark fill port lids and label the tanks of ASTs as to the regulated substance stored in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *American Petroleum Institute RP 1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals".*

**D.** If any steel piping installed in a trench is used in an AST system, owners and operators shall visually inspect the trench monthly. Owners and operators shall draw off any liquid that has accumulated in the trench within one week of the accumulation, and shall remove any other debris that has accumulated inside the trench. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen and the disposal shall be in accordance with all federal, state, and local statutes,

ordinances, and regulations. If a basin sump is located in the trench, owners and operators shall keep the basin sump free of accumulated liquid and debris. Owners and operators shall not install any valves in any basin sump in a piping trench.

**E.** Owners and operators shall check ASTs monthly for the presence of any accumulated liquids, other than the intended regulated substance. ASTs shall be checked at the lowest possible point inside the tank. Any accumulated liquid other than the intended regulated substance shall be removed to the extent technically possible. Owners and operators shall properly dispose of any liquid removed from an AST.

[20.5.110.1000 NMAC - N, 07/24/2018]

#### **20.5.110.1001 OPERATIONS AND MAINTENANCE PLAN:**

Owners and operators of all storage tank systems shall adopt and implement a written operations and maintenance plan, which they shall keep at the facility for the life of the storage tank system. Owners and operators of unmanned storage tank systems may keep the operations and maintenance plan at an alternate location as long as it is made readily available to the department upon request. The operations and maintenance plan shall be as specific as possible for each facility and shall include the piping and ancillary equipment that routinely contains regulated substances, or controls the flow of regulated substances. Owners and operators shall use, by reference, operational and maintenance guidance from the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. Owners and operators who reference a current edition of an industry standard or code of practice shall maintain a copy of the code or standard they reference. Owners and operators shall not implement the plan until it has been approved by the department.

**A.** At a minimum, the operations and maintenance plan shall include the following:

**(1)** a detailed plan showing inspections, operations, testing and maintenance to be done on a daily, monthly, quarterly and annual basis; the plan shall include a description of how owners and operators properly dispose of regulated substances spilled at the facility, and any water or soil removed from any part of the storage tank system where there is any indication it might be or have been contaminated with a regulated substance;

**(2)** a description of periodic operation and maintenance walk-through inspections in accordance with 20.5.110.1008 NMAC; and

**(3)** responses to emergency situations; this information shall be readily accessible at the facility; responses to emergency situations shall include the following:

**(a)** the location of equipment to be shut down during an emergency and how to safely perform these tasks;

(b) actions to be taken in the event of a fire, flooding, a spill, or a release of regulated substances;

(c) a site diagram; and

(d) a list of whom to notify or call during or after an emergency situation.

**B.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration Piping Systems";*

(2) *American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction";* or

(3) *Steel Tank Institute Standard SP001, "Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids";* or

**C.** Owners and operators may submit to the department for approval an alternate plan which contains all the information requested in this section.

**D.** Owners and operators of storage tank systems that have been placed in temporary closure in compliance with 20.5.115.1501 NMAC shall not be required to have an operations and maintenance plan, unless one or both of the following conditions is present:

(1) the storage tank contains greater than one inch of regulated substance; or

(2) the storage tank system has steel components that are in contact with an electrolyte, such as soil, water or concrete.

[20.5.110.1001 NMAC - N, 07/24/2018]

#### **20.5.110.1002 OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT OF SECONDARY CONTAINMENT FOR ASTS:**

**A.** Owners and operators shall operate, maintain and repair secondary containment in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

**B.** Owners and operators shall not store inside the secondary containment any material which is chemically reactive with the regulated substance stored in the AST system, or with the AST itself. Owners and operators shall not store any material in the

secondary containment that reduces the capacity of the secondary containment below the requirements in 20.5.109.904 NMAC.

**C.** Owners and operators shall draw off any accumulation of liquid in the secondary containment, including all sumps, within one week of the accumulation, and shall remove any other debris that has accumulated inside the secondary containment. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen. If gravity drain valves are used to remove the accumulated liquid from the secondary containment, owners and operators shall keep all valves closed except during the process of draining the accumulated liquid.

**D.** In order to maintain the highest level of secondary containment in case of a discharge from, or an overflow of, an AST system, owners and operators shall keep the spill containment buckets, catchment basins, containment sumps, basin sumps, and piping trenches free of water, regulated substances and debris.

**E.** Owners and operators shall, in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department:

(1) maintain, repair and replace any concrete secondary containment systems; and

(2) repair all significant cracks in the floors and walls of concrete secondary containment systems.

**F.** Owners and operators shall use one or more of the following to comply with the concrete secondary containment system repair requirements in Subsection E above:

(1) *Society of Protective Coating and National Association of Corrosion Experts SSPC-TU2/NACE 6G197, "Design, Installation and Maintenance of Coating Systems for Concrete used in Secondary Containment";*

(2) *American Concrete Institute 224R, "Control of Cracking in Concrete Structures";* or

(3) *American Concrete Institute "Concrete Repair Manual".*

**G.** Owners and operators shall maintain, repair and replace any geo-synthetic liner according to manufacturer's instructions, which owners and operators shall keep readily available at the facility for the life of the liner.

**H.** Owners and operators shall protect from corrosion any secondary containment constructed of steel, and shall cathodically protect any portion of the steel secondary containment that is in contact with an electrolyte, including soil or water. Owners and operators shall maintain the exterior of any steel secondary containment in accordance

with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. The following shall be used to comply with this requirement: *Society of Protective Coatings SSPC-PA-1, "Shop, Field, and Maintenance Painting of Steel"*.

**I.** Owners and operators of above ground storage tanks which are either double-walled or which have an interstitial space that is monitored as a method of release detection shall comply with the following applicable requirements:

**(1)** where design and release detection method allow the interstice of a double-walled above ground storage tank to be visually inspected without disturbance of the release detection system, owners and operators shall monthly visually inspect for the presence of water, regulated substances or debris;

**(2)** if testing conducted in accordance with 20.5.109, 20.5.110 or 20.5.111 NMAC indicates that the stored regulated substance is leaking into the interstice of the AST, then owners and operators shall have the tank repaired in accordance with the tank manufacturer's instructions or specifications, or with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory. Also, owners and operators shall ensure the repair is conducted in accordance with the requirements in 20.5.110.1010 NMAC;

**(3)** owners and operators shall monitor all vertical ASTs with an interstitial space between the tank bottom and secondary containment for the presence of water or regulated substances; if gravity drain valves are used for monitoring and removal of water or regulated substances, owners and operators shall keep them closed except during the process of monitoring and draining;

**(4)** owners and operators shall keep all sumps associated with interstitial monitoring free of water;

**(5)** owners and operators shall annually inspect and test all sensors used to monitor interstitial spaces, in accordance with manufacturer's testing protocol, or in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; and

**(6)** owners and operators shall remove any liquid found in interstitial spaces, and dispose of it properly.

**J.** Owners and operators shall operate, maintain, and repair containment sumps on AST systems in order to prevent any leaks or spills in the containment area from entering the environment.

**K.** Under-dispenser containment must allow for visual inspection and access to the components in the containment system or be periodically monitored for liquid in the sump in accordance with 20.5.110.1008 NMAC.

**L.** Containment sumps shall be maintained to meet requirements in 20.5.110.1007 NMAC.

[20.5.110.1002 NMAC - N, 07/24/2018]

**20.5.110.1003 OPERATION, REPAIR, AND MAINTENANCE OF VAULTS:**

**A.** Owners and operators shall operate, maintain and repair the walls and floor of a vault in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Society of Protective Coating and National Association of Corrosion Experts SSPC-TU2/NACE 6G197, "Design, Installation and Maintenance of Coating Systems for Concrete Used in Secondary Containment";*

(2) *American Concrete Institute 224R, "Control of Cracking in Concrete Structures";* or

(3) *American Concrete Institute, "Concrete Repair Manual".*

**B.** Owners and operators shall visually inspect the interior of any vault from the outside monthly, and annually shall enter and inspect the interior of the vault. Owners and operators shall draw off any liquid that has accumulated in a vault within one week of any accumulation of liquid if the liquid is in contact with the tank or piping (but need not draw off liquid only in contact with a tank's saddles, skid or other support), and shall remove any other debris that has accumulated inside the vault and which is in contact with the tank, piping or saddle, skid or other support. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. If a sump is located in the vault, owners and operators shall keep the liquid trap free of water and debris. Owners and operators shall not install any valves in any sump in a vault.

**C.** Owners and operators shall not store inside a vault any material which is chemically reactive with the regulated substance stored in the AST system, or with the AST itself.

**D.** Owners and operators shall ensure that a vault is well vented before any fuel transfer begins, and shall keep open all vents during the transfer.

E. For vaults with roofs, owners and operators shall properly maintain and repair the roof of a vault in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

[20.5.110.1003 NMAC - N, 07/24/2018]

**20.5.110.1004 OPERATION, REPAIR, AND MAINTENANCE OF VENTING SYSTEMS:**

Owners and operators shall operate, maintain and repair venting systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. At least monthly, owners and operators shall check emergency vents to ensure they are operational. The following shall be used to comply with this requirement: *National Fire Protection Association Standard 91, "Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids"*.

[20.5.110.1004 NMAC - N, 07/24/2018]

**20.5.110.1005 OPERATION AND MAINTENANCE OF SPILL AND OVERFILL PREVENTION:**

Owners and operators shall ensure that releases due to spilling or overfilling do not occur.

A. Owners and operators shall ensure that the volume available in a tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling. Owners and operators shall comply with the transfer procedures described in the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with this requirement:

(1) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";*

(2) *International Code Council, "International Fire Code";*

(3) *Petroleum Equipment Institute Publication RP600, "Recommended Practices for Overfill Prevention for Shop-Fabricated Above Ground Tanks";* or

(4) *American Petroleum Institute Standard 2350, "Overfill Protection for Storage Tanks in Petroleum Facilities"*.

**B.** For additional guidance on Subsection A, see the following:

**(1)** *National Fire Protection Association Standard 385, "Standard for Tank Vehicles for Flammable and Combustible Liquids";*

**(2)** *American Petroleum Institute Recommended Practice 1007, "Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles";*

**(3)** *American Petroleum Institute Publication 1621, "Bulk Liquid Stock Control at Retail Outlets";* or

**(4)** *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Codes".*

**C.** Owners and operators of AST systems shall ensure that spill prevention equipment required in 20.5.109.910 NMAC is liquid tight, maintained, and fully operational at all times. In order to ensure the equipment meets these requirements, owners and operators shall no later than three years after the effective date of these regulations meet the following requirements:

**(1)** Spill prevention equipment installed where the outer and inner walls along with bottom of the equipment are clearly visible shall be either monitored monthly or tested every three years. A liquid, pressure, or vacuum test method shall be used in accordance with one of the following:

**(a)** the equipment manufacturer's developed and published testing requirements;

**(b)** *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities";* or

**(c)** the current edition of another industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

**(2)** Spill prevention equipment installed where the outer walls and the bottom are not visible shall be tested by a liquid, pressure, or vacuum test method every three years in accordance with one of the documents in Paragraph (1) of this subsection.

**(3)** Factory installed spill prevention equipment installed as an integral component of a double walled storage tank system shall either be tested every three years in accordance with Paragraph (1) of this subsection or, where a leak in the spill prevention equipment can be detected in the interstice of the tank, owners and operators shall monitor the interstice of the tank every 30 days.

**(4)** Spill prevention equipment that either fails when tested or is found to be damaged during monthly monitoring shall be repaired or replaced in accordance with 20.5.110.1010 NMAC.

**(5)** A report shall be produced which includes the results of any vacuum, pressure, or liquid testing conducted on spill prevention equipment and the report shall be submitted to the department in accordance with the requirements in 20.5.110.1016 NMAC and maintained in accordance with the requirements in 20.5.110.1015 NMAC.

**(6)** Records of the monthly monitoring and testing required in this subsection shall be maintained in accordance with 20.5.110.1015 NMAC.

**D.** Owners and operators of AST systems shall ensure that overfill prevention equipment required in 20.5.109.910 NMAC is maintained and fully operational at all times. In order to ensure the equipment meets these requirements, owners and operators shall, no later than three years after the effective date of these regulations, and every three years thereafter have the overfill prevention equipment inspected or tested and shall meet the following:

**(1)** The inspection shall verify the equipment meets the requirements in 20.5.109.910 NMAC, and if the equipment fails to meet these requirements, it shall be repaired, replaced, or re-installed. The repair, replacement, or re-installation shall be in accordance with the manufacturer's instructions or the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

**(2)** Drop tube style overfill prevention equipment shall be removed from the tank for the inspection;

**(3)** Owners and operators shall ensure the inspections or tests are performed in accordance with the methods and procedures listed in one of the following:

**(a)** *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities", or*

**(b)** testing requirements developed and published by the overfill prevention equipment manufacturer;

**(4)** If more than one type of overfill prevention equipment is installed on an AST, owners and operators shall ensure that none of them will interfere with the proper operation of any of the others; and

**(5)** A report shall be produced which includes the results of any inspections or testing conducted on overfill prevention equipment and the report shall be submitted to

the department in accordance with the requirements in 20.5.110.1016 NMAC and maintained in accordance with the requirements in 20.5.110.1015 NMAC.

**E.** Owners and operators shall report, investigate, and clean up any spills and overfills in accordance with 20.5.118 NMAC.

**F.** Owners and operators of a storage tank system that meets the requirements for temporary closure and the tank is empty as defined in 20.5.115.1501 NMAC shall not be required to periodically test the spill and overfill prevention equipment.

**G.** Owners and operators of storage tank systems shall ensure tests of all spill and overfill prevention equipment as required in this section are performed by a qualified tester. The requirements for testers can be found in 20.5.105 NMAC.

[20.5.110.1005 NMAC - N, 07/24/2018]

**20.5.110.1006      OPERATION AND MAINTENANCE OF CORROSION PROTECTION:**

Owners and operators of metal storage tank systems with any metal tank or piping with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented until the storage tank system is permanently closed or undergoes a change in service pursuant to 20.5.115 NMAC.

**A.** Owners and operators shall operate and maintain corrosion protection systems to continuously provide corrosion protection to all metal components of the system that routinely contain regulated substances and are in contact with an electrolyte, to include soil or water. Owners and operators shall operate and maintain corrosion protection systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall use one or more of the following to comply with the requirements of this section:

**(1)**      *American Petroleum Institute Publication 651, "Cathodic Protection of Aboveground Petroleum Storage Tanks";*

**(2)**      *American Petroleum Institute Publication 652, "Linings of Aboveground Petroleum Storage Tank Bottoms";*

**(3)**      *American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"*

**(4)**      *National Association of Corrosion Engineers Publication RP0193, "External Cathodic Protection of On-Grade Carbon Steel Storage Tank Bottoms";*

**(5)** *National Association of Corrosion Engineers Publication SP0169, "Standard Practice for Control of External Corrosion on Underground or Submerged Metallic Piping Systems".*

**B.** Owners and operators shall ensure that all storage tank systems equipped with cathodic protection are inspected for proper operation by a qualified corrosion expert in accordance with the following requirements:

**(1)** Frequency: owners and operators shall test all cathodic protection systems as follows:

**(a)** within six months of installation and at least every three years thereafter;

**(b)** within six months of a modification or repair; or

**(c)** another reasonable time frame approved in advance in writing by the department;

**(2)** Inspection criteria: the criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

**(3)** Owners and operators of storage tank systems shall provide the department a report on the cathodic protection system test that includes the following:

**(a)** name of facility, facility address, and facility ID number issued by the department;

**(b)** name of the technician who performed the test;

**(c)** certification of the technician in the type of test performed, including certification numbers, national association where the certification was obtained, and expiration date of the certification;

**(d)** description of cathodic protection system, for example impressed current, galvanic;

**(e)** description of storage tank system including tank ID number, product, capacity, tank type, piping, flex connectors;

**(f)** type of test conducted, such as: routine three-year test; test within six months of installation; test within six months after repair or modification;

**(g)** whether all flex connectors or metal risers that routinely contain a regulated substance and are in contact with an electrolyte are protected from corrosion. If isolation boots, jackets, or other non-corrodible materials are used to protect this equipment from corrosion, it shall be determined if they are still providing protection from corrosion.

**(h)** tester's pass/fail evaluation and actions to be taken after evaluation;

**(i)** facility drawing of the storage tank system and cathodic protection system, indicating location of test points on the storage tank system, cathodic protection test stations, and reference electrode placement; and

**(j)** description of cathodic protection system repair or modification.

**(4)** Owners and operators of storage tank systems shall provide the department a report on impressed current systems that includes all requirements listed in 20.5.110.1016 NMAC; and

**(a)** rectifier manufacturer, model, serial number, rated direct current output voltage and amperage;

**(b)** rectifier tap settings, direct current output voltage and amperage, and hour meter reading;

**(c)** description of structure tested, contact point of test lead, and reference electrode placement;

**(d)** structure to soil potential with current applied in millivolts;

**(e)** structure to soil potential with current interrupted, instant OFF in millivolts;

**(f)** 100 millivolts polarization shift, end voltage and voltage change; and

**(g)** test results.

**(5)** Owners and operators of storage tank systems shall provide the department a report on galvanic systems that includes all requirements listed in 20.5.110.1016 NMAC; and

**(a)** description of structure tested, contact point of test lead, and reference electrode placement;

**(b)** structure to soil potential measured locally in millivolts;

**(c)** structure to soil potential measured remotely in millivolts; and

(d) test results.

(6) Owners and operators shall use one or more of the following to comply with the requirements of this section:

(a) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*

(b) *National Fire Protection Association Standard 30A "Code for Motor Fuel Dispensing Facilities and Repair Garages";*

(c) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems";*

(d) *American Petroleum Institute Publication RP 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems";*

(e) *International Code Council, "International Fire Code";*

(f) *NACE International Test Method TM 0101, "Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems";*

(g) *NACE International Test Method TM0497, "Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems";*

(h) *Steel Tank Institute Recommended Practice R051, "Cathodic Protection Testing Procedures for STI-P3® USTs";*

(i) *NACE International Standard Practice SP 0285, "External Control of Underground Storage Tank Systems by Cathodic Protection";* or

(j) *NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".*

**C.** Owners and operators shall inspect storage tank systems with impressed current cathodic protection systems every 60 days to ensure the equipment is running properly. Owners and operators shall record the date, time, readings and results of each inspection in a log kept at the facility, and indicate who performed each inspection.

**D.** Owners and operators shall monthly inspect any equipment or materials used to isolate metal components of AST systems and shall repair or replace equipment and materials used to meet corrosion protection requirements in this section.

**E.** For storage tank systems using cathodic protection, owners and operators shall maintain records of the operation of the cathodic protection in accordance with

20.5.110.1015 NMAC to demonstrate compliance with the performance standards in this section. These records shall provide the following:

(1) the results of the last three inspections required in Subsection C of this section; and

(2) the results of testing from the last two inspections required in Subsection B of this section.

[20.5.110.1006 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used for the cathodic protection system test report required in Subsection B. The form is available on the petroleum storage tank bureau's pages on the department website, or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.110.1007 OPERATION AND MAINTENANCE OF CONTAINMENT SUMPS FOR AST SYSTEMS:**

**A.** Owners and operators shall maintain all containment sumps (including but not limited to under dispenser sumps and transition sumps) and draw off liquid that has accumulated in the containment sumps within one week of the accumulation, and shall remove any other debris that has accumulated inside the containment sumps. Owners and operators shall properly treat and dispose of any accumulated liquid with a visible sheen, and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. If gravity drain valves are used to remove accumulated liquid from the containment sumps, owners and operators shall keep all valves closed except during the process of draining the accumulated liquid.

**B.** In order to maintain the highest level of secondary containment in case of a discharge from, or an overflow of, an AST system, owners and operators shall keep the containment sumps and basin sumps free of water, regulated substances, and debris.

**C.** Owners and operators shall maintain all containment sumps associated with interstitial monitoring of underground piping; the sumps shall be liquid tight and kept free of water.

**D.** Owners and operators of AST systems with single walled containment sumps associated with interstitial monitoring shall have the integrity of the sumps tested no later than three years after the effective date of these regulations, and every three years thereafter, in accordance with the following:

(1) Hydrostatic or other test methods shall be conducted to ensure the containment sumps are liquid tight including at all penetrations in accordance with one of the following:

(a) the equipment manufacturer's developed and published testing requirements;

(b) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*; or

(c) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

(2) Hydrostatic test methods using a test apparatus developed specifically for testing containment sumps shall ensure the containment sumps are liquid tight including at all penetrations and comply with one of the following:

(a) protocols developed by the manufacturer of the test apparatus and the certification as listed on the web site of the national work group on leak detection evaluation;

(b) protocols developed and published by the manufacturer of the containment sump;

(c) *Petroleum Equipment Institute RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection, and Secondary Containment Equipment at UST Facilities"*; or

(d) an alternate test method approved by the department in writing in advance in accordance with the requirements for Alternate Methods Requests in 20.5.110.1014 NMAC.

(3) A low liquid level hydrostatic test method may be conducted if all of the following conditions are met:

(a) test method used shall be in accordance with the following:

(i) the liquid level meets the third-party certification for the sensor installed in the sump;

(ii) the duration of the test shall be a minimum of one hour unless a different test period is specified by the containment sump manufacturer or in (iii) below;

(iii) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department;

**(b)** either a hydrostatic test shall be conducted every 12 years in accordance with Paragraph (1) and (2) of Subsection D or a site check shall be conducted every 12 years in accordance with in Subsection B of 20.5.118.1801 NMAC.

**(c)** a sump sensor that automatically shuts off equipment associated with the sump and meets the requirements for placement and testing of sensors used for interstitial monitoring in Subparagraph (b) of Paragraph (3) of Subsection A of 20.5.111.1106 NMAC;

**(4)** A low liquid level test per Paragraph (3) of this subsection shall not be conducted if the following conditions exist:

**(a)** a liquid is discovered in the sump or evidence is found that a liquid has been at a level equal to or higher than the lowest penetration in the sump; then testing has to be conducted in accordance with Paragraph (1) of this subsection;

**(b)** sensors in containment sumps are discovered to be located higher than the lowest part of the sump; then a test shall be conducted in accordance with Paragraph (1) of this subsection and owners and operators shall report and investigate a suspected release in accordance with the requirements in 20.5.118 NMAC; or

**(c)** a site check conducted in accordance with Paragraph (3) of this subsection indicates there has been a release from the containment sump.

**E.** Owners and operators of AST systems with double-walled containment sumps associated with interstitial monitoring shall have the integrity of the sumps tested no later than three years from the effective date of these regulations, and every three years thereafter, in accordance with one of the following:

**(1)** interstices under vacuum, pressure, or brine filled, are continuously monitored by use of interstitial sensors or visually inspected every 30 days, and the monitoring records are maintained in accordance with 20.5.110.1015 NMAC. Owners and operators shall ensure that annual functionality testing or annual inspections of the monitoring equipment are conducted in accordance with 20.5.111.1104 NMAC. Owners and operators who cannot demonstrate that the interstices of the containment sumps are continuously monitored or inspected every 30 days shall have the sumps tested in accordance with Subsection D above; or

**(2)** containment sumps with dry interstices that are not continuously monitored are integrity tested in accordance with Subsection D of 20.5.110.1007 NMAC.

**F.** All sensors and equipment used to monitor containment sumps and their interstices shall be functionality tested annually in accordance with 20.5.111.1104 NMAC.

**G.** A report shall be produced which includes the results of the testing, and the report shall be submitted in accordance with 20.5.110.1016 NMAC and maintained in accordance with the requirements in 20.5.110.1015 NMAC.

**H.** Owners and operators of storage tank systems shall ensure that tests of containment sumps as required in this section are performed by qualified testers. The requirements for testers can be found in 20.5.105 NMAC.

**I.** Owners and operators of storage tank systems shall dispose of water or other test media used in testing of components of petroleum storage tank systems, or any accumulated liquid with a visible sheen, and the disposal shall be in accordance with all federal, state, and local statutes, ordinances, and regulations. Owners and operators who temporarily store the test media or water on-site shall do so in accordance with all federal, state, and local statutes, ordinances, and regulations.

[20.5.110.1007 NMAC - N, 07/24/2018]

**20.5.110.1008 PERIODIC OPERATION AND MAINTENANCE WALK-THROUGH INSPECTIONS:**

**A.** Owners and operators shall conduct walk-through inspections that, at a minimum, check equipment as specified below:

**(1)** For spill and overfill prevention equipment, every 30 days (exception: spill prevention equipment at AST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):

**(a)** visually check all spill and overfill prevention equipment for damage;

**(b)** remove liquid or debris;

**(c)** check for and remove obstructions in the fill pipe;

**(d)** check the fill cap to make sure it is securely on the fill pipe; and

**(e)** for double walled spill prevention equipment with interstitial monitoring, check for liquid or a leak in the interstitial area; and

**(f)** check overfill prevention equipment for proper operation and determine whether maintenance is required.

**(2)** For release detection equipment, every 30 days:

**(a)** check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and

(b) ensure records of release detection testing are reviewed and current.

(3) For containment sumps, every 30 days:

(a) visually check the containment sump for damage, liquid in the containment area, and releases to the environment;

(b) remove liquid and debris in containment sumps; and

(c) for double walled sumps with interstitial monitoring, check for liquid or a leak in the interstitial area.

(4) Annually: check hand held release detection equipment, such as, but not limited to, tank gauge sticks for operability and serviceability;

**B.** Owners and operators shall conduct these walk-through inspections in accordance with one of the following:

(1) the current edition of a national code of practice or standard developed by a nationally recognized association or independent testing laboratory that checks equipment included in Subsection A of 20.5.110.1008 NMAC; or

(2) a checklist developed by the department.

**C.** If monthly visual checks of containment sumps are not being conducted or records of the checks cannot be produced, a test in accordance with Subsection D of 20.5.10.1007 NMAC shall be conducted within 30 days of failing to meet the requirement for monthly monitoring of the equipment.

**D.** Owners and operators must maintain records of operation and maintenance walkthrough inspections in accordance with 20.5.110.1015 NMAC. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

[20.5.110.1008 NMAC - N, 07/24/2018]

#### **20.5.110.1009 COMPATIBILITY:**

Owners and operators shall use a storage tank system made of or lined with materials that are compatible with the substance stored in the storage tank system.

**A.** Owners and operators must notify the department at least 30 days prior to changing the substance in any of their tanks to a regulated substance containing

greater than ten percent ethanol, greater than twenty percent biodiesel, or any other regulated substance identified by the department.

**B.** In addition, owners and operators with storage tank systems storing these regulated substances must meet one of the following:

**(1)** demonstrate compatibility of the storage tank system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment). Owners and operators may demonstrate compatibility of the storage tank system by using one of the following options:

**(a)** certification or listing of storage tank system equipment or components by a nationally recognized, independent testing laboratory for use with the regulated substance stored; or

**(b)** equipment or component manufacturer approval. The manufacturer's approval must be in writing, include an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer.

**(2)** for storage tank systems or system components that contain, but are not compatible with, one of the regulated substances listed in Subsection A of 20.5.110.1009 NMAC, or for those storage tank systems where compatibility cannot be determined, remove all regulated substances from the tank system by the effective date of these regulations, and comply with one of the following:

**(a)** replace the storage tank system or system components in accordance with the requirements for a new storage tank system in 20.5.109 NMAC;

**(b)** prior to putting the tank back in service, modify the storage tank system in accordance with 20.5.110.1010 NMAC and one of the following:

**(i)** install an internal lining in the tank, in accordance with the lining manufacturer's installation instructions, to address compatibility issues; or

**(ii)** comply with tank or equipment manufacturer's instructions;

**(c)** change the regulated substance stored to one that is compatible with the storage tank system; or

**(d)** permanently close the storage tank system within 12 months of the effective date of these regulations in accordance with the permanent closure requirements in 20.5.115.1502 NMAC; or

**(3)** use another option determined by the department to be no less protective of human health and the environment than the options listed in this section.

**C.** Owners and operators must maintain records documenting compliance with this section for as long as the storage tank system is used to store the regulated substance.

**D.** Owners and operators shall use the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department to comply with the compatibility requirements of this section. *American Petroleum Institute Recommended Practice RP 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations"* shall be used to comply with the requirements of this section as they pertain to storage of ethanol blends.

[20.5.110.1009 NMAC - N, 07/24/2018]

#### **20.5.110.1010 REPAIRS, REPLACEMENTS AND MODIFICATIONS:**

Owners and operators of a storage tank system shall ensure that repairs, replacements, and modifications will prevent releases due to structural failure or corrosion as long as the storage tank system is used to store regulated substances. Owners and operators shall remove all regulated substances from a storage tank system when a release has been confirmed until it is repaired or replaced in accordance with the requirements of this section.

**A.** Determining whether repair, replacement or modification is necessary. Owners and operators shall determine whether a repair, replacement or modification to a storage tank system is necessary in consultation with a department inspector, after providing notice required by this part.

**(1)** If owners and operators are repairing, replacing or modifying piping of any kind that is connected to a storage tank, the determination shall be made during an on-site inspection that provides the inspector the opportunity to view the piping while it is exposed.

**(2)** If, during an on-site inspection, the inspector determines that:

**(a)** any steel piping connected to a tank indicates corrosion; or

**(b)** any non-corrodible piping connected to a tank shows signs of deterioration or failure,

**(3)** Then the owner and operator shall replace all piping connected to that tank, and shall inspect all other piping at the same facility that is made of the same material to determine its condition prior to returning the facility to operation.

**B.** Owners and operators shall properly conduct repairs, replacements and modifications to storage tank systems in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association

or independent testing laboratory approved in advance by the department, and in accordance with the manufacturer's instructions and recommended practices. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";*
- (2) *American Petroleum Institute Recommended Practice RP 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines";*
- (3) *National Fire Protection Association Standard 30A, "Code for Motor Fuel Dispensing Facilities and Repair Garages";*
- (4) *Petroleum Equipment Institute Publication RP200, "Recommended Practices for Installation of Above Ground Storage Systems for Motor Vehicle Fueling";*
- (5) *American Society for Testing and Materials ES40, "Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection";*
- (6) *American Petroleum Institute 570, "Piping Inspection Code: Inspection, Repair, Alteration and Rerating of In-Service Piping Systems";*
- (7) *American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction";*
- (8) *American Society of Mechanical Engineering Standard B31.1, "Process Piping";*
- (9) *International Code Council, "International Fire Code";*
- (10) *National Leak Prevention Association Publication RP823, "Standard for Preventative Maintenance, Repair, and In-situ Construction of Petroleum Sumps";*
- (11) *Petroleum Equipment Institute Publication RP100 "Recommended Practices for the Installation of Underground Storage Tank Systems for Motor Vehicle Fueling";*
- (12) *Petroleum Equipment Institute Publication RP800 "Recommended Practices for Installation of Bulk Storage Plants";*
- (13) *Petroleum Equipment Institute Publication RP1000 "Recommended Practices for the Installation of Marina Fueling Systems";*

**(14)** *Petroleum Equipment Institute Publication RP1300 "Recommended Practices for the Design, Installation, Service, Repair, and Maintenance of Aviation Fueling Systems"; or*

**(15)** *Petroleum Equipment Institute Publication RP1400 "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines and Oil Burner Systems".*

**C.** Owners and operators shall not internally line ASTs as a means of repair.

**D.** Owners and operators shall tightness test a storage tank system that has been replaced, modified or repaired, prior to returning the system to service, in accordance with 20.5.111.1101 NMAC and Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.111.1105 NMAC except as provided below:

**(1)** the repaired or modified tank is internally inspected in accordance with the current edition of an industry standard or code of practice approved in advance by the department; or

**(2)** owners and operators shall use an equivalent test method, which complies with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance in writing by the department.

**E.** Upon completion of a modification or repair of any cathodically protected storage tank system, owners and operators shall test the cathodic protection system in accordance with 20.5.110.1006 NMAC to ensure that it is operating properly.

**F.** Owners and operators of a storage tank system shall maintain records of each repair, replacement and modification until the storage tank system is permanently closed pursuant to 20.5.115 NMAC.

**G.** Owners and operators shall repair an above ground storage tank if an internal inspection determines that a release is occurring or that the tank bottom or shell thickness is below minimum thickness requirements. Owners and operators shall keep the records of internal inspections for the life of the tank. Minimum thickness requirements shall be determined by one of the following:

**(1)** manufacturer's specifications;

**(2)** current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; or

(3) minimum thickness for the tank bottom shall never be less than one half of the original bottom plate thickness and minimum thickness for the tank shall never be less than one-tenth inch.

H. Owners and operators shall meet all applicable installation requirements of 20.5.109 NMAC, including testing requirements, when repairing, replacing or modifying a storage tank system involves installing new components. If any tank or piping of a tank system is replaced, owners and operators shall follow all requirements for properly assessing the site for contamination in compliance with 20.5.115 NMAC prior to installing the new components.

I. Repairs to secondary containment of tanks, piping and containment sumps must be tested for tightness according to the manufacturer's instructions, a code of practice developed by a nationally recognized association or independent testing laboratory, or according to requirements established by the implementing agency within 30 days following the date of completion of the repair.

J. Within 30 days following any repair to spill or overfill prevention equipment, the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with 20.5.110.1005 NMAC to ensure it is operating properly.

[20.5.110.1010 NMAC - N, 07/24/2018]

#### **20.5.110.1011 INSPECTIONS, MONITORING AND TESTING:**

A. For the purpose of enforcing the provisions of these regulations, all owners and operators of storage tanks shall, upon the request of the secretary or authorized department representatives, furnish information relating to such tanks, including tank equipment and contents, conduct monitoring or testing, and permit any department representative at all reasonable times to have access to, and to copy all records relating to such tanks. Owners and operators shall comply with all applicable and appropriate Occupational Health and Safety Act requirements, Sections 50-9-1 through 50-9-25 NMSA 1978, so that storage tanks may be safely inspected. For the purpose of enforcing these regulations, department officers, employees, or representatives are authorized to:

(1) enter at reasonable times any establishment or place where a storage tank is located;

(2) inspect the storage tank system and obtain samples of its contents;

(3) conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water, or groundwater; and

(4) retrieve all data from any electronic release detection equipment or device.

**B.** The department shall commence and complete each inspection with reasonable promptness. If the secretary or department representative obtains any samples, prior to leaving the premises he shall give to the owner, operator or agent in charge a receipt describing the sample obtained and, if requested, a portion of each sample equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished promptly to the owner, operator or agent in charge.

**C.** Owners and operators shall permit the department or authorized department representative to be present at and inspect all storage tank system installations, replacements, repairs, substantial modifications, installations of leak detection systems and storage tank system closures.

**D.** Owners and operators shall not intentionally delete any history from any electronic release detection equipment or device.

[20.5.110.1011 NMAC - N, 07/24/2018]

**20.5.110.1012 REQUIRED NOTIFICATION PRIOR TO REPLACEMENT, REPAIR AND MODIFICATION:**

To ensure that an inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the replacement, repair, and modification of the storage tank system are to take place. Notice need not be provided for normal maintenance. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

**A.** For replacements, modifications (including internal lining or changes to cathodic protection systems), and repairs, the term "critical junctures" means:

- (1) completion of pouring a concrete pad or footings;
- (2) completion of the excavation of existing piping;
- (3) actual performance of the repair, lining, or modification;
- (4) any time during the project in which components of piping are connected;
- (5) any time during the project in which a tank, its associated piping, spill prevention equipment, or secondary containment sumps are tested; and
- (6) any time during the project when overflow prevention equipment is inspected to ensure it meets the requirements in 20.5.110.1005 NMAC.

**B.** Owners, operators and certified tank installers shall give at least 30 days written notice before the replacement, modification or repair of a storage tank system. Owners and operators shall also give at least 30 days written notice before the application of a secondary containment coating. It may not be feasible for owners, operators, and certified tank installers to provide advance notice of emergency repairs; however, owners, operators, and certified tank installers shall provide notice of emergency repairs as soon as possible after completing emergency repairs. At a minimum, the notice for replacements, modifications, and repairs shall contain the following information:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county), and telephone number;
- (3) owner name, owner ID number, address, and telephone number;
- (4) contractor name, address, and telephone number;
- (5) description of type of replacement, modification or repair to be performed (such as spill containment, overfill prevention, release detection, piping or other);
- (6) expected date on which replacement, modification or repair will be performed;
- (7) whether any part of the system is within 1,000 feet of a community water system or a potable drinking water well; and
- (8) signature of owner, operator or an authorized representative.

**C.** In addition to the written notices described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection B of this section, such as different equipment or installation methods.

**D.** If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[20.5.110.1012 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used for notification of replacement, repair and modification. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Santa Fe, NM 87505.]

**20.5.110.1013 DEPARTMENT REVIEW AND APPROVAL OF PLANS, INSTALLATION, OPERATION, AND MAINTENANCE:**

Owners and operators shall view any inspection, review or approval by the department as permission to proceed in accordance with all applicable rules, codes and standards. Review and approval by the department shall not relieve any owner, operator, or certified tank installer of his responsibility for compliance. If the department overlooks any deficiencies or violations in the course of plan review or inspection provided in 20.5 NMAC, the department may later require correction and compliance.

[20.5.110.1013 NMAC - N, 07/24/2018]

**20.5.110.1014 ALTERNATE METHODS:**

**A.** If owners and operators want to operate, maintain, replace, repair or modify any part of a storage tank system with materials or methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin to operate, maintain, replace, repair or modify the system, unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment.

[20.5.110.1014 NMAC - N, 07/24/2018]

[The bureau provides an optional form that may be used to request approval of an alternate method. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, NM 87505.]

**20.5.110.1015 RECORD KEEPING:**

**A.** Owners and operators shall maintain the following information for the life of the storage tank system:

- (1) documentation of operation of corrosion protection equipment that demonstrates compliance with 20.5.110.1006 NMAC;
- (2) documentation of storage tank system repairs, replacements and modifications that demonstrate compliance with 20.5 NMAC;
- (3) documentation of compliance with release detection requirements in accordance with 20.5.11 NMAC;
- (4) inspection logs required by 20.5.110 NMAC and 20.5.111 NMAC;
- (5) tank tightness, internal inspection and integrity test documents required by 20.5 NMAC;
- (6) any document approving any alternate method;
- (7) spill and overfill prevention equipment testing/inspection records;
- (8) containment sump testing records;
- (9) documentation of compatibility for AST systems;
- (10) documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping;
- (11) documentation of periodic walkthroughs;
- (12) documentation of operator training in accordance with 20.5.104 NMAC;
- (13) the operation and maintenance plan and related documentation as required by 20.5.10.1001 NMAC; and
- (14) any other record or written approval required in 20.5 NMAC.

**B.** Availability and maintenance of records. Owners and operators shall keep the required records for the operational life of a tank, piping and tank system either:

(1) at the storage tank site and immediately available for inspection by the department; or

(2) at a readily available alternative site and the records shall be provided for inspection to the department upon request; if records are not available at a site during inspection, owners and operators shall send to the inspector within 10 working days all records requested by the inspector.

C. Owners and operators shall maintain permanent closure records required under 20.5.115 NMAC. Owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

D. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this section; however, both parties are liable in the event of noncompliance.

[20.5.110.1015 NMAC - N, 07/24/2018]

#### **20.5.110.1016 REPORTING:**

Owners and operators of a storage tank system shall cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator.

A. Owners and operators shall provide the following information to the department:

(1) registration for all storage tank systems in accordance with 20.5.102 NMAC, which includes certification of installation for new AST systems in accordance with Subsection C of 20.5.109.919 NMAC; (2) reports of all releases in accordance with 20.5.102 NMAC and the requirements in 20.5.18 NMAC for reporting suspected releases, spills and overfills and confirmed releases;

(3) corrective actions planned or taken as required by 20.5.119 NMAC and 20.5.200 NMAC;

(4) notification before storage tank system installation, replacement, repair or modification in accordance with 20.5.109 NMAC and 20.5.110 NMAC; notification when any person assumes ownership of a storage tank system in accordance with 20.5.102 NMAC and notification before permanent closure or change in service in accordance with 20.5.115 NMAC; it may not be feasible for owners and operators to provide advance notice of emergency repairs; however, owners and operators shall provide notice of emergency repairs as soon as possible after completing emergency repairs;

(5) notification prior to storage tank systems changing to certain regulated substances in accordance with Subsection A of 20.5.110.1009 NMAC; and

**(6)** updated project drawings for any addition, replacement or modification of a storage tank system.

**B.** Owners and operators shall provide to the department all reports as required in 20.5.110 NMAC within 60 days of completion of the tests.

**C.** Owners and operators shall report any failed tests or inspections to the department within 24 hours of completion of the test or inspection in accordance with 20.5.118.1801 NMAC.

**D.** Owners and operators shall ensure all reports required in 20.5.110 NMAC contain, at a minimum, the following:

- (1)** facility name and address;
- (2)** facility ID number;
- (3)** owner and operator name and address;
- (4)** owner ID number;
- (5)** date report was completed;
- (6)** date of the test;
- (7)** duration of the test;
- (8)** brand name and model number of equipment being tested or sufficient description to allow identification of the equipment;
- (9)** type of equipment being tested;
- (10)** type of test, including test procedures and methods;
- (11)** results of the test;
- (12)** name of the person who performed the inspection or test, and their qualifications as specified in 20.5.105 NMAC;
- (13)** name of the regulated substance stored in the tank associated with the equipment being tested; and
- (14)** for the inspections and testing of spill prevention equipment, overflow prevention equipment, and containment sumps, include the information from the following forms, as applicable, from *Petroleum Equipment Institute Publication RP 1200*,

*"Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities":*

**(a)** *"Spill Bucket Integrity Testing, Hydrostatic Test Method, Single and Double-Walled Vacuum Method";*

**(b)** *"Containment Sump Integrity Testing, Hydrostatic Testing Method";*

**(c)** *"UST Overfill Equipment Inspection, Automatic Shutoff Device and Ball Float Valve";* or

**(d)** *"Automatic Tank Gauge Operation Inspection".*

[20.5.110.1 NMAC - N, 07/24/2018]

## **PART 111: RELEASE DETECTION FOR ABOVE GROUND STORAGE TANK SYSTEMS**

### **20.5.111.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.111.1 NMAC - N, 07/24/2018]

### **20.5.111.2 SCOPE:**

This part applies to owners and operators of above ground storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance. Release detection requirements for above ground storage tank emergency generator systems are listed in 20.5.112 NMAC.

[20.5.111.2 NMAC - N, 07/24/2018]

### **20.5.111.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.111.3 NMAC - N, 07/24/2018]

### **20.5.111.4 DURATION:**

Permanent.

[20.5.111.4 NMAC - N, 07/24/2018]

**20.5.111.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.111.5 NMAC - N, 07/24/2018]

**20.5.111.6 OBJECTIVE:**

The purpose of 20.5.111 NMAC is to ensure that releases from above ground storage tanks are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.111.6 NMAC - N, 07/24/2018]

**20.5.111.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.111.7 NMAC - N, 07/24/2018]

**20.5.111.8-20.5.111.1099 [RESERVED]**

**20.5.111.1100 REQUIREMENTS AND DEADLINES FOR RELEASE  
DETECTION FOR AST SYSTEMS:**

**A.** Owners and operators of new and existing AST systems shall monitor monthly for releases using a method, or combination of methods, of release detection that can detect a release from any portion of the tank, connected piping and ancillary equipment that routinely contains a regulated substance and meets the following:

**(1)** the method:

**(a)** meets the performance requirements in 20.5.111 NMAC;

**(b)** is installed and calibrated in accordance with the manufacturer's instructions;

**(c)** is operated and maintained in accordance with one of the following, beginning on the effective date of these regulations:

**(i)** manufacturer's instructions;

(ii) the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department; or

(iii) an approved method that has been determined by the implementing agency to be no less protective of human health and the environment than Subparagraph (a) and (b) of Subsection (1) above; and

(d) has electronic and mechanical components that are tested to ensure proper operation; or

(2) the method meets all the requirements for visual inspections in 20.5.111.1102 NMAC.

**B.** Owners and operators of AST systems shall meet release detection requirements as follows:

(1) for AST systems installed on, or before, August 14, 2003 must have met release detection requirements no later than August 15, 2004; and

(2) for AST systems installed on, or after, August 15, 2003 must meet release detection requirements upon installation.

**C.** For existing AST systems installed before July 1, 1991, or where the installation date is unknown, owners and operators shall perform either a tightness test, or an internal inspection on the AST system by August 15, 2004. The tightness test or internal inspection shall be conducted in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, and shall be approved in advance by the department. If a tightness test or internal inspection shows that an AST system has a suspected release, then owners and operators shall comply with the requirements of 20.5.118 NMAC. Owners and operators shall use one or more of the following, as applicable, to comply with the above testing requirements:

(1) *American Petroleum Institute Specification 12F: "Shop-welded Tanks For Storage Of Production Liquids";*

(2) *American Petroleum Institute Standard 650, "Welded Tanks for Oil Storage",* with applicable addenda;

(3) *American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction";*

(4) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling";*

(5) *Underwriter's Laboratories Standards: UL 142, "Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids"; or*

(6) *Steel Tank Institute Standard SP001, "Standard for the Inspection of Aboveground Storage Tanks".*

D. Owners and operators shall ensure that any person who performs a test on their AST system in order to meet the requirements of 20.5.111 NMAC shall comply with the requirements in 20.5.105 NMAC.

E. Owners and operators shall ensure that equipment used to perform a test on their storage tank system is calibrated and maintained according to the manufacturer's requirements.

F. When a release detection method operated in accordance with the performance standards in 20.5.111 NMAC indicates a release may have occurred, owners and operators shall notify the department in accordance with 20.5.102.204 and 20.5.118 NMAC.

G. Owners and operators shall meet permanent closure requirements in 20.5.115 NMAC for any existing AST system to which an owner and operator cannot apply a method of release detection that complies with the requirements of 20.5.111 NMAC.

[20.5.111.1100 NMAC - N, 07/24/2018]

**20.5.111.1101 REQUIREMENTS FOR INTEGRITY TESTING OR TANK TIGHTNESS TESTING OF ASTS:**

A. Owners and operators shall perform a tightness test or internal inspection of ASTs 10 years after installation, unless the AST is in secondary containment that complies with the requirements of 20.5.109 NMAC. Owners or operators shall use one or more of the standards and codes listed in Subsection A of this section, as applicable, to comply with this requirement.

B. Owners and operators of ASTs shall ensure that integrity testing and tank tightness testing:

(1) detect a two-tenth gallon per hour leak rate from any portion of the AST that routinely contains a regulated substance while accounting for the effects of thermal expansion or contraction of the regulated substance, vapor pockets, tank deformation, and evaporation or condensation;

(2) comply with manufacturer's published testing procedures; and

(3) comply with a current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, and

shall be approved in advance by the department. Owners and operators shall use one or more of following to comply with the requirements of this section:

(a) *American Petroleum Institute Specification 12F: "Specification for Shop Welded Tanks for Storage of Production Liquids"*.

(b) *American Petroleum Institute Standard 650, "Welded Tanks for Oil Storage"*, with applicable addenda;

(c) *American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"*;

(d) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling"*;

(e) *Underwriter's Laboratories Standards: UL 142, "Standard for Steel Aboveground Tanks for Flammable and Combustible Liquids"*;

(f) *Steel Tank Institute Standard SP001, "Standard for the Inspection of Aboveground Storage Tanks"*; or

(g) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"*.

[20.5.111.1101 NMAC - N, 07/24/2018]

#### **20.5.111.1102 VISUAL INSPECTION REQUIREMENTS FOR ASTS:**

**A.** Owners and operators of ASTs may use visual inspection as a method of release detection if:

(1) all portions of the ASTs, including the AST bottoms, are completely visible, readily accessible and are inspected monthly;

(2) owners and operators maintain a written log of the visual inspections for each AST conducted monthly to include the following:

(a) the date and time the inspection was conducted;

(b) name and signature of the person who conducted the inspection;

(c) comments on the condition of each AST;

(d) the results of each inspection; and

(e) the volume of water found in the AST and if the water has been removed from the tank; and

(3) owners and operators keep visual inspection logs available at the facility.

**B.** Owners and operators of double-walled and double-bottomed AST systems shall include inspection of the interstice in the monthly visual inspection which shall be recorded in the log required in Paragraph (2) of Subsection A. Owners and operators of AST systems that use interstitial monitoring with an electronic liquid sensor as their monthly method of release detection in accordance with 20.5.111.1103 NMAC do not have to meet the requirements of this subsection. The monthly inspection of the interstice shall use one of the following methods:

(1) manually stick or gauge the monitoring ports of the tank by use of a tank gauging stick that is calibrated to the nearest one-eighth of an inch;

(2) where the interstice is equipped with a mechanical float device that will visually signal when a liquid is present in the interstice, inspect the device;

(3) for double-bottomed vertical ASTs with drain valves for the interstice, check for the accumulation of regulated substances or water;

(4) inspect the interstice per manufacturer's instructions; or

(5) visually inspect vertical ASTs inside secondary containment that meet the requirements of 20.5.109 NMAC where the secondary containment has been constructed so the space between the tank bottom and the concrete floor can be monitored or visually inspected.

[20.5.111.1102 NMAC - N, 07/24/2018]

### **20.5.111.1103 INTERSTITIAL MONITORING REQUIREMENTS FOR ASTS:**

Owners and operators of ASTs may use interstitial monitoring to continuously monitor between the AST and a secondary barrier immediately around and underneath the tank, but only if the AST system meets all of the following requirements:

**A.** the ASTs are manufactured or upgraded to include a double-walled bottom in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory which can be remotely monitored, or the ASTs are installed inside secondary containment with an impervious barrier beneath the ASTs meeting the requirements of 20.5.109.904 NMAC and the interstice between them can be remotely monitored;

**B.** the monitoring system between the AST and the secondary barrier shall meet all of the following requirements;

(1) for cathodically protected ASTs, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;

(2) the groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(3) the site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions;

(4) the locations and ports of monitoring wells are clearly marked and secured to avoid unauthorized access and tampering;

C. owners and operators shall have a qualified tester annually test to ensure proper operation of sensors and electrical or mechanical devices, which includes but is not limited to testing alarm operability, communication with controller, and proper height and location of sensors installed. Testing shall be conducted in accordance with the equipment manufacturers' testing instructions or in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory.

D. Owners and operators shall ensure the requirements in 20.5.111.1100 NMAC are met prior to implementing this method.

E. Owners and operators shall maintain and provide the department reports relating to the requirements of this section in accordance with 20.5.111.1111 NMAC and 20.5.111.1112 NMAC.

[20.5.111.1103 NMAC - N, 07/24/2018]

#### **20.5.111.1104 AUTOMATIC TANK GAUGING REQUIREMENTS FOR ASTS:**

A. Owners and operators shall use automatic tank gauging systems that are third party certified for the size and capacity of the AST. Only third-party certifications that have been reviewed and approved by the national work group on leak detection evaluations (NWGLDE) for AST use, as evidenced by their posting on the NWGLDE website, [nwgle.org](http://nwgle.org), will be accepted.

B. Owners and operators of ASTs may use automatic tank gauging as a method of release detection, every 30 days, if the automatic tank gauging system:

(1) tests for the loss of product and can detect a two-tenth gallon per hour leak rate from any portion of the tank that routinely contains regulated substances; and

**(2)** can conduct inventory control or another test of equivalent performance in accordance with all of the following:

**(a)** inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the AST are recorded each operating day;

**(b)** the equipment used is capable of measuring the level of regulated substance over the full range of the AST's height to the nearest one-eighth of an inch;

**(c)** the regulated substance inputs are reconciled with delivery receipts by measurement of the AST inventory volume before and after delivery;

**(d)** deliveries are made through a drop tube that extends to within one foot of the AST bottom, unless the AST is bottom loaded;

**(e)** regulated substance dispensing is metered and recorded within the state standards for meter calibration or an accuracy of six cubic inches for every five gallons of regulated substance withdrawn;

**(f)** the measurement of any water level in the bottom of the AST is made to the nearest one-eighth of an inch at least once a month; and

**(g)** practices described in the *American Petroleum Institute Publication RP1621, "Bulk Liquid Stock Control at Retail Outlets"* may be used, where applicable, as guidance in meeting the requirements of this section.

**C.** Owners and operators shall ensure a test of the proper operation of the automatic tank gauging system is performed at least annually starting three years after the effective date of these regulations and, at a minimum, as applicable to the facility, cover the following components and criteria:

**(1)** automatic tank gauge and other controllers: test alarm; verify system programming and configuration; test battery backup;

**(2)** probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;

**(3)** vacuum and pressure pumps and gauges: ensure proper communication with sensors and controller; and

**(4)** Inspections and testing shall be conducted by a person who is certified as a technician by the manufacturer of the automatic tank gauging system and meets the requirements for qualified testers in 20.5.105 NMAC.

D. Owners and operator shall use one of the following to comply with Paragraph C of this section:

(1) *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities";* or

(2) The manufacturer's testing or inspection instructions.

E. Owners and operators shall review the monitoring reports on a monthly basis and notify the department in accordance with 20.5.118 NMAC if there is a failed or inconclusive result.

F. Owners and operator shall produce a report for all inspections and testing required in this section which includes the results of the inspection or test and it shall be maintained and submitted in accordance with 20.5.111.1111 NMAC and 20.5.111.1112 NMAC.

[20.5.111.1104 NMAC - N, 07/24/2018]

**20.5.111.1105 REQUIREMENTS FOR AST UNDERGROUND PRESSURIZED PIPING INSTALLED PRIOR TO JULY 24, 2018:**

Owners and operators of above ground storage tank systems with underground pressurized piping installed prior to the effective date of these regulations must have implemented a method, or a combination of methods, of release detection for the piping. The monitoring method, or combination of methods, shall follow the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

A. Owners and operators of AST systems shall:

(1) use automatic line leak detectors (including mechanical or electronic detectors) that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping when a leak is detected at three gallons per hour at 10 pounds per square inch line pressure within one hour;

(2) perform an annual test of the operation of the leak detector which includes a simulated leak, is conducted in accordance with the manufacturer's testing protocol, and confirms the automatic line leak detector detects a leak at three gallons per hour at 10 pounds per square inch line pressure within one hour; and

and

(3) use a method, or combination of methods, for monitoring the piping for releases that complies with one of the following:

**(a)** a precision line tightness test is conducted every 12 months that is capable of detecting a leak of one-tenth gallons per hour at one and one-half times the operating pressure; or

**(b)** use interstitial monitoring that complies with all of the requirements in 20.5.111.1103 NMAC, 20.5.111.1106 NMAC, and all of the following:

**(i)** shall automatically shut off the submersible turbine pump for the AST if the sensors used for interstitial monitoring detect regulated substances or water within the interstice or in the containment sumps associated with the piping; and

**(ii)** all sensors shall be tested annually in accordance with Subsection C of 20.5.11.1104 NMAC;

**B.** Automatic line leak detectors and sensors required in this section that either fail a test or are found to be damaged shall be repaired or replaced, and a line tightness test shall be conducted in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of this section once the repairs or replacements have been completed;

**C.** Equipment and methods used to monitor the piping shall be appropriate for the type and length of piping.

**D.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

**(1)** *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

**(2)** *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling";*

**(3)** *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

**(4)** *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";* and

**(5)** *American Society of Mechanical Engineering Standard B31.3, "Process Piping".*

**E.** Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.111.1111 NMAC and provide to the department reports for all leak detector testing, line tightness testing, and sensor testing in accordance with 20.5.111.1112 NMAC.

[20.5.111.1105 NMAC - N, 07/24/2018]

**20.5.111.1106 REQUIREMENTS FOR AST UNDERGROUND PRESSURIZED PIPING INSTALLED OR MODIFIED ON, OR AFTER JULY 24, 2018:**

Owners and operators of above ground storage tank systems with underground pressurized piping installed or modified on, or after the effective date of these regulations shall use interstitial monitoring as the method of release detection for the piping. The interstitial monitoring method shall follow the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department.

**A. Owners and operators of AST systems shall:**

**(1)** use automatic line leak detectors (including mechanical or electronic detectors) that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping when a leak is detected at three gallons per hour at 10 pounds per square inch line pressure within one hour;

**(2)** perform an annual test of the operation of the leak detector which includes a simulated leak, is conducted in accordance with the manufacturer's testing protocol, and confirms the automatic line leak detector detects a leak at three gallons per hour at 10 pounds per square inch line pressure within one hour;

**(3)** use interstitial monitoring that complies with all of the requirements in 20.5.111.1103 NMAC and all of the following:

**(a)** Sensors shall be installed in all containment sumps associated with the piping, including under-dispenser containment, transition sumps, and submersible turbine pump containment sumps used to monitor the interstice;

**(b)** Sensors shall:

**(i)** monitor the interstice;

**(ii)** monitor all containment sumps associated with the piping;

**(iii)** sound an alarm and automatically shut off the submersible turbine pump when a regulated substance or water is detected;

**(iv)** be positioned in the lowest point of the containment sump; and

**(v)** be tested annually in accordance with Subsection C of 20.5.111.1104 NMAC;

**(c)** Containment sumps used for interstitial monitoring shall be tested every three years starting three years after the effective date of these regulations. The testing of the containment sumps shall comply with one of the following:

(i) the testing procedures as described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(ii) the equipment manufacturer's published testing procedures.

**B.** Automatic line leak detectors and sensors required in this section that either fail a test or are found to be damaged shall be repaired or replaced, and a line tightness test shall be conducted in accordance with Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.11.1105 NMAC once the repairs or replacements have been completed;

**C.** Equipment and methods used to monitor the piping shall be appropriate for the type and length of piping.

**D.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"*;

(2) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling"*;

(3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems"*;

(4) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems"*; and

(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping"*.

**E.** Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.111.1111 NMAC and provide to the department reports for all release detector testing, line tightness testing, containment sump testing, and sensor testing in accordance with 20.5.111.1112 NMAC.

[20.5.111.1106 NMAC - N, 07/24/2018]

**20.5.111.1107 REQUIREMENTS FOR AST UNDERGROUND SUCTION PIPING INSTALLED PRIOR TO JULY 24, 2018:**

**A.** Owners and operators of above ground storage tank systems where piping conveys regulated substances under suction and was installed prior to the effective date

of these regulations shall use one of the following methods. These methods shall be designed to detect a release from any portion of underground piping:

(1) An annual line tightness test shall be conducted and the tightness testing shall be capable of detecting a one-tenth gallon per hour leak at one and one-half times the operating pressure; or

(2) Interstitial monitoring shall be used in accordance with all of the requirements in 20.5.11.1103 NMAC and 20.5.11.1105 NMAC;

**B.** Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

(1) the below-grade piping operates at less than atmospheric pressure;

(2) the below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(3) only one check valve is included in each suction line;

(4) the check valve is located directly below and as close as practical to the suction pump; and

(5) compliance with Paragraphs (2) through (4) of Subsection B of this section is demonstrated.

**C.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling";*

(3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(4) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";* and

(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping".*

**D.** Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.111.1111 NMAC and provide to the department reports for all

release detector testing, line tightness testing, and sensor testing in accordance with 20.5.111.1112 NMAC.

[20.5.111.1107 NMAC - N, 07/24/2018]

**20.5.111.1108 REQUIREMENTS FOR AST UNDERGROUND SUCTION PIPING INSTALLED ON OR AFTER JULY 24, 2018:**

**A.** Owners and operators of above ground storage tank systems where piping conveys regulated substances under suction and was installed after the effective date of these regulations shall meet the requirements for interstitial monitoring in 20.5.111.1103 NMAC and the following:

(1) Sensors shall be installed in all containment sumps associated with the piping, including under-dispenser containment, transition sumps, and secondary containment sumps used to monitor the interstice.

(2) Sensors shall:

(a) monitor the interstice;

(b) monitor all containment sumps associated with the piping;

(c) sound an alarm and automatically shut off the pump when a regulated substance or water is detected;

(d) be positioned in the lowest point of the containment sump; and

(e) be tested annually in accordance with Subsection C of 20.5.111.1104 NMAC.

(3) Containment sumps used for interstitial monitoring shall be tested every three years beginning three years after the effective date of the regulations. The testing of the containment sumps shall comply with one of the following:

(a) the testing procedures as described in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; or

(b) the equipment manufacturer's published testing procedures.

**B.** Release detection is not required for suction piping that is designed and constructed to meet all of the following standards:

(1) the below-grade piping operates at less than atmospheric pressure;

(2) the below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(3) only one check valve is included in each suction line;

(4) the check valve is located directly below and as close as practical to the suction pump; and

(5) compliance with Paragraphs (2) through (4) of Subsection B of this section is demonstrated.

**C.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP 100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *Petroleum Equipment Institute RP 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling";*

(3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(4) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";* and

(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping".*

**D.** Owners and operators shall maintain all records of release detection and testing in accordance with 20.5.11.1111 NMAC and provide to the department reports for all release detector testing, line tightness testing, and sensor testing in accordance with 20.5.11.1112 NMAC.

[20.5.111.1108 NMAC - N, 07/24/2018]

#### **20.5.111.1109 REQUIREMENTS FOR AST ABOVE GROUND PIPING:**

**A.** Owners and operators of above ground storage tanks with above ground piping that conveys regulated substances either by suction or pressure shall monitor for releases every 30 days and may use visual inspection if all portions of the piping are completely visible, readily accessible, and not in contact with the ground or soil. Owners and operators shall keep a log of visual inspection of piping that meets the requirements of 20.5.111.1102 NMAC.

**B.** Owners and operators of above ground storage tank systems with above ground piping that conveys a regulated substance under pressure shall not be required to install automatic line leak detectors as long as the entire piping run is above ground and a solenoid valve has been installed on the piping at the submersible turbine pump. Also, a manually activated control shall be installed that will permit the submersible turbine pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing device and shall stop the submersible turbine pump when the dispensing nozzle is returned to the bracket.

**C.** For piping that does not meet these requirements, owners and operators shall use a method, or combination of methods, that meet the requirements in 20.5.111.1105 NMAC through 20.5.111.1108 NMAC depending on the piping type and when the piping was installed or modified.

**D.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP 100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *Petroleum Equipment Institute RP 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling";*

(3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(4) *American Petroleum Institute 570, "Piping Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";*

(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping";*

(6) *National Fire Protection Association Standard NFPA 110, "Standard for Emergency and Standby Power Systems";* and

(7) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*

[20.5.111.1109 NMAC - N, 07/24/2018]

#### **20.5.111.1110 ALTERNATE METHODS:**

**A.** If owners and operators want to install materials or methods of release detection equipment for tanks or piping required in 20.5.111 NMAC that are not in accordance with the current edition of an industry standard or code of practice developed by a

nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** Another type of release detection method, or combination of methods, may be used if approved pursuant to this section, and if, for ASTs, it can detect a two-tenth gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

**C.** The department may approve another method if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.111 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide equivalent protection of public health, safety and welfare and the environment as the methods provided in this section.

[20.5.111.1110 NMAC - N, 07/24/2018]

[The department provides an optional form that may be used to request approval of an alternate method. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

## **20.5.111.1111 RELEASE DETECTION RECORDKEEPING:**

**A.** All storage tank system owners and operators shall maintain records in accordance with 20.5.110 NMAC demonstrating compliance with all applicable requirements of 20.5.111 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to maintain the records required by this section; however, both parties are liable in the event of noncompliance.

**B.** Records to be maintained shall include, but not be limited to:

(1) all written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer;

(2) the results of any sampling, testing, or monitoring;

(3) written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site and any schedules of calibration and maintenance required by the release detection equipment manufacturer;

(4) the results of annual operational tests of release detection equipment. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria for the specified equipment or needs to have action taken, and describe any action taken to correct an issue.

[20.5.111.1111 NMAC - N, 07/24/2018]

## **20.5.111.1112 REPORTING:**

**A.** Owners and operators shall provide to the department all reports as required in 20.5.111 NMAC within 60 days of completion of the tests.

**B.** Owners and operators shall report any test or inspection results that are anything other than a "pass" or "normal" result to the department within 24 hours of completion of the test or inspection in accordance with 20.5.118.1801 NMAC.

**C.** Owners and operators shall ensure all reports required in 20.5.111 NMAC contain, at a minimum, the following:

(1) facility name and address;

(2) facility ID number;

(3) owner and operator name and address;

(4) owner ID number;

- (5)** date report was completed;
- (6)** date of the test;
- (7)** duration of the test;
- (8)** brand name and model number of equipment being tested or sufficient description to allow identification of the equipment;
- (9)** type of equipment being tested;
- (10)** type of test, including test procedures and methods;
- (11)** results of the test;
- (12)** name of the person who performed the inspection or test and their qualifications as specified in 20.5.105 NMAC;
- (13)** brand name and model number of the testing equipment used during the test and the date the testing equipment was last calibrated;
- (14)** for inspections and testing of automatic tank gauge systems as required in 20.5.111.1104 NMAC, a completed copy of the automatic tank gauge operation inspection form in *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*;
- (15)** for testing of automatic line leak detectors:
  - (a)** serial number of the leak detector;
  - (b)** description of storage tank system;
  - (c)** detected leak rate in gallons per hour;
  - (d)** line pressure and functional element holding pressure in pounds per square inch;
  - (e)** type, diameter and length of piping; and
  - (f)** test results, including the following:
    - (i)** whether flow is restricted by a mechanical line leak detector when a leak is detected;

(ii) whether the turbine shuts down, an alarm is triggered, or both, when a simulated leak is induced during the testing of an electronic line leak detector;

(16) for testing of sensors used for monitoring secondary containment and interstitial spaces:

(a) the information in the liquid sensor functionality testing form in the *Petroleum Equipment Institute Publication RP 1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"*; and

(b) information on whether each individual sensor used for interstitial monitoring meets automatic shutdown requirements in 20.5.111 NMAC; and

(17) for line tightness testing:

(a) leak rate;

(b) testing pressure;

(c) bleed back;

(d) piping type;

(e) piping diameter; and

(f) length of piping.

D. Owners and operators may use forms and checklist developed by the department, when available, to meet the reporting requirements in 20.5.111 NMAC.

[20.5.111.1112 NMAC - N, 07/24/2018]

[Provide reports as required in Subsection A of this section as directed at the petroleum storage tank bureau's pages on the department website. The forms or checklists referred to in Subsection E of this section, if available, may be found either on the department's website or by calling the Petroleum Storage Tank Bureau at 505-476-4397.]

## **PART 112: ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS**

### **20.5.112.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.112.1 NMAC - N, 07/24/2018]

**20.5.112.2 SCOPE:**

This part applies to owners and operators of above ground storage tank emergency generator systems as provided in 20.5.101 NMAC. If the owner and operator of an above ground storage tank emergency generator system are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.112.2 NMAC - N, 07/24/2018]

**20.5.112.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.112.3 NMAC - N, 07/24/2018]

**20.5.112.4 DURATION:**

Permanent.

[20.5.112.4 NMAC - N, 07/24/2018]

**20.5.112.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.112.5 NMAC - N, 07/24/2018]

**20.5.112.6 OBJECTIVE:**

The purpose of 20.5.112 NMAC is to ensure that above ground storage tank emergency generator systems are designed, constructed, installed, modified, repaired, operated, and maintained to minimize releases, to ensure that releases from storage tanks are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.112.6 NMAC - N, 07/24/2018]

**20.5.112.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.12.7 NMAC – N, 07/24/2018]

**20.5.112.8-20.5.112.1199 [RESERVED]**

**20.5.112.1200 GENERAL REQUIREMENTS:**

Owners and operators of above ground storage tank emergency generator systems shall meet the requirements in this part in addition to all of the applicable requirements in the rest of 20.5 NMAC.

[20.5.112.1200 NMAC - N, 07/24/2018]

**20.5.112.1201 DEADLINES FOR CLOSING OR UPGRADING ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS:**

Not later than July 1, 2013 owners and operators of AST emergency generator systems must have:

**A.** upgraded AST emergency generator systems to meet all performance standards for AST systems in 20.5.109 NMAC, with the exception that existing systems need not submit project drawings; or

**B.** permanently closed any AST emergency generator system that does not meet the performance standards in 20.5.109 NMAC in accordance with 20.5.115.1502 NMAC.

[20.5.112.1201 NMAC - N, 07/24/2018]

**20.5.112.1202 DESIGN, CONSTRUCTION, AND INSTALLATION OF NEW AND UPGRADED ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS:**

Owners and operators of above ground storage tank emergency generator systems shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.109 NMAC.

**A.** Owners and operators of ASTs used for emergency power generation where the loss of electrical power will not result in the loss of human life or serious injury may install motor fuel dispensers only if the dispensers are connected to the AST by a separate pump and piping system other than that which supplies a regulated substance to the emergency generator.

**B.** Owners and operator who install a normally closed solenoid valve in accordance with Subsection D of 20.5.109.902 NMAC on the supply piping so that a leak will not drain the system by siphon shall meet one of the following:

(1) solenoid valve shall operate from battery voltage and have manual (nonelectric) operation; or

(2) install a manual bypass valve.

C. Owners and operators of above ground storage tank emergency generator systems shall use national codes and standards in 20.5.109 NMAC. Owners and operators shall also use or more of the following to comply with the requirements of this part:

(1) *National Fire Protection Association Standard 110, "Standard for Emergency and Standby Power Systems"; and*

(2) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*

[20.5.112.1202 NMAC - N, 07/24/2018]

**20.5.112.1203 DESIGN, CONSTRUCTION, AND INSTALLATION OF NEW AND UPGRADED ABOVE GROUND SUB-BASE TANK EMERGENCY GENERATOR SYSTEMS:**

Owners and operators of above ground storage tanks that are installed underneath emergency generators, and are also known as belly tanks or sub-base generator tanks, shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.109 NMAC.

A. Owners and operators shall be required to meet the certified installer requirements in 20.5.105 NMAC for new sub-base ASTs.

B. Owners and operators shall not be required to meet installation requirements for above ground piping for any above ground piping that connects the sub-base AST to the emergency generator.

C. Owners and operators of sub-base AST systems shall comply with release detection requirements for tanks and piping in 20.5.111 NMAC no later than three years after the effective date of these regulations.

[20.5.112.1203 NMAC - N, 07/24/2018]

**20.5.112.1204 OPERATION AND MAINTENANCE REQUIREMENTS FOR ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS:**

Owners and operators of above ground storage tank emergency generator systems shall meet all of the requirements for operation and maintenance in 20.5.110 NMAC in addition to all of the applicable requirements in the rest of 20.5 NMAC.

[20.5.112.1204 NMAC - N, 07/24/2018]

**20.5.112.1205 RELEASE DETECTION REQUIREMENTS FOR ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS INSTALLED PRIOR TO JULY 24, 2018:**

Owners and operators of AST emergency generator systems installed prior to the effective date of these regulations shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.111 NMAC.

**A.** Owners and operators of AST emergency generator systems shall implement a method, or combination of methods, no later than three years after the effective date of these regulations that monitors above ground storage tanks every 30 days for releases.

**B.** Owners and operators of AST emergency generator systems shall provide a method, or combination of methods, of release detection for underground piping no later than three years after the effective date of these regulations. The method, or combination of methods, shall follow the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall comply with the requirements for release detection for underground piping as follows:

**(1)** Owners and operators of AST emergency generator systems with piping that conveys a regulated substance under pressure shall use automatic line leak detectors for emergency generators that alert the operator to the presence of a leak by activating a visual and audible alarm when a leak is detected and that comply with the requirements of 20.5.111.1105 NMAC, except:

**(a)** Automatic line leak detectors for emergency generators shall not be required to restrict or shut off the flow of regulated substances.

**(b)** Sensors used for interstitial monitoring shall not be required to automatically shut off the submersible turbine pump when a leak is detected in the interstice of the piping or in containment sumps. Sensors used for interstitial monitoring shall activate an external audible and visual alarm when liquid is detected.

**(2)** Owners and operators of ASTs with piping that conveys a regulated substance by suction shall comply with the requirements in 20.5.111.1107 NMAC, except the sensors used for interstitial monitoring shall not be required to restrict or shut off the flow of regulated substances. Sensors used for interstitial monitoring shall activate an audible and visual external alarm when a liquid is detected.

C. Owners and operators shall use one or more of the following to comply with the requirements of this section:

- (1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*
- (2) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling";*
- (3) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*
- (4) *American Petroleum Institute 570, "Pipe Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";*
- (5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping";*
- (6) *National Fire Protection Association Standard NFPA 110, "Standard for Emergency and Standby Power Systems";* and
- (7) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*

[20.5.112.1205 NMAC - N, 07/24/2018]

**20.5.112.1206 RELEASE DETECTION REQUIREMENTS FOR ABOVE GROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS INSTALLED OR MODIFIED ON, OR AFTER, JULY 24, 2018:**

Owners and operators of AST emergency generator systems installed on, or after, the effective date of these regulations shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.111 NMAC upon installation.

**A.** Owners and operators of AST emergency generator systems installed or modified on or after the effective date of these regulations must implement a method, or combination of methods, that monitors above ground storage tanks every 30 days for releases using an applicable method in 20.5.111 NMAC.

**B.** Owners and operators of AST emergency generator systems where the piping is installed or replaced on, or after, the effective date of these regulations, and the piping conveys a regulated substance under pressure shall use interstitial monitoring and automatic line leak detectors that alert the operator to the presence of a leak by activating an external audible and visual alarm when liquid is detected. Owners and

operators of AST emergency generator systems shall comply with the requirements of 20.5.111.1106 NMAC, except:

(1) automatic line leak detectors for AST emergency generator systems shall not be required to shut off the flow of regulated substances; and

(2) sensors used to meet the interstitial monitoring requirements for AST emergency generator systems shall not be required to automatically shut off the flow of product when liquid is detected in the interstice of the piping or in containment sumps. Sensors used for interstitial monitoring shall activate a secondary audible or visual alarm when liquid is detected.

C. Owners and operators of ASTs where the piping is installed or replaced on, or after, the effective date of these regulations and the piping conveys a regulated substance by suction shall comply with the requirements in 20.5.111.1108 NMAC, except the sensors used for interstitial monitoring shall activate an external audible and visual alarm when a leak is detected either in the interstice of the piping or in containment sumps. Sensors used to meet the interstitial monitoring requirements for AST emergency generator systems shall not be required to automatically shut off the flow of product when liquid is detected in the interstice of the piping or in containment sumps.

D. Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *Petroleum Equipment Institute RP200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling";*

(3) *American Petroleum Institute publication RP 1615, "Installation of Underground Petroleum Storage Systems";*

(4) *American Petroleum Institute 570, "Pipe Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";*

(5) *American Society of Mechanical Engineering Standard B31.3, "Process Piping".*

(6) *National Fire Protection Association Standard NFPA 110, "Standard for Emergency and Standby Power Systems"; and*

(7) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*

[20.5.112.1206 NMAC - N, 07/24/2018]

**20.5.112.1207 CERTIFIED INSTALLERS:**

Owners and operators of above ground storage tank emergency generator systems shall meet the requirements for certified installers in 20.5.105 NMAC in addition to all of the applicable requirements in the rest of 20.5 NMAC.

[20.5.112.1207 NMAC - N, 07/24/2018]

**20.5.112.1208 ALTERNATE METHODS:**

**A.** If owners and operators want to install AST emergency generator systems to meet the requirements in this part or want to install release detection equipment for tanks or piping installed prior to the effective date of these regulations with materials and methods that are not in accordance with the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** Another type of release detection method, or combination of methods, may be used if approved pursuant to this section for tanks and piping installed prior to the effective date of these regulations, and if, for ASTs, it can detect a 0.2 gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

**C.** The department may approve another release detection method for tanks and piping installed prior to the effective date of these regulations if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.111 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide protection of public health, safety and welfare and the environment equivalent to the protection provided by the methods in this part.

[20.5.112.1208 NMAC - N, 07/24/2018]

**20.5.112.1209 RECORDKEEPING:**

Owners and operators of AST emergency generator systems shall meet the requirements for recordkeeping in this part in addition to all of the applicable requirements in 20.5.110 NMAC and 20.5.111 NMAC.

[20.5.112.1209 NMAC - N, 07/24/2018]

**20.5.112.1210 REPORTING:**

Owners and operators of AST emergency generator systems shall meet the requirements for reporting in this part in addition to all of the applicable requirements in 20.5.110 NMAC and 20.5.111 NMAC.

[20.5.112.1210 NMAC - N, 07/24/2018]

**PART 113: UNDERGROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS**

**20.5.113.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.113.1 NMAC - N, 07/24/2018]

**20.5.113.2 SCOPE:**

This part applies to owners and operators of underground storage tank emergency generator systems as provided in 20.5.101 NMAC. If the owner and operator of an underground storage tank emergency generator system are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.113.2 NMAC - N, 07/24/2018]

**20.5.113.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.113.3 NMAC - N, 07/24/2018]

**20.5.113.4 DURATION:**

Permanent.

[20.5.113.4 NMAC - N, 07/24/2018]

**20.5.113.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.113.5 NMAC - N, 07/24/2018]

**20.5.113.6 OBJECTIVE:**

The purpose of 20.5.113 NMAC is to ensure that underground storage tank emergency generator systems are designed, constructed, installed, modified, repaired, operated, and maintained to minimize releases, to ensure that releases from storage tanks are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.113.6 NMAC - N, 07/24/2018]

**20.5.113.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.113.7 NMAC - N, 07/24/2018]

**20.5.113.8-20.5.113.1299 [RESERVED]**

**20.5.113.1300 GENERAL REQUIREMENTS:**

Owners and operators of underground storage tank emergency generator systems shall meet the requirements in this part in addition to all of the applicable requirements in the rest of 20.5 NMAC.

[20.5.113.1300 NMAC - N, 07/24/2018]

**20.5.113.1301 DEADLINES FOR CLOSING OR UPGRADING EXISTING UST EMERGENCY GENERATOR SYSTEMS:**

Not later than July 1, 2013, owners and operators of UST emergency generator systems installed prior to April 4, 2008, must have:

**A.** upgraded UST emergency generator systems to meet all performance standards for UST systems in this part and 20.5.106 NMAC; or

**B.** permanently closed any UST emergency generator system that does not meet the performance standards in this part and 20.5.106 NMAC in accordance with 20.5.115.1502 NMAC.

[20.5.113.1301 NMAC - N, 07/24/2018]

**20.5.113.1302 DESIGN, CONSTRUCTION, AND INSTALLATION OF NEW AND UPGRADED UNDERGROUND STORAGE TANK EMERGENCY GENERATOR SYSTEMS:**

Owners and operators of underground storage tank emergency generator systems shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.106 NMAC.

**A.** Owners and operators of USTs used for emergency power generation where the loss of electrical power will not result in the loss of human life or serious injury may install motor fuel dispensers only if the dispensers are connected to the UST by a separate pump and piping system other than that which supplies a regulated substance to the emergency generator;

**B.** Owners and operators who install a normally closed solenoid valve on the supply piping so that a leak will not drain the system by siphon shall meet one of the following:

**(1)** the solenoid valve shall operate from battery voltage and have manual (nonelectric) operation; or

**(2)** owners and operators shall install a manual bypass valve.

**C.** Owners and operators of underground storage tank emergency generator systems shall use national codes and standards as required in 20.5.106 NMAC. Owners

and operators shall also use one or more of the following to comply with the requirements of this part:

(1) *National Fire Protection Association Standard 110, "Standard for Emergency and Standby Power Systems"; and*

(2) *Petroleum Equipment Institute publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*

D. Owners and operators of UST emergency generator systems installed prior to April 4, 2008 must have either met the requirements for new UST systems in 20.5.106.606 NMAC or have upgraded the UST systems in accordance with the requirements in 20.5.106.607 NMAC.

E. Owners and operators of UST emergency generator systems installed on or after April 4, 2008 shall meet the secondary containment requirements in 20.5.106.606 NMAC at installation.

F. Owners and operators shall use one or more of the following to meet the requirements for this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(3) *American Petroleum Institute 570, "Pipe Inspection Code: In-Service Inspection, Rating, Repair, and Alteration of Piping Systems";*

(4) *American Society of Mechanical Engineers Standard B31.3, "Process Piping";*

(5) *National Fire Protection Association Standard 110, "Standard for Emergency and Standby Power Systems"; and*

(6) *Petroleum Equipment Institute Publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*

[20.5.113.1302 NMAC - N, 07/24/2018]

**20.5.113.1303 RELEASE DETECTION REQUIREMENTS FOR UST EMERGENCY GENERATOR SYSTEMS INSTALLED PRIOR TO JULY 24, 2018:**

Owners and operators of UST emergency generator systems installed prior to the effective date of these regulations shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.108 NMAC.

**A.** Owners and operators of UST emergency generator systems shall implement a method, or combination of methods, no later than three years after the effective date of these regulations that monitors underground storage tanks every 30 days for releases.

**B.** Owners and operators of UST emergency generator systems shall provide a method, or combination of methods, of release detection for underground piping no later than three years after the effective date of these regulations. The method, or combination of methods, shall follow the current edition of an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory approved in advance by the department. Owners and operators shall comply with the requirements for release detection for underground piping as follows:

**(1)** Owners and operators of UST emergency generator systems with piping that conveys a regulated substance under pressure shall use automatic line leak detectors for emergency generators that alert the operator to the presence of a leak by activating a visual and audible alarm when a leak is detected and that meet the requirements of 20.5.108.810 NMAC, except:

**(a)** Automatic line leak detectors for emergency generators shall not be required to restrict or shut off the flow of regulated substances.

**(b)** Sensors used to meet the interstitial monitoring requirements shall not be required to automatically shut off the submersible turbine pump when a liquid is detected in the interstice of the piping or in containment sumps. Sensors used for interstitial monitoring shall activate an external audible and visual alarm when liquid is detected.

**(2)** Owners and operators of UST emergency generator systems with piping that conveys a regulated substance by suction shall comply with the requirements in 20.5.108.812 NMAC, except sensors used for interstitial monitoring shall not be required to restrict or shut off the flow of regulated substances. Sensors used for interstitial monitoring shall activate an audible and visual external alarm when liquid is detected.

**C.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

**(1)** *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

**(2)** *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(3) *American Petroleum Institute 570, "Pipe Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";*

(4) *American Society of Mechanical Engineers Standard B31.3, "Process Piping";*

(5) *National Fire Protection Association Standard 110, "Standard for Emergency and Standby Power Systems";* and

(6) *Petroleum Equipment Institute publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*

[20.5.113.1303 NMAC - N, 07/24/2018]

**20.5.113.1304 RELEASE DETECTION REQUIREMENTS FOR UST EMERGENCY GENERATOR SYSTEMS INSTALLED OR MODIFIED ON, OR AFTER JULY 24, 2018:**

Owners and operators of UST emergency generator systems installed on or after the effective date of these regulations shall meet all of the requirements in this section in addition to all of the applicable requirements in 20.5.106 NMAC upon installation.

**A.** Owners and operators of UST emergency generator systems installed or modified on or after the effective date of these regulations shall use interstitial monitoring in accordance with 20.5.108.810 NMAC to meet the requirements for monthly monitoring.

**B.** Owners and operators of UST emergency generator systems where the piping is installed or replaced on or after the effective date of these regulations, and the piping conveys a regulated substance under pressure shall use interstitial monitoring and automatic line leak detectors that alert the operator to the presence of a leak by activating an external audible and visual alarm when liquid is detected. Owners and operators of UST emergency generator systems shall meet the requirements of 20.5.108.811 NMAC, except:

(1) Automatic line leak detectors for UST emergency generator systems shall not be required to restrict or shut off the flow of regulated substances; and

(2) Sensors used to meet the interstitial monitoring requirements for UST emergency generator systems shall not be required to automatically shut off the flow of product when liquid is detected in the interstice of the piping or in containment sumps. Sensors used for interstitial monitoring shall activate a secondary audible and visual alarm when liquid is detected.

**C.** Owners and operators of UST emergency generator systems where the piping is installed or replaced on or after the effective date of these regulations and the piping

conveys a regulated substance by suction shall comply with the requirements in 20.5.108.813 NMAC, except that the sensors used for interstitial monitoring shall activate an external audible and visual alarm when liquid is detected either in the interstice of the piping or in containment sumps. Sensors used to meet the interstitial monitoring requirements for UST emergency generator systems shall not be required to automatically shut off the flow of product when liquid is detected in the interstice of the piping or in containment sumps.

**D.** Owners and operators shall use one or more of the following to comply with the requirements of this section:

(1) *Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems";*

(2) *American Petroleum Institute Publication RP 1615, "Installation of Underground Hazardous Substances or Petroleum Storage Systems";*

(3) *American Petroleum Institute 570, "Pipe Inspection Code: In-Service Inspection, Repair, and Alteration of Piping Systems";*

(4) *American Society of Mechanical Engineers Standard B31.3, "Process Piping";*

(5) *National Fire Protection Association Standard 110, "Standard for Emergency and Standby Power Systems";* and

(6) *Petroleum Equipment Institute publication RP1400, "Recommended Practices for the Design and Installation of Fueling Systems for Emergency Generators, Stationary Diesel Engines, and Oil Burner Systems".*

[20.5.113.1304 NMAC - N, 07/24/2018]

#### **20.5.113.1305 CERTIFIED INSTALLERS:**

Owners and operators of underground storage tank emergency generator systems shall meet the requirements for certified installers in 20.5.105 NMAC in addition to all of the applicable requirements in the rest of 20.5 NMAC.

[20.5.113.1305 NMAC - N, 07/24/2018]

#### **20.5.113.1306 ALTERNATE METHODS:**

**A.** If owners and operators want to install UST emergency generator systems to meet requirements in this part or want to install release detection equipment for tanks or piping installed prior to the effective date of these regulations with materials or methods that are not in accordance with the current edition of an industry standard or code of

practice developed by a nationally recognized association or independent testing laboratory, owners and operators shall apply in writing to the department, shall provide supporting documentation, and shall not begin the installation unless and until the department approves the request in writing. At a minimum, the request for an alternate method shall contain the following:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county) and telephone number;
- (3) owner name, owner ID number, address and telephone number;
- (4) citation to regulation for which alternate method or material (such as type of piping) is requested;
- (5) brief description of the proposed alternate method or material;
- (6) justification of proposed alternate method or material, including citation to a standard or code supporting its use, if available; and
- (7) demonstration of its equivalent protection of public health, safety and welfare and the environment.

**B.** Another type of release detection method, or combination of methods, may be used if approved pursuant to this section for tanks or piping installed prior to the effective date of the regulations, and if, for USTs, the method can detect a two-tenth gallon per hour leak rate monthly or a release of 150 gallons within a month from a tank with a probability of detection of 0.95 and a probability of false alarm of 0.05.

**C.** The department may approve another release detection method for tanks or piping installed prior to the effective date of the regulations if owners and operators can demonstrate that the method can detect a release as effectively as any of the applicable methods allowed in 20.5.108 NMAC. In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the department on its use to ensure the protection of public health, safety and welfare and the environment. The department shall not grant the request unless owners and operators demonstrate that the request will provide protection of public health, safety and welfare and the environment equivalent to the protection provided by the methods in this part.

[20.5.113.1306 NMAC - N, 07/24/2018]

**20.5.113.1307      RECORDKEEPING:**

Owners and operators of underground storage tank emergency generator systems shall meet the requirements for recordkeeping in this part in addition to all of the applicable requirements in 20.5.107 NMAC and 20.5.108 NMAC.

[20.5.113.1307 NMAC - N, 07/24/2018]

**20.5.113.1308      REPORTING:**

Owners and operators of underground storage tank emergency generator systems shall meet the requirements for reporting in this part in addition to all of the applicable requirements in 20.5.107.715 NMAC and 20.5.108.816 NMAC.

[20.5.113.1308 NMAC - N, 07/24/2018]

**PART 114: AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS AND HYBRID STORAGE TANK SYSTEMS**

**20.5.114.1      ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.114.1 NMAC - N, 07/24/2018]

**20.5.114.2      SCOPE:**

This part applies to owners and operators of airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems as provided in 20.5.101 NMAC. If the owner and operator of an airport hydrant fuel distribution system, UST system with field-constructed tanks, or hybrid storage tank system are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.114.2 NMAC - N, 07/24/2018]

**20.5.114.3      STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.114.3 NMAC - N, 07/24/2018]

**20.5.114.4      DURATION:**

Permanent.

[20.5.114.4 NMAC - N, 07/24/2018]

**20.5.114.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.114.5 NMAC - N, 07/24/2018]

**20.5.114.6 OBJECTIVE:**

The purpose of 20.5.114 NMAC is to ensure that airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems are installed, modified, repaired, operated, and maintained to minimize releases from storage tank systems, to ensure that releases are detected early to minimize potential harmful resulting effects, and to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.114.6 NMAC - N, 07/24/2018]

**20.5.114.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.114.7 NMAC - N, 07/24/2018]

**20.5.114.8-20.5.114.1399 [RESERVED]**

**20.5.114.1400 GENERAL REQUIREMENTS FOR AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS:**

**A.** Owners and operators of airport hydrant fuel distribution systems, field-constructed tanks, and hybrid storage tank systems shall comply with the requirements of 20.5.114 NMAC in addition to all the applicable requirements in the rest of 20.5 NMAC.

**B.** Owners and operators of USTs that are part of an airport hydrant fuel distribution system shall comply with the registration requirements in 20.5.102 NMAC no later than three years after the effective date of the regulations.

**C.** Owners and operators of USTs with field-constructed tanks shall comply with the registration requirements in 20.5.102 NMAC no later than three years after the effective date of the regulations.

**D.** Owners and operators of ASTs and USTs that are part of hybrid storage tank systems shall comply with the registration requirements in 20.5.102 NMAC no later than three years after the effective date of the regulations.

**E.** Owners and operators of airport hydrant fuel distribution systems, field-constructed tanks, and hybrid storage tank systems shall comply with the following requirements on the effective date of the regulations:

- (1) release reporting requirements in 20.5.118 NMAC;
- (2) corrective action requirements in 20.5.119 through 20.5.123 NMAC;
- (3) closure requirements in 20.5.115 NMAC;
- (4) financial responsibility requirements in 20.5.117 NMAC; and
- (5) lender liability requirements in 20.5.124 NMAC.

**F.** Owners and operators of airport hydrant fuel distribution systems, field-constructed tanks, and hybrid storage tank systems shall have new storage tank systems and upgrades to existing storage tank systems designed and the construction overseen by a professional engineer with training and experience in these types of storage tank systems. The professional engineer shall prepare, sign, and stamp as-built drawings, and the owner and operator shall maintain records documenting compliance with this requirement in accordance with 20.5.107 NMAC and 20.5.110 NMAC.

(1) Owners and operators shall submit a set of plans to the department at least 60 days in advance of the start of construction.

(2) Owners and operators who install new or upgrade existing airport hydrant fuel distribution systems, field-constructed tanks, and hybrid storage tank systems shall hire a contractor who employs a person with at least two years of experience in the installation of these types of systems.

(3) Owners and operators may use the *Unified Facilities Criteria (UFC) 3-460-01, "Design: Petroleum Fuel Facilities"* when designing, constructing and installing these types of systems.

**G.** Owners and operators of hybrid storage tank systems shall do one of the following:

(1) submit to the department no later than one year after the effective date of these regulations:

(a) an approval from the New Mexico state fire marshal's office for the hybrid storage tank system;

(b) an approval from the New Mexico state fire marshal's office for an AST at a retail fueling facility that exceeds the size limit on ASTs for these facilities, as set forth in the international fire code; and

(c) documentation that the UST can withstand the head pressure from the AST anytime a transfer of regulated substance is made. The documentation must include an evaluation by a New Mexico professional engineer who has education and experience in petroleum storage tank systems; or

(2) disconnect the piping feeding the UST system from the AST and permanently close the AST system in accordance with the requirements in 20.5.114.1410 NMAC and 20.5.115 NMAC.

[20.5.114.1400 NMAC - N, 07/24/2018]

**20.5.114.1401 UPGRADE REQUIREMENTS FOR EXISTING AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS:**

No later than three years after the effective date of the regulations, all airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems installed prior to the effective date of these regulations shall comply with the following requirements:

**A.** Above ground storage tank systems. Tanks greater than 10 years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the department to adequately assess the tank for structural soundness and corrosion holes. AST systems or system components found to be structurally unsound or to have corrosion holes or damage shall be replaced in accordance with the requirements for a new AST system in 20.5.109 NMAC or permanently closed in accordance with 20.5.115 NMAC. AST systems shall be protected from corrosion in accordance with 20.5.109 NMAC and 20.5.110 NMAC and shall comply with spill and overfill prevention equipment requirements in accordance with 20.5.109 NMAC and 20.5.110 NMAC.

**B.** Underground storage tank systems. UST system components in contact with an electrolyte and that routinely contain regulated substances shall meet one of the following:

(1) be constructed of a non-corrodible material or steel clad with a non-corrodible material that meets the performance standards in 20.5.106.603 NMAC and 20.5.106.609 NMAC; or

**(2)** be constructed of metal and cathodically protected in accordance with the requirements in 20.5.106 NMAC, 20.5.107 NMAC, and in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and meet the following:

**(a)** Tanks greater than 10 years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the department to adequately assess the tank for structural soundness and corrosion holes.

**(b)** Existing steel tanks shall comply with the upgrade requirements in 20.5.106.607 NMAC.

#### **C. Piping.**

**(1)** Metal piping on an airport hydrant system or field-constructed UST system that is in contact with an electrolyte must be cathodically protected in accordance with requirements of 20.5.106 NMAC, 20.5.107 NMAC, and in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory.

**(2)** Metal underground piping or piping in contact with an electrolyte on a hybrid storage tank system shall be either secondarily contained or replaced with double walled non-corrodible piping with containment sumps at both ends.

**D. Spill and overfill prevention equipment.** Owners and operators shall comply with the spill and overfill prevention requirements as follows:

**(1)** AST systems with capacities of less than 55,000 gallons and greater than 1320 gallons and associated with airport hydrant systems or USTs with field-constructed tanks shall meet the requirements for spill and overfill prevention equipment in 20.5.109.910 NMAC;

**(2)** UST systems associated with airport hydrant systems or USTs with field-constructed tanks shall meet the requirements for spill and overfill prevention equipment in 20.5.106.613 NMAC.

#### **E. Hybrid storage tank systems.**

**(1)** Any UST receiving deliveries of regulated substance by a remote fill pipe connected to an above ground storage tank shall be equipped with a containment sump at the connection to the UST.

**(2)** Any remote fill piping shall be constructed of double walled piping and be interstitially monitored in accordance with 20.5.108.811 NMAC or 20.5.108.813 NMAC as applicable.

**(3)** Remote fill piping shall be equipped with a transition sump where the piping enters the ground from the AST.

**(4)** Any UST receiving deliveries of regulated substance by a remote fill pipe connected to an AST shall be equipped with redundant overfill prevention and pressure regulating devices to include the following:

**(a)** an overfill prevention device that shall activate an audible and visual alarm at eighty-five percent of the UST capacity;

**(b)** an overfill prevention device that shall automatically restrict fuel delivery without increasing pressure on the UST at ninety percent of the UST capacity;

**(c)** an overfill prevention device that shall automatically shut off the delivery at ninety-five percent of the UST capacity;

**(d)** devices that monitor and limit both the flow and pressure placed on the UST and the piping from the AST to the UST during the delivery of regulated substance such that the delivery pipe pressure shall not exceed normal operating pressure in accordance with the manufacturer's specification; and

**(e)** a tank venting system, which must be adequately sized to ensure that atmospheric pressure is continuously maintained, including during filling and emptying of tank.

**F.** Secondary containment. Owners and operators shall comply with the secondary containment requirements as follows:

**(1)** Tanks and piping for UST systems with field-constructed tanks replaced after the effective date of these regulations shall be secondarily contained upon installation for tanks with capacities of 50,000 gallons or less that are not part of an airport hydrant system.

**(2)** Secondary containment shall not be required for piping on UST systems with field-constructed tanks that are replaced after the effective date of these regulations where the tank capacity is greater than 50,000 gallons.

**(3)** Hydrant pits installed on existing airport hydrant systems after the effective date of these regulations shall be secondarily contained.

**G.** Owners and operators shall use one of the following codes of practice to comply with corrosion protection requirements in this section:

(1) NACE International Standard Practice SP 0285, "External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection";

(2) NACE International Standard Practice SP 0169, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems";

(3) National Leak Prevention Association Standard 631, Chapter C, "Internal Inspection of Steel Tanks for Retrofit of Cathodic Protection"; or

(4) American Society for Testing and Materials Standard G158, "Standard Guide for Three Methods of Assessing Buried Steel Tanks".

H. In addition to the industry codes of practice and standards listed in 20.5.106 NMAC and 20.5.109 NMAC owners and operators may use *Unified Facilities Criteria (UFC) 3-460-01, "Design: Petroleum Fuel Facilities"* to comply with these requirements.

[20.5.114.1401 NMAC - N, 07/24/2018]

**20.5.114.1402 ADDITIONAL REQUIREMENTS FOR HYBRID STORAGE TANK SYSTEMS:**

A. Owners and operators of hybrid storage tank systems shall, no later than one year after the effective date of these regulations, install redundant automatic shut off and manual override equipment on the piping transferring a regulated substance from the AST to the UST in order to prevent overfills.

B. Owners and operators of existing hybrid storage tank systems who replace the underground piping on or after the effective date of these regulations shall install double walled piping including but not limited to the underground remote fill piping. Containment sumps shall be installed at both ends of the underground piping. The new underground piping shall be interstitially monitored monthly in accordance with 20.5.108.811 NMAC or 20.5.8.813 NMAC as applicable upon installation.

[20.5.114.1402 NMAC - N, 07/24/2018]

**20.5.114.1403 NEW AIRPORT HYDRANT SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS:**

A. Owners and operators of airport hydrant systems and field-constructed USTs installed after the effective date of the regulations shall comply with all applicable parts of 20.5 NMAC upon installation.

B. Airport hydrant systems shall not be required to meet secondary containment requirements for piping.

C. UST systems with field-constructed tanks with a tank capacity greater than 50,000 gallons shall not be required to meet secondary containment requirements for piping.

D. Owners and operators shall not install hybrid storage tank systems after the effective date of these regulations.

[20.5.114.1403 NMAC - N, 07/24/2018]

**20.5.114.1404 OPERATION AND MAINTENANCE OF AIRPORT HYDRANT SYSTEMS, USTS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS:**

Owners and operators shall comply with the requirements in 20.5.107 NMAC and 20.5.110 NMAC no later than three years after the effective date of these regulations for existing systems and upon installation for new systems. In addition to the monthly inspection requirements in 20.5.107.707 NMAC, owners and operators must inspect the following additional areas for airport hydrant systems at least once every 30 days if confined space entry per the occupational safety and health administration (see 29 CFR part 1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection per 20.5.107.714 NMAC.

A. Hydrant pits--visually check for any damage; remove any liquid or debris; and check for any leaks, and

B. Hydrant piping vaults--check for any hydrant piping leaks.

[20.5.114.1404 NMAC - N, 07/24/2018]

**20.5.114.1405 OPERATOR TRAINING REQUIREMENTS FOR AIRPORT HYDRANT SYSTEMS, UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS, AND HYBRID STORAGE TANK SYSTEMS:**

Owners and operators shall comply with the requirements in 20.5.104 NMAC no later than three years after the effective date of these regulations for existing systems and upon installation for new systems.

[20.5.114.1405 NMAC - N, 07/24/2018]

**20.5.114.1406 DEADLINE FOR IMPLEMENTATION OF RELEASE DETECTION:**

Owners and operators of existing airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems shall meet release detection requirements described in this part no later than three years after the effective date of these regulations.

[20.5.114.1406 NMAC - N, 07/24/2018]

**20.5.114.1407 METHODS OF RELEASE DETECTION FOR UST SYSTEMS WITH FIELD-CONSTRUCTED TANKS:**

**A.** Owners and operators of field-constructed tanks with a capacity less than or equal to 50,000 gallons shall meet the release detection requirements in 20.5.108 NMAC.

**B.** Owners and operators of field-constructed tanks with a capacity greater than 50,000 gallons shall meet either the requirements in 20.5.108 NMAC (except 20.5.108.806 NMAC and 20.5.108.807 NMAC shall be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

**(1)** conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;

**(2)** use an automatic tank gauging system that can detect a leak rate less than or equal to one gallon per hour to perform release detection at least every 30 days. This method shall be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate that is performed at least every three years;

**(3)** use an automatic tank gauging system that can detect a leak rate less than or equal to two gallons per hour to perform release detection at least every 30 days. This method shall be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate that is performed at least every two years;

**(4)** perform vapor monitoring (conducted in accordance with 20.5.108.806 NMAC for a tracer compound placed in the storage tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

**(5)** perform inventory control (conducted in accordance with department of defense *Directive 4140.25-M; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual*; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

**(a)** perform a tank tightness test that can detect a 0.5 gallon per hour leak rate at least every two years; or

**(b)** perform vapor monitoring or groundwater monitoring (conducted in accordance with 20.5.108.806 NMAC and 20.5.108.807 NMAC, respectively, for the stored regulated substance) at least every 30 days.

[20.5.114.1407 NMAC - N, 07/24/2018]

**20.5.114.1408 METHODS OF RELEASE DETECTION FOR PIPING:**

**A.** Owners and operators of underground piping associated with USTs with field-constructed tanks less than or equal to 50,000 gallons shall meet the release detection requirements in 20.5.108 NMAC.

**B.** Owners and operators of underground piping associated with airport hydrant systems and USTs with field-constructed tanks greater than 50,000 gallons shall follow either the requirements in 20.5.108 NMAC (except 20.5.108.806 NMAC and 20.5.108.807 NMAC shall be combined with inventory control as stated below) or use one or a combination of the following alternative methods of release detection:

**(1)** Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below.

<b>Maximum Leak Detection Rate Per Test Section Volume</b>		
<b>Test Section Volume (Gallons)</b>	<b>Semiannual Test - Leak Detection Rate Not to Exceed (Gallons Per Hour)</b>	<b>Annual Test - Leak Detection Rate Not to Exceed (Gallons Per Hour)</b>
< 50,000	1.0	0.5
≥ 50,000 to < 75,000	1.5	0.75
≥ 75,000 to < 100,000	2.0	1.0
≥ 100,000	3.0	1.5

**(2)** Piping segment volumes greater than or equal to 100,000 gallons not capable of meeting the maximum 3.0 gallon per hour leak rate for the semiannual test shall test according to the following schedule:

**(a)** First test shall be conducted no later than three years after the effective date of these regulations and the leak rate the test shall be no greater than six gallons per hour.

**(b)** Second test shall be conducted no later than six years after the effective date of these regulations and the leak rate for the test shall be no greater than six gallons per hour.

**(c)** Third test shall be conducted no later than seven years after the effective date of these regulations and the leak rate for the test shall be three gallons per hour.

(d) Subsequent tests conducted after seven years from the effective date of these regulations shall be semiannual or annual and conducted in accordance with Subparagraph (1) of this section.

(3) Perform vapor monitoring (conducted in accordance with 20.5.108.806 NMAC for a tracer compound placed in the storage tank system) capable of detecting a 0.1 gallon per hour leak rate at least every two years;

(4) Perform inventory control (conducted in accordance with department of defense *Directive 4140.25-M; ATA Airport Fuel Facility Operations and Maintenance Guidance Manual*; or equivalent procedures) at least every 30 days that can detect a leak equal to or less than 0.5 percent of flow-through; and

(a) perform a line tightness test (conducted in accordance with Paragraph (1) of this section using the leak rates for the semiannual test) at least every two years; or

(b) perform vapor monitoring or groundwater monitoring (conducted in accordance with 20.5.108.806 NMAC and 20.5.108.807 NMAC, respectively, for the stored regulated substance) at least every 30 days; or

(5) Another method approved by the implementing agency if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in Paragraphs (1) through (4) of this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect as well as the frequency and reliability of detection.

**C.** Owners and operators of hybrid storage tank systems shall meet release detection requirements for the piping between the above ground tank and the underground tank as follows:

(1) existing above ground piping may be monthly monitored by use of visual inspection if the requirements in 20.5.111.1102 NMAC are met; or

(2) existing underground piping shall meet the requirements for release detection in 20.5.108 NMAC.

[20.5.114.1408 NMAC - N, 07/24/2018]

**20.5.114.1409 RELEASE REPORTING:**

Owners and operators shall report any suspected or confirmed releases to the department in accordance with the requirements in 20.5.118 NMAC.

[20.5.114.1409 NMAC - N, 07/24/2018]

**20.5.114.1410 CLOSURE REQUIREMENTS:**

Owners and operators of airport hydrant fuel distribution systems, UST systems with field-constructed tanks, and hybrid storage tank systems shall comply with closure requirements in 20.5.115 NMAC for temporary closure, return to service, and permanent closures.

**A.** Owners and operators of hybrid storage tank systems shall permanently close any above ground storage tanks in accordance with the requirements in 20.5.115.1502 NMAC within 12 months of placing them in temporary closure. Once owners and operators have placed the above ground storage tanks into temporary closure they can no longer return them to service.

**B.** Owners and operators shall use the *Unified Facilities Criteria (UFC) 3-460-01, "Design: Petroleum Fuel Facilities"* to comply with the requirements in this section.

[20.5.114.1410 NMAC - N, 07/24/2018]

**20.5.114.1411      APPLICABILITY OF CLOSURE REQUIREMENTS TO PREVIOUSLY CLOSED STORAGE TANK SYSTEMS:**

When directed by the department, the owner and operator of an UST system with field-constructed tanks, airport hydrant system, or hybrid storage tank system permanently closed before the effective date of these regulations must assess the excavation zone and close the storage tank system in accordance with 20.5.115 NMAC if releases from the storage tank system may, in the judgment of the department, pose a current or potential threat to human health and the environment.

[20.5.114.1411 NMAC - N, 07/24/2018]

**20.5.114.1412      ALTERNATE METHOD REQUEST:**

Owners and operators of airport hydrant fuel distribution systems and UST systems with field-constructed tanks shall comply with either 20.5.106.617 NMAC, 20.5.107.713 NMAC, 20.5.109.920 NMAC, and 20.5.110.1014 NMAC when submitting an alternate methods request.

[20.5.114.1412 NMAC - N, 07/24/2018]

**20.5.114.1413      RECORDKEEPING:**

Owners and operators shall maintain records, including release detection records, according to the recordkeeping requirements in 20.5.107.714 NMAC, 20.5.108.815 NMAC, 20.5.110.1015 NMAC and 20.5.111.1111 NMAC.

[20.5.114.1413 NMAC - N, 07/24/2018]

**20.5.114.1414      REPORTING:**

Owners and operators shall meet the reporting requirements in 20.5.107.715 NMAC, 20.5.108.816 NMAC, 20.5.110.1016 and 20.5.111.1112 NMAC.

[20.5.114.1414 NMAC - N, 07/24/2018]

## **PART 115: OUT-OF-SERVICE STORAGE TANK SYSTEMS AND CLOSURE**

### **20.5.115.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.115.1 NMAC - N, 07/24/2018]

### **20.5.115.2 SCOPE:**

This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance. Owners and operators of airport hydrant systems, field-constructed tanks, and hybrid storage tank systems shall follow the requirements for temporary closure and return to service requirements in 20.5.114 NMAC in addition to the requirements in this part.

[20.5.115.2 NMAC - N, 07/24/2018]

### **20.5.115.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-16 NMSA 1978.

[20.5.115.3 NMAC - N, 07/24/2018]

### **20.5.115.4 DURATION:**

Permanent.

[20.5.115.4 NMAC - N, 07/24/2018]

### **20.5.115.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.115.5 NMAC - N, 07/24/2018]

#### **20.5.115.6 OBJECTIVE:**

The purpose of 20.5.115 NMAC is to regulate storage tank systems to protect the public health, safety and welfare and the environment of the state, and to provide safe and effective closure requirements for out-of-service systems.

[20.5.115.6 NMAC - N, 07/24/2018]

#### **20.5.115.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.115.7 NMAC - N, 07/24/2018]

#### **20.5.115.8-20.5.115.1499 [RESERVED]**

#### **20.5.115.1500 REQUIRED NOTIFICATION PRIOR TO TEMPORARY OR PERMANENT CLOSURE, RETURN TO SERVICE, REMOVAL, OR CHANGE IN SERVICE:**

##### **A. Notice required.**

(1) At least 30 days before beginning either permanent closure, temporary closure, return to service, change in service, or removal of a tank pursuant to this part, or within another reasonable time period if approved in advance by the department, owners and operators shall notify the department in writing of their intent to remove, close or make the return to or change in service, unless such action is in response to corrective action.

(2) If owners and operators do not notify the department that a tank is out of service, the tank shall be considered to be in service for the purpose of these regulations.

(3) Additionally, owners and operators shall notify the department in writing at least 30 days prior to placing any regulated substance into a tank that has been in temporary or permanent closure, or before a return to service.

**B. Opportunity for inspector to be present.** To ensure that a department inspector has an opportunity to be present during the steps in procedures which are important to the prevention of releases, owners, operators, and certified tank installers shall give the department notice of the dates on which critical junctures in the removal, change in service, return to service and closure of the storage tank system are to take place. This notice shall be given at least 24 hours before any critical juncture begins, and shall be either oral or written. The inspector may require that critical junctures be performed from Monday through Friday during regular business hours.

**C.** Critical junctures. For removal, change in service, return to service, or storage tank system closure, the term "critical junctures" means:

- (1) completion of the excavation of a UST or piping;
- (2) cleaning and inerting of a tank;
- (3) the actual removal of a UST or its associated piping from the ground, or the filling of a UST in place;
- (4) actual permanent closure of an AST and its associated piping from any location where it has been in use; and
- (5) assessment of a tank site for releases.

**D.** At a minimum, the notice for removal, change in service, return to service or temporary or permanent closure of a storage tank system shall contain the following information:

- (1) date the form is completed;
- (2) facility name, facility ID number, address (with county), and telephone number;
- (3) owner name, owner ID number, and address, and telephone number;
- (4) description of type of change of status (change in service, return to service or closure);
- (5) expected date of change in service, return to service or closure; and
- (6) signature of owner, operator or an authorized representative.

**E.** In addition to the written notices described in this section, owners, operators and certified tank installers shall give oral notice at least 24 hours in advance of the commencement of the procedure. In the oral notice, owners, operators and certified tank installers shall describe any changes to the 30-day written notice required in Subsection D of this section, such as different equipment or removal methods.

**F.** If owners, operators and certified tank installers are separate persons, only one person is required to comply with the notice requirements of this section; however, all parties are liable in the event of noncompliance.

[The bureau provides an optional form that may be used. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the petroleum storage tank bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, NM 87505.]

**20.5.115.1501      TEMPORARY CLOSURE AND RETURN TO SERVICE:**

**A.** When a storage tank system is in temporary closure and the tank contains greater than one inch or 0.3 percent by weight of the total capacity of the storage tank system of a regulated substance, owners and operators shall:

- (1) continue to operate, maintain, and monitor corrosion protection systems in accordance with 20.5.107 NMAC and 20.5.110 NMAC;
- (2) continue to maintain financial responsibility in accordance with 20.5.117 NMAC;
- (3) continue to meet the requirements for operator training in 20.5.104 NMAC;
- (4) continue to meet operation and maintenance requirements for secondary containment, spill prevention equipment, overfill prevention equipment, and release detection, in accordance with 20.5.107 NMAC and 20.5.110 NMAC;
- (5) continue to meet release detection requirements in 20.5.108 NMAC and 20.5.111 NMAC;
- (6) continue to meet piping release detection requirements in 20.5.108 NMAC or 20.5.111 NMAC until the piping is purged of regulated substances and capped; and
- (7) continue to comply with 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC if a release is suspected or confirmed.

**B.** As long as a storage tank system is in temporary closure and the tank contains one inch or less or the storage tank system contains 0.3 percent by weight or less of the total capacity of the storage tank system of a regulated substance, owners and operators shall comply with Subsection A of this section except for the following:

- (1) release detection requirements in 20.5.108 NMAC and 20.5.111 NMAC;
- (2) periodic testing and inspection requirements for spill prevention, overfill prevention, release detection, and secondary containment in 20.5.107 NMAC and 20.5.110 NMAC;
- (3) periodic operation and maintenance walk-through inspections in 20.5.107.707 NMAC and 20.5.110.1008 NMAC; and

**(4)** If the storage tank system does not have steel components that are in contact with soil, water, or concrete, owners and operators are exempt from operator re-training requirements in 20.5.104 NMAC.

**C.** When a storage tank system is temporarily closed for three months or more, owners and operators shall also comply with all of the following requirements:

**(1)** leave vent lines open and functioning;

**(2)** cap and secure all other lines, pumps, manways, and ancillary equipment;  
and

**(3)** for AST systems, disconnect and cap all associated piping from the AST as soon as the tank is emptied in accordance with Subsection B of this section.

**D.** When a UST system is temporarily closed for more than 12 months, owners and operators shall permanently close the UST system if it does not meet either performance standards for new UST systems or the UST system upgrade requirements in 20.5.106 NMAC, except that the spill and overfill equipment requirements do not have to be met. Owners and operators shall permanently close any substandard storage tank systems at the end of this 12-month period in accordance with 20.5.115 NMAC, unless the department provides an extension of the 12-month temporary closure period. Owners and operators shall complete a site assessment in accordance with 20.5.115 NMAC and shall be current with all tank fees before applying for such an extension.

**E.** When an AST system is temporarily closed for more than 12 months, owners and operators shall permanently close the AST system if it does not meet the performance standards for new AST systems in 20.5.109 NMAC except that the spill and overfill equipment requirements do not have to be met. Owners and operators shall permanently close any substandard storage tank systems at the end of this 12-month period in accordance with 20.5.115 NMAC, unless the department provides an extension of the 12-month temporary closure period. Owners and operators shall complete a site assessment in accordance with 20.5.115 NMAC and shall be current with all tank fees before applying for such an extension.

**F.** When a storage tank system will be temporarily closed for more than 12 cumulative months, owners and operators must apply for an extension at least 30 days prior to the end of the twelfth cumulative month. In order to apply for an extension, owners and operators shall:

**(1)** empty the tank and purge the piping of regulated substances so that the tank contains one inch or less or the system contains three-tenths percent by weight or less of the total capacity of the storage tank system of a regulated substance;

**(2)** perform a site assessment in accordance with 20.5.115.1504 NMAC;

(3) pay all annual tank fees and all accrued late fees for all tanks they own or operate in accordance with 20.5.103 NMAC;

(4) meet financial responsibility requirements in 20.5.117 NMAC;

(5) apply in writing to the department and include records demonstrating completion of Paragraphs (1) through (4) of Subsection F of this section and include all of the information in Subsection D of 20.5.115.1500 NMAC.

**G.** When a field-erected AST system or field constructed UST system has been temporarily closed for three months or more and meets the performance standards for new storage tank systems in 20.5.106 NMAC, 20.5.109 NMAC, or 20.5.114 NMAC, prior to placing any regulated substance in the system, owners and operators shall:

(1) perform an internal inspection, integrity test, or tightness test on the tank in accordance with the requirements in 20.5.108 NMAC, 20.5.111 NMAC, or 20.5.114 NMAC;

(2) perform a tightness test on all piping in accordance with the requirements in 20.5.108 NMAC, 20.5.111 NMAC, or 20.5.114 NMAC; and

(3) perform functionality testing or inspections on leak detection equipment in accordance with the requirements for annual or periodic testing in 20.5.108 NMAC, 20.5.111 NMAC, or 20.5.114 NMAC.

**H.** After temporary or permanent closure and before returning any part of a storage tank system to service, owners and operators shall demonstrate the integrity of the entire storage tank system in a manner approved in advance by the department.

**I.** A delivery of a regulated substance into a tank in temporary closure shall be considered a return to service and all of the requirements for a tank in service shall be met.

**J.** Owners and operators of temporarily or permanently closed storage tank systems shall use one or more of the following as applicable to the type of storage tank system to meet the requirements in this section:

(1) *American Petroleum Institute Publication RP 1615, "Installation of Underground Petroleum Storage Systems";*

(2) *American Petroleum Institute Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction";*

(3) *American Petroleum Institute Publication RP 1110, "Recommended Practice for the Pressure Testing of Steel Pipelines for the Transportation of Gas, Petroleum Gas, Hazardous Liquids, Highly Volatile Liquid, or Carbon Dioxide";*

(4) *Petroleum Equipment Institute Recommended Practice RP 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor-Vehicle Fueling";*

(5) *Unified Facilities Criteria (UFC) 3-460-01, "Petroleum Fuel Facilities";* or

(6) *National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code".*

[20.5.115.1501 NMAC - N, 07/24/2018]

#### **20.5.115.1502 PERMANENT CLOSURE:**

**A.** To permanently close a tank, owners and operators shall empty and clean it by removing all liquids, accumulated sludges, and vapors. Owners and operators shall properly dispose of any liquids and sludge removed from a storage tank.

(1) Owners and operators shall either remove from the ground all USTs closed permanently, fill them with an inert solid material or close in place in a manner approved by the department.

(2) Owners and operators shall perform the following closure operations on AST systems:

(a) ASTs being closed in place shall be rendered vapor free; owners and operators shall make provisions for adequate ventilation to ensure that the AST remains vapor free;

(b) vent lines shall remain open and shall be maintained in accordance with the current edition of a standard or code of practice developed by a nationally recognized association or independent testing laboratory, or manufacturer's recommendations;

(c) all access openings shall be secured, normally with spacers, to assist ventilation;

(d) ASTs shall be secured against tampering and flooding;

(e) the name of the product last stored, the date of permanent closure and "PERMANENTLY CLOSED" shall be stenciled in a readily visible location on each AST;

(f) piping shall be removed or closed in place; if closed in place, piping shall be disconnected from ASTs, rendered vapor free, and filled with inert material, capped or blind flanged; owners and operators seeking to close piping in place shall propose a closure plan for the piping in writing to the department at least 30 days prior to closure; the department may approve the plan on a case-by-case basis, after considering the

extent and depth of piping, the proximity of the piping to buildings, the extent of pavement at the facility, and other factors raised by owners and operators; if the department does not approve a closure plan, owners and operators shall remove the piping; and

**(g)** owners and operators shall dismantle or remove AST systems and secondary containment to the extent needed to conduct the site assessment required in 20.5.115.1504 NMAC.

**(3)** For mobile AST systems, owners and operators shall perform all of the closure requirements in Paragraph (2) of this subsection, except they need not perform the requirements of Subparagraph (e) of Paragraph (2) of this subsection. Owners and operators shall remove or cap piping when permanently closing a mobile AST. Owners and operators shall perform a site assessment that complies with the requirements of 20.5.115.1504 NMAC before permanent closure of any permanently installed mobile tank is completed.

**B.** The current edition of the following cleaning and closure procedures shall be used to comply with this section as applicable:

**(1)** *American Petroleum Institute Publication RP 1604, "Closure of Underground Petroleum Storage Tanks";*

**(2)** *American Petroleum Institute Standard 2015, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks";*

**(3)** *American Petroleum Institute Publication RP 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";*

**(4)** *American Petroleum Institute Publication 2202, "Guidelines for Protecting Against Lead Hazards when Dismantling and Disposing of Steel from Tanks that have Contained Leaded Gasoline";*

**(5)** *American Petroleum Institute Publication RP 1631, "Interior Lining and Periodic Inspections of Underground Storage Tanks";* or

**(6)** *The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard: Working in Confined Space".*

**C.** Owners and operators shall perform an assessment meeting the requirements of 20.5.115.1504 NMAC after notifying the department but before completion of permanent closure.

**D.** Owners and operators that have installed any monitoring wells as release detection pursuant to 20.5.108 NMAC shall properly close the wells in a manner approved by the department as part of permanent closure activities.

[20.5.115.1502 NMAC - N, 07/24/2018]

**20.5.115.1503 CHANGES IN SERVICE:**

**A.** Continued use of a storage tank system to store a non-regulated substance is a change in service.

**B.** Owners and operators shall notify the department in compliance with 20.5.115.1500 NMAC of any change in service, and any change in location of AST systems that are operational and registered pursuant to 20.5.102 NMAC.

**C.** Before a change in service, owners and operators shall empty and clean the tank by removing all liquid and accumulated sludge, and shall properly dispose of any liquids and sludge removed from a storage tank. Owners and operators shall also conduct a site assessment meeting the requirements of 20.5.115.1504 NMAC. The current edition of the following cleaning and closure procedures shall be used as applicable to comply with the requirements of this section:

**(1)** *American Petroleum Institute Publication RP 1604, "Closure of Underground Petroleum Storage Tanks";*

**(2)** *American Petroleum Institute Standard 2015, "Requirements for Safe Entry and Cleaning of Petroleum Storage Tanks";*

**(3)** *American Petroleum Institute Publication RP 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks";*

**(4)** *American Petroleum Institute Publication 2202, "Guidelines for Protecting Against Lead Hazards when Dismantling and Disposing of Steel from Tanks that have Contained Leaded Gasoline";*

**(5)** *American Petroleum Institute Publication RP 1631, "Interior Lining and Periodic Inspections of Underground Storage Tanks";* or

**(6)** *The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard: Working in Confined Space".*

[20.5.115.1503 NMAC - N, 07/24/2018]

**20.5.115.1504 ASSESSING THE SITE AT CLOSURE OR CHANGE IN SERVICE:**

**A.** Before permanent closure or a change in service is completed, owners and operators shall measure for the presence of a release where contamination is most likely to be present at the storage tank site.

(1) In selecting sample types, sample locations, and measurement methods, the bureau shall consider the method of closure, the nature of the stored regulated substance, the type of backfill for any USTs, the depth to groundwater, and other factors appropriate for identifying the presence of a release. Examples of sample locations may include but are not limited to piping junctions, under dispensers and under storage tanks.

(2) A bureau inspector may waive the requirement for soil sampling when an AST is closed or may require alternate tests for the presence of a release, based on site specific conditions that demonstrate equivalent environmental protection. For example, at a site where an AST has been operated for less than 10 years with impervious secondary containment, the inspector may waive soil sampling as the secondary containment would have effectively prevented any release outside the containment. The bureau may require soil sampling or a site assessment at a later date if site-specific circumstances indicate that a release may have occurred.

(3) The requirements of this section are satisfied if one of the external release detection methods allowed in 20.5.108.806 NMAC and 20.5.108.807 NMAC is operating in accordance with the requirements in 20.5.108 NMAC at the time of closure, and indicates no release has occurred.

**B.** If contaminated soils, contaminated groundwater, non-aqueous phase liquid or vapor is discovered as a result of activities required by this section, or by any other manner, owners and operators shall notify the department in accordance with 20.5.118 NMAC and begin corrective action in accordance with 20.5.119 NMAC and 20.5.120 NMAC.

[20.5.115.1504 NMAC - N, 07/24/2018]

**20.5.115.1505      APPLICABILITY TO PREVIOUSLY CLOSED STORAGE TANK SYSTEMS:**

**A.** When directed by the department, owners and operators of UST systems permanently closed before December 22, 1988, shall assess the excavation zone and close the UST systems in accordance with this part if releases from the UST system may, in the judgment of the department, pose a current or potential threat to public health, safety and welfare and the environment.

**B.** When directed by the department, owners and operators of AST systems permanently closed before August 15, 2003, shall assess the entire AST system area and close the AST systems in accordance with this part if releases from the AST system may, in the judgment of the department, pose a current or potential threat to public health, safety and welfare and the environment.

[20.5.115.1505 NMAC - N, 07/24/2018]

## **20.5.115.1506 CLOSURE RECORDS:**

**A.** Owners and operators shall maintain records in accordance with 20.5.107 NMAC and 20.5.110 NMAC that demonstrate compliance with all closure requirements of this part.

**B.** Owners and operators shall ensure that the results of the assessment required in 20.5.115.1504 NMAC are maintained in accordance with 20.5.107.714 NMAC and 20.5.110.1015 NMAC after completion of permanent closure or change in service in one of the following ways:

- (1)** by the owners and operators who took the storage tank system out of service;
- (2)** by the current owners and operators of the storage tank system site; or
- (3)** by mailing these records to the department if they cannot be maintained at the closed facility.

[20.5.115.1506 NMAC - N, 07/24/2018]

## **PART 116: DELIVERY PROHIBITION**

### **20.5.116.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.116.1 NMAC - N, 07/24/2018]

### **20.5.116.2 SCOPE:**

This part applies to owners and operators of storage tanks and facilities holding petroleum and to product deliverers, as defined in 20.5.101 NMAC, who deliver petroleum, and to any person subject to the provisions of 20.5 NMAC.

[20.5.116.2 NMAC - N, 07/24/2018]

### **20.5.116.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Groundwater Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.116.3 NMAC - N, 07/24/2018]

**20.5.116.4 DURATION:**

Permanent.

[20.5.116.4 NMAC - N, 07/24/2018]

**20.5.116.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.116.5 NMAC - N, 07/24/2018]

**20.5.116.6 OBJECTIVE:**

The purpose of this part is to set forth the prohibitions for the delivery, deposit, or acceptance of product at or to a storage tank or a facility that has been determined by the department to be ineligible for such delivery, deposit or acceptance, in order to protect the public health, safety and welfare and the environment of the state.

[20.5.116.6 NMAC - N, 07/24/2018]

**20.5.116.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC shall apply to this part.

[20.5.116.7 NMAC - N, 07/24/2018]

**20.5.116.8-20.5.116.1599 [RESERVED]**

**20.5.116.1600 GENERAL:**

It shall be unlawful for any owner, operator or product deliverer to deliver to, deposit into or accept a regulated substance at or to a storage tank or a facility that has been identified by the department as ineligible for product delivery, deposit or acceptance. It shall also be unlawful for any person to remove, tamper with, destroy or damage a red tag or certificate posted pursuant to this part.

[20.5.116.1600 NMAC - N, 07/24/2018]

**20.5.116.1601 DELIVERY PROHIBITIONS:**

**A.** Mandatory ineligibility. The department shall classify a storage tank as ineligible for delivery, deposit or acceptance of product if any of the following conditions exist at the storage tank, or shall classify a facility as ineligible for delivery or acceptance of product if any of the following conditions exist at every storage tank at the facility:

- (1) required spill prevention equipment is not installed;
- (2) required overfill protection equipment is not installed;
- (3) required leak detection equipment is not installed; or
- (4) required corrosion protection equipment is not installed, including required corrosion protection equipment for a buried metal flexible connector.

**B. Discretionary ineligibility.** The department may, in its sole discretion, classify a storage tank as ineligible for delivery, deposit or acceptance of product if any of the following conditions exist at the storage tank, or may classify a facility as ineligible for delivery, deposit or acceptance of product if any of the following conditions exist at every storage tank at the facility:

- (1) improper operation or maintenance of required equipment for:
  - (a) spill prevention;
  - (b) overfill prevention;
  - (c) leak detection;
  - (d) corrosion protection; or
- (2) operation of the storage tank or facility in a manner that creates an imminent threat to public health and the environment.

[20.5.116.1601 NMAC - N, 07/24/2018]

**20.5.116.1602 PROCEDURES FOR CLASSIFYING A STORAGE TANK OR FACILITY AS INELIGIBLE:**

**A. Mandatory ineligibility. Notice of intent to red tag:** Upon identification of a condition or conditions at one or more storage tanks at a facility under Subsection A of 20.5.116.1601 NMAC, the department shall issue the owner and operator a notice of intent to red tag stating the violations and providing the owner or operator 30 days from the date of the notice to correct the violations. The notice of intent to red tag shall inform the owner and operator that the department will prohibit delivery to each storage tank with one or more conditions identified under 20.5.116.1601 NMAC at the facility if the violations are not corrected. The notice of intent to red tag shall state if the facility is in a rural and remote area as defined in 20.5.101.7 NMAC, and shall grant a deferral as provided in 20.5.116.1608 NMAC.

**B. Discretionary ineligibility.**

(1) Notice of violation. Upon identification of a condition or conditions at one or more storage tanks at a facility under Subsection B of 20.5.116.1601 NMAC, the department shall issue the owner and operator a notice of violation stating the violation and providing the owner or operator 30 days from the date of the notice to correct the violation. The notice of violation shall inform the owner and operator that the violation cited could subject the owner and operator to delivery prohibition at the identified tanks if the violations are not corrected.

(2) Notice of deficiency. If the owner or operator fails to correct the violations within the timeframe provided in the notice of violation, the department shall issue the owner or operator a notice of deficiency re-stating the violations and providing the owner or operator an additional 30 days from the date of the notice to correct the violations. The notice of deficiency shall inform the owner and operator that the violations cited could subject the owner and operator to delivery prohibition at the identified tanks if the violations are not corrected.

(3) Notice of intent to red tag. If the owner or operator fails to correct the violations within the timeframe provided in the notice of deficiency, the department shall issue the owner or operator a notice of intent to red tag re-stating the violations and providing the owner or operator an additional 30 days from the date of the notice to correct the violations. The notice of intent to red tag shall inform the owner and operator that the department will prohibit delivery to the identified tanks at the facility if the violations are not corrected. The notice of intent to red tag shall state if the facility is in a rural and remote area as defined in 20.5.101.7 NMAC, and shall grant a deferral as provided in 20.5.116.1608 NMAC.

**C.** Red tag placement and ineligibility for delivery. If the owner or operator fails to correct the violations within the timeframe provided in the notice of intent to red tag, the department shall affix a red tag to the fill pipe of every storage tank with one or more conditions identified under 20.5.116.1601 NMAC at the facility pursuant to 20.5.116.1603 NMAC.

**D.** Notification of installation, replacement, repair or modification. Owners and operators shall give the department notice of any installation, replacement, repair or modification performed to correct the conditions listed in the notice of violation, notice of deficiency or notice of intent to red tag in accordance with 20.5.106 NMAC, 20.5.107 NMAC, 20.5.109 NMAC, and 20.5.110 NMAC. The department may grant a waiver shortening the notification time periods required by those parts if warranted by the circumstances.

[20.5.116.1602 NMAC - N, 07/24/2018]

**20.5.116.1603 IDENTIFICATION OF INELIGIBLE STORAGE TANKS OR FACILITIES:**

**A. Red tag.** In order to prevent the delivery, deposit or acceptance of product at or to a storage tank or a facility that has been identified by the department as ineligible under 20.5.116.1601 NMAC and 20.5.116.1602 NMAC, the department shall affix a tamper-proof red tag to the fill pipe of every storage tank with one or more conditions identified under 20.5.116.1601 NMAC at the facility 48 hours after posting the name and address of the facility on the department's website list of facilities that are ineligible for delivery. The department shall document the level of stored product in each storage tank with one or more conditions identified under 20.5.116.1601 NMAC prior to affixing a red tag to the fill pipe(s) of the storage tank.

**B. Certificate.** In order to prevent the delivery, deposit or acceptance of product at or to a storage tank or a facility that has been classified by the department as ineligible under 20.5.116.1601 NMAC, the department shall post a certificate, conspicuously displayed at the facility, clearly prohibiting the delivery, deposit or acceptance of product at every storage tank at the facility to which the department has affixed a red tag.

**C. Red tag tampering prohibited.** It shall be unlawful for any person, other than an authorized representative of the department, to remove, tamper with, destroy or damage a red tag affixed to any storage tank or a certificate posted at a storage tank facility by department personnel.

**D. Performance standards.** Owners and operators shall continue to adhere to all performance standards of 20.5 NMAC after placement of one or more red tags and a certificate at a facility, including but not limited to leak detection, corrosion protection and monthly inspections.

[20.5.116.1603 NMAC - N, 07/24/2018]

#### **20.5.116.1604 REGULATED SUBSTANCE REMOVAL:**

Owners and operators shall empty all regulated substances from storage tanks that have been affixed with a red tag if the violations have not been corrected within 30 days of the placement of the red tag. This section shall not limit or supersede the application of 20.5.118 NMAC in the event of a suspected or confirmed release. If no suspected or confirmed release exists, owners and operators shall:

**A.** empty all regulated substances from each storage tank at the facility that has been affixed with a red tag in accordance with 20.5.115 NMAC, and shall provide written notice to the inspector who issued the red tag when each tank has been emptied, with the name, address, telephone number and email address of the person who removed the regulated substances from the tank; and

**B.** continue to meet all requirements for temporary closure in 20.5.115.1501 NMAC, including operation of cathodic protection and release detection equipment and payment of the annual fee, or shall permanently close the storage tank system in accordance with 20.5.115.1502 NMAC.

[20.5.116.1604 NMAC - N, 07/24/2018]

**20.5.116.1605 PERMANENT CLOSURE:**

Owners and operators shall permanently close a storage tank system that has been affixed with a red tag if the violations associated with the red tag have not been corrected within 12 months of the placement of the red tag. Permanent closure must meet the requirements in 20.5.115.1502 NMAC, including notification requirements.

[20.5.116.1605 NMAC - N, 07/24/2018]

**20.5.116.1606 RED TAG PLACEMENT AND NOTIFICATION PROCESSES FOR STORAGE TANK OWNERS AND OPERATORS AND PRODUCT DELIVERERS:**

**A.** Owners and operators. Notification of red tag placement, including a tank's status as being ineligible for deliveries, shall be provided to an owner or operator in the following manner:

**(1)** Owner or operator present. If the owner or operator is present on the site, the department shall provide to the owner or operator the notice of red tag placement and ineligibility for delivery.

**(2)** Owner and operator not present. If neither the owner nor operator is present on the site, the department shall immediately notify an employee in charge of the facility, if such employee is present, of red tag placement and ineligibility for delivery and shall send a copy of the written notice to the owner and operator within 24 hours of notifying the employee in charge of the facility or of affixing a red tag and certificate.

**B.** Product deliverers. The department shall notify all product deliverers 48 hours before the department affixes a red tag to the fill pipes of each storage tank with one or more conditions identified under 20.5.116.1601 NMAC by posting the name and address of the facility on the department's website list of facilities that contain storage tanks which are ineligible for delivery. Product deliverers shall be responsible for checking the website or contacting the department prior to any product delivery.

[20.5.116.1606 NMAC - N, 07/24/2018]

[The department provides a list of storage tank facilities containing storage tanks with delivery prohibitions. The list is available on the petroleum storage tank bureau's pages on the department website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.116.1607 RECLASSIFYING INELIGIBLE STORAGE TANKS OR FACILITIES AS ELIGIBLE TO RECEIVE PRODUCT:**

**A.** Statement of compliance from owner or operator. In order for an owner or operator of a storage tank or facility which has been determined by the department as ineligible under this rule to have the storage tank or facility reclassified by the department as eligible to receive delivery of product, the owner or operator shall provide a written statement of compliance to the department and the inspector listed in the notice that the conditions listed in the notice of intent to red tag have been corrected. The written statement shall contain the date, owner or operator's name, how the conditions have been corrected, by whom, and the date of correction.

**B.** Department confirmation. The department shall, in its sole discretion, determine whether the conditions listed in the notice of intent to red tag have been corrected as soon as practicable but within no more than three business days after receipt of the owner's written statement of compliance. If the conditions have not been corrected, the department shall notify the owner or operator in the manner prescribed by 20.5.116.1606 NMAC.

**C.** Removal of red tag and notice of ineligibility. Upon verification of compliance, department personnel shall:

(1) immediately remove each red tag and certificate at the facility, and document the level of product in each tank; and

(2) as soon as practicable, but in no event longer than three business days, remove the facility from the department's website list of facilities that contain storage tanks which are ineligible for delivery.

[20.5.116.1607 NMAC - N, 07/24/2018]

[The department provides an optional form for compliance with Subsection A. The form is available on the petroleum storage tank bureau's pages on the department's website or by contacting the Petroleum Storage Tank Bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.116.1608 DELIVERY PROHIBITION DEFERRAL IN RURAL AND REMOTE AREA AND FOR MATTERS OF NATIONAL SECURITY:**

The department shall defer classifying a storage tank or facility as ineligible for delivery, deposit or acceptance of product if such classification would jeopardize the availability of, or access to, motor fuel in a rural and remote area as defined in 20.5.101.7 NMAC, or where the United States department of defense operates a storage tank and notifies the department that continued operation of the tank is a matter of national security. The department may only defer application of delivery prohibition for up to 180 days from the date of the issuance of the notice of intent to red tag pursuant to Subsection A of 20.5.116.1602 NMAC or Paragraph (3) of Subsection B of 20.5.116.1602 NMAC.

[20.5.116.1608 NMAC - N, 07/24/2018]

**20.5.116.1609 DELIVERY AUTHORIZATION IN EMERGENCY SITUATIONS OR FOR TANK TESTING:**

**A.** Emergency situations. The department may authorize delivery or deposit of product to an emergency generator tank that is otherwise ineligible for delivery or deposit if the owner or operator can demonstrate to the satisfaction of the department that:

(1) a commercial power failure or other declared state of emergency exists;  
and

(2) the emergency generator tank:

(a) provides power supply;

(b) stores petroleum; and

(c) is used solely in connection with an emergency system, legally required standby system or optional standby system.

**B.** Tank testing. The department may authorize delivery or deposit of product to a storage tank that is otherwise ineligible for delivery or deposit if the owner or operator can demonstrate to the satisfaction of the department that delivery or deposit is necessary to test or calibrate a tank.

[20.5.116.1609 NMAC - N, 07/24/2018]

**20.5.116.1610 ADDITIONAL REQUIREMENTS:**

**A.** Storage tank equipment tampering prohibited. It shall be unlawful for any person, including product deliverers, to remove, tamper with, destroy, damage or disable storage tank equipment, including but not limited to release detection and other safety mechanisms, in the course of delivery of any product.

**B.** Compliance with rules. A product deliverer shall be responsible for ensuring that all deliveries are made in compliance with 20.5 NMAC.

[20.5.116.1610 NMAC - N, 07/24/2018]

**20.5.116.1611 ADMINISTRATIVE APPEALS:**

Any owner or operator of a facility that contains storage tanks to which the department has affixed a red tag prohibiting delivery pursuant to this part may appeal to the secretary by submitting a written request for hearing.

**A. Timelines.** The request must be made in writing to the secretary by the owner or operator within five business days after the notice of red tag placement has been issued or the decision of the department shall be final. If an appeal is received within the five-business day time limit, the secretary shall hold a hearing within seven business days after receipt of the request, unless the parties agree to an alternate timeframe. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail.

**B. Burden of proof.** In the appeal hearing, the burden of proof is on the person who requested the hearing.

**C. Procedures.**

**(1)** Appeal hearings shall be held at a place designated by the secretary, unless other mutually agreed upon arrangements are made. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

**(2)** The department shall make an audio recording of the hearing. If either party wants the hearing transcribed, that party shall bear the costs of transcription.

**(3)** In appeal hearings, the rules governing civil procedure and evidence in district court shall not apply. Hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary shall decide and announce if the hearing record will remain open, for how long, and for what reason it will be left open.

**D. Secretary's decision.** Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within seven business days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice.

**E. No stay of action.** The filing of an administrative appeal shall not stay any action, compliance or corrective action required by the red tag issued by the department.

**F. Judicial review.** Judicial review of the secretary's final order shall be as provided by law. The filing of a judicial appeal shall not stay any action, compliance or corrective action required by the secretary's decision.

## **PART 117: FINANCIAL RESPONSIBILITY**

### **20.5.117.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.117.1 NMAC - N, 07/24/2018]

### **20.5.117.2 SCOPE:**

This part applies to owners and operators of petroleum storage tanks as defined in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC. If the owner and operator are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

[20.5.117.2 NMAC - N, 07/24/2018]

### **20.5.117.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-15 NMSA 1978.

[20.5.117.3 NMAC - N, 07/24/2018]

### **20.5.117.4 DURATION:**

Permanent.

[20.5.117.4 NMAC - N, 07/24/2018]

### **20.5.117.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.117.5 NMAC - N, 07/24/2018]

### **20.5.117.6 OBJECTIVE:**

The purpose of this part is to require owners and operators of petroleum storage tanks systems to demonstrate financial responsibility for their systems and to protect the public health, safety and welfare and the environment of the state.

[20.5.117.6 NMAC - N, 07/24/2018]

**20.5.117.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.117.7 NMAC - N, 07/24/2018]

**20.5.117.8-20.5.17.1699 [RESERVED]**

**20.5.117.1700 APPLICABILITY:**

**A.** This part applies to owners and operators of all petroleum storage tank systems except as otherwise provided in this section.

**B.** Owners and operators of petroleum above ground storage tank systems are subject to these requirements in accordance with 20.5.117.1701 NMAC.

**C.** State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this part.

**D.** The requirements of this part do not apply to owners and operators of storage tank systems described in Subsection B or D of 20.5.101.2 NMAC.

**E.** If the owner and operator of a petroleum storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

[20.5.117.1700 NMAC - N, 07/24/2018]

**20.5.117.1701 PHASE-IN FOR ABOVE GROUND STORAGE TANKS:**

Owners and operators of above ground storage tanks shall comply with the requirements of 20.5.117 NMAC by July 1, 2007.

[20.5.117.1701 NMAC - N, 07/24/2018]

**20.5.117.1702 [RESERVED]**

**20.5.117.1703 AMOUNT AND SCOPE OF REQUIRED FINANCIAL RESPONSIBILITY:**

**A.** Owners and operators of petroleum storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum storage tanks in at least the following per-occurrence amounts:

(1) For owners or operators of petroleum storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year, \$1,000,000; and

(2) For all other owners or operators of petroleum storage tanks, \$500,000.

**B.** Owners and operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:

(1) for owners or operators of one to 100 petroleum underground storage tanks, \$1,000,000; and

(2) for owners or operators of 101 or more petroleum underground storage tanks, \$2,000,000.

**C.** Owners and operators of petroleum above ground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum above ground storage tanks in at least the following annual aggregate amounts:

(1) for owners or operators of one to 100 petroleum above ground storage tanks, \$1,000,000; and

(2) for owners or operators of 101 or more petroleum above ground storage tanks, \$2,000,000.

The annual aggregate on above ground storage tanks is separate from the annual aggregate on underground storage tanks, although an owner or operator of both above ground and underground storage tanks may include both types of tanks within the same annual aggregate if the aggregate is no less than the total of the annual aggregates required for each type of tank.

**D.** For the purposes of Subsections B, C and G of this section only, "a petroleum underground storage tank" or "a petroleum above ground storage tank" means a single containment unit and does not mean combinations of single containment units.

**E.** Except as provided in Subsection F of this section, if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:

- (1)** taking corrective action;
- (2)** compensating third parties for bodily injury and property damage caused by sudden accidental releases; or
- (3)** compensating third parties for bodily injury and property damage caused by non-sudden accidental releases, the amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in Subsections A, B and C of this section.

**F.** If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanism.

**G.** Owners and operators shall review the amount of aggregate assurance provided whenever additional petroleum storage tanks are acquired or installed. If the number of either petroleum underground storage tanks or petroleum above ground storage tanks for which assurance shall be provided exceeds 100, the owner or operator shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance for that particular type of tank (UST or AST) by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, owner and operators shall demonstrate financial responsibility in the amount of at least \$2,000,000 of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

**H.** The amounts of assurance required under this section exclude legal defense costs.

**I.** The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

[20.5.117.1703 NMAC - N, 07/24/2018]

**20.5.117.1704 ALLOWABLE MECHANISMS AND COMBINATIONS OF MECHANISMS:**

**A.** Subject to the limitations of Subsections B and C and the requirements of Subsection D of this section:

(1) an owner or operator may use any one or combination of the mechanisms listed in 20.5.117.1705 NMAC through 20.5.117.1713 NMAC to demonstrate financial responsibility under this part for one or more storage tanks; and

(2) a local government owner or operator may use any one or combination of the mechanisms listed in 20.5.117.1705 NMAC through 20.5.117.1717 NMAC to demonstrate financial responsibility under this part for one or more storage tanks.

**B.** An owner or operator may use a guarantee or surety bond under 20.5.117.1708 NMAC to establish financial responsibility only if the attorney general of the state has submitted a written statement to the department that a guarantee or surety bond executed as described in this section is a legally valid and enforceable obligation in this state. The department received this statement on July 24, 1988.

**C.** An owner or operator may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under this rule, the financial statements of the owner or operator are not consolidated with the financial statements of the guarantor.

**D.** An owner or operator who intend to use one mechanism or a combination of mechanisms for tanks in more than one state may use the federal forms found in 40 CFR Part 280. If an owner or operator uses the federal forms, the owner or operator shall attach the following addendum: It is hereby acknowledged and agreed that, with respect to the storage tanks located in New Mexico, any and all references to Subtitle I of the federal Resource Conservation and Recovery Act or to one or more of the regulations of the United States environmental protection agency promulgated under Subtitle I and included in 40 CFR Part 280 are deemed references to the New Mexico Hazardous Waste Act and the applicable provisions of 20.5 NMAC, the New Mexico petroleum storage tank regulations.

[20.5.117.1704 NMAC - N, 07/24/2018]

#### **20.5.117.1705 FINANCIAL TEST OF SELF INSURANCE:**

**A.** An owner or operator, or guarantor, may satisfy the requirements of 20.5.117.1703 NMAC by passing a financial test as specified in this section. To pass the financial test of self-insurance, the owner or operator, or guarantor, shall meet the criteria of Subsection B or C of this section based on year-end financial statements for the latest completed fiscal year.

**B.** Criteria for option one.

(1) The owner or operator, or guarantor, shall have a tangible net worth of at least 10 times:

**(a)** the total of the applicable aggregate amounts required by 20.5.117.1703 NMAC based on the number of storage tanks for which a financial test is used to demonstrate financial responsibility to the department under this section;

**(b)** the sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR 264.101, Sections 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and

**(c)** The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Sections 144.63 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.

**(2)** The owner or operator, or guarantor, shall have a tangible net worth of at least \$10,000,000.

**(3)** The owner or operator, or guarantor, shall have a letter signed by the chief financial officer worded as specified in 20.5.117.1755 NMAC.

**(4)** The owner or operator, or guarantor, shall either:

**(a)** file financial statements annually with the United States securities and exchange commission, the energy information administration, or the rural utilities service; or

**(b)** report annually the firm's tangible net worth to Dun and Bradstreet, and Dun and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A.

**(5)** The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

**C.** Criteria for option two.

**(1)** The owner or operator, or guarantor, shall meet the financial test requirements of 40 CFR Section 264.147(f)(1), substituting the appropriate amounts specified in Paragraphs (1) and (2) of Subsection B of 20.5.117.1703 NMAC for the "amount of liability coverage" each time specified in that section.

**(2)** The fiscal year-end financial statements of the owner or operator, or guarantor, shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

**(3)** The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

**(4)** The owner or operator, or guarantor, shall have a letter signed by the chief financial officer, worded as specified in 20.5.117.1755 NMAC.

**(5)** If the financial statements of the owner or operator, or guarantor, are not submitted annually to the United States securities and exchange commission, the energy information administration or the rural utilities service, the owner or operator, or guarantor, shall obtain a special report by an independent certified public accountant stating that:

**(a)** the accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator, or guarantor, with the amounts in such financial statements; and

**(b)** in connection with that comparison, no matters came to the accountant's attention which caused the accountant to believe that the specified data should be adjusted.

**D.** To demonstrate that it meets the financial test under Subsection B or C of this section, the chief financial officer of the owner or operator, or guarantor, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as shown in 20.5.117.1755 NMAC.

**E.** If owners or operators using the test to provide financial assurance finds that they no longer meet the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

**F.** The secretary may require reports of financial condition at any time from the owner or operator, or guarantor. If the secretary finds, on the basis of such reports or other information, that the owner or operator, or guarantor, no longer meets the financial test requirements of Subsections B or C and D of 20.5.117.1705 NMAC, the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

**G.** If owners or operators fail to obtain alternate assurance within 150 days of finding that they no longer meet the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the secretary that they no longer meet the requirements of the financial test, the owner or operator shall notify the secretary of such failure within 10 days.

[20.5.117.1705 NMAC - N, 07/24/2018]

**20.5.117.1706      GUARANTEE:**

**A.** An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

**(1)** a firm that:

**(a)** possesses a controlling interest in the owner or operator;

**(b)** possesses a controlling interest in a firm described under Subparagraph (a) of Paragraph (1) of Subsection A of this section; or

**(c)** is controlled through stock ownership by a common parent firm that possesses a controlling interest in the owner or operator; or

**(2)** a firm engaged in a substantial business relationship with the owner or operator and issuing the guarantee as an act incident to that business relationship.

**B.** Within 120 days of the close of each financial reporting year the guarantor shall demonstrate that it meets the financial test criteria of 20.5.117.1705 NMAC based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in 20.5.117.1755 NMAC and shall deliver the letter to the owner or operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. If the secretary notifies the guarantor that he no longer meets the requirements of the financial test of Subsection B or C of 20.5.117.1705 NMAC and 20.5.117.1755 NMAC, the guarantor shall notify the owner or operator within 10 days of receiving such notification from the secretary. In both cases, the guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternate coverage as specified in Subsection E of 20.5.117.1724 NMAC.

**C.** The guarantee shall be worded as specified in 20.5.117.1756 NMAC.

**D.** An owner or operator who uses a guarantee to satisfy the requirements of 20.5.117.1703 NMAC shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the secretary under 20.5.117.1722 NMAC. This standby trust fund shall meet the requirements specified in 20.5.117.1713 NMAC.

[20.5.117.1706 NMAC - N, 07/24/2018]

**20.5.117.1707 INSURANCE AND RISK RETENTION GROUP COVERAGE:**

**A.** An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or risk retention group. Such insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

**B.** Each insurance policy shall be amended by an endorsement worded as specified in Subsection A of 20.5.117.1757 NMAC or evidenced by a certificate of insurance worded as specified in Subsection B of 20.5.117.1757 NMAC, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

**C.** Each insurance policy shall be issued by an insurer or a risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states.

[20.5.117.1707 NMAC - N, 07/24/2018]

**20.5.117.1708 SURETY BOND:**

**A.** An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest *Circular 570* of the United States department of the treasury.

**B.** The surety bond shall be worded as specified in 20.5.117.1758 NMAC.

**C.** Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

**D.** The owner or operator who uses a surety bond to satisfy the requirements of 20.5.117.1703 NMAC shall establish a standby trust fund when the surety bond is acquired. Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the secretary under 20.5.117.1722 NMAC. This standby trust fund shall meet the requirements specified in 20.5.117.1713 NMAC.

[20.5.117.1708 NMAC - N, 07/24/2018]

**20.5.117.1709 LETTER OF CREDIT:**

**A.** An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of

credit in each state where used and whose letter-of-credit operations are regulated and examined by a federal or state agency.

**B.** The letter of credit shall be worded as specified in 20.5.117.1759 NMAC.

**C.** An owner or operator who uses a letter of credit to satisfy the requirements of 20.5.117.1703 NMAC shall also establish a standby trust fund when the letter of credit is acquired. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the secretary will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the secretary under 20.5.117.1722 NMAC. This standby trust fund shall meet the requirements specified in 20.5.117.1713 NMAC.

**D.** The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the owner or operator by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the owner or operator receives the notice, as evidenced by the return receipt.

[20.5.117.1709 NMAC - N, 07/24/2018]

**20.5.117.1710 USE OF STATE REQUIRED MECHANISM:**

**A.** An owner or operator may use a state-required financial mechanism to meet the requirements of 20.5.117.1703 NMAC if the secretary determines that the state mechanism is at least equivalent to the financial mechanisms specified in this part.

**B.** The secretary will evaluate the equivalency of a state-required mechanism principally in terms of: certainty of the availability of funds for taking corrective action or for compensating third parties; the amount of funds that will be made available; and the types of costs covered. The secretary may also consider other factors as is necessary.

**C.** The state, an owner or operator, or any other interested party may submit to the secretary a written petition requesting that one or more of the state-required mechanisms be considered acceptable for meeting the requirements of 20.5.117.1703 NMAC. The submission shall include copies of the appropriate state statutory and regulatory requirements and shall show the amount of funds for corrective action or for compensating third parties assured by the mechanism(s). The secretary may require the petitioner to submit additional information as is deemed necessary to make this determination.

**D.** Any petition under this section may be submitted on behalf of all of the state's petroleum underground storage tank owners and operators, petroleum above ground storage tank owners and operators, or both petroleum underground and above ground storage tank owners and operators.

**E.** The secretary will notify the petitioner of the determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this part. Pending this determination, the owners and operators using such mechanisms will be deemed to be in compliance with the requirements of 20.5.117.1703 NMAC for storage tanks located in the state for the amounts and types of costs covered by such mechanisms.

[20.5.117.1710 NMAC - N, 07/24/2018]

**20.5.117.1711 STATE FUND OR OTHER STATE ASSURANCE:**

**A.** An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC for storage tanks located in New Mexico if the state assures that monies will be available from a state fund or state assurance program to cover costs up to the limits specified in 20.5.117.1703 NMAC or otherwise assures that such costs will be paid if the secretary determines that the state's assurance is at least equivalent to the financial mechanisms specified in this part.

**B.** The secretary will evaluate the equivalency of a state fund or other state assurance principally in terms of: certainty of the availability of funds for taking corrective action; the amount of funds that will be made available; and the types of costs covered. The secretary may also consider other factors as is necessary.

**C.** The secretary shall consider a description of the state fund or other state assurance to be supplied as financial assurance, along with a list of the classes of storage tanks to which the funds may be applied. The secretary may also consider additional information as is deemed necessary to make a determination regarding the acceptability of the state fund or other state assurance. Pending the determination by the secretary, the owner or operator of a covered class of storage tanks will be deemed to be in compliance with the requirements of 20.5.117.1703 NMAC for the amounts and types of costs covered by the state fund or other state assurance.

**D.** Within 60 days after the secretary determines the state's fund or other assurance is acceptable in lieu of other financial mechanisms specified in 20.5.117 NMAC the secretary shall provide to each owner or operator for which it is assuming financial responsibility a letter or certificate describing the nature of the state's assumption of responsibility. The letter or certificate from the secretary shall include, or have attached to it, the following information: the facility's name and address and the amount of funds for corrective action or for compensating third parties that is assured by the state. The owner or operator shall maintain this letter or certificate on file as proof of financial responsibility in accordance with Paragraph (8) of Subsection B of 20.5.117.1721 NMAC.

[20.5.117.1711 NMAC - N, 07/24/2018]

**20.5.117.1712 TRUST FUND:**

**A.** An owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by establishing a trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

**B.** The wording of the trust agreement shall be identical to the wording specified in 20.5.117.1763 NMAC with the addition of the addendum required by Subsection D of 20.5.117.1704 NMAC, and shall be accompanied by a formal certification of acknowledgment as specified in Subsection B of 20.5.117.1763 NMAC.

**C.** The trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining required coverage.

**D.** If the value of the trust fund is greater than the required amount of coverage, the owner or operator may submit a written request to the secretary for release of the excess.

**E.** If other financial assurance as specified in this part is substituted for all or part of the trust fund, the owner or operator may submit a written request to the secretary for release of the excess.

**F.** Within 60 days after receiving a request from the owner or operator for release of funds as specified in Subsection D or E of this section, the secretary will instruct the trustee to release to the owner or operator such funds as the secretary specifies in writing.

[20.5.117.1712 NMAC - N, 07/24/2018]

### **20.5.117.1713      STANDBY TRUST FUND:**

**A.** An owner or operator using any one of the mechanisms authorized by 20.5.117.1706, 1708, or 1709 NMAC shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or an agency of the state in which the fund is established.

**B.** The standby trust agreement shall be worded as specified in 20.5.117.1763 NMAC.

**C.** The secretary will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the secretary determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

**D.** An owner or operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.

[20.5.117.1713 NMAC - N, 07/24/2018]

**20.5.117.1714 LOCAL GOVERNMENT BOND RATING TEST:**

**A.** A general purpose local government owner or operator or local government serving as a guarantor, or a local government owner or operator or guarantor which is not a general purpose local government but which has the legal authority to issue general obligation bonds, may satisfy the requirements of 20.5.117.1703 NMAC by having a currently outstanding issue or issues of general obligation bonds of \$1,000.000 or more, excluding refunded obligations, with a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB. Where a local government has multiple outstanding issues, or where a local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility. Bonds that are backed by credit enhancement other than municipal bond insurance may not be considered in determining the amount of applicable bonds outstanding.

**B.** A local government owner or operator or local government serving as a guarantor that is not a general-purpose local government and also does not have the legal authority to issue general obligation bonds may satisfy the requirements of 20.5.117.1703 NMAC by having both a currently outstanding issue or issues of revenue bonds of \$1,000.000 or more, excluding refunded issues, and a Moody's rating of Aaa, Aa, A, or Baa, or a Standard & Poor's rating of AAA, AA, A, or BBB as the lowest rating for any rated revenue bond issued by the local government. Where bonds are rated by both Moody's and Standard and Poor's, the lower rating for each bond shall be used to determine eligibility. Bonds that are backed by credit enhancement may not be considered in determining the amount of applicable bonds outstanding.

**C.** The local government owner or operator or guarantor shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

**D.** To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator or guarantor described in Subsection A of this section shall sign a letter worded exactly as specified in Subsection A of 20.5.117.1764 NMAC.

**E.** To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator or guarantor described in Subsection B of this section shall sign a letter worded exactly as specified in Subsection B of 20.5.117.1764 NMAC.

**F.** The secretary may require reports of financial condition at any time from the local government owner or operator, or local government guarantor. If the secretary finds, on

the basis of such reports or other information, that the local government owner or operator, or guarantor, no longer meets the local government bond rating test requirements of this section, the local government owner or operator shall obtain alternative coverage within 30 days after notification of such a finding.

**G.** If a local government owner or operator using the bond rating test to provide financial assurance finds that it no longer meets the bond rating test requirements, the local government owner or operator shall obtain alternative coverage within 150 days of the change in status.

**H.** If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the bond rating test or within 30 days of notification by the director of the implementing agency that it no longer meets the requirements of the bond rating test, the owner or operator must notify the director of such failure within 10 days.

[20.5.117.1714 NMAC - N, 07/24/2018]

#### **20.5.117.1715 LOCAL GOVERNMENT FINANCIAL TEST:**

**A.** A local government owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by passing the financial test specified in this section. To be eligible to use the financial test, the local government owner or operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges. To pass the local government financial test, the owner or operator shall meet the criteria of Paragraphs (2) and (3) of Subsection B of this section based on year-end financial statements for the latest completed fiscal year.

**B.** The criteria for local government financial test.

**(1)** The local government owner or operator shall have the following information available, as shown in the year-end financial statements for the latest completed fiscal year.

**(a)** Total revenues. "Total revenues" is the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, etc.), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity. For purposes of this test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers), liquidation of investments, and issuance of debt.

**(b) Total expenditures.** "Total expenditures" is the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

**(c) Local revenues.** "Local revenues" is total revenues as defined in Subparagraph (a) of Paragraph (1) of Subsection B of this section minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.

**(d) Debt service.** "Debt service" is the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. It includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest-bearing warrants. It excludes payments on non-interest-bearing short-term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

**(e) Total funds.** "Total funds" is the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. It includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

**(f) Population** is the number of people in the area served by the local government.

**(2)** The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation or revenue bonds that are rated as less than investment grade.

**(3)** The local government owner or operator shall have a letter signed by the chief financial officer worded as specified in Subsection C of this section and 20.5.117.1765 NMAC.

**C.** To demonstrate that it meets the financial test under Subsection B of this section, the chief financial officer of the local government owner or operator, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as specified in 20.5.117.1765 NMAC.

**D.** If a local government owner or operator using the test to provide financial assurance finds that it no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.

**E.** The secretary may require reports of financial condition at any time from the local government owner or operator. If the secretary finds, on the basis of such reports or other information, that the local government owner or operator no longer meets the financial test requirements of Subsections B and C of this section, the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.

**F.** If the local government owner or operator fails to obtain alternate assurance within 150 days of finding that it no longer meets the requirements of the financial test based on the year-end financial statements or within 30 days of notification by the secretary that it no longer meets the requirements of the financial test, the owner or operator shall notify the secretary of such failure within 10 days.

[20.5.117.1715 NMAC - N, 07/24/2018]

**20.5.117.1716 LOCAL GOVERNMENT GUARANTEE:**

**A.** A local government owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be either the state or a local government having a "substantial governmental relationship" with the owner and operator and issuing the guarantee as an act incident to that relationship. A local government acting as the guarantor shall do one of the following:

**(1)** demonstrate that it meets the bond rating test requirement of 20.5.117.1714 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.117.1764 NMAC to the local government owner or operator;

**(2)** demonstrate that it meets the worksheet test requirements of 20.5.117.1715 and 20.5.17.1765 NMAC and deliver a copy of the chief financial officer's letter as contained in 20.5.117.1765 NMAC to the local government owner or operator;  
or

**(3)** demonstrate that it meets the local government fund requirements of Subsection A, B or C of 20.5.117.1717 NMAC and deliver a copy of the chief financial

officer's letter as contained in 20.5.117.1767 NMAC to the local government owner or operator.

**B.** If the local government guarantor is unable to demonstrate financial assurance under any provision of 20.5.117.1714 or 20.5.117.1715 NMAC or Subsection A, B, or C of 20.5.117.1717 NMAC at the end of the financial reporting year, the guarantor shall send by certified mail, before cancellation or non-renewal of the guarantee, notice to the owner or operator. The guarantee will terminate no less than 120 days after the date the owner or operator receives the notification, as evidenced by the return receipt. The owner or operator shall obtain alternative coverage as specified in Subsection E of 20.5.117.1724 NMAC.

**C.** The guarantee agreement shall be worded as specified in Subsection A or B of 20.5.117.1766 NMAC, depending on which of the following alternative guarantee arrangements is selected.

**(1)** If, in the default or incapacity of the owner or operator, the guarantor guarantees to fund a standby trust as directed by the secretary, the guarantee shall be worded as specified in Subsection A of 20.5.117.1766 NMAC.

**(2)** If, in the default or incapacity of the owner or operator, the guarantor guarantees to make payments as directed by the secretary for taking corrective action or compensating third parties for bodily injury and property damage, the guarantee shall be worded as specified in Subsection B of 20.5.117.1766 NMAC.

**D.** If the guarantor is the state, the local government guarantee with standby trust shall be worded as specified in Paragraph (1) of Subsection A of 20.5.117.1766 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee with standby trust shall be worded as specified in Paragraph (2) of Subsection A of 20.5.117.1766 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

**E.** If the guarantor is the state, the local government guarantee without standby trust shall be worded as specified in Paragraph (1) of Subsection B of 20.5.117.1766 NMAC except that instructions in brackets are to be replaced with relevant information and the brackets deleted. If the guarantor is a local government, the local government guarantee without standby trust shall be worded as specified in Paragraph (2) of Subsection B of 20.5.117.1766 NMAC, except that instructions in brackets are to be replaced with relevant information and the brackets deleted.

[20.5.117.1716 NMAC - N, 07/24/2018]

**20.5.117.1717 LOCAL GOVERNMENT FUND:**

A local government owner or operator may satisfy the requirements of 20.5.117.1703 NMAC by establishing a dedicated fund account that conforms to the requirements of this section. Except as specified in Subsection B of this section, a dedicated fund may not be commingled with other funds or otherwise used in normal operations. A dedicated fund will be considered eligible if it meets the requirements in either Subsection A, B or C of this section.

**A.** The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both and is funded for the full amount of coverage required under 20.5.117.1703 NMAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage.

**B.** The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance, or order as a contingency fund for general emergencies, including taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both and is funded for five times the full amount of coverage required under 20.5.117.1703 NMAC, or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage. If the fund is funded for less than five times the amount of coverage required under 20.5.117.1703 NMAC, the amount of financial responsibility demonstrated by the fund may not exceed one-fifth the amount in the fund.

**C.** The fund is dedicated by state constitutional provision, or local government statute, charter, ordinance or order to pay for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks. A payment is made to the fund once every year for seven years until the fund is fully-funded. This seven-year period is hereafter referred to as the "pay-in-period." The amount of each payment shall be determined by this formula:  $(TF - CF)/Y$ , where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in-period, and

**(1)** the local government owner or operator has available bonding authority, approved through voter referendum (if such approval is necessary prior to the issuance of bonds), for an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund. This bonding authority shall be available for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks, petroleum above ground storage tanks, or both; or

(2) the local government owner or operator has a letter signed by the state attorney general stating that the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws. The letter shall also state that prior voter approval is not necessary before use of the bonding authority.

D. To demonstrate that it meets the requirements of the local government fund, the chief financial officer of the local government owner or operator or guarantor shall sign a letter worded exactly as specified in 20.5.117.1767 NMAC.

[20.5.117.1717 NMAC - N, 07/24/2018]

**20.5.117.1718 SUBSTITUTION OF FINANCIAL ASSURANCE MECHANISMS BY OWNER OR OPERATOR:**

A. Owners and operators may substitute any alternate financial assurance mechanisms as specified in this part, provided that at all times they maintain an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of 20.5.117.1703 NMAC.

B. After obtaining alternate financial assurance as specified in this part, an owner or operator may cancel a financial assurance mechanism by providing notice to the provider of financial assurance.

[20.5.117.1718 NMAC - N, 07/24/2018]

**20.5.117.1719 CANCELLATION OR NON-RENEWAL BY A PROVIDER OF FINANCIAL ASSURANCE:**

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the owner or operator.

(1) Termination of a local government guarantee, a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

(2) Termination of insurance or risk retention group coverage, except for non-payment or misrepresentation by the insured, or state-funded assurance may not occur until 60 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt. Termination for non-payment of premium or misrepresentation by the insured may not occur until a minimum of 10 days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.

**B.** If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 20.5.117.1724 NMAC, the owner or operator shall obtain alternate coverage as specified in this section within 60 days after receipt of the notice of termination. If the owner or operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the owner or operator shall notify the secretary of such failure and submit:

- (1) the name and address of the provider of financial assurance;
- (2) the effective date of termination; and
- (3) the evidence of the financial assurance mechanism subject to the termination maintained in accordance with Subsection B of 20.5.117.1721 NMAC.

[20.5.117.1719 NMAC - N, 07/24/2018]

**20.5.117.1720 REPORTING BY OWNER OR OPERATOR:**

**A.** Owners and operators shall submit the appropriate forms listed in Subsection B of 20.5.117.1721 NMAC documenting current evidence of financial responsibility to the secretary:

(1) within 30 days after the owner or operator identifies a release from a storage tank required to be reported under 20.5.102.204 NMAC or 20.5.118 NMAC;

(2) if the owner or operator fails to obtain alternate coverage as required by this part, within 30 days after the owner or operator receives notice of:

(a) commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a provider of financial assurance as a debtor,

(b) suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,

(c) failure of a guarantor to meet the requirements of the financial test, or

(d) other incapacity of a provider of financial assurance, except as provided

in Paragraph (3) of this subsection;

(3) if the owner or operator fails to obtain alternate coverage as required by this part, within 60 days after the owner or operator receives notice that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs; or

**(4)** as required by Subsection G of 20.5.117.1705 NMAC and Subsection B of 20.5.117.1719 NMAC.

**B.** Owners and operators shall certify compliance with the financial responsibility requirements of this part as specified in the new tank registration form when registering a new storage tank under 20.5.102.202 NMAC.

**C.** The secretary may require an owner or operator to submit evidence of financial assurance as described in Subsection B of 20.5.117.1721 NMAC or other information relevant to compliance with this part at any time.

[20.5.117.1720 NMAC - N, 07/24/2018]

**20.5.117.1721 RECORD KEEPING:**

**A.** Owners and operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this part for a storage tank until released from the requirements of this part under 20.5.117.1723 NMAC. An owner or operator shall maintain such evidence at the storage tank site or the owner's or operator's place of business. Records maintained off-site shall be made available upon request of the department.

**B.** Owners and operators shall maintain the following types of evidence of financial responsibility:

**(1)** An owner or operator using an assurance mechanism specified in 20.5.117.1705 NMAC through 20.5.117.1710 NMAC or 20.5.117.1712 NMAC or 20.5.117.1714 through 20.5.117.1717 NMAC shall maintain a copy of the instrument worded as specified in this part.

**(2)** An owner or operator using a financial test or guarantee, a local government financial test a local government guarantee supported by the local government financial test shall maintain a copy of the chief financial officer's letter based on year-end financial statements for the most recent completed financial reporting year. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

**(3)** An owner or operator using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

**(4)** A local government owner or operator using a local government guarantee under Subsection D of 20.5.117.1716 NMAC shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.

**(5)** A local government owner or operator using the local government bond rating test under 20.5.117.1714 NMAC shall maintain a copy of its bond rating published within the last 12 months by Moody's or Standard & Poor's.

**(6)** A local government owner or operator using the local government guarantee under 20.5.117.1716 NMAC, where the guarantor's demonstration of financial responsibility relies on the bond rating test under 20.5.117.1714 NMAC shall maintain a copy of the guarantor's bond rating published within the last 12 months by Moody's or Standard & Poor's.

**(7)** An owner or operator using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

**(8)** An owner or operator covered by a state fund or other state assurance shall maintain on file a copy of any evidence of coverage supplied by or required by the state under Subsection D of 20.5.117.1711 NMAC.

**(9)** An owner or operator using a local government fund under 20.5.117.1717 NMAC shall maintain the following documents:

**(a)** a copy of the state constitutional provision or local government statute charter, ordinance, or order dedicating the fund, and

**(b)** year-end financial statements for the most recent completed financial reporting year showing the amount in the fund. If the fund is established under Subsection A of 20.5.117.1717 NMAC using incremental funding backed by bonding authority, the financial statements shall show the previous year's balance the amount of funding during the year, and the closing balance in the fund.

**(c)** If the fund is established under Subsection A of 20.5.117.1717 NMAC using incremental funding backed by bonding authority, the owner or operator shall also maintain documentation of the required bonding authority, including either the results of a voter referendum under Paragraph (1) of Subsection C of 20.5.117.1717 NMAC or attestation by the state attorney general as specified under Paragraph (2) of Subsection C of 20.5.117.1717 NMAC.

**(10)** A local government owner or operator using the local government guarantee supported by the local government fund shall maintain a copy of the guarantor's year-end financial statements for the most recent completed financial reporting year showing the amount of the fund.

**(11)** Owners and operators using an assurance mechanism specified in 20.5.117.1705 through 20.5.117.1717 NMAC shall maintain an updated copy of a certification of financial responsibility worded as specified in 20.5.117.1771 NMAC. The

owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

[20.5.117.1721 NMAC - N, 07/24/2018]

**20.5.117.1722 DRAWING ON FINANCIAL ASSURANCE MECHANISMS:**

**A.** The secretary shall require the guarantor, surety, or institution issuing a letter of credit to place the amount of funds stipulated by the secretary, up to the limit of funds provided by the financial assurance mechanism, into the standby trust under certain conditions:

(1) The owner or operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or, as applicable, other financial assurance mechanism; and the secretary determines or suspects that a release from a storage tank covered by the mechanism has occurred and so notifies the owner or operator or the owner or operator has notified the secretary pursuant to 20.5.102 or 20.5.118 NMAC of a release from a storage tank covered by the mechanism; or

(2) The conditions of Paragraph (1) or Paragraph (2) of Subsection B of this section are satisfied.

**B.** The secretary may draw on a standby trust fund when:

(1) the secretary makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under 20.5.119 NMAC; or

(2) the secretary has received one of the following:

(a) certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid, worded as specified in 20.5.117.1772 NMAC; or

(b) a valid final court order establishing a judgment against the owner or operator for bodily injury or property damage caused by an accidental release from a storage tank covered by financial assurance under this part and the secretary determines that the owner or operator has not satisfied the judgment.

**C.** If the secretary determines that the amount of corrective action costs and third-party liability claims eligible for payment under Subsection B of this section may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to

protect human health and the environment. The secretary shall pay third-party liability claims in the order in which the secretary receives certifications under Subparagraph (a) of Paragraph (2) and valid court orders under Subparagraph (b) of Paragraph (2) of Subsection B of this section.

**D.** A governmental entity acting as guarantor under Subsection E of 20.5.117.1716 NMAC shall make payments as directed by the secretary under the circumstances described in Subsections A, B and C of this section.

[20.5.117.1722 NMAC - N, 07/24/2018]

**20.5.117.1723      RELEASE FROM THE REQUIREMENTS:**

An owner or operator is no longer required to maintain financial responsibility under this part for a storage tank after the tank has been permanently closed or undergoes a change in service or, if corrective action is required, after corrective action has been completed and the tank has been permanently closed or undergoes a change in service as required by 20.5.115 NMAC.

[20.5.117.1723 NMAC - N, 07/24/2018]

**20.5.117.1724      BANKRUPTCY OR OTHER INCAPACITY OF OWNER OR OPERATOR OR PROVIDER OF FINANCIAL ASSURANCE:**

**A.** Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming an owner or operator as debtor, the owner or operator shall notify the secretary by certified mail of such commencement and submit the appropriate forms listed in Subsection B of 20.5.117.1721 NMAC documenting current financial responsibility.

**B.** Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a guarantor providing financial assurance as debtor, such guarantor shall notify the owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in 20.5.117.1706 NMAC.

**C.** Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a local government owner or operator as debtor, the local government owner or operator shall notify the secretary by certified mail of such commencement and submit the appropriate forms listed in Subsection B of 20.5.117.1721 NMAC documenting current financial responsibility.

**D.** Within 10 days after commencement of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming a guarantor providing a local government financial assurance as debtor, such guarantor shall notify the local

government owner or operator by certified mail of such commencement as required under the terms of the guarantee specified in 20.5.117.1716 NMAC.

**E.** An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator shall obtain alternate financial assurance as specified in this part within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he shall notify the secretary.

**F.** Within 60 days after receipt of notification that a state fund or other state assurance has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator shall obtain alternate financial assurance.

[20.5.117.1724 NMAC - N, 07/24/2018]

**20.5.117.1725 REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS:**

**A.** If at any time after a standby trust is funded upon the instruction of the secretary with funds drawn from a guarantee, local government guarantee with standby trust, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner or operator shall by the anniversary date of the financial mechanism from which the funds were drawn:

(1) replenish the value of financial assurance to equal the full amount of coverage required; or

(2) acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

**B.** For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 20.5.117.1703 NMAC. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

[20.5.117.1725 NMAC - N, 07/24/2018]

**20.5.117.1726-20.5.117.1754 [RESERVED]**

**20.5.117.1755 FORM DOCUMENTS FOR FINANCIAL TEST OF SELF INSURANCE:**

To demonstrate that it meets the financial test under Subsection B or C of 20.5.117.1705 NMAC, the chief financial officer of the owner or operator, or guarantor, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

**LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of [insert: name and address of the owner or operator, or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," or "guarantee"] to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC. If this financial test is used to assure both underground and above ground storage tanks, identify each tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC.]

A [insert: "financial test," and/or "guarantee"] is also used by this [insert: "owner or operator," or aggregate arising from operating (an) underground storage tank(s) and at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this financial test by this [insert: "owner or operator," and/or "guarantor"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test or another financial test under 20.5.117 New Mexico Administrative Code (NMAC). If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each

"guarantor"] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

EPA Regulations	Amount
Closure (264.143 and 265.143)	\$_____
Post-Closure Care (264.145 and 265.145)	\$_____

Liability Coverage (264.147 and 265.147)	\$ _____
Corrective Action (264.101(b))	\$ _____
Plugging and Abandonment (144.63)	\$ _____
Closure	\$ _____
Post-Closure Care	\$ _____
Liability Coverage	\$ _____
Corrective Action	\$ _____
Plugging and Abandonment	\$ _____
Total	\$ _____

This [insert: "owner or operator," or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of Subsection B of 20.5.117.1705 NMAC are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of Subsection C of 20.5.117.1705 NMAC are being used to demonstrate compliance with the financial test requirements.]

Alternative I

1. Amount of annual aggregate coverage for storage tanks being assured by a financial test, and/or guarantee \$ \_\_\_\_\_
  
2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee \$ \_\_\_\_\_
  
3. Sum of lines 1 and 2 \$ \_\_\_\_\_
  
4. Total tangible assets \$ \_\_\_\_\_

5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \$\_\_\_\_\_

6. Tangible net worth [subtract line 5 from line 4] \$\_\_\_\_\_

Yes No

7. Is line 6 at least \$10,000,000? \_\_\_\_\_

8. Is line 6 at least 10 times line 3? \_\_\_\_\_

9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? \_\_\_\_\_

10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? \_\_\_\_\_

11. Have financial statements for the latest fiscal year been filed with the Rural Utilities Service? \_\_\_\_\_

12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] \_\_\_\_\_

Alternative II

1. Amount of annual aggregate coverage for storage tanks being assured by a financial test, and/or guarantee \$\_\_\_\_\_

2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee			\$_____
3. Sum of lines 1 and 2			\$_____
4. Total tangible assets			\$_____
5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]			\$_____
6. Tangible net worth [subtract line 5 from line 4]			\$_____
7. Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.]			\$_____
	Yes	No	
8. Is line 6 at least \$10,000,000?	_____	_____	
9. Is line 6 at least 6 times line 3?	_____	_____	
10. Are at least 90 percent of assets located in the U.S.? _____		_____	
[If "No," complete line 11.]			
11. Is line 7 at least 6 times line 3? _____			_____
[Fill in either lines 12-15 or lines 16-18:]			
12. Current assets			\$_____
13. Current liabilities			\$_____
14. Net working capital [subtract line 13 from line 12]			\$_____
	Yes	No	

15. Is line 14 at least 6 times line 3? \_\_\_\_\_  
\_\_\_\_\_

16. Current bond rating of most recent bond issue \_\_\_\_\_  
\_\_\_\_\_

17. Name of rating service  
\_\_\_\_\_

18. Date of maturity of bond  
\_\_\_\_\_

Yes No

19. Have financial statements for the latest fiscal year  
been filed with the SEC, the Energy Information  
Administration, or the Rural Utilities Service? \_\_\_\_\_ \_\_\_\_\_

[If "No," please attach a report from an independent certified  
public accountant certifying that there are no material  
differences between the data as reported in lines 4-18 above  
and the financial statements for the latest fiscal year.]

For both Alternative I and Alternative II complete the certification with this statement:

I hereby certify that the wording of this letter is identical to the wording  
specified in 20.5.117.1755 NMAC as such regulations were constituted on the date  
shown immediately below.

[Signature]

[Name]

[Title]

[Date]

[20.5.117.1755 NMAC - N, 07/24/2018]

**20.5.117.1756 FORM DOCUMENT FOR GUARANTEE:**

The guarantee shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

## **GUARANTEE**

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [name of state], herein referred to as guarantor, to the New Mexico Environment Department and to any and all third parties, and obligees, on behalf of [owner or operator] of [business address].

### Recitals

(1) Guarantor meets or exceeds the financial test criteria of Subsection B, C or D of 20.5.117.1705 New Mexico Administrative Code (NMAC) and agrees to comply with the requirements for guarantors as specified in Subsection B of 20.5.117.1706 NMAC.

(2) [Owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies 20.5.117.1703 NMAC requirements for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases" [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate and at least [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating the above-identified above ground storage tank(s).

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the owner or operator); "On behalf of our affiliate" (if guarantor is a related firm of the owner or operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner or operator)] [owner or operator], guarantor guarantees to the department and to any and all third parties that:

In the event that [owner or operator] fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the secretary has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the guarantor, upon instructions from the secretary of the Environment Department, shall fund a standby trust fund in accordance with the

provisions of 20.5.117.1713 NMAC, in an amount not to exceed the coverage limits specified above.

In the event that the secretary determines that [owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the guarantor upon written instructions from the secretary shall fund a standby trust in accordance with the provisions of 20.5.117.1713 NMAC in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "non-sudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the secretary, shall fund a standby trust in accordance with the provisions of 20.5.117.1713 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of Subsections B, C and D of 20.5.117.1705 NMAC, guarantor shall send within 120 days of such failure, by certified mail, notice to [owner or operator]. The guarantee will terminate 120 days from the date of receipt of the notice by [owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding the Bankruptcy Code, 11 U.S.C., naming guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC, the New Mexico Petroleum Storage Tank Regulations.

(7) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.119 NMAC for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by [the implementing agency], by any or all third parties, or by [owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in 20.5.117.1756 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[20.5.117.1756 NMAC - N, 07/24/2018]

**20.5.117.1757 FORM DOCUMENTS FOR INSURANCE AND RISK RETENTION GROUP COVERAGE:**

To use insurance to satisfy requirements of 20.5.117.1703 NMAC, as described in 20.5.117.1707 NMAC, each insurance policy shall be amended by an endorsement

worded as specified in Subsection A of this section or evidenced by a certificate of insurance worded as specified in Subsection B of this section, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

**A. Required wording for endorsement.**

**ENDORSEMENT**

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Endorsement

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following storage tanks:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.]

For [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental release"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage

applicable to each tank or location] arising from operating the storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with Subsections a through e of this Paragraph 2 are hereby amended to conform with Subsections a through e:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this endorsement is attached.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 20.5.117.1705 through 20.5.117.1712 NMAC and 20.5.117.1714 NMAC through 20.5.117.1717 NMAC.

c. Whenever requested by the Secretary of the Environment Department, ["Insurer" or "Group"] agrees to furnish to the Secretary a signed duplicate original of the policy and endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the

policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Paragraph (1) of Subsection A of 20.5.117.1757 NMAC and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

**B. Required wording for certificate of insurance.**

**CERTIFICATION**

Name: [name of each covered location]

Address: [address of each covered location]

Policy Number:

Endorsement (if applicable):

Period of Coverage: [current policy period]

Name of [Insurer or Risk Retention Group]:

Address of [Insurer or Risk Retention Group]:

Name of Insured:

Address of Insured:

Certification

1. [Name of Insurer or Risk Retention Group], [the "Insurer" or "Group"], as identified above, hereby certifies that it has issued liability insurance covering the following storage tank(s):

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as above ground or underground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.]

For [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the storage tank(s) identified above.

The limits of liability are [insert the dollar amount of the "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The ["Insurer" or "Group"] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the ["Insurer" or "Group"] of its obligations under the policy to which this certificate applies.

b. The ["Insurer" or "Group"] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the ["Insurer" or "Group"]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 20.5.117.1705 through 20.5.117.1712 NMAC and 20.5.117.1714 NMAC through 20.5.117.1717 NMAC.

c. Whenever requested by the Secretary of the Environment Department, the ["Insurer" or "Group"] agrees to furnish to the Secretary a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ["Insurer" or "Group"], except for non-payment of premium or misrepresentation by the insured,

will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 10 days after a copy of such written notice is received by the insured.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ["Insurer" or "Group"] within six months of the effective date of cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Subsection B of 20.5.117.1757 NMAC and that the ["Insurer" or "Group"] is ["licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states"].

[Signature of authorized representative of Insurer or Risk Retention Group]

[Type name of person signing]

[Title of person signing], Authorized Representative of [name of Insurer or Risk Retention Group]

[Address of Representative]

[20.5.117.1757 NMAC - N, 07/24/2018]

**20.5.117.1758 FORM DOCUMENT FOR SURETY BOND:**

To satisfy the requirements of 20.5.117.1708 NMAC, the surety bond shall be worded as follows, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted:

**PERFORMANCE BOND**

Date bond executed:

Period of coverage:

Principal: [legal name and business address of owner or operator]

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable):

Surety(ies): [name(s) and business address(es)]

Scope of Coverage: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC, and the name and address of the facility. List the coverage guaranteed by the bond: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases" "arising from operating the storage tank"].

Penal sums of bond:

Per occurrence                    \$\_\_\_\_\_

Annual aggregate                \$\_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the New Mexico Environment Department, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the federal Solid Waste Disposal Act, as amended, and the New Mexico Hazardous Waste Act, as amended, to provide financial assurance for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either

"sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the storage tanks identified above, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully ["take corrective action, in accordance with 20.5.119 NMAC and the instructions of the Secretary of the New Mexico Environment Department for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in 20.5.117 NMAC, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Secretary that the Principal has failed to ["take corrective action, in accordance with 20.5.119 NMAC and the Secretary's instructions," and/or "compensate injured third parties"] as guaranteed by this bond,

the Surety(ies) shall either perform ["corrective action in accordance with 20.5.119 NMAC and the Secretary's instructions," and/or "third-party liability compensation"] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Secretary under 20.5.117.1713 NMAC.

Upon notification by the Secretary that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Secretary has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Secretary under 20.5.117.1713 NMAC.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Thereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 20.5.117.1758 NMAC, as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

Corporate Surety(ies)

[Name and address]

State of Incorporation:

Liability limit: \$\_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$\_\_\_\_\_

[20.5.117.1758 NMAC - N, 07/24/2018]

**20.5.117.1759 FORM DOCUMENT FOR LETTER OF CREDIT:**

To satisfy the requirements of 20.5.117.1709 NMAC, the letter of credit shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

**IRREVOCABLE STANDBY LETTER OF CREDIT**

[Name and address of issuing institution]

[Name and address of the Secretary of the New Mexico Environment Department]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. in your favor, at the request and for the account of [owner or operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of:

(1) your sight draft, bearing reference to this letter of credit, No. \_\_\_\_\_, and

(2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the federal Solid Waste Disposal Act, as amended, and the New Mexico Hazardous Waste Act, as amended."

This letter of credit may be drawn on to cover [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate and the above ground storage tank(s) identified below in the amount of [in words] \$[insert dollar amount] per occurrence and [in words] \$[insert dollar amount] annual aggregate:

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground and above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or

agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify [owner or operator] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that [owner or operator] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by [owner or operator], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner or operator] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 20.5.117.1759 NMAC, as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

[20.5.117.1759 NMAC - N, 07/24/2018]

**20.5.117.1760-20.5.117.1762 [RESERVED]**

**20.5.117.1763 FORM DOCUMENTS FOR STANDBY TRUST FUND:**

To satisfy the requirements of 20.5.117.1712 NMAC, the standby trust agreement shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### **TRUST AGREEMENT**

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of state] [insert "corporation," "partnership,"

"association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of \_\_\_\_" or "a national bank"], the "Trustee."

Whereas, the New Mexico Environmental Improvement Board, "EIB," has established certain regulations applicable to the Grantor, requiring that an owner or operator of a storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from the operation of the storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the standby trust agreement.

[Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

#### Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

#### Section 2. Identification of the Financial Assurance Mechanism

This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement.)].

#### Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of [implementing agency]. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. [The Fund is established

initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Secretary of the New Mexico Environment Department's instructions are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Environment Department.

#### Section 4. Payment for ["Corrective Action" and/or "Third-Party Liability Claims"]

The Trustee shall make payments from the Fund as the Secretary shall direct, in writing, to provide for the payment of the costs of [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] arising from operating the tanks covered by the financial assurance mechanism identified in this Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of [insert owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of [insert owner or operator] arising from, and in the course of, employment by [insert owner or operator];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert owner or operator] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 New Mexico Administrative Code (NMAC).

The Trustee shall reimburse the Grantor, or other persons as specified by the Secretary, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Secretary shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Secretary specifies in

writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

#### Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

#### Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims, except that:

(a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;

(b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and

(c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

#### Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the

shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

#### Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

#### Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee,

the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

#### Section 10. Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

#### Section 11. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

#### Section 12. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in 20.5.117 NMAC.

#### Section 13. Instructions to the Trustee

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Secretary to the Trustee shall be in writing, signed by the Secretary, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Secretary hereunder has occurred. The Trustee shall have no duty to act in the

absence of such orders, requests, and instructions from the Grantor and/or the Secretary, except as provided for herein.

#### Section 14. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Secretary if the Grantor ceases to exist.

#### Section 15. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 14, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Secretary, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

#### Section 16. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Secretary issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

#### Section 17. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the state of New Mexico, or the Comptroller of the Currency in the case of National Association banks.

#### Section 18. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in

20.5.117.1763 NMAC and Paragraph (1) of Subsection B of 20.5.117.1713 NMAC as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

**B.** The standby trust agreement, or trust agreement, shall be accompanied by a formal certification of acknowledgment similar to the following:

State of

County of

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

[Name of Notary Public]

[20.5.117.1763 NMAC - N, 07/24/2018]

**20.5.117.1764 FORM DOCUMENTS FOR LOCAL GOVERNMENT BOND RATING TEST:**

**A.** To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator and/or guarantor described in Subsection A of 20.5.117.1714 NMAC shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

**LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue Date	Maturity Date	Outstanding Amount	Bond Rating	Rating Agency
------------	---------------	--------------------	-------------	---------------

[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding general obligation bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in Subsection A of 20.5.117.1764 New Mexico Administrative Code (NMAC) as such regulations were constituted on the date shown immediately below.

[Signature]

Name]

[Title]

[Date]

**B.** To demonstrate that it meets the local government bond rating test, the chief financial officer of a local government owner or operator and/or guarantor described in Subsection B of 20.5.117.1714 NMAC shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

### LETTER FROM CHIEF FINANCIAL OFFICER

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the bond rating test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s). This local government is not organized to provide general governmental services and does not have the legal authority under state law or constitutional provisions to issue general obligation debt.

Storage tanks at the following facilities are assured by this bond rating test: [List for each facility: the name and address of the facility where tanks are assured by the bond rating test].

The details of the issue date, maturity, outstanding amount, bond rating, and bond rating agency of all outstanding revenue bond issues that are being used by [name of local government owner or operator, or guarantor] to demonstrate financial responsibility are as follows: [complete table]

Issue	Maturity	Outstanding	Bond	Rating
Date	Date	Amount	Rating	Agency

[Moody's or Standard & Poor's]

The total outstanding obligation of [insert amount], excluding refunded bond issues, exceeds the minimum amount of \$1,000,000. All outstanding revenue bonds issued by this government that have been rated by Moody's or Standard & Poor's are rated as at least investment grade (Moody's Baa or Standard & Poor's BBB) based on the most recent ratings published within the last 12 months. The revenue bonds listed are not backed by third-party credit enhancement or are insured by a municipal bond insurance company. Neither rating service has provided notification within the last 12 months of downgrading of bond ratings below investment grade or of withdrawal of bond rating other than for repayment of outstanding bond issues.

I hereby certify that the wording of this letter is identical to the wording specified in Subsection B of 20.5.117.1764 New Mexico Administrative Code (NMAC) as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

Date]

[20.5.117.1764 NMAC - N, 07/24/2018]

**20.5.117.1765 FORM DOCUMENT FOR LOCAL GOVERNMENT FINANCIAL TEST:**

To demonstrate that it meets the financial test under Subsection B of 20.5.117.1714 NMAC, the chief financial officer of the local government owner or operator, shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

**LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the local government financial test to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) underground storage

tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this financial test [List for each facility: the name and address of the facility where tanks assured by this financial test are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC.]

This owner or operator has not received an adverse opinion, or a disclaimer of opinion from an independent auditor on its financial statements for the latest completed fiscal year. Any outstanding issues of general obligation or revenue bonds, if rated, have a Moody's rating of Aaa, Aa, A, or Baa or a Standard and Poor's rating of AAA, AA, A, or BBB; if rated by both firms, the bonds have a Moody's rating of Aaa, Aa, A, or Baa and a Standard and Poor's rating of AAA, AA, A, or BBB.

## **WORKSHEET FOR MUNICIPAL FINANCIAL TEST**

### **PART I: BASIC INFORMATION**

#### 1. Total Revenues

##### a. Revenues (dollars)

Value of revenues excludes liquidation of investments and issuance of debt. Value includes all general fund operating and non-operating revenues, as well as all revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but excluding revenues to funds held in a trust or agency capacity.

##### b. Subtract interfund transfers (dollars)

##### c. Total Revenues (dollars)

#### 2. Total Expenditures

##### a. Expenditures (dollars)

Value consists of the sum of general fund operating and non-operating expenditures including interest payments on debt, payments for retirement of debt

principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues.

b. Subtract interfund transfers (dollars)

c. Total Expenditures (dollars)

3. Local Revenues

a. Total Revenues (from 1c) (dollars)

b. Subtract total intergovernmental transfers (dollars)

c. Local Revenues (dollars)

4. Debt Service

a. Interest and fiscal charges (dollars)

b. Add debt retirement (dollars)

c. Total Debt Service (dollars)

5. Total Funds (dollars)

(Sum of amounts held as cash and investment securities from all funds, excluding amounts held for employee retirement funds, agency funds, and trust funds)

6. Population (persons)

PART II: APPLICATION OF TEST

7. Total Revenues to Population

a. Total Revenues (from 1c)

b. Population (from 6)

c. Divide 7a by 7b

d. Subtract 417

e. Divide by 5,212

f. Multiply by 4.095

8. Total Expenses to Population

a. Total Expenses (from 2c)

b. Population (from 6)

c. Divide 8a by 8b

d. Subtract 524

e. Divide by 5,401

f. Multiply by 4.095

9. Local Revenues to Total Revenues

a. Local Revenues (from 3c)

b. Total Revenues (from 1c)

c. Divide 9a by 9b

d. Subtract .695

e. Divide by .205

f. Multiply by 2.840

10. Debt Service to Population

a. Debt Service (from 4c)

b. Population (from 6)

c. Divide 10a by 10b

d. Subtract 51

e. Divide by 1,038

f. Multiply by -1.866

11. Debt Service to Total Revenues

- a. Debt Service (from 4c)
- b. Total Revenues (from 1c)
- c. Divide 11a by 11b
- d. Subtract .068
- e. Divide by .259
- f. Multiply by -3.533

12. Total Revenues to Total Expenses

- a. Total Revenues (from 1c)
- b. Total Expenses (from 2c)
- c. Divide 12a by 12b
- d. Subtract .910
- e. Divide by .899
- f. Multiply by 3.458

13. Funds Balance to Total Revenues

- a. Total Funds (from 5)
- b. Total Revenues (from 1c)
- c. Divide 13a by 13b
- d. Subtract .891
- e. Divide by 9.156
- f. Multiply by 3.270

14. Funds Balance to Total Expenses

- a. Total Funds (from 5)
- b. Total Expenses (from 2c)

c. Divide 14a by 14b

d. Subtract .866

e. Divide by 6.409

f. Multiply by 3.270

15. Total Funds to Population

a. Total Funds (from 5)

b. Population (from 6)

c. Divide 15a by 15b

d. Subtract 270

e. Divide by 4,548

f. Multiply by 1.866

16. Add  $7f + 8f + 9f + 10f + 11f + 12f + 13f + 14f + 15f + 4.937$

I hereby certify that the financial index shown on line 16 of the worksheet is greater than zero and that the wording of this letter is identical to the wording specified in 20.5.117.1765 NMAC, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]

[Date]

[20.5.117.1765 NMAC - N, 07/24/2018]

**20.5.117.1766 FORM DOCUMENTS FOR LOCAL GOVERNMENT  
GUARANTEE:**

**A.** Required form documents for guarantees with standby trusts.

**(1)** Local government guarantee with standby trust made by the state. The guarantee agreement shall be worded as follows:

## GUARANTEE

Guarantee made this [date] by the State of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

### Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies the requirements of 20.5.117 NMAC for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC; in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall fund a standby trust

fund in accordance with the provisions of 20.5.117.1722 NMAC, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "non-sudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Secretary, shall fund a standby trust in accordance with the provisions of 20.5.117.1722 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(7) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (1) of Subsection A of 20.5.117.1766 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

**(2)** Local government guarantee with standby trust made by a local government. The guarantee agreement shall be worded as follows:

### **GUARANTEE**

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 20.5.117.1714 New Mexico Administrative Code (NMAC), the local government financial test requirements of 20.5.117.1715

NMAC, or the local government fund under Subsection A, B or C of 20.5.117.1717 NMAC.]

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.117 NMAC for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC, in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall fund a standby trust fund in accordance with the provisions of 20.5.117.1722 NMAC, in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "non-sudden"] accidental releases arising from the operation

of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Secretary, shall fund a standby trust in accordance with the provisions of 20.5.117.1722 NMAC to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

(4) Guarantor agrees that, if at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in Paragraph (1), Guarantor shall send within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to the New Mexico Petroleum Storage Tank Regulations (20.5 NMAC).

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt.

(8) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (2) of Subsection A of 20.5.117.1766 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

**B. Required form documents for guarantees without standby trusts.**

**(1)** Local government guarantee without standby trust made by the state. The guarantee agreement shall be worded as follows:

**GUARANTEE**

Guarantee made this [date] by the State of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

Recitals

(1) Guarantor is a state.

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each

facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 New Mexico Administrative Code (NMAC). If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name and address of the facility.] This guarantee satisfies requirements of 20.5.117 NMAC for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon written instructions from the Secretary shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "non-sudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Secretary, shall make funds available to

compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(5) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5 NMAC.

(6) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(7) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(8) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator].

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (1) of Subsection B of 20.5.117.1766 NMAC, as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

(2) Local government guarantee without standby trust made by a local government. The guarantee agreement shall be worded as follows:

### **GUARANTEE**

Guarantee made this [date] by [name of guaranteeing entity], a local government organized under the laws of New Mexico, herein referred to as Guarantor, to the New Mexico Environment Department and to any and all third parties, and obliges, on behalf of [local government owner or operator].

#### Recitals

(1) Guarantor meets or exceeds [select one: the local government bond rating test requirements of 20.5.117.1714 New Mexico Administrative Code (NMAC), the local government financial test requirements of 20.5.117.1715 NMAC, the local government fund under of Subsections A, B and C of 20.5.117.1717 NMAC.]

(2) [Local government owner or operator] owns or operates the following storage tank(s) covered by this guarantee: [List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If this instrument is used to assure both underground and above ground storage tanks, identify each storage tank as underground or above ground and list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20.5.102.202 NMAC and the name

and address of the facility.] This guarantee satisfies requirements of 20.5.117 NMAC for assuring funding for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified underground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate and the above-identified above ground storage tank(s) in the amount of [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate.

(3) Incident to our substantial governmental relationship with [local government owner or operator], Guarantor guarantees to the New Mexico Environment Department (Department) and to any and all third parties and obliges that:

In the event that [local government owner or operator] fails to provide alternative coverage within 60 days after receipt of a notice of cancellation of this guarantee and the Secretary of the New Mexico Environment Department (Secretary) has determined or suspects that a release has occurred at a storage tank covered by this guarantee, the Guarantor, upon written instructions from the Secretary shall make funds available to pay for corrective actions and compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

In the event that the Secretary determines that [local government owner or operator] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20.5.119 NMAC, the Guarantor upon written instructions from the Secretary shall make funds available to pay for corrective actions in an amount not to exceed the coverage limits specified above.

If [owner or operator] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by ["sudden" and/or "non-sudden"] accidental releases arising from the operation of the above-identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the Guarantor, upon written instructions from the Secretary, shall make funds available to compensate third parties for bodily injury and property damage in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if at the end of any fiscal year before cancellation of this guarantee, the Guarantor fails to meet or exceed the requirements of the financial responsibility mechanism specified in Paragraph (1), Guarantor shall send

within 120 days of such failure, by certified mail, notice to [local government owner or operator], as evidenced by the return receipt.

(5) Guarantor agrees to notify [owner or operator] by certified mail of a voluntary or involuntary proceeding under the Bankruptcy Code, 11 U.S.C., naming Guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of [owner or operator] pursuant to 20.5.117 NMAC.

(7) Guarantor agrees to remain bound under this guarantee for so long as [local government owner or operator] shall comply with the applicable financial responsibility requirements of 20.5.117 NMAC for the above identified tank(s), except that Guarantor may cancel this guarantee by sending notice by certified mail to [owner or operator], such cancellation to become effective no earlier than 120 days after receipt of such notice by [owner or operator], as evidenced by the return receipt. If notified of a probable release, the Guarantor agrees to remain bound to the terms of this guarantee for all charges arising from the release, up to the coverage limits specified above, notwithstanding the cancellation of the guarantee with respect to future releases.

(8) The Guarantor's obligation does not apply to any of the following:

(a) Any obligation of [local government owner or operator] under a workers' compensation disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of [insert: local government owner or operator] arising from, and in the course of, employment by [insert: local government owner or operator];

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by [insert: local government owner or operator] that is not the direct result of a release from a petroleum storage tank;

(e) Bodily damage or property damage for which [insert: owner or operator] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20.5.117.1703 NMAC.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by [local government owner or operator],

I hereby certify that the wording of this guarantee is identical to the wording specified in Paragraph (2) of Subsection B of 20.5.117.1766 NMAC as such regulations were constituted on the effective date shown immediately below.

Effective date:

[Name of Guarantor]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[20.5.117.1766 NMAC - N, 07/24/2018]

**20.5.117.1767 FORM DOCUMENT FOR LOCAL GOVERNMENT FUND:**

To demonstrate that it meets the requirements of the local government fund, as specified in 20.5.117.1717 NMAC, the chief financial officer of the local government owner or operator and/or guarantor shall sign a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

**LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of [insert: name and address of local government owner or operator, or guarantor]. This letter is in support of the use of the local government fund mechanism to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by [insert: "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases"] in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating an underground storage tank(s) and at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating (an) above ground storage tank(s).

Storage tanks at the following facilities are assured by this local government fund mechanism: [List for each facility: the name and address of the facility where tanks are assured by the local government fund].

[Insert: "The local government fund is funded for the full amount of coverage required under 20.5.117.1703 New Mexico Administrative Code (NMAC) or funded for part of the required amount of coverage and used in combination with other mechanism(s) that provide the remaining coverage." or "The local government fund is funded for five times the full amount of coverage required under 20.5.117.1703 New Mexico Administrative Code (NMAC) or funded for part of the required amount of coverage and used in combination with other mechanisms(s) that provide the remaining coverage," or "A payment is made to the fund once every year for seven years until the fund is fully-funded and [name of local government owner or operator] has available bonding authority, approved through voter referendum, of an amount equal to the difference between the required amount of coverage and the amount held in the dedicated fund" or "A payment is made to the fund once every year for seven years until the fund is fully-funded and I have attached a letter signed by the State Attorney General stating that (1) the use of the bonding authority will not increase the local government's debt beyond the legal debt ceilings established by the relevant state laws and (2) that prior voter approval is not necessary before use of the bonding authority"].

The details of the local government fund are as follows:

Amount in Fund (market value of fund of close of last fiscal year):

---

[If fund balance is incrementally funded as specified in Subsection C of 20.5.117.1717 NMAC, insert:

Amount added to fund in the most recently completed fiscal year:

Number of years remaining in the pay-in period:

A copy of the state constitutional provision, or local government statute, charter, ordinance or order dedicating the fund is attached.

I hereby certify that the wording of this letter is identical to the wording specified in 20.5.117.1767 NMAC, as such regulations were constituted on the date shown immediately below.

[Signature]

[Name]

[Title]
[Date]

[20.5.117.1767 NMAC - N, 07/24/2018]

**20.5.117.1768-20.5.117.1770 [RESERVED]**

**20.5.117.1771 FORM DOCUMENT FOR RECORD KEEPING:**

**A.** An owner or operator using an assurance mechanism specified in 20.5.117.1705 through 20.5.117.1717 NMAC shall maintain an updated copy of a certification of financial responsibility worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

<b>CERTIFICATION OF FINANCIAL RESPONSIBILITY</b>
[Owner or operator] hereby certifies that it is in compliance with the requirements of 20.5.117 New Mexico Administrative Code (NMAC).
The financial assurance mechanism[s] used to demonstrate financial responsibility under 20.5.117 NMAC is [are] as follows:
[For each mechanism, list the type of mechanism, name of issuer, mechanism number (if applicable), amount of coverage, effective period of coverage and whether the mechanism covers "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "non-sudden accidental releases" or "accidental releases."]
[Signature of owner or operator]
[Name of owner or operator]
[Title]
[Date]
[Signature of witness or notary]
[Name of witness or notary]
[Date]

**B.** The owner or operator shall update this certification whenever the financial assurance mechanism(s) used to demonstrate financial responsibility change(s).

[20.5.117.1771 NMAC - N, 07/24/2018]

**20.5.117.1772 FORM DOCUMENT FOR DRAWING ON FINANCIAL ASSURANCE MECHANISMS:**

The certification from the owner or operator and the third-party liability claimant(s) and from attorneys representing the owner or operator and the third-party liability claimant(s) that a third-party liability claim should be paid shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

<b>CERTIFICATION OF VALID CLAIM</b>	
The undersigned, as principals and as legal representatives of [insert owner or operator] and [insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by an accidental release arising from operating [owner's or operator's] storage tank should be paid in the amount of \$[insert: dollar amount].	
[Signatures]	[Signatures]
Owner or Operator	Claimant(s)
Attorney for	Attorney(s) for
Owner or Operator	Claimant(s)
(Notary) Date	(Notary) Date]

[20.5.117.1772 NMAC - N, 07/24/2018]

**PART 118: REPORTING AND INVESTIGATION OF SUSPECTED AND CONFIRMED RELEASES**

**20.5.118.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.118.1 NMAC - N, 07/24/2018]

**20.5.118.2 SCOPE:**

This part applies to owners and operators of storage tanks as defined in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more

associated with UST systems with field-constructed tanks as these terms are defined in 20.5.1 NMAC. If the owner and operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.118.2 NMAC - N, 07/24/2018]

**20.5.118.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14, NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17, NMSA 1978.

[20.5.118.3 NMAC - N, 07/24/2018]

**20.5.118.4 DURATION:**

Permanent.

[20.5.118.4 NMAC - N, 07/24/2018]

**20.5.118.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.118.5 NMAC - N, 07/24/2018]

**20.5.118.6 OBJECTIVE:**

The purpose of 20.5.118 NMAC is to regulate storage tank systems in order to protect the public health, safety and welfare and the environment of the state, and to ensure that suspected and confirmed releases from storage tank systems are promptly reported and investigated and that corrective action is promptly initiated.

[20.5.118.6 NMAC - N, 07/24/2018]

**20.5.118.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.118.7 NMAC - N, 07/24/2018]

**20.5.118.8-20.5.118.1799 [RESERVED]**

## **20.5.118.1800      REPORTING OF SPILL OR RELEASE:**

**A.** Owners, operators, certified installers, certified junior installers, and testers shall give notice of any suspected or confirmed release from a storage tank system pursuant to 20.5.118.1801 or 20.5.118.1802 NMAC, or any spill or any other relevant emergency situation to the department by telephone within 24 hours. The owner, operator, certified installer, certified junior installer, or tester giving the notice shall provide the following items of information to the best of the owner's, operator's, certified installer's, certified junior installer's, or tester's knowledge:

(1) the name, address, and telephone number of the agent in charge of the site at which the storage tank system is located, as well as the name, address and telephone number of the owner and the operator of the storage tank system;

(2) the name, address, facility ID number, and owner ID number of the site at which the storage tank system is located, as listed on the tank registration certificate, and the location of the storage tank system on that site;

(3) the date, time, location and duration of the spill, release or suspected release;

(4) the source and cause of the spill, release or suspected release;

(5) the storage tank system description;

(6) a description of the spill, release or suspected release, including its chemical composition;

(7) the estimated volume of the spill, release or suspected release; and

(8) any actions taken to mitigate immediate damage from the spill, release or suspected release.

**B.** Owners and operators shall provide a seven-day report describing the spill, release or suspected release and any investigation or follow-up action to the department within seven days of the incident. The written report shall verify the prior oral notification as to each of the items of information listed in Subsection A of this section and provide any appropriate amendments to the information contained in the prior oral notification.

**C.** The department shall determine whether a release is a confirmed release based on the 24-hour and seven-day reports prepared in accordance with this section, 20.5.118.1801 NMAC and 20.5.18.1802 NMAC, monitoring results, system checks, the investigation performed in accordance with 20.5.18.1801 NMAC, and any other information available to the department. The department shall provide a written

determination that a release is a confirmed release to all affected owners and operators, and shall state the basis for the determination.

[20.5.118.1800 NMAC - N, 07/24/2018]

[To provide notice to the department under Subsection A of this section, telephone the department staff person currently on duty. The petroleum storage tank bureau's pages on the department website provide the phone number and an optional incident reporting form.]

#### **20.5.118.1801      SUSPECTED RELEASES:**

**A.** Owners, operators, certified installers, certified junior installers, and testers of storage tank systems shall report the following conditions, which are considered suspected releases, to the department within 24 hours, in accordance with 20.5.118.1800 NMAC, and follow the procedures in Subsection B of this section:

**(1)** evidence of released regulated substances in the vicinity of the storage tank site, including but not limited to, the presence of non-aqueous phase liquid or vapors in soils, basements, sewer and utility lines, groundwater, drinking water or nearby surface water;

**(2)** unusual operating conditions such as, but not limited to, no flow of product, slow flow of product, the erratic function of product dispensing equipment, the sudden loss of a regulated substance from the storage tank system, an unexplained presence of water in the storage tank system, the presence of a regulated substance in containment sumps or in the annular or interstitial space of secondarily contained tanks or piping, or interstitial sensor alarm conditions, unless after an investigation:

**(a)** the storage tank system equipment or component is determined not to have released regulated substances into the environment;

**(b)** all defective storage tank system equipment or components are immediately repaired or replaced; and

**(c)** for secondarily contained storage tank systems, except as provided for in Subparagraph (d) of Paragraph (2) of Subsection A of 20.5.108.808 NMAC, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example brine filled) is immediately removed.

**(3)** monitoring or test results, including investigation of an alarm, that are anything other than a "pass" or "normal" result from any release detection method in 20.5.108 NMAC and 20.5.111 NMAC, or that indicate a release may have occurred unless:

**(a)** the monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring is performed which does not indicate that a release has occurred;

**(b)** the leak is contained in the secondary containment; and

**(i)** except as provided for in Subparagraph (d) of Paragraph (2) of Subsection A of 20.5.108.808 NMAC, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and

**(ii)** all defective storage tank system equipment or components are immediately repaired or replaced.

**(c)** the investigation determines no release has occurred;

**(d)** in the case of statistical inventory reconciliation, described in 20.5.108 NMAC, inconclusive or failed monthly results are overturned by the third-party vendor within 24 hours of the receipt of the report from the vendor; or

**(e)** the alarm was investigated and determined to be a non-release event (for example, from a power surge or caused by filling or dispensing from the tank during release detection testing).

**(4)** failing results from continuous monitoring or periodic testing of spill prevention equipment and containment sumps; or

**(5)** other evidence of failure or deterioration such as but not limited to holes, cracks, or corrosion in the storage tank system.

**B.** Owners and operators shall investigate all suspected releases of regulated substances within seven days of discovery of the suspected release. Owners and operators shall conduct appropriate storage tank system testing, site check or another procedure, with prior approval by the department of the procedure.

**(1)** System test. Owners and operators shall conduct appropriate system tests approved by the department according to the requirements for tightness testing for USTs in 20.5.108.804 NMAC and in Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.108.810 NMAC, and for ASTs in 20.5.111.1101 NMAC and Subparagraph (a) of Paragraph (3) of Subsection A of 20.5.111.1105 NMAC, or as appropriate, secondary containment testing described in 20.5.107 NMAC or 20.5.110 NMAC.

**(a)** The test must determine whether:

**(i)** a leak exists in any portion of the tank or piping that has the potential to contain a regulated substance;

(ii) a breach of the inner or outer wall of the secondary containment has occurred; or

(iii) the integrity of the tank system is compromised such that a release has occurred.

(b) If the system test confirms a leak into the interstice or a release, owners and operators must repair, replace, upgrade or close the storage tank system. In addition, owners and operators must begin corrective action in accordance with 20.5.119 NMAC if test results for the storage tank system indicate that a release has occurred.

(c) Further investigation is not required if test results for the storage tank system do not show a leak exists and if environmental contamination is not the basis for suspecting a release.

(2) Site check. When there is evidence of a release of a regulated substance in the vicinity of a storage tank system, owners and operators shall conduct a site check as directed by the department.

(a) Owners and operators shall investigate a release in the locations where contamination is most likely to be present at the storage tank site.

(b) In selecting sample types, sample locations, and measurement methods, owners and operators shall consider the nature of the stored regulated substance, the basis for the suspected release report, the type of backfill, depth to groundwater, and other appropriate site-specific conditions.

(c) The department shall approve sample types, locations and methods of measurement.

(3) In the case of a suspected release indicated by statistical inventory reconciliation, after following the process outlined in 20.5.108.809.C NMAC, owners and operators shall conduct appropriate system tests or site checks approved by the department.

C. In the event of a suspected release, the secretary may take any action necessary, including suspension of the use of a storage tank system and requiring additional testing or other actions to investigate whether a release has occurred.

D. Owners and operators who do not demonstrate that a release has not occurred within 30 days of the reporting of a suspected release, or another timeframe approved by the department, shall be subject to the requirements of 20.5.118.1802 NMAC and the requirements of 20.5.119 NMAC or 20.5.120 NMAC for confirmed releases.

**E.** Owners and operators shall report to the department in writing all results of the storage tank system test, site check or other procedure approved by the department in accordance with this part. Any report submitted in accordance with this section shall contain, at a minimum, the information required in Subsection A of 20.5.118.1800 NMAC.

[20.5.118.1801 NMAC - N, 07/24/2018]

[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the petroleum storage tank bureau's pages on the department website.]

**20.5.118.1802 CONFIRMED RELEASES:**

**A.** Owners, operators, certified installers, certified junior installers, and testers of storage tank systems shall report the following conditions to the department within 24 hours, in accordance with 20.5.118.1800 NMAC:

- (1) visible leaks or seeps from any part of a storage tank system;
- (2) evidence of released regulated substances at the storage tank site including, but not limited to, the presence of non-aqueous phase liquid or vapors in soils, basements, sewer and utility lines, groundwater, drinking water or nearby surface water; and
- (3) evidence of released regulated substances in soils, including, but not limited to:
  - (a) any soil analytical results that indicate the presence of total petroleum hydrocarbons at concentrations equal to or exceeding 100 parts per million;
  - (b) any petroleum hydrocarbon vapor field screening results that exceed 100 whole instrument units; or
  - (c) significant visible staining or obvious petroleum odors.

**B.** If a release is confirmed, the secretary may take any action necessary, including suspension of the use of a storage tank system, until the owner or operator identifies and stops the release.

**C.** Owners and operators of storage tank systems shall address confirmed releases in accordance with 20.5.119 and 20.5.120 NMAC, and shall empty the storage tank and close the storage tank system in accordance with 20.5.115 NMAC until the storage tank system is repaired or replaced so that the release will not recur.

[20.5.118.1802 NMAC - N, 07/24/2018]

[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the petroleum storage tank bureau's pages on the department website.]

### **20.5.118.1803 SPILLS AND OVERFILLS:**

**A.** Owners and operators of storage tank systems shall contain and immediately clean up a spill or overflow, and report the spill or overflow to the department within 24 hours in accordance with 20.5.118.1800 NMAC except as provided in Subsection C of this section, and begin corrective action in accordance with 20.5.119 and 20.5.120 NMAC in the following cases:

**(1)** any spill or overflow of petroleum that results in a release to the environment that exceeds 25 gallons, that causes a sheen on nearby surface water, or that creates a vapor hazard pursuant to 20.5.119.1902 NMAC; and

**(2)** any spill or overflow of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), and 40 CFR part 302.

**B.** Owners and operators of storage tank systems shall contain and immediately clean up a spill or overflow of petroleum that is less than 25 gallons, and a spill or overflow of a hazardous substance that is less than the reportable quantity. Owners and operators shall notify the department if cleanup cannot be accomplished within 24 hours, or within another reasonable time period which has been established by the department.

**C.** Pursuant to 40 CFR parts 302.7 and 355.40, owners and operators shall also immediately report a release of a hazardous substance equal to or in excess of its reportable quantity to the national response center under sections 102 and 103 of CERCLA and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.

[20.5.118.1803 NMAC - N, 07/24/2018]

[To provide notice to the department under this section, telephone the department staff person currently on duty; to obtain this number, check the petroleum storage tank bureau's pages on the department website.]

## **PART 119: CORRECTIVE ACTION FOR STORAGE TANK SYSTEMS CONTAINING PETROLEUM PRODUCTS**

### **20.5.119.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.119.1 NMAC - N, 07/24/2018]

**20.5.119.2 SCOPE:**

This part applies to owners and operators of petroleum storage tanks as defined in 20.5.101 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC. If the owner and operator of a petroleum storage tank are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of non-compliance.

[20.5.119.2 NMAC - N, 07/24/2018]

**20.5.119.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14, NMSA 1978; the Water Quality Act, Sections 74-6-1 through 74-6-17, NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17, NMSA 1978.

[20.5.119.3 NMAC - N, 07/24/2018]

**20.5.119.4 DURATION:**

Permanent.

[20.5.119.4 NMAC - N, 07/24/2018]

**20.5.119.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.119.5 NMAC - N, 07/24/2018]

**20.5.119.6 OBJECTIVE:**

The purpose of this part is to provide for corrective action at sites contaminated by releases from petroleum storage tank systems and to protect the public health, safety and welfare and the environment of the state.

[20.5.119.6 NMAC - N, 07/24/2018]

**20.5.119.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.119.7 NMAC - N, 07/24/2018]

**20.5.119.8-20.5.119.1899 [RESERVED]**

**20.5.119.1900 GENERAL:**

**A.** Owners and operators of petroleum storage tank systems shall take corrective action to address all releases, including such action as collection and analysis of relevant site-specific data, soil remediation, groundwater and surface water remediation and any other appropriate actions pursuant to this part, in a manner protective of public health, safety and welfare and the environment.

**B.** Upon confirmation of a release pursuant to 20.5.118 NMAC or identification and reporting of a release in any other manner, owners and operators of petroleum storage tank systems shall comply with the requirements of this part if the release:

**(1)** is of unknown volume or is greater in volume than 25 gallons; or

**(2)** is of any size and the owner or operator is directed by the department to comply with this part.

**C.** Owners and operators shall maintain and provide to the department all reports required in 20.5.119.1932 and 20.5.119.1933 NMAC.

**D.** Owners and operators shall mail or deliver and provide paper and electronic copies of all written notices and reports required under this part to be submitted to the department to the owner or operator’s assigned project manager from the petroleum storage tank bureau, New Mexico environment department.

**E.** Owners and operators shall comply with any site-specific timeline or deadline that is approved in writing by the department at the time of workplan approval. If no applicable site-specific timeline has been approved, the following timeline shall apply to all corrective action requirements under this part. The time deadlines set forth in this part are computed from the date of reporting of a release or of reporting of the confirmation of a suspected release pursuant to 20.5.118.1800 NMAC unless another event is specified in these.

Default Corrective Action Timeline

<b>Deadline, in days from report:</b>	<b>Action or deliverable due date, as defined above:</b>
0	report discovery or confirmation of a release

3	72-hour report
14	14-day report
60	submit NAPL assessment
60	initiate interim removal of contaminated soil
60	preliminary investigation report
120	secondary investigation report
<b>When monitored natural attenuation is used:</b>	
510	monitored natural attenuation (MNA) plan
570	implementation of MNA
935	first annual MNA monitoring report
935	annual evaluation of MNA report
<b>When other remediation is used:</b>	
510	conceptual remediation plan
540	final remediation plan
600	implementation of remediation
690	first quarterly monitoring report
965	annual evaluation of remediation system report

**F.** All owners and operators are responsible for compliance with all provisions of this part. An owner or operator may designate a representative to facilitate compliance with this part. The designation of such a representative shall not affect the department's right to seek compliance at any time from any owner or operator and shall not relieve owners or operators of any legal liabilities or responsibilities they may have under this part or otherwise under the law.

**G.** Except for 20.5.119.1901, 20.5.119.1902 and 20.5.119.1903 NMAC, owners and operators shall submit to the department written workplans for all corrective action, including voluntary corrective action, as required under this part. Owners and operators may submit workplans in stages to reflect the sequence or types of corrective action described in 20.5.119 NMAC at the site, but the owners and operators shall submit all workplans to and obtain approval by the department in writing for technical adequacy before the corrective action is commenced.

**H.** Unless otherwise approved, a qualified firm as specified in 20.5.122 NMAC shall perform all corrective action and, when required by the rules in Title 20, Chapter 5 NMAC, a professional engineer as defined in 20.5.101.7 NMAC.

**(1)** All contractors and their subcontractors shall have appropriate licenses and certifications and be in compliance with applicable local, state and federal laws and regulations, including but not limited to the rules in Title 16, Chapter 39 NMAC governing engineers, 14.6.3 NMAC governing contractors and 29 CFR part 1910 governing worker health and safety.

**(2)** Owners and operators shall identify all prime contractors and all subcontractors in all workplans submitted to the department.

**I.** Where site conditions are amenable, owners and operators may use accelerated site characterization techniques if pre-approved by the department.

**J.** All monitoring wells shall be permitted in conformance with applicable federal, state and local laws and regulations in effect at the time of installation.

**K.** Owners and operators shall clearly mark and secure monitoring wells and major remediation equipment to prevent unauthorized access, tampering and damage. Owners and operators shall close or abandon all wells in accordance with the requirements of applicable federal, state and local laws and regulations.

**L.** The department shall notify owners and operators taking corrective action and contractors of state-lead sites in writing when it has determined that a deliverable completed under an approved workplan is satisfactory. The written notice shall also inform the owner, operator or contractor that any application for payment from the fund of costs associated with the approved deliverable must be received by the department within 90 days of the date the owner, operator or contractor received written notice of approval and that the department shall not grant extensions of the deadline except for good cause as shown pursuant to 20.5.123.2318 NMAC.

[20.5.119.1900 NMAC - N, 07/24/2018]

[The address of the petroleum storage tank bureau, remedial action program, is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.119.1901      MINIMUM SITE ASSESSMENT, INITIAL RESPONSE:**

**A.** Upon discovery or confirmation of a release, owners and operators of the storage tank system shall immediately prevent any further release from the storage tank system by whatever means necessary, including removing product from the storage tank system or any part of the storage tank system that is known to leak or is suspected of leaking. If necessary, owners and operators shall remove the storage tank system from service in accordance with 20.5.115 NMAC.

**B.** Owners and operators shall inform the department in accordance with 20.5.118.1800 NMAC of any release and action taken to mitigate immediate damage from the release.

[20.5.119.1901 NMAC - N, 07/24/2018]

**20.5.119.1902      MINIMUM SITE ASSESSMENT, INITIAL ABATEMENT:**

**A.** Owners and operators shall undertake the initial abatement and site investigation actions specified in this section within 72 hours of discovery or confirmation of a release pursuant to 20.5.118 NMAC, using the default timeline as set forth in Subsection E of 20.5.119.1900 NMAC or as otherwise approved by the department.

**B.** Owners and operators shall identify the location and details of construction of all private water supply wells, using readily accessible public records, within a 1,000-foot radius, and all public water supply wells within a one mile radius of the storage tank system, and shall determine if the identified wells lie within a designated wellhead protection area. Owners and operators shall take appropriate measures to protect these water supplies from contamination.

**C.** Owners and operators shall contain or remediate releases which present an imminent threat of contamination to or are within 500 feet of a surface water course as soon as practicable to prevent contamination of surface water. If the surface water course is a drinking water supply, within 24 hours owners and operators shall notify the owners or operators of all drinking water supplies likely to be affected by the release.

**D.** If the release has contaminated a water supply, owners and operators shall immediately provide a temporary replacement drinking water supply, as well as adequate warnings or other mechanisms to prevent persons from drinking or otherwise contacting water contaminated by the release. Within seven days of the discovery or confirmation of a release pursuant to 20.5.118 NMAC that has contaminated a water supply, owners and operators shall provide a replacement water supply which is of adequate quality and quantity for drinking, bathing, cooking and washing. Owners and operators shall maintain the replacement water supply until an alternate water supply sufficient for all domestic purposes is available.

**E.** Owners and operators shall identify the depth, location, composition and construction of all underground utilities including water lines, sewer lines, communication cables, electric lines, and natural gas lines within the area of the release to assess the susceptibility of these utilities to permeation by contaminants or deterioration caused by contaminants. Owners and operators shall notify the utility owner that the release has occurred and obtain permission to perform a site check of the utilities or other subsurface structures most likely to be contaminated by the release to determine whether petroleum products or vapors are present.

**F.** Owners and operators shall complete an investigation to determine whether potentially explosive or harmful vapors are present in any building, utility corridor, basement, or other surface or subsurface structure on or adjacent to the release site.

**1)** The investigation shall include testing for vapors using the following:

**(a)** a combustible gas indicator or equivalent instrument calibrated according to the manufacturer's instructions to test for potentially explosive levels of petroleum hydrocarbon vapors; and

**(b)** a photoionization detector, flame ionization detector or another method approved by the department calibrated according to the manufacturer's instructions to test for potentially harmful petroleum hydrocarbon vapors.

**(2)** In the event owners and operators discover potentially explosive levels of petroleum hydrocarbon vapors or potentially harmful petroleum hydrocarbon vapors in any structure in the vicinity of the release site, owners and operators shall take immediate action to mitigate the vapor hazard. Within seven days of the discovery of the vapors, owners and operators shall install and place into operation a vapor mitigation system capable of reducing petroleum hydrocarbon vapors to safe levels within the shortest reasonable time. The vapor mitigation system shall be designed by and constructed under the direct, responsible, supervisory control of a professional engineer, when required by the department.

**(a)** Once a vapor mitigation system has been installed, owners and operators shall monitor and report in writing to the department the levels of petroleum hydrocarbon vapors in the affected structures weekly for the first month and monthly thereafter unless a different monitoring schedule is approved in writing by the department. This monitoring shall be performed in accordance with Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

**(b)** After the vapor mitigation system has been in operation for three months, owners and operators shall have 30 days to submit to the department a written summary report containing the monitoring results. The department may direct the owner and operator to modify the vapor mitigation system as necessary to reduce petroleum hydrocarbon vapors to safe levels. Owners and operators shall submit monitoring results to the department at three-month intervals until operation of the vapor mitigation system is discontinued in accordance with this section.

**(3)** Owners and operators shall continue to operate the vapor mitigation system until the results of three consecutive monthly monitoring events indicate the following:

**(a)** levels of petroleum hydrocarbon vapors are less than ten percent LEL;  
and

**(b)** levels of petroleum hydrocarbon vapors are less than or equal to five whole instrument units above ambient levels in any structure in the vicinity of the release site when measured as required in Subparagraphs (a) and (b) of Paragraph (1) of this Subsection.

**(4)** When operation of a vapor mitigation system is discontinued, owners and operators shall monitor the vapor levels in the structure weekly for the first month and monthly thereafter until one calendar year has passed, or as otherwise approved by the department. If during this period the levels exceed those set forth in Subparagraphs (a)

and (b) of Paragraph (3) of this subsection, owners and operators shall notify the department and take the necessary corrective action, as directed by the department.

**G.** Owners and operators shall remove any exposed petroleum products related to the release and mitigate any related immediate fire and safety hazards as soon as possible, but in no case no later than 72 hours after the confirmation or other identification of the release.

[20.5.119.1902 NMAC - N, 07/24/2018]

**20.5.119.1903        MINIMUM SITE ASSESSMENT, 72-HOUR AND 14-DAY REPORTS:**

**A.** Owners and operators shall make an oral report to the department summarizing the abatement procedures undertaken and the results of action taken under 20.5.119.1901 and 20.5.119.1902 NMAC within 72 hours of the discovery or confirmation of a release pursuant to 20.5.118 NMAC.

**B.** Owners and operators shall submit a paper and electronic copy of a written report to the department within 14 days of the discovery or confirmation of a release pursuant to 20.5.118 NMAC, in addition to the written notice required under 20.5.118 NMAC. This report shall summarize all the work performed pursuant to 20.5.119.1901 and 20.5.119.1902 NMAC and shall include the following information, as appropriate:

(1) a map based on a United States geologic survey topographic map showing locations of actual and potential receptors, including, but not limited to, private and public water supplies identified pursuant to 20.5.119.1902 NMAC; owners and operators shall draw two concentric circles, at 1,000 feet and at one mile radii from the center of the release, and shall also show on the map all surface water courses within a one mile radius of the site;

(2) information about any water supplies known or suspected to have been contaminated by the release;

(3) most likely direction of groundwater flow;

(4) a site plan map showing locations of utilities, surface structures and storage tank systems;

(5) information about underground utilities gathered in accordance with Subsection E of 20.5.119.1902 NMAC;

(6) soil borings, logs, and details of construction of all wells, if available;

(7) description of any actions taken to abate adverse effects;

- (8) data from vapor monitoring performed in the vicinity of the site;
- (9) description of any actions taken to abate potentially explosive or harmful vapors and any plans for further action;
- (10) description of fire and safety hazards resulting from the release and actions taken to abate such hazards;
- (11) description of current and past ownership of the property, storage tank systems, the substance stored in the system, age of tank and history of any tank removals;
- (12) present land use, within 1,000 feet of the site; and
- (13) records of tightness tests, repairs to the storage tank system, release detection and monitoring results.

[20.5.119.1903 NMAC - N, 07/24/2018]

**20.5.119.1904 NOTICE, SPLIT SAMPLES AND SAMPLING PROCEDURES:**

**A.** Except for the 72-hour vapor check, owners and operators shall notify the department at least four days prior to the collection of any samples which are required pursuant to this part and upon which laboratory analyses are to be performed to allow the department an opportunity to be present at the collection of samples or to split samples.

**B.** Owners and operators shall notify the department at least four days prior to the decommissioning, destruction or abandonment of any wells.

**C.** Owners and operators shall collect, store and transport all samples necessary to comply with the requirements of this part in a manner consistent with the nature of the known or suspected contaminants and in conformance with applicable federal, state and local laws and regulations.

[20.5.119.1904 NMAC - N, 07/24/2018]

**20.5.119.1905 INTERIM REMOVAL OF NON-AQUEOUS PHASE LIQUID:**

**A.** Owners and operators shall assess the potential for remediation of non-aqueous phase liquid (NAPL) where there is a thickness of greater than one-eighth inch of NAPL on surface water, in any excavation pit, or in any well. Owners and operators shall submit the assessment to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

**B.** The department may approve interim removal of NAPL when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment. In this event, owners and operators shall remove NAPL in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

**C.** Owners and operators shall remove NAPL in a manner that minimizes the spread of contamination into uncontaminated media.

**D.** Owners and operators shall store and dispose of NAPL in accordance with all flammable and combustible liquids codes approved by the state fire marshal or other local authority, state hazardous waste regulations (20.4.1 NMAC), and any other applicable laws or regulations.

**E.** Owners and operators shall report recovery and disposal of NAPL to the department.

[20.5.119.1905 NMAC - N, 07/24/2018]

**20.5.119.1906 INTERIM REMOVAL OF CONTAMINATED SOIL:**

**A.** Owners and operators shall remediate contaminated soil in accordance with 20.5.119.1912, 20.5.119.1914, and 20.5.119.1922 NMAC, unless approved by the department to remove and treat contaminated soil in accordance with this section.

**(1)** The department may approve interim removal of contaminated soil when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment.

**(2)** Under this section, owners and operators shall excavate, treat and dispose of contaminated soil using methods approved by the department, in compliance with local laws and regulations, and under a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

**(3)** The department shall approve the vertical and horizontal extent of soil to be excavated.

**B.** When treating or temporarily storing soil on site, owners and operators shall:

**(1)** for treatment on site, spread soil in a six-inch layer over an impervious liner or other surface approved by the department to prevent infiltration to groundwater and place the layer of soil on level ground and berm to prevent runoff from contaminating other soil or surface water;

(2) for temporary storage, place the soil in a secure, bermed area on an impervious liner or surface or in a secured and properly labeled container, as approved by the department; and

(3) handle soil in a manner that does not contaminate groundwater, surface water or other uncontaminated soil or does not create or cause a public nuisance or threat to human health, safety and welfare or the environment.

C. When contaminated soil is taken off site, owners and operators shall provide the department with the following information within 14 days of removal of the soil from the site:

(1) written documentation of the type and concentration of contaminants, volume and weight of soil, method of treatment, date transported, and location of the site of disposal or treatment;

(2) a signed, written statement by the owner of the treatment or disposal site describing the location of the site and expressly accepting the contaminated soil; and

(3) if contaminated soil is taken to a permitted solid waste facility, a manifest signed by the generator, transporter and the owner or operator of the solid waste facility.

D. Remediation shall be considered complete when the requirements in 20.5.119.1929 NMAC are met.

E. In accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC, owners and operators shall submit to the department a report describing the removal and treatment of contaminated soil.

(1) The report shall describe the soil removal action and its effectiveness, including volumes and weight removed.

(2) Owners and operators shall submit the report within 30 days of the soil removal action.

[20.5.119.1906 NMAC - N, 07/24/2018]

**20.5.119.1907 MINIMUM SITE ASSESSMENT, PRELIMINARY AND OTHER REQUIRED INVESTIGATIONS:**

A. A preliminary investigation is not required when owners and operators can demonstrate that the contamination has not reached groundwater and one of the following two conditions apply:

1) the release is remediated in accordance with this part within 72 hours of discovery or confirmation; or

(2) the release is permanently contained within the UST excavation area or the AST containment system.

**B.** If the contamination extends beyond the boundaries of the property where the release originated, owners and operators shall conduct a secondary investigation in accordance with 20.5.119.1910 NMAC.

**C.** When the horizontal and vertical extent and magnitude of contamination from the release have been characterized, and it has been demonstrated that contamination has not reached groundwater, owners and operators, if required by the department, shall perform a soil-only contamination assessment and related corrective action in accordance with 20.5.119.1912 NMAC.

**D.** When a potential or actual threat from vapor intrusion is identified, owners and operators, if required by the department, shall perform a petroleum vapor intrusion assessment and related corrective action in accordance with 20.5.119.1913 NMAC.

[20.5.119.1907 NMAC - N, 07/24/2018]

**20.5.119.1908 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION REQUIREMENTS:**

Owners and operators shall conduct a preliminary investigation in accordance with this subsection and under a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC. The preliminary investigation shall determine the following, unless otherwise approved by the department.

**A.** If not previously identified and reported under 20.5.119.1903 NMAC, the preliminary investigation shall determine the source of contamination, the regulated substance released or suspected of being released at the site, the media of concern, current and potential receptors, current and anticipated use of property, complete and incomplete exposure pathways, and routes of exposure.

**B.** The preliminary investigation shall also determine the horizontal and vertical extent and magnitude of soil contamination.

(1) Owners and operators shall conduct a soil boring survey by advancing a continuously cored soil boring at each area of release where soil contamination is most likely to be encountered unless otherwise directed by the department. The initial incident report and a soil vapor survey may be used in locating these areas. Owners and operators shall advance at least one of the borings into the groundwater saturated zone or, with approval from the department, to a depth at which measured levels of contaminants in soil are no longer detectable by laboratory analysis, and hydrocarbon

vapor concentrations, as determined with a field instrument, are less than 100 whole instrument units.

**(2)** Owners and operators shall advance at least four additional soil borings to characterize the release within property boundaries. Borings shall be completed to the depth at which contaminants in soil are no longer detectable by laboratory analysis, and hydrocarbon vapor concentrations, as determined with a field instrument, are less than 100 whole instruments units. If the soil borings indicate that contaminated soil extends beyond the boundary of the property on which the storage tank system is located, owners and operators shall advance soil borings sufficient to characterize the extent and magnitude of contamination within site boundaries.

**(3)** Owners and operators shall assess at five-foot intervals, field estimates of concentrations of petroleum hydrocarbons in the soil borings and select and prepare samples for laboratory analysis.

**(4)** Owners and operators shall gather field data for soil classification, determining and recording color, grain size, texture, description of lithification, plasticity and clay content.

**(5)** The preliminary investigation shall include determinations of derived values for soil bulk density (g/cc), soil moisture content (percent by mass), and effective porosity, and fraction organic carbon content (percent by mass) using samples taken from an uncontaminated area of the vadose zone.

**(6)** Owners and operators shall delimit the horizontal and vertical extent of contaminant saturated soil as defined in 20.5.101.7 NMAC.

**C.** Owners and operators shall determine whether groundwater or surface water has been contaminated above applicable standards or whether a potential for groundwater or surface water contamination is present by performing the following:

**(1)** install at least three groundwater monitoring wells at locations where the results of the soil boring survey conducted pursuant to this section indicate that groundwater may be contaminated; owners and operators shall:

**(a)** locate monitoring wells so that groundwater gradient can be determined;

**(b)** install at least one monitoring well on site in the area of highest contamination as determined by the soil borings installed in conformance with the initial incident report and other relevant information;

**(c)** install one of the monitoring wells in the estimated down-gradient direction from the area of highest contamination;

**(d)** construct wells in accordance with all applicable federal, state and local laws and regulations; and

**(e)** survey the wells using a New Mexico licensed professional surveyor, in decimal degrees of latitude and longitude in accordance with NAD 83;

**(2)** calculate the direction and gradient of groundwater flow;

**(3)** inspect all monitoring wells for the presence of NAPL using a method approved by the department; if NAPL is present in any well, measure the apparent thickness, delimit its horizontal extent, and initiate recovery procedures in accordance with 20.5.119.1905 NMAC; and

**(4)** sample each monitoring well that does not contain NAPL and analyze the sample for contaminants of concern to determine whether:

**(a)** immediate mitigation procedures are warranted; and

**(b)** other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.119.1902 NMAC by:

**(i)** identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.119.1902 NMAC;

**(ii)** checking for the presence of vapors in accordance with 20.5.119.1902 and 20.5.119.1907 NMAC; and

**D.** Owners and operators shall identify all other hazards and potential threats to public health, safety and welfare and the environment which may exist as a result of the release to determine if:

**(1)** immediate mitigation procedures are warranted; and

**(2)** other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.119.1903 NMAC by:

**(a)** identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.119.1902 NMAC;

**(b)** checking for the presence of vapors in accordance with 20.5.119.1902 and 20.5.119.1907 NMAC.

[20.5.119.1908 NMAC - N, 07/24/2018]

**20.5.119.1909            MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION REPORT:**

**A.** Owners and operators shall submit paper and electronic copies of a written report of the preliminary investigation and other requirements of the minimum site assessment as defined in 20.5.101.7 NMAC in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC. The report shall include the information gathered under 20.5.119.1901, 20.5.119.1902, 20.5.119.1903 and 20.5.119.1907 NMAC and shall conform to the requirements of this section and 20.5.119.1908 NMAC.

**B.** Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

**C.** The minimum site assessment report shall, at a minimum, include all pertinent data collected during the minimum site assessment investigation, interpretation of that data using cross sections, contoured maps that depict the magnitude and extent of all contaminated media, identification of any threatened receptors, recommendations for additional work and justification for the recommended work.

**D.** The department shall review the report and notify owners and operators of any inadequacies in the report as soon as feasible. Owners and operators shall, in accordance with a timeline approved by the department, correct the report and resubmit it to the department for review and written approval. If the revised report does not conform to the minimum site assessment, preliminary investigation requirements in this section and 20.5.119.1908 NMAC, the department shall reject the report and the owner and operator shall be determined not to have conducted a minimum site assessment for the purposes of Subparagraph (c) of Paragraph (1) of Subsection B of Section 74-6B-8 NMSA 1978. The department's failure to review or to comment on this report shall not relieve the owner and operator of their responsibilities under this part or the law.

**E.** Owners and operators shall comply with the requirements of any local government which has designated a wellhead/source water protection area that includes the area of the release.

**F.** Owners and operators shall provide notice that includes the contaminants identified, as well as the horizontal and vertical extent of those contaminants, to all owners of property located within the extent of contamination.

[20.5.119.1909 NMAC - N, 07/24/2018]

**20.5.119.1910            SECONDARY INVESTIGATION:**

**A.** Owners and operators shall perform a secondary investigation in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC when the department makes at least one of the following determinations about the site:

- (1) the extent and magnitude of contamination in all media has not been delimited by the preliminary investigation; or
- (2) the release threatens public health, safety and welfare or the environment.

**B.** The secondary investigation shall determine the following:

- (1) the horizontal and vertical extent and magnitude of soil contamination both on and off site;
- (2) the horizontal extent and magnitude of dissolved phase groundwater contamination both on and off site;
- (3) the vertical extent and magnitude of dissolved phase groundwater contamination, when site conditions warrant;
- (4) characteristics, aerial extent, estimated volume and apparent thickness of NAPL in wells;
- (5) the elevation of groundwater and surface water and the gradient, rate and direction of groundwater and surface water flow;
- (6) the rate and direction of contaminant migration;
- (7) the hydrologic properties of the contaminated portion of the aquifer including hydraulic conductivity, transmissivity and storativity; the department may require field verification of estimates made from literature;
- (8) whether the aquifer is perched;
- (9) whether the aquifer is confined or unconfined; and
- (10) any other technical information requested by the department which is reasonably necessary to meet the requirements of this part.

[20.5.119.1910 NMAC - N, 07/24/2018]

**20.5.119.1911      SECONDARY INVESTIGATION REPORT:**

**A.** Owners and operators shall submit paper and electronic copies of a written report of the secondary investigation to the department in accordance with a timeline

approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC. The report shall include all information gathered under 20.5.119.1910 NMAC and shall conform to the requirements of this part.

**B.** Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

**C.** The secondary investigation report shall, at a minimum, include all pertinent data collected during the secondary investigation, interpretation of that data using cross sections, contoured maps that depict the magnitude and extent of all contaminated media, identification of any threatened receptors, recommendations for additional work and justification for the recommended work.

**D.** The department shall review the report and notify owners and operators of any inadequacies in the report within 30 days of receipt. Owners and operators shall, in accordance with a timeline approved by the department, correct the report and resubmit it to the department for review and written approval. If the revised report does not meet the requirements of 20.5.119.1910 NMAC, the owner and operator will be in violation of this part until the inadequacies are corrected. The department's failure to review or to comment on the secondary investigation report shall not relieve the owner and operator of their responsibilities under this part or the law.

**E.** Owners and operators shall provide notice that includes the contaminants identified, as well as horizontal and vertical extent of those contaminants, to all owners of property located within the extent of contamination who were not previously notified in accordance with 20.5.119.1909 NMAC.

[20.5.119.1911 NMAC - N, 07/24/2018]

#### **20.5.119.1912 SOIL-ONLY CONTAMINATION ASSESSMENT:**

The soil-only contamination assessment is intended to determine whether soil contamination poses a threat to human health or the environment including groundwater or may pose a threat in the future such that corrective action is required. Owners and operators shall comply with this section as required by the department. Owners and operators shall obtain written approval from the department before initiating the evaluation.

**A.** After the horizontal and vertical extent and magnitude of the soil contamination from the release has been fully characterized and where groundwater has not been impacted, the department may require owners and operators to demonstrate the extent to which a release may pose a threat to human health and the environment.

**B.** Owners and operators shall use the department approved risk assessment guidance for site investigations and remediation; or equivalent assessment tool as required and approved by the department to comply with the requirements of this section.

**C.** When representative concentrations of any contaminant of concern equal or exceed any soil screening levels (SSLs) as discussed in Subsection B of 20.5.119.1912 NMAC for any exposure pathway, owners and operators shall perform a site-specific risk assessment if directed by the department.

**D.** Soil-only contamination assessment reports shall be submitted in accordance with 20.5.119.1933 NMAC and shall be maintained in accordance with 20.5.119.1932 NMAC.

[20.5.119.1912 NMAC - N, 07/24/2018]

### **20.5.119.1913      PETROLEUM VAPOR INTRUSION ASSESSMENT:**

A vapor intrusion assessment is intended to determine if vapor intrusion poses a threat to human health and the environment specifically within an overlying building or structure such that corrective action is required. Owners and operators shall comply with this section as required by the department if vapor intrusion poses or may pose a threat to human health or the environment. Owners and operators shall obtain written approval from the department before initiating the evaluation.

**A.** After the horizontal and vertical extent and magnitude of the soil contamination from the release has been fully characterized, and a threat or potential threat from petroleum vapors intrusion has been identified, owners and operators shall be required to perform a petroleum vapor intrusion assessment.

**B.** Owners and operators shall use the environmental protection agency (EPA) technical guide for addressing petroleum vapor intrusion at leaking underground storage tank sites or an equivalent assessment tool as approved by the department to comply with the requirements of this section:

**C.** If petroleum vapor intrusion has been demonstrated to be present, then the owner and operator shall perform vapor mitigation and corrective action if directed by the department.

**D.** Petroleum vapor intrusion assessment reports shall be submitted in accordance with 20.5.119.1933 NMAC and shall be maintained in accordance with 20.5.119.1932 NMAC.

[20.5.119.1913 NMAC - N, 07/24/2018]

**20.5.119.1914 CORRECTIVE ACTION REQUIREMENTS FOR TOTAL PETROLEUM HYDROCARBONS (TPH):**

In addition to comparing representative soil concentrations for all contaminants of concern to risk-based screening levels (RBSLs) and site-specific target levels (SSTLs) and concentrations in groundwater and surface water to applicable WQCC and EIB standards, in accordance with, 20.5.119.1912 NMAC, owners and operators shall mitigate, remediate, or remove TPH contamination in soil and groundwater, when directed by the department based upon a determination by the department that the TPH contamination adversely affects public health, safety and welfare or the environment.

[20.5.119.1914 NMAC - N, 07/24/2018]

**20.5.119.1915 MONITORED NATURAL ATTENUATION:**

**A.** If approved by the department, owners and operators shall submit a plan for monitored natural attenuation to the department if any of the following conditions have been identified at the site:

**(1)** concentrations of contaminants of concern exceed site-specific target levels (SSTLs) in soil or WQCC or EIB standards in groundwater or surface water; or

**(2)** other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

**B.** Owners and operators shall submit the monitored natural attenuation plan in accordance with this section and 20.5.119.1920 NMAC and in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

**C.** The intent of the monitored natural attenuation plan is to provide a written description of the methodology proposed and demonstrate how the plan will achieve target concentrations in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. The content of the monitored natural attenuation plan, at a minimum and as appropriate, shall include:

**(1)** a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing petroleum storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

**(2)** cross sections showing the source contaminant mass in relation to the groundwater contamination;

**(3)** a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

**(4)** concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

**(5)** a schematic drawing depicting the construction details including lithology and screen intervals for the designated monitoring wells;

**(6)** the justification for selecting the designated monitoring wells;

**(7)** the recommended approach to monitoring including an implementation and monitoring schedule, the analytical methods, and the justification for the recommendation;

**(8)** an estimation of the time necessary for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

**(9)** a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;

**(10)** public notice in conformance with the following requirements:

**(a)** owners and operators shall publish a legal notice of the submission or planned submission of the monitored natural attenuation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release; the first notice shall appear within one week of, but not later than, the day of submission of the monitored natural attenuation plan to the department; the second publication of this notice shall occur no later than seven days after the date the monitored natural attenuation plan is submitted to the department, and owners and operators shall submit two certified affidavits of publication from the newspaper to the department within 21 days after the date the monitored natural attenuation plan is submitted;

**(b)** the notice shall contain the information specified in this section including the following:

**(i)** a statement that a monitored natural attenuation plan has been submitted to the department proposing actions to monitor natural attenuation of a release of petroleum products;

**(ii)** the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of contaminant plume is located, using adequate identification of the properties, including street addresses if applicable;

(iii) a statement that a copy of the monitored natural attenuation plan and all data and modeling related to the monitored natural attenuation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

(iv) a statement that public comments on the plan must be delivered within 21 days of the publication of the second notice, to the owner or operator's assigned project manager at the petroleum storage tank bureau, New Mexico environment department, or a district office if approved by the department, and to the secretary of the environment department;

(c) within seven days of the date a monitored natural attenuation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners; and

(d) owners and operators shall post a notice of the submission of the monitored natural attenuation plan at the release site within seven days of the submission of the monitored natural attenuation plan; the notice shall contain the information specified in this subsection and shall be at least eight and one-half inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the monitored natural attenuation plan is approved and implemented; public comments must be received by the department within 21 days of the date of the second publication of the public notice; and

(11) other requirements as directed by the department.

[20.5.119.1915 NMAC - N, 07/24/2018]

[The address of the department's petroleum storage tank bureau, remediation section is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.119.1916 REVIEW AND APPROVAL OF MONITORED NATURAL ATTENUATION PLAN:**

**A.** After the public comment period has ended, the department shall review the plan and shall either approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the monitored natural attenuation plan must be postponed due to significant comments from the public, the department shall notify the owner and operator within 30 days of such a postponement, and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection E of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

**B.** The department may approve a monitored natural attenuation plan and impose reasonable conditions.

**C.** If the department determines that the monitored natural attenuation plan is inadequate, owners and operators shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

**D.** The department may provide notice of the submission of the monitored natural attenuation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event that an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the monitored natural attenuation plan until after a public hearing or meeting is held and a determination is made. Any public hearing or meeting that is held due to significant public interest shall be held within 60 days of determining that there is significant public interest.

[20.5.119.1916 NMAC - N, 07/24/2018]

**20.5.119.1917 MONITORED NATURAL ATTENUATION PLAN IMPLEMENTATION:**

**A.** Owners and operators shall implement the monitored natural attenuation plan after department approval in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

**B.** Owners and operators shall monitor the contamination until the department determines that the natural attenuation is complete pursuant to this part, or unless otherwise approved by the department.

[20.5.119.1917 NMAC - N, 07/24/2018]

**20.5.119.1918 REPORTS ON THE MONITORED NATURAL ATTENUATION:**

**A.** Owners and operators shall submit paper and electronic copies of written reports to the department on the progress of the monitored natural attenuation. Owners and operators shall submit the reports annually unless a different reporting period is approved by the department and shall document all work performed during the preceding interval and shall include at a minimum the following information, as appropriate:

**(1)** a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing petroleum storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

- (2) a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;
- (3) concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;
- (4) tabulation of the current and historical results of all water quality analyses and water elevation data;
- (5) graphs of appropriate scale of the current and historical water quality analyses and water elevation data versus time;
- (6) data evaluation and interpretation, and recommendations; and
- (7) other information required by the department.

**B.** Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.

[20.5.119.1918 NMAC - N, 07/24/2018]

**20.5.119.1919 EVALUATION OF MONITORED NATURAL ATTENUATION PLAN:**

**A.** Owners and operators shall evaluate the effectiveness of the monitored natural attenuation plan at the end of each year of monitoring and submit the evaluation to the department for review unless otherwise approved by the department.

**B.** When the department determines that the plan is not effectively mitigating contamination according to the identified risks to public health, safety and welfare or the environment, owners and operators shall propose an alternative approach or change in the existing monitored natural attenuation plan within 30 days of the department's determination of ineffectiveness. Within 30 days of the department's approval, owners and operators shall implement the approved changes.

**C.** After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section.

[20.5.119.1919 NMAC - N, 07/24/2018]

**20.5.119.1920 MODIFICATION OF MONITORED NATURAL ATTENUATION PLAN:**

**A.** Owners and operators may petition the department to approve a modification of the monitored natural attenuation plan for good cause.

**B.** The department may approve a modification of the monitored natural attenuation plan only if such modification provides adequate protection of public health, safety and welfare and the environment and the owner or operator complies with the public notice requirements of 20.5.119.1915 NMAC.

[20.5.119.1920 NMAC - N, 07/24/2018]

**20.5.119.1921 COMPLETION OF MONITORED NATURAL ATTENUATION:**

**A.** Natural attenuation shall be considered complete when all of the following criteria are met:

**(1)** no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

**(2)** the EIB standard of 0.1 mg/L for methyl tertiary butyl ether (MTBE) has been met in groundwater and surface water;

**(3)** all applicable site-specific target levels or risk-based screening levels in soil and WQCC and EIB standards in groundwater have been achieved:

**(a)** the applicable standards shall be achieved concurrently at all compliance wells as approved by the department;

**(b)** for verification that soil has reached target concentrations, owners and operators shall install at least four soil borings, at least three of which are distributed throughout the previously most contaminated portion of the vadose zone, unless otherwise approved by the department;

**(4)** corrective action requirements for total petroleum hydrocarbons determined in accordance with 20.5.119.1914 NMAC have been met; and

**(5)** any other conditions which threatened public health, safety and welfare or the environment have been abated.

**B.** If any of the conditions of Paragraphs (1) through (5) of Subsection A of this section are not met, the department may require owners and operators to perform additional remediation.

**C.** Termination of monitored natural attenuation in accordance with this section does not relieve the owner and operator of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

**D.** Following department approval, and with 30 days' notice unless otherwise approved by the department, owners and operators shall properly abandon wells that

are no longer needed for monitoring, in accordance with federal, state and local laws and regulations.

[20.5.119.1921 NMAC - N, 07/24/2018]

**20.5.119.1922 CONCEPTUAL REMEDIATION PLAN:**

**A.** If approved by the department, owners and operators shall submit a conceptual remediation plan to the department if any of the following conditions have been identified at the site:

(1) a thickness of greater than one-eighth inch of NAPL is present on the surface of the water, including in any excavation pit, or in any well;

(2) contaminant saturated soil is present;

(3) concentrations of contaminants of concern exceed site-specific target levels (SSTLs) in soil or WQCC or EIB standards in groundwater or surface water;

(4) total petroleum hydrocarbons in soil meet the criteria outlined 20.5.119.1914 NMAC; or

(5) other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

**B.** All remediation plans shall include but are not limited to methods to mitigate, remove or otherwise remediate the contaminant source areas.

**C.** Owners and operators shall submit the conceptual remediation plan in accordance with this section and a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

(1) The conceptual remediation plan shall provide a written description of all of the methodologies proposed and discuss how the plan will achieve target concentrations and other goals of remedial action in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. Owners and operators shall obtain department approval for the conceptual remediation plan before developing the final remediation plan.

(2) The conceptual remediation plan, at a minimum and as appropriate, shall include:

(a) a concise description of site conditions, including hydrogeology, contaminant characteristics and plume dynamics;

(b) the recommended approach to remediation and justification for the recommendation;

(c) a clear description of the goals of remediation and the target concentrations to be met in each medium;

(d) a narrative description of the proposed methodologies including a preliminary cost comparison and time lines for achieving goals of remediation;

(e) a cost estimate of implementation including installation, operation and maintenance, and monitoring;

(f) a schematic diagram of the proposed remediation system or treatment area and a narrative description of its operation;

(g) a plan view, to scale, of the site showing locations of the proposed equipment or excavation boundaries in relation to the site's physical features and contaminant plumes;

(h) a description of how the approach will achieve target concentrations and other goals of remediation; and

(i) a description of additional data required to support the conceptual remediation plan and design of the final plan and how it will be collected.

[20.5.119.1922 NMAC - N, 07/24/2018]

#### **20.5.119.1923 FINAL REMEDIATION PLAN:**

**A.** Following department approval of the conceptual remediation plan, owners and operators shall develop a final remediation plan in accordance with this section and shall submit three copies of the final remediation plan to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC.

**B.** The design and engineering of any final remediation plan that includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis shall be the responsibility of a professional engineer as defined in 20.5.101.7 NMAC. A professional engineer shall sign and seal all plans and drawings required pursuant to this section, unless otherwise approved by the department.

**C.** In order to eliminate the potential to emit regulated substances to the environment, all engineered remediation systems shall be designed, constructed and operated such that malfunction or failure of any integral component results in automatic shutdown of the entire system. Integral components include but are not limited to

pumps, blowers, oil-water separators, oxidizer systems, air strippers, filtration systems and computers.

**D.** All final remediation plans shall, at a minimum, include all of the following:

- (1)** goals of remediation and target concentrations to be achieved in each medium;
- (2)** a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing storage tanks, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;
- (3)** a hydrogeologic cross section showing contaminant mass in relation to the remediation system and a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;
- (4)** an implementation schedule;
- (5)** engineered plans and specifications in accordance with Subsection E of this section;
- (6)** a schedule for remediation of the source areas for protection of receptors and for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;
- (7)** a design and schedule for a system optimization that meets the requirements of 20.5.119.1928 NMAC;
- (8)** a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;
- (9)** copies of all permits, permit applications, and property access agreements required to initiate remediation, including, if necessary, permits required by the state engineer, permits for discharge to groundwater or a waste water treatment plant, permits for air emissions or a surface water national pollution discharge elimination system (NPDES) permit;
- (10)** public notice in conformance with the following requirements:
  - (a)** owners and operators shall publish a legal notice of the submission or planned submission of the final remediation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release; the first notice shall appear within one week of, but not later than, the day of submission of the final remediation plan to the department; the second publication of this notice shall occur no later than seven days after the date the remediation plan is submitted to

the department, and owners and operators shall submit two certified affidavits of publication from the newspaper to the department within 21 days after the date the final remediation plan is submitted;

**(b)** the notice shall contain the information specified in this section including the following:

**(i)** a statement that a remediation plan has been submitted to the department proposing actions to remediate a release of petroleum products;

**(ii)** the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of the remediation system will be located, using adequate identification of the properties, including street addresses if applicable;

**(iii)** a statement that a copy of the remediation plan and all data and modeling related to the remediation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

**(iv)** a statement that public comments on the plan must be delivered, within 21 days of the publication of the second notice, to the owner or operator's assigned project manager at the petroleum storage tank bureau, New Mexico environment department, or a district office if approved by the department, and to the secretary of the environment department;

**(c)** within seven days of the date a remediation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners; and

**(d)** owners and operators shall post a notice of the submission of the remediation plan at the release site within seven days of the submission of the remediation plan; the notice shall contain the information specified in this subsection and shall be at least eight and on-half inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the remediation plan is approved and implemented; public comments must be received by the department within 21 days of the date of the second publication of the public notice;

**(11)** for sites where contaminated media are being removed, a description of the ultimate disposal site of contaminated media, location of excavation and trenching, and method of limiting access by pedestrian and vehicular traffic; and

**(12)** other requirements as directed by the department.

**E.** In addition to the requirements of Subsection D of this section, all final remediation plans shall include:

**(1)** for engineered systems:

**(a)** unless otherwise approved by the department, a complete and definitive engineering design for a mechanical, electrical, or constructed system, including drawings, plans, diagrams and specifications which are signed and sealed by a professional engineer;

**(b)** process and instrumentation diagrams;

**(c)** mechanical arrangement plans and elevations, drawn to scale, showing proposed wells, manifolds, piping details, instrumentation and sampling ports;

**(d)** details of vapor or fluid extraction or injection wells, as appropriate, including screen length and placement in relation to ground surface, normal and low water table elevations and geologic strata, screen slot size, depths and specifications of the filter pack and seal, and drilling method;

**(e)** equipment and parts list and specifications including a spare parts list, performance requirements, maintenance requirements and schedule;

**(f)** electric power requirements including a one-line diagram and schematics;

**(g)** operation and maintenance commitments and schedules for all facets of the remediation system; and

**(h)** all other plans, diagrams and specifications that are necessary to properly construct and operate the remediation system in accordance with the remediation plan including but not limited to requirements for:

**(i)** trenching and protection from traffic;

**(ii)** concrete repair and replacement;

**(iii)** restoration of property; and

**(iv)** location and protection of underground utilities;

**(2)** for excavation and disposal plans:

**(a)** plan view of proposed excavation relative to contaminant plume;

**(b)** cross-sections of proposed excavation depicting overburden, contaminated material to be removed and backfill;

- (c) volume calculations and slope stability analysis;
- (d) description of excavation and backfill procedure to be performed in conformance with OSHA and ASTM standards and regulations;
- (e) traffic control plan;
- (f) description of post-excavation confirmation sampling;
- (g) proposed final grade plan;
- (h) post-excavation grade survey; and
- (i) all other plans, diagrams and specifications that are necessary including but not limited to requirements for:
  - (i) trenching and protection from traffic;
  - (ii) concrete repair and replacement;
  - (iii) restoration of property; and
  - (iv) location and protection of underground utilities.

[20.5.119.1923 NMAC - N, 07/24/2018]

[The address of the petroleum storage tank bureau, remediation section is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.119.1924 REVIEW AND APPROVAL OF FINAL REMEDIATION PLAN:**

**A.** Within 30 days of receipt of the final remediation plan and after the public comment period has ended, the department shall review the plan and shall either approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the remediation plan must be postponed due to significant comments from the public, the department must notify the owner and operator within 30 days of such a postponement, and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

**B.** The department may approve a final remediation plan and impose reasonable conditions.

**C.** If the department determines that the final remediation plan is inadequate, owners and operators shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

**D.** The department may provide notice of the submission of the remediation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event that an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the final remediation plan until after a public hearing or meeting is held and a determination is made. Any public hearing or meeting that is held due to significant public interest shall be held within 60 days of determining that there is significant public interest.

[20.5.119.1924 NMAC - N, 07/24/2018]

### **20.5.119.1925 IMPLEMENTATION OF FINAL REMEDIATION PLAN:**

**A.** Owners and operators shall implement the final remediation plan after department approval in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.119.1900 NMAC. Owners and operators shall employ a professional engineer to ensure conformance with the final remediation plan including excavation and installation, commissioning and operation of the system.

**B.** When the remediation plan includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis:

**(1)** a professional engineer shall supervise conformance with the final remediation plan including installation, commissioning and operation of the system;

**(2)** owners and operators shall operate the remediation system continuously until the remediation is terminated pursuant to this part unless otherwise approved by the department; and

**(3)** owners and operators shall report to the department all interruptions of the operation of the remediation system greater than 72 hours.

**C.** Owners and operators shall obtain written approval from the department prior to implementing any change to the department-approved engineering design.

**D.** Following implementation of the final remediation plan, owners and operators shall submit an "as-built" report signed and sealed by the project professional engineer including:

**(1)** any deviations from the drawings and specifications included in the final remediation plan;

(2) a tabulation of pertinent data including but not limited to flow rates, pressures, temperatures, and contaminant concentrations and groundwater elevations at start-up, and boring logs and well completion diagrams; and

(3) information and documentation of purchased major remediation equipment including, but not limited to serial number, model and manufacturer, description, warranty information, operating manuals, maintenance requirements and purchase price.

[20.5.119.1925 NMAC - N, 07/24/2018]

#### **20.5.119.1926 QUARTERLY REPORTS ON THE REMEDIATION:**

**A.** Owners and operators shall submit paper and electronic copies of written reports to the department on the operation of the remediation system. Owners and operators shall submit the reports quarterly unless a different reporting period is approved by the department, shall document all work performed during the preceding interval, and shall include the following information, as appropriate:

(1) tabulation of the current and historical results of all water quality analyses and water elevation data;

(2) evaluation of the performance and efficiency of each aspect of the remediation:

(a) the evaluation and all adjustments to system operation shall be performed, as appropriate, under the direct, responsible, supervisory control of an authorized representative of the qualified firm and a professional engineer; and

(b) owners and operators shall submit evidence that the performance of the remediation system meets the operating standards outlined in the final remediation plan;

(3) verification based on calculations that the schedule is being met for source removal, protection of actual and potential receptors, achievement of target concentrations, quarterly and cumulative contaminant mass reduction totals to date in pounds and gallons of contaminants;

(4) records of system operation, including but not limited to, periods of shut-down and equipment malfunctions; the maintenance procedures performed on the remediation system during the preceding quarter, including the names of the individuals performing the maintenance; and an operation and maintenance schedule for the next quarter;

(5) NAPL recovery, both cumulative and quarterly, and details of its disposal;

- (6) effluent vapor concentrations over time;
- (7) evaluation and recommendations for improving the performance of the system to achieve the goals of remediation; and
- (8) other information required by the department.

**B.** Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.

[20.5.119.1926 NMAC - N, 07/24/2018]

**20.5.119.1927 ANNUAL EVALUATION OF REMEDIATION:**

**A.** Owners and operators shall evaluate the effectiveness of the approach to remediation at the end of each year of operation and submit the evaluation to the department for review.

**B.** When the department determines that the approach to remediation is not effectively remediating contamination according to the identified risks to public health, safety and welfare and the environment, owners and operators shall propose an alternative approach or change in the existing remediation plan within 30 days of the department's determination of ineffectiveness. Within 30 days of the department's approval, owners and operators shall implement the approved changes.

**C.** After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section until monitoring to verify completion of remediation in accordance with 20.5.119.1929 NMAC commences.

[20.5.119.1927 NMAC - N, 07/24/2018]

**20.5.119.1928 MODIFICATION OF FINAL REMEDIATION PLAN:**

**A.** Owners and operators may petition the department to approve a modification of the final remediation plan for good cause.

**B.** The department may modify a final remediation plan only if it complies with applicable regulations, provides adequate protection of public health, safety and welfare and the environment, and the owner and operator comply with the public notice requirements of 20.5.119.1923 NMAC.

[20.5.119.1928 NMAC - N, 07/24/2018]

**20.5.119.1929 COMPLETION OF REMEDIATION:**

**A.** The department shall consider remediation complete when all of the following criteria are met:

(1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

(2) the EIB standard of 0.1 mg/L for methyl tertiary butyl ether (MTBE) has been met in groundwater and surface water;

(3) all applicable site-specific target levels or risk-based screening levels in soil and WQCC and EIB standards in groundwater have been achieved;

(a) all electrical and mechanical components of the remediation system shall remain shut down during the monitoring period described in this subsection;

(b) the department shall approve the designation of certain monitoring wells as compliance wells; the applicable standards shall be achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise as approved by the department; and

(c) for verification of remediation of soil to target concentrations, owners and operators shall install at least four soil borings, at least three of which are distributed throughout the previously most contaminated portion of the vadose zone, as approved by the department;

(4) corrective action requirements for total petroleum hydrocarbons determined in accordance with 20.5.119.1914 NMAC have been met; and

(5) any other conditions which threatened public health, safety and welfare or the environment have been abated or remediated.

**B.** If any of the conditions of Paragraphs (1) through (5) of Subsection A of this section are not met, the department may require owners and operators to perform additional remediation.

**C.** Notwithstanding the conditions in Subsection A of this section, owners and operators may continue to operate the mechanical and electrical components of the remediation system when it is effectively reducing contaminant concentrations, as determined and approved by the department.

**D.** Termination of remediation in accordance with this section does not relieve the owner and operator of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

**E.** Following department approval, owners and operators shall decommission the electrical and mechanical components of the remediation system and properly abandon

wells that are no longer needed for remediation or monitoring, in accordance with federal, state and local laws and regulations.

[20.5.119.1929 NMAC - N, 07/24/2018]

**20.5.119.1930 NO FURTHER ACTION DETERMINATION:**

**A.** A no further action determination is a technical determination issued by the department that documents that the owner or operator of a site has met all applicable WQCC and EIB remediation standards and that no contaminant will present a significant risk of harm to public health, safety and welfare and the environment.

**B.** Any owner or operator may request that the department evaluate a site for a no further action determination by submitting a written request to the department. The request shall include the following, if requested by the department:

(1) description of the site including a historical overview and generalized description of businesses, structures, vegetation, other prominent features, and location of the site;

(2) surveyed plat of the site, site map with legal description, or both;

(3) completed current environmental conditions table listing all areas of environmental concern on the site subject to remediation; the table shall include the following information about each area of environmental concern:

(a) remedial action taken, date, regulatory agency;

(b) residual contaminants of concern;

(c) clean-up status; and

(d) clean-up standards for contaminants of concern;

(4) chronology of events for each area investigated or remediated; and

(5) other relevant documents, as requested by the department.

**C.** Owners and operators shall receive approval of a request for a no further action determination for the release when all of the following conditions are met:

(1) groundwater and surface water contamination related to the release is less than or equal to WQCC and EIB standards, and where there had been groundwater contamination related to the release, the applicable standards have been achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise approved by the department;

(2) soil contamination is less than or equal to applicable RBSLs or SSTLs, unless otherwise approved by the department under Subparagraph (c) of Paragraph (3) of Subsection A of 20.5.119.1929 NMAC; and

(3) any other conditions which did threaten public health, safety and welfare or the environment have been adequately mitigated.

**D.** Owners and operators shall receive approval of a request for no further action determination for the release when subsurface water does not meet the definition of "subsurface water" in 20.6.2.7 NMAC or is unprotected pursuant to Subsection A of 20.6.2.3101 NMAC, if NAPL and contaminant saturated soil have been adequately remediated in accordance with this part and any other conditions which threatened public health, safety and welfare or the environment have been adequately mitigated.

**E.** Upon completion of an assessment by the department that a site qualifies for a no further action determination, the department shall issue a no further action determination letter.

**F.** Any of the following may result in a reversal of a no further action determination:

(1) new information becomes available or circumstances arise indicating that an unacceptable risk to public health, safety and welfare or the environment exists; or

(2) a change in use or reasonable foreseeable future use of land or resources, including a change from less sensitive land use to more sensitive land use, such as from commercial or industrial to residential, and including the drilling of water supply wells in the vicinity of remaining contamination.

[20.5.119.1930 NMAC - N, 07/24/2018]

#### **20.5.119.1931 REQUEST FOR EXTENSION OF TIME:**

**A.** For good cause shown, the department may extend the time for complying with any deadline set forth in this part. The request shall specify the reason for the request, all actions taken to comply with the deadline and the period of time for which the extension is requested.

**B.** The department shall not grant an extension for more than 30 days at a time unless the department determines additional time is warranted. The department may place conditions on the extension.

**C.** Lack of diligence or failure of owners and operators to comply with these regulations shall be grounds for denying a request for an extension of time.

[20.5.119.1931 NMAC - N, 07/24/2018]

**20.5.119.1932 RECORDKEEPING AND RETENTION:**

**A.** Owners and operators of petroleum storage tanks where a release has occurred shall retain records documenting compliance with all applicable requirements of 20.5.119 NMAC. If the owner and operator of a petroleum storage tank are separate persons, only one person is required to maintain the records required by this section however both parties are liable in the event of non-compliance.

**B.** Records to be maintained shall include, but not be limited to:

- (1) 72-hour report;
- (2) 14-day report;
- (3) NAPL Assessment report;
- (4) interim removal of contaminated soil report;
- (5) minimum site assessment, preliminary investigation report;
- (6) secondary investigation report;
- (7) soil-only contamination assessment report;
- (8) petroleum vapor intrusion assessment report;
- (9) final remediation plan;
- (10) groundwater monitoring reports;
- (11) operation and maintenance reports.

**C.** Records shall be maintained for a minimum period of 10 years following a no further action determination as set forth in 20.5.119.1930 NMAC.

[20.5.119.1932 NMAC - N, 07/24/2018]

**20.5.119.1933 REPORTING:**

**A.** Owners and operators shall provide to the department all reports as required in 20.5.119 NMAC in accordance with the timeline or deadlines set forth as stated in 20.5.119.1900 NMAC.

**B.** Owners and operators shall ensure all reports, plans and requests required in 20.5.119 NMAC contain at a minimum, in addition to the requirements set forth in 20.5.119.1902, 20.5.119.1903, 20.5.119.1905, 20.5.119.1906, 20.5.119.1909,

20.5.119.1911, 20.5.119.1912, 20.5.119.1913, 20.5.119.1915, 20.5.119.1918, 20.5.119.1922, 20.5.119.1923, 20.5.119.1926, 20.5.119.1927, 20.5.119.1930 and 20.5.119.1931 NMAC:

- (1) release name and address;
- (2) facility identification and release identification numbers;
- (3) workplan and deliverable identification numbers as applicable;
- (4) owner and operator name and address, and
- (5) date report was completed.

[20.5.119.1933 NMAC - N, 07/24/2018]

## **PART 120: CORRECTIVE ACTION FOR UST SYSTEMS CONTAINING OTHER REGULATED SUBSTANCES**

### **20.5.120.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.120.1 NMAC - N, 07/24/2018]

### **20.5.120.2 SCOPE:**

This part applies to owners and operators of hazardous substance UST systems as defined in 20.5.101 NMAC. If the owner and operator of an UST system are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.120.2 NMAC - N, 07/24/2018]

### **20.5.120.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.120.3 NMAC - N, 07/24/2018]

### **20.5.120.4 DURATION:**

Permanent.

[20.5.120.4 NMAC - N, 07/24/2018]

**20.5.120.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.120.5 NMAC - N, 07/24/2018]

**20.5.120.6 OBJECTIVE:**

The purpose of this part is to provide for corrective action at sites contaminated by releases from hazardous substance UST systems and to protect the public health, safety and welfare and the environment of the state.

[20.5.120.6 NMAC - N, 07/24/2018]

**20.5.120.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part.

[20.5.120.7 NMAC - N, 07/24/2018]

**20.5.120.8-20.5.120.1999 [RESERVED]**

**20.5.120.2000 GENERAL:**

**A.** Owners and operators of hazardous substance UST systems shall take corrective action to address all releases, including such action as collection and analysis of relevant site-specific data, soil remediation, groundwater and surface water remediation and any other appropriate actions pursuant to this part, in a manner protective of public health, safety and welfare and the environment.

**B.** Upon confirmation of a release pursuant to 20.5.118.1802 NMAC or identification and reporting of a release in any other manner, owners and operators of hazardous substance UST systems shall comply with the requirements of this part if the release:

(1) is of unknown volume or is greater in volume than the reportable quantity under 40 C.F.R. Part 302; or

(2) is of any size and the owner or operator is directed by the department to comply with this part.

**C.** Owners and operators shall maintain and provide to the department all reports required in 20.5.120.2029 and 20.5.120.2030 NMAC.

**D.** Owners and operators shall mail or deliver and provide paper and electronic copies of all written notices and reports required under this part to be submitted to the department to the owner or operator’s assigned project manager from the petroleum storage tank bureau, New Mexico environment department.

**E.** Owners and operators shall comply with any site-specific timeline or deadline that is approved in writing by the department at the time of workplan approval. If no applicable site-specific timeline has been approved, the following timeline shall apply to all corrective action requirements under this part. The time deadlines set forth in this part are computed from the date of reporting of a release or of reporting of the confirmation of a suspected release pursuant to 20.5.118.1800 NMAC unless another event is specified in these rules.

**Default Corrective Action Timeline**

<b>Deadline, in days from report:</b>	<b>Action or deliverable due date, as defined above:</b>
0	report discovery or confirmation of a release
3	72-hour report
14	14-day report
60	submit NAPL assessment
60	initiate interim removal of contaminated soil
60	preliminary investigation report
120	secondary investigation report
<b>When monitored natural attenuation is used:</b>	
510	monitored natural attenuation (MNA) plan
570	implementation of MNA
935	first annual MNA monitoring report
935	annual evaluation of MNA report
<b>When other remediation is used:</b>	
510	conceptual remediation plan
540	final remediation plan
600	implementation of remediation
690	first quarterly monitoring report
965	annual evaluation of remediation system report

**F.** All owners and operators are responsible for compliance with all provisions of this part. An owner or operator may designate a representative to facilitate compliance

with this part. The designation of such a representative shall not affect the department's right to seek compliance at any time from the owner or the operator or both. The designation of a representative is intended to facilitate compliance with this part and shall not relieve the owner and operator of their legal liabilities or responsibilities under this part.

**G.** Except for 20.5.120.2001, 20.5.120.2002 and 20.5.120.2003 NMAC, owners and operators shall submit to the department written workplans for all corrective action under this part. Owners and operators may submit workplans in stages to reflect the sequence or types of corrective action described in 20.5.120 NMAC at the site, but the owners and operators shall submit all workplans to and obtain approval by the department in writing for technical adequacy before the corrective action is commenced.

**H.** Unless otherwise approved, a qualified firm as specified in 20.5.122 NMAC shall perform all corrective action and, when required by the rules in Title 20, Chapter 5 NMAC, a professional engineer as defined in 20.5.101.7 NMAC.

**(1)** All contractors and their subcontractors shall have appropriate licenses and certifications and be in compliance with applicable local, state and federal laws and regulations, including but not limited to the rules in Title 16, Chapter 39 NMAC governing engineers, 14.6.3 NMAC governing contractors and, 29 CFR part 1910 governing worker health and safety.

**(2)** Owners and operators shall identify all prime contractors and all subcontractors in all workplans submitted to the department.

**I.** Where site conditions are amenable, owners and operators may use accelerated site characterization techniques if pre-approved by the department.

**J.** All monitoring wells shall be permitted in conformance with all applicable federal, state and local laws, regulations and ordinances in effect at the time of installation.

**K.** Owners and operators shall clearly mark and secure monitoring wells and major remediation equipment to prevent unauthorized access, tampering. Owners and operators shall close or abandon all wells in accordance with the requirements of applicable federal, state and local laws and regulations in effect at the time the workplan was approved.

**L.** If a release constitutes a hazardous substance incident under the provisions of the Hazardous Waste Act relating to hazardous substance incidents, those provisions may apply in addition to this part.

**M.** The department shall notify owners and operators taking corrective action and contractors of state-lead sites in writing when it has determined that a deliverable completed under an approved workplan is satisfactory. The written notice shall also inform the owner, operator or contractor that any application for payment from the fund

of costs associated with the approved deliverable must be received by the department within 90 days of the date the owner, operator or contractor received written notice of approval and that the department shall not grant extensions of the deadline except for good cause as shown pursuant to 20.5.123.2318 NMAC.

[20.5.120.2000 NMAC - N, 07/24/2018]

[The address of the department's Petroleum Storage Tank Bureau, Remedial Action Program, is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.120.2001      MINIMUM SITE ASSESSMENT, INITIAL RESPONSE:**

**A.** Upon discovery or confirmation of a release, owners and operators of the UST system shall immediately prevent any further release from the UST system by whatever means necessary, including removing product from the UST system or any part of the UST system that is known to leak or is suspected of leaking. If necessary, owners and operators shall remove the UST system from service in accordance with 20.5.115 NMAC.

**B.** Owners and operators shall inform the department in accordance with 20.5.118.1800 NMAC of any release and action taken to mitigate immediate damage from the release.

[20.5.120.2001 NMAC - N, 07/24/2018]

**20.5.120.2002      MINIMUM SITE ASSESSMENT, INITIAL ABATEMENT:**

**A.** Owners and operators shall undertake the initial abatement and site investigation actions specified in this section within 72 hours of discovery or confirmation of a release pursuant to 20.5.118 NMAC, using the default timeline as set forth in Subsection E of 20.5.120.2000 NMAC or as otherwise approved by the department.

**B.** Owners and operators shall identify the location and details of construction of all private water supply wells, using readily accessible public records, within a 1,000-foot radius, and all public water supply wells within a one mile radius of the UST system, and shall determine if the identified wells lie within a designated wellhead protection area. Owners and operators shall take appropriate measures to protect these water supplies from contamination.

**C.** Owners and operators shall contain or remediate releases which present an imminent threat of contamination to or are within 500 feet of a surface water course as soon as practicable to prevent contamination of surface water. If the surface water course is a drinking water supply, within 24 hours owners and operators shall notify the owners or operators of all drinking water supplies likely to be affected by the release.

**D.** If the release has contaminated a water supply, owners and operators shall immediately provide a temporary replacement drinking water supply, as well as adequate warnings or other mechanisms to prevent persons from drinking or otherwise contacting water contaminated by the release. Within seven days of discovery or confirmation of a release pursuant to 20.5.118 NMAC that has contaminated a water supply, owners and operators shall provide a replacement water supply which is of adequate quality and quantity for drinking, bathing, cooking and washing. Owners and operators shall maintain the replacement water supply until an alternate water supply sufficient for all domestic purposes is available.

**E.** Owners and operators shall identify the depth, location, composition and construction of all underground utilities including water lines, sewer lines, communication cables, electric lines, and natural gas lines within the area of the release to assess the susceptibility of these utilities to permeation by contaminants or deterioration caused by contaminants. Owners and operators shall notify the utility owner that the release has occurred and obtain permission to perform a site check of the utilities or other subsurface structures most likely to be contaminated by the release to determine whether NAPL or vapors are present.

**F.** Owners and operators shall complete an investigation to determine whether potentially explosive or harmful vapors are present in any building, utility corridor, basement, or other surface or subsurface structure on or adjacent to the release site.

**(1)** The investigation shall include testing for vapors using the following:

**(a)** a combustible gas indicator or equivalent instrument calibrated according to the manufacturer's instructions to test for potentially explosive levels of vapors; and

**(b)** a photoionization detector, flame ionization detector or another method approved by the department calibrated according to the manufacturer's instructions to test for potentially harmful vapors.

**(2)** In the event owners and operators discover potentially explosive levels of vapors greater than 10 percent of the lower explosive limit (LEL) or potentially harmful vapors reading greater than five whole units above ambient concentrations in any structure in the vicinity of the release site, owners and operators shall take immediate action to mitigate the vapor hazard. Within seven days of the discovery of the vapors, owners and operators shall install and place into operation a vapor mitigation system capable of reducing vapors to safe levels within the shortest reasonable time. The vapor mitigation system shall be designed by and constructed under the direct, responsible, supervisory control of a professional engineer, when required by the department.

**(a)** Once a vapor mitigation system has been installed, owners and operators shall monitor and report in writing to the department the levels of vapors in the affected structures weekly for the first month and monthly thereafter unless a different monitoring

schedule is approved in writing by the department. This monitoring shall be performed in accordance with Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

**(b)** After the vapor mitigation system has been in operation for three months, owners and operators shall have 30 days to submit to the department a written summary report containing the monitoring results. The department may direct owners and operators to modify the vapor mitigation system as necessary to reduce vapors to safe levels. Owners and operators shall submit monitoring results to the department at three-month intervals until operation of the vapor mitigation system is discontinued in accordance with this section.

**(3)** Owners and operators shall continue to operate the vapor mitigation system until the results of three consecutive monthly monitoring events indicate the following:

**(a)** levels of vapors are less than ten percent LEL; and

**(b)** levels of vapors are less than or equal to five whole instrument units above ambient levels in any structure in the vicinity of the release site when measured as required in Subparagraphs (a) and (b) of Paragraph (1) of this subsection.

**(4)** When operation of a vapor mitigation system is discontinued, owners and operators shall monitor the vapor levels in the structure weekly for the first month and monthly thereafter until one calendar year has passed, or as otherwise approved by the department. If during this period the levels exceed those set forth in Subparagraphs (a) and (b) of Paragraph (3) of this subsection, owners and operators shall notify the department and take the necessary corrective action, as directed by the department.

**G.** Owners and operators shall remove any exposed hazardous substances related to the release and mitigate any related immediate fire and safety hazards as soon as possible, but in no case no later than 72 hours after the confirmation or other identification of the release.

[20.5.120.2002 NMAC - N, 07/24/2018]

**20.5.120.2003      MINIMUM SITE ASSESSMENT, 72-HOUR AND 14-DAY REPORTS:**

**A.** Owners and operators shall make an oral report summarizing the abatement procedures undertaken and the results of action taken under 20.5.120.2001 and 20.5.120.2002 NMAC within 72 hours of the discovery or confirmation of a release pursuant to 20.5.118 NMAC.

**B.** Owners and operators shall submit a paper and electronic copy of a written report to the department within 14 days of the discovery or confirmation of a release pursuant to 20.5.118 NMAC in addition to the written notice required under 20.5.118

NMAC. This report shall summarize all the work performed pursuant to 20.5.120.2001 and 20.5.120.2002 NMAC and shall include the following information, as appropriate:

(1) a map based on a United States geologic survey topographic map showing locations of actual and potential receptors, including, but not limited to, private and public water supplies identified pursuant to Subsection B of 20.5.120.2002 NMAC; owners and operators shall draw two concentric circles, at 1,000 feet and at one mile radii from the center of the release, and shall also show on the map all surface water courses within a one mile radius of the site;

(2) information about any water supplies known or suspected to have been contaminated by the release;

(3) most likely direction of groundwater flow;

(4) a site plan map showing locations of utilities, surface structures and storage tank systems;

(5) information about underground utilities gathered in accordance with Subsection E of 20.5.120.2002 NMAC;

(6) soil borings, logs, and details of construction of all wells, if available;

(7) description of any actions taken to abate adverse effects;

(8) data from vapor monitoring performed in the vicinity of the site;

(9) description of any actions taken to abate potentially explosive or harmful vapors and any plans for further action;

(10) description of fire and safety hazards resulting from the release and actions taken to abate such hazards;

(11) description of current and past ownership of the property, UST systems, the substance stored in the system, age of tank and history of any tank removals;

(12) present land use, within 1,000 feet of the site; and

(13) records of tightness tests, repairs to the UST system, release detection and monitoring results.

[20.5.120.2003 NMAC - N, 07/24/2018]

**20.5.120.2004 NOTICE, SPLIT SAMPLES AND SAMPLING PROCEDURES:**

**A.** Except for the 72-hour vapor check, owners and operators shall notify the department at least four days prior to the collection of any samples which are required pursuant to this part and upon which laboratory analyses are to be performed to allow the department an opportunity to be present at the collection of samples or to split samples.

**B.** Owners and operators shall notify the department at least four days prior to the decommissioning, destruction or abandonment of any wells.

**C.** Owners and operators shall collect, store and transport all samples necessary to comply with the requirements of this part in a manner consistent with the nature of the known or suspected and in conformance with applicable federal, state and local laws and regulations.

[20.5.120.2004 NMAC - N, 07/24/2018]

**20.5.120.2005 INTERIM REMOVAL OF NON-AQUEOUS PHASE LIQUID:**

**A.** Owners and operators shall assess the potential for remediation of non-aqueous phase liquid (NAPL) where there is a thickness of greater than one-eighth inch of NAPL in surface water, in any excavation pit, or in any well. Owners and operators shall submit the assessment to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

**B.** The department may approve interim removal of NAPL when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment. In this event, owners and operators shall remove NAPL in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

**C.** Owners and operators shall remove NAPL in a manner that minimizes the spread of contamination into uncontaminated media.

**D.** Owners and operators shall store and dispose of NAPL in accordance with all flammable and combustible liquids codes approved by the state fire marshal or other local authority, state hazardous waste regulations 20.4.1 NMAC, and any other applicable laws or regulations.

**E.** Owners and operators shall report recovery and disposal of NAPL to the department.

[20.5.120.2005 NMAC - N, 07/24/2018]

**20.5.120.2006 INTERIM REMOVAL OF CONTAMINATED SOIL:**

**A.** Owners and operators shall remediate contaminated soil in accordance with 20.5.120.2018 and 20.5.120.2026 NMAC, unless approved by the department to remove and treat contaminated soil in accordance with this section.

(1) The department may approve interim removal of contaminated soil when such action is determined to be practical and necessary to protect public health, safety and welfare or the environment.

(2) Under this section, owners and operators shall excavate, treat and dispose of contaminated soil using methods approved by the department, in compliance with local laws and regulations, and under a timeline approved by the department or the timeline in Subsection E of 20.5.120.2000 NMAC.

(3) The department shall approve the vertical and horizontal extent of soil to be excavated.

**B.** When treating or temporarily storing soil on site, owners and operators shall:

(1) for treatment on site, spread soil in a six-inch layer over an impervious liner or other surface approved by the department to prevent infiltration to groundwater and place the layer of soil on level ground and berm to prevent runoff from contaminating other soil or surface water;

(2) for temporary storage, place the soil in a secure, bermed area on an impervious liner or surface or in a secured and properly labeled container, as approved by the department; and

(3) handle soil in a manner that does not contaminate groundwater, surface water or other uncontaminated soil or does not create or cause a public nuisance or threat to human health, safety and welfare or the environment.

**C.** When contaminated soil is taken off site, owners and operators shall provide the department with the following information within 14 days of removal of the soil from the site:

(1) written documentation of the type and concentration of contaminants, volume and weight of soil, method of treatment, date transported, and location of the site of disposal or treatment;

(2) a signed, written statement by the owner of the treatment or disposal site describing the location of the site and expressly accepting the contaminated soil; and

(3) if contaminated soil is taken to a permitted solid or hazardous waste facility, a manifest signed by the generator, transporter and the owner or operator of the solid waste facility.

**D.** Remediation shall be considered complete when the requirements in 20.5.120.2026 NMAC are met.

**E.** In accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC, owners and operators shall submit to the department a report describing the removal and treatment of contaminated soil.

(1) The report shall describe the soil removal action and its effectiveness, including volumes and weight removed.

(2) Owners and operators shall submit the report within 30 days of the soil removal action.

[20.5.120.2006 NMAC - N, 07/24/2018]

**20.5.120.2007 MINIMUM SITE ASSESSMENT, PRELIMINARY AND OTHER REQUIRED INVESTIGATIONS:**

**A.** A preliminary investigation is not required when owners and operators can demonstrate that the contamination has not reached groundwater and one of the following two conditions apply:

(1) the release is remediated in accordance with this part within 72 hours of discovery or confirmation; or

(2) the release is permanently contained within the excavation area.

**B.** If the contamination extends beyond the boundaries of the property where the release originated, owners and operators shall conduct a secondary investigation in accordance with 20.5.120.2010 NMAC.

[20.5.120.2007 NMAC - N, 07/24/2018]

**20.5.120.2008 MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION - REQUIREMENTS:**

Owners and operators shall conduct a preliminary investigation in accordance with this Subsection and under a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC. The preliminary investigation shall determine the following, unless otherwise approved by the department.

**A.** If not previously identified and reported under 20.5.120.2003 NMAC, the preliminary investigation shall determine the regulated substance released or suspected of being released at the site, the media of concern, current and potential receptors, current and anticipated use of property, complete and incomplete exposure pathways, and routes of exposure.

**B.** The preliminary investigation shall also determine the horizontal and vertical extent and magnitude of soil contamination.

**(1)** Owners and operators shall conduct a soil boring survey by advancing a continuously cored soil boring at each area of release where soil contamination is most likely to be encountered unless otherwise directed by the department. The initial incident report and a soil vapor survey may be used in locating these areas. Owners and operators shall advance at least one of the borings into the groundwater saturated zone or, with approval from the department, to a depth at which measured levels of contaminants in soil are no longer detectable by laboratory analysis, and vapor concentrations, as determined with a field instrument, are less than 100 whole instrument units.

**(2)** Owners and operators shall advance at least four additional soil borings to characterize the release within property boundaries. Borings shall be completed to the depth at which contaminants in soil are no longer detectable by laboratory analysis, and vapor concentrations, as determined with a field instrument, are less than 100 whole instruments units. If the soil borings indicate that contaminated soil extends beyond the boundary of the property on which the storage tank system is located, owners and operators shall advance soil borings sufficient to characterize the extent and magnitude of contamination within site boundaries.

**(3)** The preliminary investigation shall assess, at five-foot intervals, field estimates of concentrations of contaminants of concern in the soil borings and select and prepare samples for laboratory analysis.

**(4)** Owners and operators shall gather field data for soil classification, determining and recording color, grain size, texture, description of lithification, plasticity and clay content.

**(5)** The preliminary investigation shall include derived values for soil bulk density (g/cc), soil moisture content (percent by mass), and effective porosity, and fraction organic carbon content (percent by mass) using samples taken from an uncontaminated area of the vadose zone.

**(6)** The preliminary investigation shall delimit the horizontal and vertical extent of contaminant saturated soil as defined in 20.5.101.7 NMAC.

**C.** The preliminary investigation shall determine whether groundwater or surface water has been contaminated above applicable standards or whether a potential for groundwater or surface water contamination is present by performing the following:

**(1)** install at least three groundwater monitoring wells at locations where the results of the soil boring survey conducted pursuant to this section indicate that groundwater may be contaminated; owners and operators shall:

**(a)** locate monitoring wells so that groundwater gradient can be determined;

**(b)** install at least one monitoring well on site in the area of highest contamination as determined by the soil borings installed in conformance with the initial incident report and other relevant information;

**(c)** install one of the monitoring wells in the estimated down-gradient direction from the area of highest contamination;

**(d)** construct wells in accordance with all applicable federal, state and local laws and regulations; and

**(e)** survey the wells using a New Mexico licensed professional surveyor, in decimal degrees of latitude and longitude in accordance with NAD 83;

**(2)** calculate the direction and gradient of groundwater flow;

**(3)** inspect all monitoring wells for the presence of NAPL using a method approved by the department; if NAPL is present in any well, measure the apparent thickness, delimit its horizontal extent, and initiate recovery procedures in accordance with 20.5.120.2005 NMAC; and

**(4)** sample each monitoring well that does not contain NAPL and analyze the sample for contaminants of concern to determine whether:

**(a)** immediate mitigation procedures are warranted; and

**(b)** other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.120.2002 NMAC by:

**(i)** identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.120.2002 NMAC;

**(ii)** checking for the presence of vapors in accordance with 20.5.120.2002 and 20.5.120.2008 NMAC; and

**D.** Owners and operators shall identify all other hazards and potential threats to public health, safety and welfare and the environment which may exist as a result of the release to determine if:

**(1)** immediate mitigation procedures are warranted; and

**(2)** other hazardous conditions exist as a result of the release if not previously identified in accordance with 20.5.120.2003 NMAC by;

(a) identifying the location and depth of underground utilities and other subsurface structures on or adjacent to the site not identified earlier in accordance with Subsection E of 20.5.120.2002 NMAC.

(b) checking for the presence of vapors in accordance with 20.5.120.2002 and 20.5.120.2008 NMAC.

[20.5.120.2008 NMAC - N, 07/24/2018]

**20.5.120.2009      MINIMUM SITE ASSESSMENT, PRELIMINARY INVESTIGATION REPORT:**

**A.** Owners and operators shall submit paper and electronic copies of a written report of the preliminary investigation and other requirements of the minimum site assessment as defined in 20.5.101.7 NMAC in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC. The report shall include the information gathered under 20.5.120.2001, 20.5.120.2002, 20.5.120.2003 and 20.5.120.2007 NMAC and shall conform to the requirements of this section and 20.5.120.2008 NMAC.

**B.** Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

**C.** The minimum site assessment report shall at a minimum, include all pertinent data collected during the minimum site assessment investigation, interpretation of that data using cross sections, contoured maps that depict the magnitude and extent of all contaminated media, identification of any threatened receptors, recommendations for additional work and justification for the recommended work.

**D.** The department shall review the report and notify owners and operators of any inadequacies in the report within 30 days of receipt. Owners and operators shall, in accordance with a timeline approved by the department, correct the report and resubmit it to the department for review and written approval. If the revised report does not conform to the minimum site assessment, preliminary investigation requirements in this section and 20.5.120.2008 NMAC, the department shall reject the report and owners and operators shall be determined not to have conducted a minimum site assessment for the purposes of Subparagraph (c) of Paragraph (1) of Subsection B of Section 74-6B-8 NMSA 1978. The department's failure to review or to comment on this report shall not relieve owners and operators of their responsibilities under this part or otherwise under the law.

**E.** Owners and operators shall comply with the requirements of any local government which has designated a wellhead/source water protection area that includes the area of the release.

**F.** Owners and operators shall provide notice that includes the contaminants identified, as well as the horizontal and vertical extent of those contaminants, to all owners of property located within the extent of contamination.

[20.5.120.2009 NMAC - N, 07/24/2018]

**20.5.120.2010      SECONDARY INVESTIGATION:**

**A.** Owners and operators shall perform a secondary investigation in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC when the department makes at least one of the following determinations about the site:

- (1) the extent and magnitude of contamination in all media has not been delimited by the preliminary investigation; or
- (2) the release threatens public health, safety and welfare or the environment.

**B.** The secondary investigation shall determine the following:

- (1) the horizontal and vertical extent and magnitude of soil contamination both on and off site;
- (2) the horizontal extent and magnitude of dissolved phase groundwater contamination both on and off site;
- (3) the vertical extent and magnitude of dissolved phase groundwater contamination, when site conditions warrant;
- (4) characteristics, aerial extent, estimated volume and apparent thickness of NAPL in wells;
- (5) the elevation of groundwater and surface water and the gradient, rate and direction of groundwater and surface water flow;
- (6) the rate and direction of contaminant migration;
- (7) the hydrologic properties of the contaminated portion of the aquifer including hydraulic conductivity, transmissivity and storativity; the department may require field verification of estimates made from literature;
- (8) whether the aquifer is perched;
- (9) whether the aquifer is confined or unconfined; and

(10) any other technical information requested by the department which is reasonably necessary to meet the requirements of this part.

[20.5.120.2010 NMAC - N, 07/24/2018]

**20.5.120.2011      SECONDARY INVESTIGATION REPORT:**

**A.** Owners and operators shall submit paper and electronic copies of a written report of the secondary investigation to the department in accordance with a timeline approved by the department or the timeline in Subsection E of 20.5.120.2000 NMAC. The report shall include all information gathered under 20.5.120.2010 NMAC and shall conform to the requirements of this part.

**B.** Owners and operators shall attach a statement signed by an authorized representative of the qualified firm preparing the report for the owner or operator attesting to the veracity of the information submitted in the report and attached documents.

**C.** The secondary investigation report shall, at a minimum, include all pertinent data collected during the secondary investigation, interpretation of that data using cross sections, contoured maps that depict the magnitude and extent of all contaminated media, identification of any threatened receptors, recommendations for additional work and justification for the recommended work.

**D.** The department shall review the report and notify owners and operators of any inadequacies in the report within 30 days of receipt. Owners and operators shall, in accordance with a timeline approved by the department, correct the report and resubmit it to the department for review and written approval. If the revised report does not meet the requirements of 20.5.120.2010 NMAC, the owner and operator will be in violation of this part until the inadequacies are corrected. The department's failure to review or to comment on the secondary investigation report shall not relieve owners and operators of their responsibilities under this part or otherwise under the law.

**E.** Owners and operators shall provide notice that includes the contaminants identified, as well as horizontal and vertical extent of those contaminants, to all owners of property located within the extent of contamination who were not previously notified in accordance with 20.5.120.2009 NMAC.

[20.5.120.2011 NMAC - N, 07/24/2018]

**20.5.120.2012      MONITORED NATURAL ATTENUATION:**

**A.** If approved by the department, owners and operators shall submit a plan for remediation by monitored natural attenuation to the department if any of the following conditions have been identified at the site:

**(1)** concentrations of contaminants of concern exceed target concentrations in soil or WQCC or EIB standards in groundwater or surface water; and

**(2)** other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

**B.** Owners and operators shall submit the monitored natural attenuation plan in accordance with this section and 20.5.120.2013 NMAC and in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

**C.** The intent of the monitored natural attenuation plan is to provide a written description of the methodology proposed and demonstrate how the plan will achieve target concentrations in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment. The content of the monitored natural attenuation plan, at a minimum and as appropriate, shall include:

**(1)** a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

**(2)** cross sections showing the source contaminant mass in relation to the groundwater contamination;

**(3)** a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

**(4)** concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

**(5)** a schematic drawing depicting the construction details including lithology and screen intervals for the designated monitoring wells;

**(6)** justification for selecting the designated monitoring wells;

**(7)** recommended approach to monitoring including an implementation and monitoring schedule, the analytical methods, and the justification for the recommendation;

**(8)** an estimation of the time necessary for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

**(9)** a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;

**(10)** public notice in conformance with the following requirements:

**(a)** owners and operators shall publish a legal notice of the submission or planned submission of the monitored natural attenuation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release; the first notice shall appear within one week of, but not later than, the day of submission of the monitored natural attenuation plan to the department; the second publication of this notice shall occur no later than seven days after the date the monitored natural attenuation plan is submitted to the department, and owners and operators shall submit two certified affidavits of publication from the newspaper to the department within 21 days after the date the monitored natural attenuation plan is submitted;

**(b)** the notice shall contain the information specified in this section including the following:

**(i)** a statement that a monitored natural attenuation plan has been submitted to the department proposing actions to monitor natural attenuation of a release of hazardous substances;

**(ii)** the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of contaminant plume is located, using adequate identification of the properties, including street addresses if applicable;

**(iii)** a statement that a copy of the monitored natural attenuation plan and all data and modeling related to the monitored natural attenuation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

**(iv)** a statement that public comments on the plan must be delivered within 21 days of the publication of the second notice, to the owner or operator's assigned project manager at the petroleum storage tank bureau, New Mexico environment department, or a district office if approved by the department, and to the secretary of the environment department;

**(c)** within seven days of the date a monitored natural attenuation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners;

**(d)** owners and operators shall post a notice of the submission of the monitored natural attenuation plan at the release site within seven days of the submission of the monitored natural attenuation plan; the notice shall contain the information specified in this Subsection and shall be at least eight and on-half inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the monitored natural attenuation

plan is approved and implemented; public comments must be received by the department within 21 days of the date of the second publication of the public notice; and

(11) other requirements as directed by the department.

[20.5.120.2012 NMAC - N, 07/24/2018]

[The address of the department's Petroleum Storage Tank Bureau, Remediation Section is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

### **20.5.120.2013 REVIEW AND APPROVAL OF MONITORED NATURAL ATTENUATION PLAN:**

**A.** After the public comment period has ended, the department shall review the plan and shall approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the monitored natural attenuation plan must be postponed due to significant comments from the public, the department must notify owners and operators of such a postponement, and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

**B.** The department may approve a monitored natural attenuation plan and impose reasonable conditions.

**C.** If the department determines that the monitored natural attenuation plan is inadequate, owners and operators shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

**D.** The department may provide notice of the submission of the monitored natural attenuation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the monitored natural attenuation plan until after a public hearing or meeting is held and a determination is made. Any public hearing or meeting that is held due to significant public interest shall be held within 60 days of determining there is significant public interest.

[20.5.120.2013 NMAC - N, 07/24/2018]

### **20.5.120.2014 MONITORED NATURAL ATTENUATION PLAN IMPLEMENTATION:**

**A.** Owners and operators shall implement the monitored natural attenuation plan after department approval in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

**B.** Owners and operators shall monitor the contamination until the department determines that the natural attenuation is complete pursuant to this part, or unless otherwise approved by the department.

[20.5.120.2014 NMAC - N, 07/24/2018]

#### **20.5.120.2015      REPORTS ON THE MONITORED NATURAL ATTENUATION:**

**A.** Owners and operators shall submit paper and electronic copies of written reports to the department on the progress of the monitored natural attenuation. Owners and operators shall submit the reports annually unless a different reporting period is approved by the department and shall document all work performed during the preceding interval and shall include at a minimum the following information, as appropriate:

**(1)** a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing storage tanks and ancillary equipment, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

**(2)** a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

**(3)** concentration contour maps depicting the extent and magnitude of the contaminants of concern and the designated monitoring wells in relation to the site;

**(4)** tabulation of the current and historical results of all water quality analyses and water elevation data;

**(5)** graphs of appropriate scale of the current and historical water quality analyses and water elevation data versus time;

**(6)** data evaluation and interpretation, and recommendations; and

**(7)** other information required by the department.

**B.** Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.

[20.5.120.2015 NMAC - N, 07/24/2018]

**20.5.120.2016 EVALUATION OF MONITORED NATURAL ATTENUATION PLAN:**

**A.** Owners and operators shall evaluate the effectiveness of the monitored natural attenuation plan at the end of each year of monitoring and submit the evaluation to the department for review unless otherwise approved by the department.

**B.** When the department determines that the plan is not effectively mitigating contamination according to the identified risks to public health, safety and welfare or the environment, the owner or operator shall propose a change in the existing monitored natural attenuation plan within 30 days of the department's determination of ineffectiveness, or propose an alternative approach to remediation under 20.5.120.2019 NMAC. Within 30 days of the department's approval, the owner or operator shall implement the approved changes.

**C.** After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section.

[20.5.120.2016 NMAC - N, 07/24/2018]

**20.5.120.2017 MODIFICATION OF MONITORED NATURAL ATTENUATION PLAN:**

**A.** Owners and operators may petition the department to approve a modification of the monitored natural attenuation plan for good cause.

**B.** The department may approve a modification of the monitored natural attenuation plan only if such modification provides adequate protection of public health, safety and welfare and the environment and the owner or operator complies with the public notice requirements of 20.5.120.2012 NMAC.

[20.5.120.2017 NMAC - N, 07/24/2018]

**20.5.120.2018 COMPLETION OF MONITORED NATURAL ATTENUATION:**

**A.** Natural attenuation shall be considered complete when all of the following criteria are met:

**(1)** no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

**(2)** all applicable standards for soil and in groundwater and surface water have been achieved; the applicable standards shall be achieved concurrently at all compliance wells as approved by the department; and

**(3)** any other conditions which threatened public health, safety and welfare or the environment have been abated.

**B.** If any of the conditions of Paragraphs (1) through (3) of Subsection A of this section are not met, the department may require the owner or operator to perform additional remediation.

**C.** Termination of monitored natural attenuation in accordance with this section does not relieve the owner and operator of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

**D.** Following department approval, and with 30 days' notice unless otherwise approved by the department, owners and operators shall properly abandon wells that are no longer needed for monitoring, in accordance with federal, state and local laws and regulations.

[20.5.120.2018 NMAC - N, 07/24/2018]

#### **20.5.120.2019      CONCEPTUAL REMEDIATION PLAN:**

**A.** If approved by the department, owners and operators shall submit a conceptual remediation plan to the department if any of the following conditions have been identified at the site:

**(1)** a thickness of greater than one-eighth inch of NAPL is present in the water, including in any excavation pit, or in any well;

**(2)** contaminant saturated soil is present;

**(3)** concentrations of contaminants of concern exceed target concentrations in soil or WQCC or EIB standards in groundwater or surface water; or

**(4)** other conditions exist as a result of the release which threaten public health, safety and welfare or the environment, as determined by the department.

**B.** All remediation plans shall include but are not limited to methods to mitigate, remove or otherwise remediate the contaminant source areas.

**C.** Owners and operators shall submit the conceptual remediation plan in accordance with this section and with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

**(1)** The conceptual remediation plan shall provide a written description of all of the methodologies proposed and discuss how the plan will achieve target concentrations and other goals of remedial action in a manner that is practicable, cost effective, and protective of public health, safety and welfare and the environment.

Owners and operators shall obtain department approval for the conceptual remediation plan before developing the final remediation plan.

**(2)** The conceptual remediation plan, at a minimum and as appropriate, shall include:

**(a)** a concise description of site conditions, including hydrogeology, contaminant characteristics and plume dynamics;

**(b)** the recommended approach to remediation and justification for the recommendation;

**(c)** a clear description of the goals of remediation and the target concentrations to be met in each medium;

**(d)** a narrative description of the proposed methodologies including a preliminary cost comparison and time lines for achieving goals of remediation;

**(e)** a cost estimate of implementation including installation, operation and maintenance, and monitoring;

**(f)** a schematic diagram of the proposed remediation system or treatment area and a narrative description of its operation;

**(g)** a plan view, to scale, of the site showing locations of the proposed equipment or excavation boundaries in relation to the site's physical features and contaminant plumes;

**(h)** a description of how the approach will achieve target concentrations and other goals of remediation; and

**(i)** a description of additional data required to support the conceptual remediation plan and design of the final plan and how it will be collected.

[20.5.120.2019 NMAC - N, 07/24/2018]

**20.5.120.2020 FINAL REMEDIATION PLAN:**

**A.** Following department approval of the conceptual remediation plan, owners and operators shall develop a final remediation plan in accordance with this section and shall submit three copies of the final remediation plan to the department in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC.

**B.** The design and engineering of any final remediation plan that includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability

analysis shall be the responsibility of a professional engineer as defined in 20.5.101.7 NMAC. A professional engineer shall sign and seal all plans and drawings required pursuant to this section, unless otherwise approved by the department.

**C.** In order to eliminate the potential to emit regulated substances to the environment, all engineered remediation systems shall be designed, constructed and operated such that malfunction or failure of any integral component results in automatic shutdown of the entire system. Integral components include but are not limited to pumps, blowers, oil-water separators, oxidizer systems, air strippers, filtration systems and computers.

**D.** All final remediation plans shall, at a minimum, include all of the following:

**(1)** goals of remediation and target concentrations to be achieved in each medium;

**(2)** a site plan drawn to scale of no less than one inch equals 40 feet, showing all existing buildings, structures, paved areas, utilities, buried utility trenches, former and existing USTs, other sources of contamination, extent and magnitude of contamination, and existing and proposed monitoring wells;

**(3)** a hydrogeologic cross section showing contaminant mass in relation to the remediation system and a topographic map of appropriate scale showing the site in relation to existing and reasonably foreseeable future receptors;

**(4)** an implementation schedule;

**(5)** engineered plans and specifications in accordance with Subsection E of this section;

**(6)** a schedule for remediation of the source areas, for protection of receptors, and for achieving target concentrations, and a demonstration through calculations or other appropriate means which supports this schedule;

**(7)** a design and schedule for system optimization that meets the requirements of 20.5.120.2024 NMAC;

**(8)** a contingency plan in case of a change in site conditions that threatens public health, safety and welfare or the environment;

**(9)** copies of all permits, permit applications, and property access agreements required to initiate remediation, including, if necessary, permits required by the state engineer, permits for discharge to groundwater or a waste water treatment plant, permits for air emissions or a surface water national pollution discharge elimination system (NPDES) permit;

**(10)** public notice in conformance with the following requirements:

**(a)** the owner or operator shall publish a legal notice of the submission or planned submission of the final remediation plan at least twice in a paper of general circulation in the county in which soil or water has been contaminated by the release; the first notice shall appear within one week of, but not later than, the day of submission of the final remediation plan to the department; the second publication of this notice shall occur no later than seven days after the date the remediation plan is submitted to the department, and owners and operators shall submit two certified affidavits of publication from the newspaper to the department within 21 days after the date the final remediation plan is submitted;

**(b)** the notice shall contain the information specified in this section including the following:

**(i)** a statement that a remediation plan has been submitted to the department proposing actions to remediate a release of hazardous substances;

**(ii)** the name and physical address of the site at which the release occurred and the names and physical addresses of properties where any part of the remediation system will be located, using adequate identification of the properties, including street addresses if applicable;

**(iii)** a statement that a copy of the remediation plan and all data and modeling related to the remediation plan, if applicable, can be viewed at the department's main office and at the department's field office for the area in which the release occurred; and

**(iv)** a statement that public comments on the plan must be delivered, within 21 days of the publication of the second notice, to the owner or operator's assigned project manager at the petroleum storage tank bureau, New Mexico environment department, or a district office if approved by the department, and to the secretary of the environment department;

**(c)** within seven days of the date a remediation plan is submitted to the department, owners and operators shall also mail by certified mail a copy of the legal notice to adjacent property owners;

**(d)** owners and operators shall post a notice of the submission of the remediation plan at the release site within seven days of the submission of the remediation plan; the notice shall contain the information specified in this Subsection and shall be at least eight and one-half inches by 11 inches in size and prominently displayed in a location where it is likely to be seen by members of the public for a continuous period until the remediation plan is approved and implemented; public comments must be received by the department within 21 days of the date of the second publication of the public notice;

**(11)** for sites where contaminated media are being removed, a description of the ultimate disposal site of contaminated media, location of excavation and trenching, and method of limiting access by pedestrian and vehicular traffic; and

**(12)** other requirements as directed by the department.

**E.** In addition to the requirements of Subsection D of this section, all final remediation plans shall include:

**(1)** for engineered systems:

**(a)** unless otherwise approved by the department, a complete and definitive engineering design for a mechanical, electrical, or constructed system, including drawings, plans, diagrams and specifications which are signed and sealed by a professional engineer;

**(b)** process and instrumentation diagrams;

**(c)** mechanical arrangement plans and elevations, drawn to scale, showing proposed wells, manifolds, piping details, instrumentation and sampling ports;

**(d)** details of vapor or fluid extraction or injection wells, as appropriate, including screen length and placement in relation to ground surface, normal and low water table elevations and geologic strata, screen slot size, depths and specifications of the filter pack and seal, and drilling method;

**(e)** equipment and parts list and specifications including a spare parts list, performance requirements, maintenance requirements and schedule;

**(f)** electric power requirements including a one-line diagram and schematics;

**(g)** operation and maintenance commitments and schedules for all facets of the remediation system; and

**(h)** all other plans, diagrams and specifications that are necessary to properly construct and operate the remediation system in accordance with the remediation plan including but not limited to requirements for:

**(i)** trenching and protection from traffic;

**(ii)** concrete repair and replacement;

**(iii)** restoration of property; and

**(iv)** location and protection of underground utilities.

**(2)** for excavation and disposal plans:

- (a)** plan view of proposed excavation relative to contaminant plume;
- (b)** cross-sections of proposed excavation depicting overburden, contaminated material to be removed and backfill;
- (c)** volume calculations and slope stability analysis;
- (d)** description of excavation and backfill procedure to be performed in conformance with OSHA and ASTM standards and regulations;
- (e)** traffic control plan;
- (f)** description of post-excavation confirmation sampling;
- (g)** proposed final grade plan;
- (h)** post-excavation grade survey; and
- (i)** all other plans, diagrams and specifications that are necessary including but not limited to requirements for:
  - (i)** trenching and protection from traffic;
  - (ii)** concrete repair and replacement;
  - (iii)** restoration of property; and
  - (iv)** location and protection of underground utilities.

[20.5.120.2020 NMAC - N, 07/24/2018]

[The address of the department's Petroleum Storage Tank Bureau, Remediation Section is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.120.2021 REVIEW AND APPROVAL OF FINAL REMEDIATION PLAN:**

**A.** Within 30 days of receipt of the final remediation plan and after the public comment period has ended, the department shall review the plan and shall either approve the plan or notify the owner and operator in writing of the deficiencies of the plan. If the secretary determines that a decision on the remediation plan must be postponed due to significant comments from the public, the department must notify the owner and operator of such a postponement within 30 days, and may extend its review period for a period not to exceed 60 days unless otherwise provided in Subsection D of

this section. All deadlines calculated from the end of the review period will be adjusted to reflect any extension.

**B.** The department may approve a final remediation plan and impose reasonable conditions.

**C.** If the department determines that the final remediation plan is inadequate, the owner or operator shall modify the plan to correct the deficiencies specified by the department and re-submit it within the time period specified by the department.

**D.** The department may provide notice of the submission of the remediation plan to persons other than the owner and operator and provide for public participation in the review process as the department deems appropriate or when there is significant public interest. In the event an informal public meeting, public hearing or other form of public participation is conducted, the department may postpone its decision on the final remediation plan until after a public hearing or meeting is held. Any public hearing or meeting that is held due to significant public interest shall be held within 60 days of determining that there is significant public interest.

[20.5.120.2021 NMAC - N, 07/24/2018]

#### **20.5.120.2022 IMPLEMENTATION OF FINAL REMEDIATION PLAN:**

**A.** Owners and operators shall implement the final remediation plan after department approval in accordance with a timeline approved by the department or the timeline set forth in Subsection E of 20.5.120.2000 NMAC. Owners and operators shall employ a professional engineer to ensure conformance with the final remediation plan, including excavation, installation, commissioning and operation of the system.

**B.** When the remediation plan includes mechanical or electrical equipment, engineered fill, pinning, shoring or slope stability analysis:

**(1)** a professional engineer shall supervise conformance with the final remediation plan including installation, commissioning and operation of the system;

**(2)** owners and operators shall operate the remediation system continuously until the remediation is terminated pursuant to this part, unless otherwise approved by the department; and

**(3)** owners and operators shall report to the department all interruptions of the operation of the remediation system greater than 72 hours.

**C.** Owners and operators shall obtain written approval from the department prior to implementing any change to the department-approved engineering design.

**D.** Following implementation of the final remediation plan, the owner or operator shall submit an "as-built" report signed and sealed by the project professional engineer including:

(1) any deviations from the drawings and specifications included in the final remediation plan;

(2) a tabulation of pertinent data including but not limited to flow rates, pressures, temperatures, contaminant concentrations and groundwater elevations at start-up, and boring logs and well completion diagrams; and

(3) information and documentation purchased major remediation equipment including, but not limited to, serial number, model and manufacturer, description, warranty information, operating manuals, maintenance requirements and purchase price.

[20.5.120.2022 NMAC - N, 07/24/2018]

**20.5.120.2023 QUARTERLY REPORTS ON THE REMEDIATION:**

**A.** Owners and operators shall submit written reports to the department on the operation of the remediation system. Owners and operators shall submit the reports quarterly unless a different reporting period is approved by the department, shall document all work performed during the preceding interval, and shall include the following information, as appropriate:

(1) tabulation of the current and historical results of all water quality analyses and water elevation data;

(2) evaluation of the performance and efficiency of each aspect of the remediation:

(a) the evaluation and all adjustments to system operation shall be performed, as appropriate, under the direct, responsible, supervisory control of an authorized representative of the qualified and a professional engineer; and

(b) owners and operators shall submit evidence that the performance of the remediation system meets the operating standards outlined in the final remediation plan;

(3) verification based on calculations that the schedule is being met for source removal, protection of actual and potential receptors, achievement of target concentrations, quarterly and cumulative contaminant mass reduction totals to date in pounds and gallons of contaminants;

(4) records of system operation, including but not limited to, periods of shut-down and equipment malfunctions; the maintenance procedures performed on the remediation system during the preceding quarter, including the names of the individuals performing the maintenance; and an operation and maintenance schedule for the next quarter;

(5) NAPL recovery, both cumulative and quarterly, and details of its disposal;

(6) effluent vapor concentrations over time;

(7) evaluation and recommendations for improving the performance of the system to achieve the goals of remediation; and

(8) other information required by the department.

**B.** Owners and operators shall submit the report within 30 days of the end of the reporting period or as otherwise approved by the department.

[20.5.120.2023 NMAC - N, 07/24/2018]

#### **20.5.120.2024 ANNUAL EVALUATION OF REMEDIATION:**

**A.** Owners and operators shall evaluate the effectiveness of the approach to remediation at the end of each year of operation and submit the evaluation to the department for review.

**B.** When the department determines that the approach to remediation is not effectively remediating contamination according to the identified risks to public health, safety and welfare or the environment, owners and operators shall propose an alternative approach or change in the existing remediation plan within 30 days of the department's determination of ineffectiveness. Within 30 days of the department's approval, owners and operators shall implement the approved changes.

**C.** After implementation of any modification, owners and operators shall repeat annually the evaluation process described in this section until monitoring to verify completion of remediation in accordance with 20.5.120.2026 NMAC commences.

[20.5.120.2024 NMAC - N, 07/24/2018]

#### **20.5.120.2025 MODIFICATION OF FINAL REMEDIATION PLAN:**

**A.** Owners and operators may petition the department to approve a modification of the final remediation plan for good cause.

**B.** The department may modify a final remediation plan only if it complies with applicable regulations, provides adequate protection of public health, safety and welfare

and the environment, and the owners and operators comply with the public notice requirements of 20.5.120.2020 NMAC.

[20.5.120.2025 NMAC - N, 07/24/2018]

**20.5.120.2026 COMPLETION OF REMEDIATION:**

**A.** The department shall consider remediation complete when all of the following criteria are met:

(1) no layer of NAPL greater than one-eighth inch in thickness is present on the water table or in any of the wells;

(2) all applicable standards for soil, groundwater and surface water have been achieved;

(a) all electrical and mechanical components of the remediation system shall remain shut down during the monitoring period described in this subsection;

(b) the department shall approve the designation of certain monitoring wells as compliance wells; the applicable standards shall be achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise as approved by the department; and

(c) for verification of remediation of soil to target concentrations, owners and operators shall install at least four soil borings, at least three of which are distributed throughout the previously most contaminated portion of the vadose zone, as approved by the department; and

(3) any other conditions which threatened public health, safety and welfare or the environment have been remediated.

**B.** If any of the conditions of Paragraphs (1) through (3) of Subsection A of this section are not met, the department may require the owner or operator to perform additional remediation.

**C.** Notwithstanding the conditions in Subsection A of this section, owners and operators may continue to operate the mechanical and electrical components of the remediation system when it is effectively reducing contaminant concentrations, as determined and approved by the department.

**D.** Termination of remediation in accordance with this section does not relieve owners and operators of any other liability or responsibility they may have under this part or any other federal, state or local law or regulation.

**E.** Following department approval, owners and operators shall decommission the electrical and mechanical components of the remediation system and properly abandon wells that are no longer needed for remediation or monitoring, in accordance with federal, state and local laws and regulations.

[20.5.120.2026 NMAC - N, 07/24/2018]

**20.5.120.2027 NO FURTHER ACTION DETERMINATION:**

**A.** A no further action determination is a technical determination issued by the department that documents that the owner or operator of a site has met all applicable remediation standards and that no contaminant will present a significant risk of harm to public health, safety and welfare and the environment.

**B.** Any owner or operator may request that the department evaluate a site for a no further action determination by submitting a written request to the department. The request shall include the following, if requested by the department:

(1) description of the site including a historical overview and generalized description of businesses, structures, vegetation, other prominent features, and location of the site;

(2) surveyed plat of the site, site map with legal description, or both;

(3) completed current environmental conditions table listing all areas of environmental concern on the site subject to remediation; the table shall include the following information about each area of environmental concern:

(a) remedial action taken, date, regulatory agency;

(b) residual contaminants of concern;

(c) clean-up status; and

(d) clean-up standards for contaminants of concern;

(4) chronology of events for each area investigated or remediated; and

(5) other relevant documents, as requested by the department.

**C.** Owners and operators shall receive approval of a determination for no further action status for the release when all of the following conditions are met:

(1) groundwater and surface water contamination related to the release is less than or equal to WQCC and EIB standards, and where there had been groundwater contamination related to the release, the applicable standards have been

achieved concurrently at all compliance wells for at least eight consecutive quarters unless otherwise approved by the department;

(2) soil contamination is less than or equal to applicable standards; and

(3) any other conditions which did threaten public health, safety and welfare or the environment have been adequately mitigated.

**D.** Owners and operators shall receive approval of a request for no further action determination for the release when subsurface water does not meet the definition of "subsurface water" in 20.6.2.7 NMAC or is unprotected pursuant to Subsection A of 20.6.2.3101 NMAC, if NAPL and contaminant saturated soil have been adequately remediated in accordance with this part and any other conditions which threatened public health, safety and welfare or the environment have been adequately mitigated.

**E.** Upon completion of an assessment by the department that a site qualifies for a no further action determination, the department shall issue a no further action determination letter.

**F.** Any of the following may result in a reversal of a no further action determination:

(1) new information becomes available or circumstances arise indicating that an unacceptable risk to public health, safety and welfare or the environment exists; or

(2) change in use or reasonable foreseeable future use of land or resources, including a change from less sensitive land use to more sensitive land use, such as from commercial or industrial to residential, and including the drilling of water supply wells in the vicinity of remaining contamination.

[20.5.120.2027 NMAC - N, 07/24/2018]

#### **20.5.120.2028 REQUEST FOR EXTENSION OF TIME:**

**A.** For good cause shown, the department may extend the time for complying with any deadline set forth in this part. The request for an extension of time shall specify the reason for the request, the actions taken to comply with the deadline and the period of time for which the extension is requested.

**B.** The department shall not grant an extension for more than 30 days at a time unless the department determines additional time is warranted. The department may place conditions on the extension.

**C.** Lack of diligence or failure of owners and operators to comply with this part shall be grounds for denying a request for an extension of time.

[20.5.120.2028 NMAC - N, 07/24/2018]

**20.5.120.2029 RECORDKEEPING AND RETENTION:**

**A.** Owners and operators of a hazardous waste UST system where a release has occurred shall retain records documenting compliance with all applicable requirements of 20.5.120 NMAC. If the owner and operator are separate persons, only one person is required to maintain the records required by the section, however both parties are liable in the event of non-compliance.

**B.** Records to be maintained shall include, but not be limited to:

- (1) 72-hour report;
- (2) 14-day report;
- (3) NAPL Assessment report;
- (4) interim removal of contaminated soil report;
- (5) minimum site assessment, preliminary investigation report;
- (6) secondary investigation report;
- (7) final remediation plan;
- (8) groundwater monitoring reports;
- (9) operation and Maintenance reports.

**C.** Records shall be maintained for a minimum period of 10 years following a no further action determination as set forth in 20.5.120.2027 NMAC.

[20.5.120.2029 NMAC - N, 07/24/2018]

**20.5.120.2030 REPORTING:**

**A.** Owners and operators shall provide to the department all reports as required in 20.5.120 NMAC in accordance with the timeline or deadlines as set forth in Subsection E of 20.5.120.2000 NMAC.

**B.** Owners and operators shall ensure all reports, plans and requests required in 20.5.120 NMAC contain at a minimum, in addition to the requirements set forth in 20.5.120.2002, 20.5.120.2003, 20.5.120.2005, 20.5.120.2006, 20.5.120.2009, 20.5.120.2011, 20.5.120.2012, 20.5.120.2015, 20.5.120.2019, 20.5.120.2020, 20.5.120.2023, 20.5.120.2024, 20.5.120.2029 and 20.5.120.2030 NMAC.

- (1) release name and address;

- (2) facility identification and release identification numbers;
- (3) workplan and deliverable identification numbers as applicable;
- (4) owner and operator name and address, and
- (5) date report was completed.

[20.5.120.2030 NMAC - N, 07/24/2018]

## **PART 121: CORRECTIVE ACTION FUND USE AND EXPENDITURES**

### **20.5.121.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.121.1 NMAC - N, 07/24/2018]

### **20.5.121.2 SCOPE:**

This part applies to owners and operators of storage tanks as provided in 20.5.101 NMAC and to the use of the corrective action fund. If the owner and the operator of a storage tank are separate persons, only one person is required to comply with the requirements of this part; however, both parties are liable in the event of noncompliance.

[20.5.121.2 NMAC - N, 07/24/2018]

### **20.5.121.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Ground Water Protection Act, sections 74-6B-1 through 74-6B-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, sections 74-1-1 through 74-1-16 NMSA 1978.

[20.5.121.3 NMAC - N, 07/24/2018]

### **20.5.121.4 DURATION:**

Permanent.

[20.5.121.4 NMAC - N, 07/24/2018]

### **20.5.121.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.121.5 NMAC - N, 07/24/2018]

**20.5.121.6 OBJECTIVE:**

The purposes of this part are (1) to establish priorities for the use of the corrective action fund at sites contaminated by releases of regulated substances from storage tanks and (2) to specify procedures for administering the fund in conjunction with the procedures set forth in 20.5.123 NMAC, adopted by the New Mexico environment department.

[20.5.121.6 NMAC - N, 07/24/2018]

**20.5.121.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC and the Ground Water Protection Act apply to this part. In the case of conflict, the definitions in the Ground Water Protection Act shall apply to this part.

[20.5.121.7 NMAC - N, 07/24/2018]

**20.5.121.8-20.5.121.2099 [RESERVED]**

**20.5.121.2100 PERMISSIBLE FUND EXPENDITURES:**

The department shall make expenditures from the fund that are necessary to take emergency corrective action, to investigate releases and undertake other corrective action in accordance with the priorities established in this part, to make payments to or on behalf of owners and operators as provided in 20.5.123 NMAC, to pay for the department's reasonable costs of administering the fund, to pay for the department's costs associated with the recovery of expenditures from the fund pursuant to section 74-6B-8 NMSA 1978, including related legal costs, and to pay the state's share of federal leaking underground storage tank trust fund cleanup costs as required by the federal Resource Conservation and Recovery Act. The department shall keep records of the expenditures made from the fund and shall make those records available to the interim legislative finance committee upon request.

[20.5.121.2100 NMAC - N, 07/24/2018]

**20.5.121.2101 CORRECTIVE ACTION BY OWNERS AND OPERATORS:**

Owners and operators shall take corrective action in accordance with 20.5.118 NMAC and 20.5.119 or 20.5.120 NMAC, and the department shall make payments to or on behalf of owners and operators in accordance with section 74-6B-13 NMSA 1978 and the provisions of 20.5.123 NMAC. The department shall designate a site where the owner or operator takes corrective action and applies to the fund for payment of corrective action costs as a responsible party-lead site.

[20.5.121.2101 NMAC - N, 07/24/2018]

**20.5.121.2102 CORRECTIVE ACTION BY THE DEPARTMENT - INFORMATION REQUIRED:**

**A.** When the department determines that the owners and operators are unknown, unable or unwilling to take corrective action as described in 20.5.121.2101 NMAC, or when the department determines that a single entity is necessary to lead the corrective action, the department may designate the site as a state-lead site and take corrective action using the fund.

**B.** To make a determination that the owner and operator are unknown, the department shall, as appropriate:

- (1) investigate site specifics;
- (2) ascertain the current status and past history of the tanks at the site and determine the compliance status of the tanks; and
- (3) review and document search results of all additional reasonably available records.

**C.** To make a determination that the owner and operator are unable to take corrective action, the department shall, as appropriate:

- (1) investigate site specifics;
- (2) ascertain the current status and past history of the tanks at the site and determine the compliance status of the tanks;
- (3) request and review the owner's and operator's documentation of mental or physical inability, including but not limited to physician statements and court orders;
- (4) request and review the owner's and operator's financial records for the past two years, including but not limited to federal tax returns, and evaluate the owner's and operator's ability to pay, based on anticipated costs of remediation; and
- (5) review and document search results of all additional reasonably available records.

**D.** To make a determination that the owner and operator are unwilling to take corrective action, the department shall, as appropriate:

- (1) investigate site specifics;

(2) ascertain the liable owner and operator and identify any other owner and operator that may be liable;

(3) review and document search results of all additional reasonably available records; and

(4) send a notice of violation, return receipt requested, to the appropriate owner and operator.

E. To make a determination that a single entity is necessary to lead the corrective action, or in the case of danger to human health and the environment, the department shall, as appropriate:

(1) investigate site specifics;

(2) ascertain the current status and past history of the tanks at the site and determine the compliance status of the tanks; and

(3) review and document search results of all additional reasonably available records.

[20.5.121.2102 NMAC - N, 07/24/2018]

**20.5.121.2103 CORRECTIVE ACTION BY THE DEPARTMENT - OWNER AND OPERATOR NOTIFICATION:**

A. Upon a determination that a site be designated a state-lead site, the department shall send a notice to the owner and operator, if known, with the division director's signature notifying the owner and operator that the site is being designated a state-lead site and that the department may initiate an action for recovery of its costs of corrective action from the owner and operator pursuant to Subsection C of this section.

B. When the department takes corrective action at sites as described in 20.5.121.2102 NMAC, it shall do so in accordance with the provisions of 20.5.121.2104 NMAC.

C. The department may recover the costs of corrective action taken under 20.5.121.2102 NMAC from the owner or operator, unless the owner or operator demonstrates compliance as required by section 74-6B-8 NMSA 1978 and the provisions of 20.5.123 NMAC.

D. Owners and operators at sites where the department has taken corrective action under this section shall assume responsibility for and control of the corrective action when required or permitted by the department. Any request by the owner and operator to change the designation of a site from a state-lead site to a responsible party-lead site shall be in writing, shall state the reasons why corrective action by the department is no

longer necessary, and shall include appropriate documentation to support the request. The department may request additional documentation from the owner and operator, shall respond to the request in writing and shall state the reasons for its decision.

[20.5.121.2103 NMAC - N, 07/24/2018]

#### **20.5.121.2104 SITE PRIORITIZATION:**

**A.** The department shall assign a rank to all sites contaminated by releases from storage tanks using the leaking storage tank (LST) ranking system, as defined in 20.5.101.7 NMAC, and shall classify sites as being first, second or third priority sites. A site's priority shall be based on a minimum site assessment, as defined in 20.5.101.7 NMAC, or other available information that documents an effect or potential effect of the release on public health, safety and welfare or the environment. The department may re-rank and reclassify as warranted, based on facts affecting public health, safety and welfare and the environment.

**(1)** A first priority site is a site where the release of a regulated substance from a storage tank system has created an actual or imminent hazard to public health, safety and welfare or the environment such that the following corrective action is required:

**(a)** water supply protection or replacement pursuant to Subsection C or D of 20.5.119.1902 and 20.5.120.2002 NMAC;

**(b)** mitigation of toxic or explosive or potentially toxic or explosive vapors pursuant to Subsection F of 20.5.119.1902 and 20.5.120.2002 NMAC; or

**(c)** other corrective action as required to protect public health, safety and welfare or the environment from hazards caused by the release pursuant to Subsection G of 20.5.119.1902 and 20.5.120.2002 NMAC.

**(2)** A second priority site is a site where the release of a regulated substance from a storage tank system has created a source of environmental contamination such that the following corrective action is required:

**(a)** containment and removal of non-aqueous phase liquid pursuant to 20.5.119.1905 and 20.5.120.2005 NMAC; or

**(b)** treatment of contaminant saturated soils pursuant to 20.5.119.1906 and 20.5.120.2006 NMAC.

**(3)** A third priority site is a site which is not first or second priority, containing contaminants that were released from the storage tank system and where corrective action is required by 20.5.119 or 20.5.120 NMAC.

**B.** When the department approves corrective action other than minimum site assessments, it shall approve corrective action at sites in order of rank and shall approve priority one sites first, priority two sites after priority one sites, and priority three sites after priority one and priority two sites, except that the department may approve emergency corrective action at any time.

[20.5.121.2104 NMAC - N, 07/24/2018]

**20.5.121.2105 ORDER OF PAYMENTS IN CASE OF INSUFFICIENT FUNDS:**

**A.** If, after the department has determined that the owner or operator is in substantial compliance, the department determines that the fund budget or the fund balance is insufficient to cover the amount requested for payment, the department shall promptly notify the owner or operator. Payment for eligible costs shall occur when sufficient amounts are available in the fund budget or the fund, subject to the provisions of this section.

**B.** If the fund budget or the fund balance is insufficient to pay all applications for payment under 20.5.123.2318 NMAC but the fund remains an approved financial responsibility mechanism under 20.5.117.1711 NMAC, the department shall pay applications for payment for approved corrective action in order of priority as established in accordance with this part from the funds available, so long as funds are available.

**C.** Applications for sites of equal score based on the priorities established in this part shall be paid in order of date of receipt of complete applications for payment. For applications for sites of equal score with the same date of receipt, the earliest date on which a corrective action was taken as evidenced by the date of the earliest invoice included in the application shall determine the order of payment.

**D.** When the fund budget or the fund balance is insufficient to pay all applications for payment under 20.5.123.2318 NMAC and the fund is no longer an approved financial responsibility mechanism, the department shall make payments according to priority rank as established in this part and in the following percentages, so long as funds are available:

**(1)** one hundred percent of all reasonable and necessary eligible costs incurred to complete a minimum site assessment in excess of the deductible;

**(2)** one hundred percent of all reasonable and necessary eligible costs incurred to conduct a secondary investigation in accordance with 20.5.119.1910 or 20.5.120.2010 NMAC;

**(3)** in the case of reasonable and necessary costs incurred to complete corrective action other than the minimum site assessment and secondary investigation, according to the following formulae:

(a) for owners or operators of two or fewer facilities used for retail gasoline sales and whose facilities have less than 40,000 gallons combined total of product dispensed monthly, averaged over the last two years of operation: first priority LST ranked sites: one hundred percent; second priority LST ranked sites: ninety-five percent; third priority LST ranked sites: ninety percent; or

(b) for sites owned or operated by other owners or operators: one hundred percent for first priority LST ranked sites. The percentage of payment for second and third priority LST ranked sites shall be based on the ending quarterly unobligated balance of the fund proportional to the amount of each application for payment received in that quarter for these sites. The quarters end on June 30, September 30, December 31 and March 31. The percentage of payment equals the unobligated fund balance on the last day of the quarter divided by the dollar amount of reasonable and necessary eligible costs of applications for payment received in the quarter, not to exceed one hundred percent. For purposes of this subparagraph, "unobligated balance" or "unobligated fund balance" means corrective action fund equity less all known or anticipated liabilities against the fund; and

(4) payment for remaining eligible costs shall be made pursuant to Subsection E of this section.

E. When the fund is reestablished as an approved financial responsibility mechanism, payment shall be made for the balance of the eligible costs previously submitted but not paid under provisions of this section. These payments shall be made in the order in which sites were ranked by the department, in accordance with this part, as funds become available.

F. The department's determinations under this section concerning the availability of funds shall be final and not subject to appeal.

[20.5.121.2105 NMAC - N, 07/24/2018]

#### **20.5.121.2106 RESERVED MONEY:**

A. The department shall establish a reserve of one-million dollars (\$1,000,000) in the fund for the costs of taking emergency corrective action. The department may make expenditures from this reserve during the fiscal year and replenish the reserve at the beginning of the next fiscal year.

B. Money that is reserved pursuant to Subsection A of this section may be expended by the department only for corrective action necessary when an emergency threat to public health, safety and welfare or the environment is determined by the department to exist.

[20.5.121.2106 NMAC - N, 07/24/2018]

## **PART 122: QUALIFICATION OF PERSONS PERFORMING CORRECTIVE ACTION**

### **20.5.122.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.122.1 NMAC - N, 07/24/2018]

### **20.5.122.2 SCOPE:**

This part applies to all persons performing corrective action on behalf of storage tank owners, operators or the state under 20.5 NMAC.

[20.5.122.2 NMAC - N, 07/24/2018]

### **20.5.122.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.122.3 NMAC - N, 07/24/2018]

### **20.5.122.4 DURATION:**

Permanent.

[20.5.122.4 NMAC - N, 07/24/2018]

### **20.5.122.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.122.5 NMAC - N, 07/24/2018]

### **20.5.122.6 OBJECTIVE:**

The objective of this part is to establish rules for the qualification of firms for and disqualification of firms from conducting corrective action on sites where releases from storage tanks have caused contamination.

[20.5.122.6 NMAC - N, 07/24/2018]

### **20.5.122.7 DEFINITIONS:**

**A.** The definitions in 20.5.101 NMAC and the Ground Water Protection Act apply to this part. In the case of conflict, the definitions in the Ground Water Protection Act control.

**B.** For purposes of this part, the term "firm" shall be synonymous with the term "person," as defined in 20.5.101 NMAC.

**C.** For purposes of this part, the term "proposal" means an offer to complete work submitted in response to given specifications issued for a responsible party-lead site or for a state-lead site.

[20.5.122.7 NMAC - N, 07/24/2018]

### **20.5.122.8-20.5.122.2199 [RESERVED]**

### **20.5.122.2200 PAYMENTS:**

Payments from the corrective action fund may be made only for corrective action conducted by firms qualified by the department to perform such work pursuant to this part.

[20.5.122.2200 NMAC - N, 07/24/2018]

### **20.5.122.2201 QUALIFICATION OF FIRMS:**

**A.** Except as provided in Subsections C and D of this section, firms shall be evaluated for qualification by the department to conduct corrective action for each workplan submitted. Except as provided in Subsection B of this section, firms shall be qualified upon approval of the following:

(1) the subject workplan;

(2) a current statement of qualifications of the firm's authorized representative, the individual with direct, responsible, supervisory control of the approved workplan unless previously submitted under the current active phase of corrective action; and

(3) if the involvement of a professional engineer is required for the work to be undertaken under the workplan, a current statement of qualifications of the professional engineer that complies with 20.5.122.2203 NMAC.

**B.** In addition to the requirements of Subsection A of this section, if the department reasonably believes that a firm already qualified to perform corrective action under an approved workplan is not timely paying its subcontractors, suppliers, laboratories, and

other entities included in any invoice connected with an approved workplan, the firm shall not be qualified unless it provides proof to satisfy the department that within the preceding two years it has paid those entities according to the firm's contractual agreements.

**C.** When initial response or initial abatement is required at a site, firms may be qualified prior to commencement of work by submitting for verbal approval a statement of qualifications for the authorized representative and, if a professional engineer is required by 20.5.119 NMAC or 20.5.120 NMAC, for the professional engineer. Written statements of qualifications shall be submitted to the department with the report on initial abatement required by Subsection B of 20.5.119.1903 or 20.5.120.2002 NMAC.

**D.** When remediation is required at a site, selection of a remediation proposal in accordance with the competitive selection process described in 20.5.123.2306 NMAC and 20.5.123.2308 NMAC qualifies the successful firm to conduct corrective action within the scope of work defined by the proposal, except as provided in 20.5.122.2204 NMAC. A firm may be tentatively qualified prior to submitting a proposal under 20.5.123.2306 NMAC or 20.5.123.2308 NMAC by submitting for verbal approval a statement of qualifications for the authorized representative and, if a professional engineer is required by 20.5.119 NMAC or 20.5.120 NMAC, for the professional engineer.

**E.** Statements of qualifications shall include:

- (1) the authorized representative's name and status as sole proprietor, officer, partner, employee or subcontractor of the firm;
- (2) education relevant to the nature of the work to be performed;
- (3) experience relevant to the nature of the work to be performed; and
- (4) licenses and certifications required for the work to be performed.

**F.** While the required education and experience for the authorized representative may vary with the work to be performed, the following shall be considered minimums: a baccalaureate degree in science or engineering and at least two years of applicable experience in the investigation and remediation of unsaturated and saturated zone contamination, or five years supervised experience in investigation or remediation of unsaturated and saturated zone contamination.

**G.** Firms performing corrective action must maintain their qualification at all stages of work in order for the costs of that work to be eligible for payment.

**H.** This part is in addition to and not in lieu of any other licensing and registration requirements of the Construction Industries Licensing Act, Sections 60-13-1 through 60-13-59 NMSA 1978.

I. This part does not relieve contractors or owners or operators of their obligations and liabilities under applicable local, state, and federal laws and regulations.

[20.5.122.2201 NMAC - N, 07/24/2018]

**20.5.122.2202 DISQUALIFICATION OF FIRMS:**

A. The department may disqualify a qualified firm if the department determines that the firm has:

- (1) knowingly misrepresented a material fact in its request to become qualified or in any subsequent report or communication with the department;
- (2) failed to comply with any of the requirements of 20.5.119 NMAC, 20.5.120 NMAC, 20.5.122 NMAC or 20.5.123 NMAC;
- (3) failed to complete to the department's satisfaction the work described in one or more approved workplans; or
- (4) when required to do so by 20.5.122.2201 NMAC, failed to prove to the department's satisfaction that it has timely paid its subcontractors, suppliers, laboratories and other entities.

B. A firm that has been disqualified under this section may become eligible to perform corrective action upon satisfactory proof that the firm has remedied, to the department's satisfaction, the problem that lead to disqualification. For purposes of Paragraph (4) of Subsection A of this section, a firm that has timely paid its subcontractors, suppliers, laboratories and other entities for at least six months, and which meets all applicable requirements of 20.5.122.2201 NMAC, shall become eligible to perform corrective action.

[20.5.122.2202 NMAC - N, 07/24/2018]

**20.5.122.2203 REQUIREMENTS FOR PROFESSIONAL ENGINEERS:**

If the involvement of a professional engineer is required for the corrective action being conducted, the firm's qualification requirements shall include licensure by the New Mexico state board of licensure for professional engineers and surveyors in the discipline of engineering appropriate to the corrective action. This requirement may be met by demonstrating that the firm has on staff or available by contract a professional engineer licensed in the appropriate discipline.

[20.5.122.2203 NMAC - N, 07/24/2018]

**20.5.122.2204 ADVERSE DETERMINATIONS ON REQUESTS TO QUALIFY FIRMS:**

**A.** In reviewing a firm's qualifications to perform corrective action, the department shall consider the nature of the work to be performed under the submitted workplan. Except as provided in Subsections B and C of this section, the department's determination on a request to qualify a firm for a workplan involving remediation shall be consistent with the department's selection of the firm's proposal for remediation under 20.5.123 NMAC, if applicable.

**B.** Failure of a qualified firm to complete work described in one or more approved workplans to the satisfaction of the department may be taken into consideration when the firm's qualifications are reviewed by the department for purposes of future workplans.

**C.** The failure of a qualified firm to complete work described in an approved workplan to the satisfaction of the department may result in a determination by the department that further work by the firm is not eligible for payment or that a new remediation proposal or workplan, or both, is required.

**D.** Nothing in this part is intended to affect the rights or obligations of the department or its contractors in any suspension or debarment proceedings undertaken by the department under the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978. Suspension or debarment under the Procurement Code will be considered, however, in the department's determination on a firm's qualifications under this part.

[20.5.122.2204 NMAC - N, 07/24/2018]

**20.5.122.2205      APPEALING ADVERSE DETERMINATIONS:**

A firm that has been denied qualification or that has been disqualified under this part may obtain review of the decision by using the procedures set forth in 20.5.125 NMAC.

[20.5.122.2205 NMAC - N, 07/24/2018]

**PART 123: CORRECTIVE ACTION FUND ADMINISTRATION**

**20.5.123.1      ISSUING AGENCY:**

New Mexico Environment Department.

[20.5.123.1 NMAC – Rp. 20.5.123.1 NMAC, 12/27/2018]

**20.5.123.2      SCOPE:**

This part applies to owners and operators of storage tanks as provided in 20.5 NMAC and as provided in 20.5.101 NMAC to contractors, offerors, and designated representatives, and to all payments made by the department to or on behalf of storage

tank owners and operators under the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978. If the owner and operator are separate persons, only one person is required to comply with the requirements of this part, including any notice and reporting requirements; however, both parties are liable in the event of noncompliance.

[20.5.123.2 NMAC – Rp. 20.5.123.2 NMAC, 12/27/2018]

### **20.5.123.3 STATUTORY AUTHORITY:**

20.5.123 NMAC is adopted by the Secretary of Environment pursuant to the provisions of the Department of Environment Act, Sections 9-7A-1 through 9-7A-15 NMSA 1978 and the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978.

[20.5.123.3 NMAC – Rp. 20.5.123.3 NMAC, 12/27/2018]

### **20.5.123.4 DURATION:**

Permanent.

[20.5.123.4 NMAC – Rp. 20.5.123.4 NMAC, 12/27/2018]

### **20.5.123.5 EFFECTIVE DATE:**

December 27, 2018, unless a later date is indicated in the rule history note at the end of a section.

[20.5.123.5 NMAC – Rp. 20.5.123.5 NMAC, 12/27/2018]

### **20.5.123.6 OBJECTIVE:**

The purpose of 20.5.123 NMAC is to establish the procedures for administering and making payments from the corrective action fund ("fund") created by the Ground Water Protection Act ("act"), Sections 74-6B-1 through 74-6B-14 NMSA 1978, including procedures for:

A. payment of the costs of a minimum site assessment in excess of ten thousand dollars (\$10,000), or in excess of lesser amounts as permitted by the act;

B. payment of the costs of corrective action other than the minimum site assessment;

C. determinations of compliance with the act;

D. determinations of eligibility of costs for payment;

E. competitive bidding for corrective action work; and

F. disposition of remediation equipment acquired through the fund.

[20.5.123.6 NMAC – Rp. 20.5.123.6 NMAC, 12/27/2018]

**20.5.123.7 DEFINITIONS:**

A. Terms used in this part shall have the meanings given to them in the Ground Water Protection Act and 20.5.101 NMAC except as provided in Subsection B of this section.

B. As used in 20.5.123 NMAC:

(1) "cost-effectiveness" means completing tasks in a manner that is economical in terms of goods or services received for the money spent;

(2) "major remediation equipment" means any transportable unit or system which has been acquired specifically for remediation using the corrective action fund and which the department inventories pursuant to Section 12-6-10 NMSA 1978;

(3) "pay for performance" means payment of a previously approved amount based on completion or achievement of previously determined criteria including, but not limited to, a given task or set of tasks, specified reductions in contaminant levels, or achievement of other measurable milestones, as approved by the department;

(4) "payment" means payment from the fund to a person that the owner or operator has assigned the right of reimbursement, or reimbursement from the fund to an owner or operator for the costs of corrective action;

(5) "phase of corrective action" means any one of the following activities, required by 20.5.119 or 20.5.120 NMAC:

(a) minimum site assessment ("MSA"), as defined in 20.5.101.7 NMAC;

(b) phase 1, which includes secondary investigation and report, soil-only contamination assessment, and petroleum vapor intrusion assessment;

(c) phase 2, which includes interim removal of non-aqueous phase liquid or contaminated soil;

(d) phase 3, which includes development of a conceptual and final remediation plan or a monitored natural attenuation plan;

(e) phase 4, which includes implementation of the remediation plan; or

(f) phase 5, which includes operating, monitoring, maintaining and reporting under the implemented remediation plan or monitoring and reporting under the approved monitored natural attenuation plan;

(6) "proposal" means an offer to complete work submitted in response to given specifications issued for a responsible party-lead site, or for a state-lead site;

(7) "resident business" means:

(a) a business enterprise which is authorized to do and is doing business under the laws of New Mexico and maintains its principal place of business in New Mexico, or has staffed an office and has paid applicable New Mexico taxes for two years prior to the awarding of the proposal and has five or more employees who are residents of New Mexico, or is an affiliate of a business which meets either of these two requirements; as used in this paragraph, "affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with the qualifying business through ownership of voting securities representing a majority of the total voting power of the entity; or

(b) a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods, commodities or services that are substantially manufactured, produced or assembled in New York state, or, in the case of construction services, has its principal place of business in New York state;

(8) "responsible party" means any owner or operator of a storage tank system from which a release has occurred;

(9) "responsible party-lead site" means a site where the owner or operator takes corrective action and applies to the fund for payment of corrective action costs, as distinct from a site where the state takes corrective action;

(10) "specifications" means a detailed written statement of particulars prescribing corrective action to be taken, conditions to be met, materials to be used, or standards of workmanship to which something is to be built, installed, or operated, which is provided to prospective contractors on responsible party-lead sites and state-lead sites;

(11) "state-lead site" means a site where the department takes corrective action using the fund because the owner and operator are unknown, unable or unwilling to take corrective action as described in 20.5.121.2102 NMAC or because the department determines that a single entity is necessary to lead the corrective action;

(12) "technical merit" means those characteristics of a proposal including but not limited to strategies, expertise, methods, materials and procedures meeting the specifications included in a request for proposals.

[20.5.123.7 NMAC – Rp. 20.5.123.7 NMAC, 12/27/2018]

**20.5.123.8-20.5.123.2299 [RESERVED]**

**20.5.123.2300 CONSTRUCTION:**

This part shall be liberally construed to effectuate the purposes of the Ground Water Protection Act and shall be construed, to the extent possible, so as not to conflict with the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978, or 20.5.101 through 20.5.125 NMAC.

[20.5.123.2300 NMAC – Rp. 20.5.123.2300 NMAC, 12/27/2018]

**20.5.123.2301 SEVERABILITY:**

If any section or application of this part (20.5.123 NMAC) is held invalid, the remainder of this part (20.5.123 NMAC) or its application to other persons or situations shall not be affected.

[20.5.123.2301 NMAC – Rp. 20.5.123.2301 NMAC, 12/27/2018]

**20.5.123.2302 EFFECT ON OTHER REGULATIONS:**

This part does not relieve any owner or operator of the obligation to comply with any federal or state laws or regulations, including 20.5 NMAC.

[20.5.123.2302 NMAC – Rp. 20.5.123.2302, 12/27/2018]

**20.5.123.2303 COMPLIANCE DETERMINATIONS:**

A. The department shall make compliance determinations in the following circumstances:

(1) Corrective action by owner or operator. Pursuant to Section 74-6B-13 NMSA 1978, in order to be eligible for payment of corrective action costs other than those costs associated with a minimum site assessment, the owner or operator shall be in compliance with the requirements of Subsection B of Section 74-6B-8 NMSA 1978, as outlined in 20.5.123.2304 NMAC, during the owner or operator's term of ownership or operation for all storage tanks owned or operated at the site where the corrective action was or is being taken. Compliance for underground storage tanks ("USTs") shall be determined for the period from March 7, 1990 to the date the department determines that corrective action is complete. Compliance for above-ground storage tanks ("ASTs") shall be determined for the period from July 1, 2001 to the date the department determines that corrective action is complete.

(2) Corrective action by the department. Before bringing an action in district court against an owner or operator to recover expenditures from the fund incurred by the department to take corrective action at a site, the department shall determine, in accordance with 20.5.123.2304 NMAC, whether the owner or operator has complied with the requirements of Subsection B of Section 74-6B-8 NMSA 1978, during their term of ownership or operation for all storage tanks owned or operated at the site. Compliance for USTs shall be determined for the period from March 7, 1990 to the date the department determines that corrective action is complete. Compliance for ASTs shall be determined for the period from July 1, 2001 to the date the department determines that corrective action is complete.

B. The owner or operator shall request a compliance determination before submitting the initial request for payment of the costs of corrective action, other than the costs of an MSA. Once the department has completed an initial compliance determination at the owner or operator's request, the department may initiate and make separate compliance determinations at one or more phases of corrective action, other than an MSA, for which payment is requested. If the department determines that a tank owner or operator is not in compliance with 20.5.123.2304 NMAC, the tank owner or operator will be ineligible for payment of corrective action costs, other than an MSA.

C. No compliance determination is necessary when, pursuant to Section 74-6B-13 NMSA 1978, an owner or operator applies to the department for payment of MSA costs exceeding the deductible. However, prior to payment, the department shall determine that the work performed meets the definition of an MSA provided in 20.5.101.7 NMAC.

[20.5.123.2303 NMAC – Rp. 20.5.123.2303 NMAC, 12/27/2018]

**20.5.123.2304 DETERMINATION OF COMPLIANCE UNDER SECTION 74-6B-8 NMSA 1978:**

A. For sites where all USTs were removed or properly abandoned prior to March 7, 1990, and for sites where all ASTs were removed or properly abandoned prior to July 1, 2001, the determination of compliance required by Subsections B and C of 20.5.123.2303 NMAC shall include findings as to whether the owner or operator has:

(1) paid all storage tank fees required by Section 74-4-4.4 NMSA 1978, and, for all USTs removed or properly abandoned prior to March 7, 1990, and for all ASTs removed or properly abandoned prior to July 1, 2001, a two hundred (\$200) fee for each site;

(2) conducted a minimum site assessment as defined in 20.5.101.7 NMAC;  
and

(3) cooperated in good faith with the department and granted access to the department for investigation, cleanup, and monitoring.

B. For sites where USTs were not removed or properly abandoned prior to March 7, 1990, or where ASTs were not removed or properly abandoned prior to July 1, 2001, the determination of compliance required by Subsections B and C of 20.5.123.2303 NMAC shall include findings as to whether the owner or operator has:

(1) paid all storage tank fees required by Sections 74-4-4.4 and 74-6B-9 NMSA 1978;

(2) conducted a minimum site assessment as defined in 20.5.101.7 NMAC and, if contamination is found, taken action to prevent continuing contamination;

(3) cooperated in good faith with the department and granted access to the department for investigation, cleanup, and monitoring; and

(4) substantially complied with all requirements and provisions of regulations adopted by the environment improvement board pursuant to Subsection C of Section 74-4-4 NMSA 1978 for storage tanks at the site for which payment is sought (including installation, upgrade, operation and maintenance of storage tanks in accordance with 20.5.106 NMAC, 20.5.107 NMAC, 20.5.109 NMAC, and 20.5.110 NMAC; release detection in accordance with 20.5.108 NMAC and 20.5.111 NMAC; for any storage tanks which have been abandoned or closed at the site, proper closure in accordance with 20.5.115 NMAC; reporting, investigating, confirming and remediating the release in accordance with 20.5.118 NMAC, 20.5.119 NMAC and 20.5.120 NMAC; proof of financial responsibility in accordance with 20.5.117 NMAC; and record keeping in accordance with the record keeping provisions of 20.5.101 through 20.5.103 NMAC, 20.5.106 through 20.5.115 NMAC, 20.5.117 through 20.5.120 NMAC, 20.5.124 NMAC and 20.5.125 NMAC).

C. In determining whether the owner or operator has substantially complied with the regulations referenced in Paragraph (4) of Subsection B of this section, the department may consider, among other things, the severity of the non-compliance, the period of non-compliance, the actions taken by the owner or operator to come into compliance, and the timeliness of the owner or operator's actions in coming into compliance.

[20.5.123.2304 NMAC – Rp. 20.5.123.2304 NMAC, 12/27/2018]

#### **20.5.123.2305 PROCEDURES FOR DETERMINING COMPLIANCE:**

A. When the owner or operator submits a written request for a compliance determination to the department, the request shall provide the following information for all storage tanks located at the site where the owner or operator is performing corrective action:

(1) the applicant's name, address, telephone number, and email address;

(2) a description of the applicant's interest in the site (for example, landowner, tank owner, lending institution, operator);

(3) the name, address, email address, and telephone number of the tank facility at the release site;

(4) the facility ID, owner ID, and release ID numbers for the tank facility at the release site;

(5) information on all systems that exist or that have existed at the release site during the owner or operator's term of ownership or operation, including:

(a) tank type (UST or AST), tank number, installation dates, tank capacity, product contained and removal date, if applicable;

(b) information on installation, upgrade, operation and maintenance standards, including type of tank construction, piping system, corrosion protection, spill and overflow protection, release detection for tanks and piping, operation and maintenance plans, compatibility, and secondary containment, if applicable;

(c) type of regulated substance(s) in each tank; and

(d) date(s) of permanent closure, if applicable;

(6) proof of financial responsibility that includes:

(a) name and address of the facility that is the subject of the compliance determination;

(b) type of financial responsibility;

(c) name of insurance provider, policy number, and period of coverage; and

(d) information about insurance coverage, including: type or types of coverage for corrective action or third-party liability, amount of coverage per occurrence, and amount of annual aggregate coverage for sudden accidental releases, non-sudden accidental releases, and accidental releases;

(7) corrective action information for each release that includes:

(a) date(s) the release was reported to the department;

(b) methods of preventing further release; and

(c) completion of the MSA report;

(8) certification on oath or affirmation of the truthfulness of all matters and facts contained in the request.

B. When the department initiates a compliance determination pursuant to Subsection B of 20.5.123.2303 NMAC:

(1) the department shall, in writing, notify the owner or operator of the reason(s) for the compliance determination and explain that if the department determines that the owner or operator is not in compliance with 20.5.123.2304 NMAC, the owner or operator will be ineligible for payment of corrective action costs other than for an MSA; and

(2) the owner or operator shall submit in writing all information requested by the department by a date specified by the department; the department may request any of the information required for an MSA pursuant to subsection A of this section and shall establish a deadline for submission of this information that is reasonable under the circumstances.

C. The department shall review all written submissions in the order received and shall, within 30 days of receipt, notify the owner or operator in writing of any inadequacies in the submittal. The owner or operator may then correct any inadequacies and resubmit the application. Submissions shall be determined "complete" by the department when the submissions are adequately documented or inadequacies identified by the department have been corrected.

D. The owner or operator has the burden of establishing each point of fact relevant to such a determination. For such purpose, the submissions shall state specific facts which demonstrate compliance with Subsection B of 20.5.123.2304 NMAC.

E. The department shall make a compliance determination within 45 days following the department's determination that a submission is complete and shall promptly notify the owner or operator of its determination. For good cause, the director may permit additional time in which to make a compliance determination. If the department finds an owner or operator to be out of compliance, the department shall also notify the owner or operator in writing of the manner in which the owner or operator has failed to comply with 20.5.123.2304 NMAC and inform the owner or operator that he or she is ineligible for payment of corrective action costs, other than the costs of an MSA.

[20.5.123.2305 NMAC – Rp. 20.5.123.2305 NMAC, 12/27/2018]

[The department provides a form that may be used to request a compliance determination. The form is available on the petroleum storage tank bureau's pages on the department website or by contacting the petroleum storage tank bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.123.2306 COMPETITIVE CONTRACTOR SELECTION FOR REMEDIATION AT RESPONSIBLE PARTY-LEAD SITES:**

A. Payments made from the fund shall be made in accordance with 20.5.123.2309 NMAC and only for work performed by contractors that were selected using a competitive procedure based upon technical merit and cost-effectiveness, as defined in this part except as provided in Subsections C and D of this section. The solicitation and evaluation of proposals are required prior to workplan approval.

B. At a minimum, the department and the owner or operator shall obtain proposals and select contractors competitively for remediation activities under 20.5.119.1922 through 20.5.119.1928 NMAC and under 20.5.120.2019 through 20.5.120.2025 NMAC, including conceptual and final remediation plans, design, construction, installation, operation and maintenance, and monitoring.

C. Competitive contractor selection is not required for the following activities:

(1) initial abatement or emergency response under 20.5.119.1902 NMAC or 20.5.120.2002 NMAC;

(2) 72 hour and 14 day reports under 20.5.119.1903 NMAC or 20.5.120.2003 NMAC;

(3) interim removal of non-aqueous phase liquid ("NAPL"), directed or approved by the department under 20.5.119.1905 or 12.5.120.2005 NMAC;

(4) interim removal of contaminated soil, directed or approved by the department under 20.5.119.1906 NMAC or 12.5.120.2006 NMAC;

(5) investigation activities under 20.5.118.1801 NMAC and 20.5.119.1907 through 20.5.119.1913 NMAC or 20.5.120.2007 through 20.5.120.2011 NMAC;

(6) development of and monitoring and reporting under a monitored natural attenuation plan under 20.5.119.1915 through 20.5.119.1921 NMAC or 20.5.120.2012 through 20.5.120.2018 NMAC;

(7) work at sites for which the owner or operator is not seeking payment, including but not limited to federal facilities and sites determined to be out of compliance pursuant to 20.5.123.2304 NMAC; or

(8) work at sites under contract as described in subsection D of this section.

D. Work at sites with releases from USTs where the owner or operator and a contractor entered into a contract approved by the department and initiated remediation prior to October 1, 1995, shall be exempt from competitive contractor selection requirements. Work at sites with releases from ASTs at which the owner or operator

and a contractor entered into a contract for and initiated remediation prior to June 14, 2002, shall be exempt from competitive contractor selection requirements. The owner or operator shall obtain a contractor for any subsequent site through the competitive contractor selection process in accordance with the requirements of 20.5.123.2306 through 20.5.123.2307 NMAC.

[20.5.123.2306 NMAC – Rp. 20.5.123.2306 NMAC, 12/27/2018]

### **20.5.123.2307 PROCEDURES AND REQUIREMENTS FOR SELECTION OF REMEDIATION CONTRACTORS AT RESPONSIBLE PARTY-LEAD SITES:**

A. Within 15 days of written notification from the department that remediation is required, the owner or operator shall provide to the department either a written list with a minimum of five names of consultants from which the department and the owner or operator shall solicit proposals for remediation or a written request that the department solicit proposals for remediation on its website. The department and the owner or operator shall follow the procedures outlined in subsections B through E of this section where site evaluation, remediation selection and justification, and design may be required. The department and the owner or operator shall follow the procedures outlined in subsection F for bids at sites where limited remediation is such that no additional infrastructure is needed, plans and specifications that require a professional engineer signature and stamp are not required, the cost is less than \$80,000 (not including NM gross receipt tax), and the proposed activities can be accomplished within two years. Limited remediation includes but is not limited to the injection of contaminant-reducing agents and the use of portable units for soil vapor extraction ("SVE"). The department shall follow the procedures outlined in subsection G for proposals at sites where the owner or operator is the state of New Mexico or a subdivision thereof.

#### **B. Specifications.**

(1) The department and the owner or operator shall develop specifications for remediation, which shall state which sections of 20.5.119 NMAC or 20.5.120 NMAC the work is intended to fulfill.

(2) The department and the owner or operator may require that specifications including primary responsibility for operation or maintenance of remediation systems with electrical or mechanical components contain the requirement that winning proposals shall include pay-for-performance criteria as defined in this part.

(3) Proposals shall meet all requirements outlined in the specifications.

(4) Costs for all tasks outlined in the specifications shall be submitted by short-listed firms only and shall be submitted under separate, sealed cover from the technical portion of the proposal.

#### **C. Solicitation of proposals.**

(1) If the owner or operator provides a list of contractors, the department shall mail the specifications to those contractors. However, if the owner or operator, within 15 days of receiving written notification from the department that remediation is required, fails to provide the department with the names of five contractors, fails to respond to the department's notice that remediation is required, or chooses to allow the department to solicit proposals on behalf of the owner or operator, the department may solicit proposals from and make specifications available to any interested contractor using the department's webpage.

(2) Any questions concerning the solicitation, including any requests for clarification of the specifications, shall be submitted in writing to the department and the owner or operator, within two weeks prior to the deadline for submission of proposals. Any response from the department and the owner or operator shall be provided promptly to all contractors through a posting on the department's webpage.

(3) Each proposal shall contain a notarized affidavit signed by the contractor certifying under oath that the contractor has participated and will continue to participate in the competitive contractor selection process as described in this section and Section 74-6B-7C NMSA 1978 without misrepresentation and without collusion with other contractors during the entire solicitation, evaluation and selection process.

#### D. Evaluation of proposals and contractor selection.

(1) Once the department and the owner or operator have received a proposal, they shall not discuss the solicitation or any proposal received in response to the solicitation with anyone other than department staff or the owner or operator.

(2) If fewer than three responsive proposals are obtained by the deadline in the solicitation, the department shall consult with the owner or operator and solicit additional proposals pursuant to subsection A of this section or paragraph (1) of subsection C of this section.

(3) If fewer than three responsive proposals are obtained after two attempts, the department and the owner or operator may select a proposal following the procedures in this section, provided the technical merit is acceptable for the proposed work.

(4) The department shall, and the owner or operator may, evaluate proposals based on technical merit as defined in this part. The technical merit score shall be based on an understanding of site-specific conditions and the appropriateness of proposed remediation technology.

(a) A team approved by the department shall evaluate the proposals in a timely manner. The owner or operator or their representative is encouraged to participate as a part of the evaluation team. Each team member shall independently

evaluate each proposal for technical merit. After discussion, the team shall determine the preliminary technical merit score for each proposal.

(b) The team shall prepare a short list of proposals for further consideration. The short list shall consist of the names of the firms that have submitted proposals with the highest preliminary technical merit scores.

(c) The team shall present the short list of firms to a department task force for a discussion of proposals to ensure consistency among team evaluation and scoring. The department task force shall consist of senior department technical staff. After discussion with the department task force, the team shall assign the technical merit scores.

(5) The department and the owner or operator may request all firms selected for the short list to conduct an oral presentation outlining their proposals for the department task force, the team and the owner or operator. The owner or operator's attendance during the oral presentations is encouraged, but not required. During the oral presentations, members of the department task force, the team and the owner or operator may ask questions. Only the team shall assign the scores to each proposal on the short list.

(a) Any firm that is requested by the department and the owner or operator to conduct an oral presentation and chooses not to do so, shall be eliminated from the short list.

(b) All short-listed firms shall submit a sealed cost proposal to the department and the owner or operator no later than two days prior to the oral presentations. The team shall open and review the sealed cost information submitted for each proposal on the short list.

(c) Prior to or during the oral presentations, contractors on the short list may withdraw the original cost submission and substitute a best and final offer for the cost portion of the proposal.

(6) Following the oral presentations, the team may adjust the technical merit score, based on demonstrated general expertise, site-specific knowledge and application, or information clarified or provided.

(7) At any point in the evaluation process, when, in the team's opinion, a proposal does not substantially meet the technical merit or cost effectiveness standards set forth in the solicitation, the team may reject the proposal.

(8) The team shall assign a final score for each proposal on the short list, which shall be the cost effectiveness score plus the technical merit score.

(a) The technical merit score, with a maximum of 700 points, shall be assigned pursuant to the procedure described in this subsection.

(b) The cost effectiveness score is the technical weight factor times the cost weight factor times 300, where the technical weight factor is the proposal's technical merit score divided by the highest technical merit score of proposals on the short list; the cost weight factor is the lowest cost of proposals on the short list divided by the proposal's cost; 300 is the maximum cost effectiveness score.

(9) The department shall notify the owner or operator and all submitting firms of the highest scoring proposal. The owner or operator shall enter into a contract with the selected firm not less than 10 days or more than 30 days after the notification. If, for any reason, the selected firm cannot complete the project, the department and the owner or operator shall either select the firm with the second highest scoring proposal, provided the technical merit is acceptable for the proposed work, or repeat the contractor selection process in accordance with this section. In order for the work to qualify for payment from the fund, the owner or operator shall use the firm selected in accordance with this part.

(10) After the department has notified the owner or operator of the highest scoring proposal, the department and the owner or operator shall make available to the contractors and the public all proposals submitted and the evaluation team's scores.

(11) An owner or operator aggrieved by the department's selection may request administrative review pursuant to 20.5.123.2320 NMAC within 15 days of the post mark on the notification.

(12) An offeror aggrieved by the department's selection may request administrative review pursuant to 20.5.123.2320 NMAC within 10 days of the post mark date on the notification.

(13) For purposes of owner and operator participation in the process set forth in this subsection, the owner or operator may appoint a representative who is not affiliated with any individual who submitted a proposal. Any owner or operator representative may not later work for the contractor, the owner, or the operator on any work generated by the proposal.

E. When proposals are received from nonresident businesses and resident businesses, and the proposal with the highest evaluation is from a nonresident business, the contract shall be awarded to the resident business whose technical merit is comparable and whose cost is nearest to the cost of the high-scoring nonresident business proposal if the cost of the resident proposal is made lower than the cost of the nonresident business when multiplied by a factor of 0.95.

F. The department and the owner or operator shall follow the procedures outlined in this section at sites where limited remediation is such that no additional infrastructure is

needed, plans and specifications that require a professional engineer signature and stamp are not required, the cost is less than \$80,000 (not including NM gross receipt tax), and the proposed activities can be accomplished within two years.

(1) Specifications.

(a) The department and the owner or operator shall develop specifications for limited remediation, which shall state which sections of 20.5.119 NMAC or 20.5.120 NMAC the work is intended to fulfill.

(b) Bids shall meet all requirements and include costs for all tasks outlined in the specifications.

(2) Request for bids.

(a) The owner or operator shall provide to the department either a written list with a minimum of three names of consultants from which the department shall request bids for the limited remediation or a written request that the department request bids on its website.

(b) Any questions concerning the request for bids, including any requests for clarification of the specifications, shall be submitted in writing to the department and the owner or operator within one week prior to the deadline for submission of bids. Any response from the department and the owner or operator shall be provided promptly to all contractors identified by the owner or operator or by posting the responses on the department's webpage consistent with the method that the bids were requested.

(3) Bid content and specifications. The request for bids shall include but not be limited to:

(a) the scope of work including a list of tasks,

(b) a request for costs associated with each task and a total project cost;

(c) a request for a description of the technical approach; and

(d) the schedule for implementing the limited remedial strategy.

(4) Evaluation of the bids and contractor selection.

(a) Once the department and the owner or operator have received a bid, they shall not discuss the request for bids or any responses to the request for bids received with anyone other than department staff and the owner or operator.

(b) Only one responsive bid is required for evaluation, provided the technical merit is acceptable for the proposed work.

(c) The department shall, and the owner or operator may, evaluate the bids based on technical responsiveness to the limited remediation strategy and cost. The responsive bids shall be evaluated by a team approved by the department, and owner or operator if requested. The team shall make a recommendation to a department task force for approval.

(d) The department shall notify the owner or operator and all submitting firms of the selected bid. The owner or operator shall enter into a contract with the selected firm not less than 10 days or more than 30 days after the notification.

(e) After the department has notified the owner or operator of the selected bid, the department and the owner or operator shall make available to the contractors and the public all bids submitted and the evaluation team's scores.

(f) An owner or operator aggrieved by the department's selection may request administrative review pursuant to 20.5.123.2320 NMAC within 15 days of the post mark on the notification.

(g) An offeror aggrieved by the department's selection may request administrative review pursuant to 20.5.123.2320 NMAC within 10 days of the post mark date on the notification.

(h) For purposes of owner and operator participation in the process set forth in this subsection, the owner or operator may appoint a representative who is not affiliated with any individual who submitted a bid. Any owner or operator representative may not later work for the contractor, the owner, or the operator on any work generated by the bid.

G. For responsible party-lead sites where the owner or operator is the state of New Mexico or any subdivision thereof, including but not limited to municipalities, counties, school districts, or other political subdivisions and their agencies, the department shall accept the use of the state procurement code, provided the department is involved in the development of the specifications and the evaluation of the submitted proposals.

[20.5.123.2307 NMAC – Rp. 20.5.123.2307 NMAC, 12/27/2018]

#### **20.5.123.2308 PROCEDURES AND REQUIREMENTS FOR SELECTION OF REMEDIATION CONTRACTORS AT STATE-LEAD SITES:**

When selecting remediation contractors for state-lead sites, the department shall comply with the Procurement Code, Sections 13-1-21 through 13-1-199 NMSA 1978, 1.4.1 NMAC and the request for proposals procurement guide, which is incorporated by reference.

[20.5.123.2308 NMAC – Rp. 20.5.123.2308 NMAC, 12/27/2018]

**20.5.123.2309 WORKPLAN APPROVAL, CHANGE ORDERS FOR CORRECTIVE ACTION AND APPROVAL OF DELIVERABLES:**

A. Except as provided in Subsection C of 20.5.123.2310 NMAC, a written workplan and budget to complete any phase of corrective action shall be approved in writing by the department prior to any corrective action work being done in order for that work to be eligible for payment under this part.

B. For responsible party-lead sites, the owner or operator shall submit the corrective action workplan and cost in a fixed-fee format unless the department determines that a time-and-materials format is appropriate. Any fixed-fee approvals which require reallocation of approved amounts from one deliverable to another deliverable shall be approved in advance by the department in writing. If the department approves a time-and-materials format, any increase in approved amounts for specific tasks, categories or subcategories or any reallocation of an amount from one task to another task, one category to another category or within categories shall be approved in advance by the department in writing.

C. If required by Paragraph (2) of Subsection B of 20.5.123.2307 NMAC, a workplan including the operation and maintenance of a remediation system that includes mechanical or electrical installations shall list the performance criteria required for payment and amount of payment.

D. If a workplan is rejected after two attempts to receive approval by the department, the department may select the contractor who received the second highest evaluation, repeat the contractor selection process in accordance with subsection B of 20.5.123.2307 NMAC, or, in the case of activities which do not require competitive contractor selection under Subsection D of 20.5.123.2306 NMAC, require the owner or operator to submit a workplan from a different contractor.

E. Changes to the technical approach or increases in costs beyond the approved workplan shall not be eligible for payment unless approved in writing by the department prior to implementation.

F. The department may increase or reduce payments for work based on pay-for-performance criteria because of *force majeure* or unforeseen changes in site conditions.

G. After receiving a deliverable, the department shall assess whether the deliverable is satisfactory. If the department finds that the deliverable is satisfactory, it shall issue a written notice of approval to the owner, operator or contractor. The notice of approval shall explain that any application for payment of costs associated with the approved deliverable must be received by the department within 90 days of the date the owner, operator or contractor received the certification of approval and that no extensions of this deadline shall be granted except extensions for good cause pursuant to 20.5.123.2318 NMAC. If the department finds the deliverable to be unsatisfactory, it shall, within 30 days of receiving a deliverable, provide to the owner, operator or

contractor a written notice of exception explaining the defect in the deliverable and any steps the owner, operator or contractor may take to remedy the defect.

[20.5.123.2309 NMAC – Rp. 20.5.123.2309 NMAC, 12/27/2018]

**20.5.123.2310 CORRECTIVE ACTION ELIGIBLE AND INELIGIBLE COSTS AND EXPENDITURES FOR STATE-LEAD AND RESPONSIBLE PARTY-LEAD SITES:**

A. Payments shall be made only for corrective action conducted by firms qualified under 20.5.122 NMAC or in accordance with Subsection H of 20.5.119.1900 NMAC.

B. No expenditures from the fund shall be paid to or on behalf of owners or operators for corrective action, other than the minimum site assessment or any sampling done for purposes of Paragraph (3) of Subsection A of 20.5.119.1921 or 20.5.119.1929 NMAC or Paragraph (2) of Subsection A of 20.5.120.2018 or 20.5.120.2026 NMAC, where the corrective action was conducted by firms or entities that are subsidiaries, parents or otherwise affiliate firms or entities of the owner or operator.

C. Payments shall be made for only those deliverables that the department has approved as satisfactory in writing, as required by 20.5.123.2309 NMAC.

D. For USTs, payment shall not be made for corrective action performed on or after September 22, 1992, if the owner or operator does not obtain department approval of workplans and costs prior to work being performed or costs incurred, exclusive of initial response or initial abatement measures performed in accordance with 20.5.119.1901 or 20.5.119.1902 NMAC or 20.5.120.2001 or 20.5.120.2002 NMAC. For ASTs, payment shall not be made for corrective action performed on or after June 14, 2002, if the owner or operator does not obtain department approval of workplans and costs prior to work being performed or costs incurred, exclusive of initial response or initial abatement measures performed in accordance with 20.5.119.1901 or 20.5.119.1902 NMAC.

E. Costs eligible for payment from the fund are all costs, except those excluded by Subsections H and I of this section, that are reasonable and necessary to confirm releases in accordance with 20.5.118 NMAC, to complete the minimum site assessment in excess of the deductible, and to complete corrective action beyond the minimum site assessment, in accordance with 20.5.119 NMAC or 20.5.120 NMAC, the department's fee schedule, and any workplan required by 20.5.123.2309 NMAC and approved by the department.

F. Before making payments, the department shall determine that the owner or operator has reimbursed the department for all federal leaking underground storage tank (LUST) trust funds expended for contractual services at the site.

G. Unpaid invoices are eligible for payment on an assignment basis from the applicant to the party who rendered the invoiced services or goods, or the party who made payment. Invoices resulting from assignments as described in this subsection are not contractual between the department and the party who rendered the service or the party who made payment. Payments of such invoices are made pursuant to provisions of Section 74-6B-13 NMSA 1978, including being subject to the availability of funds in the corrective action fund.

H. For USTs, costs ineligible for payment include, but are not limited to, the following:

- (1) costs incurred prior to March 7, 1990;
- (2) costs incurred on or after September 22, 1992, that exceed those in the department fee schedule in effect at the time the work was performed;
- (3) costs paid or reimbursed by insurance companies or any other third party as described in 20.5.123.2319 NMAC;
- (4) unpaid invoices, unless allowed under Subsection F of this section;
- (5) costs of removing, repairing, retrofitting or replacing any USTs;
- (6) costs of destroying, repairing, relocating or constructing any utility line unless required for cost-effective remediation or in response to a threat to public health, safety or welfare, or the environment, as determined by the department;
- (7) costs of destroying any structure unless required for cost-effective remediation or in response to a threat to public health, safety or welfare, or the environment, as determined by the department;
- (8) costs of repairing or replacing any remediation equipment or groundwater monitoring wells negligently or intentionally damaged or destroyed by the owner or operator;
- (9) insurance premiums, the loss of interest on funds used to pay for a minimum site assessment, or loss of business;
- (10) attorneys' fees or other legal costs;
- (11) costs of monitoring a contractor and the owner's, operator's and designated representative's participation in the contractor selection process;
- (12) costs associated with real estate transactions;

(13) rush charges for laboratory or other services, unless required by the department;

(14) payment made to property owners for property access to install or place monitoring wells or other investigation-related or remediation-related equipment;

(15) economic losses and liability to third parties;

(16) any markup on costs, to include subcontractor costs;

(17) costs associated with corrective action that fails to conform with the preapproved workplan or with the requirements of 20.5.119 NMAC or 20.5.120 NMAC;

(18) costs associated with releases from ASTs with capacities 55,000 gallons and greater that are part of airport hydrant fuel distribution systems, USTs with field constructed tanks, or hybrid storage tank systems;

(19) costs associated with releases from piping attached to an AST with a capacity of 55,000 gallons or greater;

(20) costs associated with releases from piping attached to a hybrid storage tank system; and

(21) costs associated with releases from piping attached to unregulated storage tank systems.

I. For ASTs, costs ineligible for payment include but are not limited to the following:

(1) costs incurred prior to July 1, 2001;

(2) costs incurred that exceed those in the department fee schedule in effect at the time the work was performed;

(3) costs paid or reimbursed by insurance companies or any other third party described in 20.5.123.2319 NMAC;

(4) unpaid invoices, unless allowed under subsection F of this section;

(5) costs of removing, repairing, retrofitting or replacing any ASTs;

(6) costs of destroying, repairing, relocating or constructing any utility line unless required for cost-effective remediation or in response to a threat to public health, safety or welfare, or the environment, as determined by the department;

- (7) costs of destroying any structure unless required for cost-effective remediation or in response to a threat to public health, safety or welfare, or the environment, as determined by the department;
- (8) costs of repairing or replacing any remediation equipment or groundwater monitoring wells negligently or intentionally damaged or destroyed by the owner or operator;
- (9) insurance premiums, the loss of interest on funds used to pay for a minimum site assessment, or loss of business;
- (10) attorneys' fees or other legal costs;
- (11) costs of monitoring a contractor and the owner's, operator's and designated representative's participation in the contractor selection process;
- (12) costs associated with real estate transactions;
- (13) rush charges for laboratory or other services, unless required by the department;
- (14) payment made to property owners for property access to install or place monitoring wells or other investigation-related or remediation-related equipment;
- (15) economic losses and liability to third parties;
- (16) any markup on costs, to include subcontractor costs;
- (17) costs associated with corrective action that fails to conform with the preapproved workplan or with the requirements of 20.5.119 NMAC or 20.5.120 NMAC;
- (18) costs associated with releases from ASTs with capacities 55,000 gallons and greater that are part of airport hydrant fuel distribution systems, USTs with field constructed tanks, or hybrid storage tank systems;
- (19) costs associated with releases from piping attached to an AST with a capacity of 55,000 gallons or greater;
- (20) costs associated with releases from piping attached to a hybrid storage tank system; and
- (21) costs associated with releases from piping attached to unregulated storage tank systems.

[20.5.123.2310 NMAC – Rp. 20.5.123.2310 NMAC, 12/27/2018]

## **20.5.123.2311 DESIGNATED REPRESENTATIVES:**

A. Subject to approval by the department, an owner or operator may designate a representative to facilitate compliance with 20.5.118 NMAC, 20.5.119 NMAC, 20.5.120 NMAC, 20.5.121 NMAC, 20.5.122 NMAC, and 20.5.123 NMAC. Designation of a representative shall include assignment to the designated representative of any rights the owner or operator may have to payment from the corrective action fund.

B. In the event an owner or operator is incapable of both directing required corrective action and assigning rights to a designated representative, a person may request in writing to be designated as a representative by the department and to be assigned any rights the owner or operator may have had to payment from the corrective action fund.

C. Anyone requesting to designate or be designated as a representative pursuant to this section shall submit a written request to the department that includes the:

- (1) owner ID number;
- (2) facility ID number;
- (3) release ID;
- (4) reason for the requested designation (for example: sale of property or change of ownership, out-of-state move, operator illness, age, or death); and
- (5) proposed representative's name, mailing address, email address, and telephone number.

D. When determining whether to approve or designate a person as a representative pursuant to subsection A or B of this section, the department shall consider: the reason or reasons a designated representative may be necessary; the nature of the proposed representative's relationship to the owner or operator, if any; the proposed representative's interest in the facility or real property where corrective action is being or shall be performed; and the proposed representative's ability to direct corrective action activities. The department shall approve or deny the request for designation of a representative in writing, which explains the department's decision, to the requesting party and the owner or operator.

E. Requests for payment from the fund resulting from assignments described in subsection A or B of this section are not contractual between the department and the designated representative. Payments of such requests are made pursuant to the provisions of Section 74-6B-13 NMSA 1978, and are subject to the availability of funds in the corrective action fund.

F. Designation of a representative does not waive owner or operator responsibility or liability. Regardless of appointment of a designated representative, or assignment to the designated representative of rights to the corrective action fund, owners and operators remain responsible for compliance with the provisions of this chapter. The designation of a representative shall not affect the department's right to seek compliance at any time from the owner or operator or both. The designation of a representative is intended to facilitate compliance with corrective action requirements only and shall not relieve the owner and operator of their legal responsibilities or liabilities under this chapter.

[20.5.123.2311 NMAC – Rp. 20.5.123.2311 NMAC, 12/27/2018]

**20.5.123.2312 MEANS TEST TO DETERMINE DEDUCTIBLE:**

A. An owner or operator otherwise responsible for paying the first ten thousand dollars (\$10,000) of minimum site assessment costs under Section 74-6B-13 NMSA 1978 may request that the first ten thousand dollars (\$10,000) be paid from the Fund (a "zero deductible") if the owner or operator proves to the department an inability to pay the deductible.

B. An owner or operator otherwise responsible for a ten thousand dollar (\$10,000) deductible is allowed a five thousand dollar (\$5,000) deductible if the owner or operator proves to the department an inability to pay the full deductible.

C. The owner or operator shall submit an application for a zero or reduced deductible before or with submission of the MSA workplan, pursuant to 20.5.119 NMAC or 20.5.120 NMAC. The application shall include the following:

(1) a letter explaining why the owner or operator is unable to afford to pay all or a portion of the initial ten thousand dollar (\$10,000) cost of an MSA;

(2) copies of the owner's or operator's federal tax returns for the immediately preceding two years; and

(3) any additional financial documentation (for example, copies of bankruptcy filings or medical bills) that will assist the department in determining the owner or operator's inability to pay.

D. The department shall determine inability or reduced ability to pay by using one of the environmental protection agency's published computer analysis programs, and by considering the owner's or operator's ability to maintain basic business operations if required to pay the full or reduced deductible, including consideration of the overall financial condition of the owner or operator and demonstrable constraints on the ability of the owner or operator to raise revenues.

E. Notwithstanding the provisions of subsections A and B of this section, an owner or operator otherwise responsible for paying a deductible shall be allowed a zero deductible if the owner or operator has proven to the department that the owner or operator is a municipality or county.

[20.5.123.2312 NMAC – Rp. 20.5.123.2312 NMAC, 12/27/2018]

**20.5.123.2313 OWNERSHIP AND DISPOSITION OF MAJOR REMEDIATION EQUIPMENT:**

A. The department shall be the owner of all major remediation equipment paid for by the fund, unless the equipment is leased as a more cost-effective approach, and shall be responsible for disposition of all major remediation equipment. No owner or operator shall dispose of any major remediation equipment without the written permission of the department. Disposition by the department shall be in accordance with all applicable laws and regulations, and by any of the following means:

(1) relocation to another fund remediation site, as provided in subsections C through E of this section;

(2) interim rental to a non-fund remediation site, subject to subsection F of this section;

(3) sale or salvage, subject to subsection G of this section; or

(4) when options in paragraphs (1) through (3) of this subsection are not available, any other form of disposal consistent with federal and state law.

B. Any major remediation equipment shall be installed, maintained and disposed of in accordance with subsections A through G of this section.

C. An owner or operator requiring the use of major remediation equipment for corrective action paid for with fund money shall use equipment on the department's reuse list, if available, and provided such equipment can be refurbished to the manufacturer's operating specifications for a cost not to exceed one-half of the replacement cost of the equipment.

D. For all major remediation equipment, new or used, the owner or operator shall enter into a written installation and maintenance agreement with a company qualified to install and maintain the equipment, and shall furnish a copy of the agreement, executed by the company, to the department. Installation and maintenance shall be performed by factory-authorized personnel or a contractor specified by the manufacturer, or as otherwise approved by the department. Complete and proper installation shall be verified by both the manufacturer or its designated representative, and the installation personnel or company. Installation and maintenance contract costs shall be stated

together with the purchase price of the equipment quoted to the department in proposals, workplans and applications for payment from the fund.

E. For all new major remediation equipment and for all used major remediation equipment under warranty when acquired, the owner or operator shall also furnish a copy of the manufacturer's warranty to the department.

F. If major remediation equipment is rented to a non-fund remediation site, a reasonable rental fee shall be paid into the fund. The department shall determine the reasonable rental fee based on the lowest price quote from three equipment renters.

G. Major remediation equipment shall be depreciated over its useful life and have a salvage value, method and schedule as approved by the department. If the equipment is sold or salvaged, the proceeds from the sale or salvage value shall be paid into the fund. Gain or loss shall be calculated based on the net book value or salvage value in accordance with generally accepted accounting principles.

H. The department shall remove all major remediation equipment from a site within 90 days after issuing a "no further action" letter for that site.

[20.5.123.2313 NMAC – Rp. 20.5.123.2313 NMAC, 12/27/2018]

**20.5.123.2314 FUND APPLICATION, PAYMENT AND SUBROGATION:**

A. Nothing in 20.5.123 NMAC establishes or creates any liability or responsibility on the part of the department or the state to pay corrective action costs from any source other than the fund, nor shall the department or the state have any liability or responsibility to make any payments of corrective action costs if the balance in the fund is insufficient to cover those costs.

B. Payment shall be made only for work that has been performed in accordance with 20.5.118 NMAC, 20.5.119 NMAC or 20.5.120 NMAC and 20.5.123 NMAC, subject to the provisions of 20.5.121.2105 NMAC.

[20.5.123.2314 NMAC – Rp. 20.5.123.2314 NMAC, 12/27/2018]

**20.5.123.2315 OBTAINING FACILITY AND OWNER ID NUMBERS FOR PURPOSES OF CORRECTIVE ACTION:**

A. An owner or operator who is exempt from registration and tank fee requirements pursuant to 20.5.101.7 NMAC (because the owner had a UST taken out of operation on or before January 1, 1974, had a UST taken out of operation after January 1, 1974 and removed from the ground prior to November 8, 1984, or had an AST taken out of operation on or before July 1, 2001) remains responsible for all corrective action requirements otherwise imposed on all owners and operators.

B. To access the fund, an owner or operator shall apply for and receive from the department a facility ID number and owner ID number upon submitting the following information:

(1) the owner's or operator's name, mailing address, email address, and telephone number; and

(2) the physical address of the UST, AST or site that requires corrective action but that is exempt from registration and tank fee requirements pursuant to 20.5.101.7 NMAC.

[20.5.123.2315 NMAC – Rp. 20.5.123.2315 NMAC, 12/27/2018]

**20.5.123.2316 CONTENTS OF APPLICATION FOR PAYMENT AT RESPONSIBLE PARTY-LEAD SITES:**

A. When a deliverable is completed and the department has determined in writing that the work for which payment is sought is satisfactory, the owner or operator shall submit one original and one copy of the application for payment to the department. The application shall include:

(1) information about the applicant, including: the owner's or operator's name, mailing address, email address, telephone number, owner ID number and the name of an individual to contact regarding the claim;

(2) the name of the owner at the time of the release;

(3) the name of the operator at the time of the release;

(4) the name of the responsible party at the time of the release;

(5) information about the facility, including: the name, address, release ID, and facility ID number for which payment is sought; the phase of corrective action being claimed; the type of tank (UST or AST); the workplan approval date and workplan identification number; the amount approved for the deliverable and the amount of the claim; the invoice number; the deliverable identification; and the exact name and date of the deliverable;

(6) references to all work products or deliverables for which payment is sought;

(7) the date or dates of the department's compliance determination or determinations under 20.5.123.2303 NMAC;

(8) information about the payee if the owner or operator has assigned payment to another person, including: name, mailing address, telephone number, email address, and the nature of the payee's interest in the site;

(9) a copy of any claim or claims the owner or operator has filed against any third party who caused or contributed to the release;

(10) copies of invoices showing the work performed for the minimum site assessment or other required corrective action for which payment is sought;

(11) a copy of the letter from the department determining the owner's or operator's eligibility for a zero or reduced deductible, if applicable, as determined in accordance with 20.5.123.2312 NMAC;

(12) a statement that requirements to use a qualified firm in accordance with 20.5.122 NMAC have been met;

(13) a signed and notarized statement of an officer or agent of the qualified firm performing the corrective action:

(a) consenting to an audit of time sheets, payroll and bank records, tax records, purchase orders, manifests and bills of lading, internal expense records and any other documents required to verify the costs claimed in the application; and

(b) agreeing to return to the department, upon demand, any and all amounts paid from the fund if the department determines that the owner or operator misrepresented or omitted any relevant facts;

(14) copies of the workplan approval letter and any subsequent amendments to the workplan covering work for which payment is requested;

(15) a copy of any and all notices from the department approving as satisfactory the deliverable for which payment is requested;

(16) information about the contractor, including: the contractor's name, address and telephone number; and the name of the contractor's project manager for the site; and

(17) if payment has been assigned by the owner or operator to a contractor, proof that the contractor has paid all subcontractor invoices.

B. When work is performed on a fixed fee basis, the owner or operator shall also submit the following as part of the application:

(1) a description of the deliverable and the date delivered;

(2) verification that any performance criteria required for payment were achieved; and

(3) any other requirements of the workplan approval.

C. When work is performed on a time-and-materials basis, the owner or operator shall also submit the following as part of the application:

(1) detailed billings of labor and equipment for each task performed; contractor staff shall be identified by name and hourly rate; equipment shall be identified as owned or rented, with the hourly or daily rate; laboratory and subcontractor charges shall be clearly explained;

(2) timesheets, invoices, or statements with staff name, labor category, and description and date of work performed;

(3) copies of receipts for all equipment and supplies;

(4) travel and expense logs;

(5) if work is billed on an hourly basis, timesheets, invoices or statements which include the hourly rate and number of hours billed to the nearest one-quarter hour; and

(6) any other requirements of the workplan approval.

D. Upon the department's request, the owner or operator shall submit copies of all subcontractor invoices and an accounting of the amount paid and any remaining balance on each invoice.

E. In the first application for payment of corrective action costs for each workplan, the owner or operator shall submit one original and one copy of:

(1) an original, signed oath or affirmation in accordance with Sections 14-13-1 and 14-13-2 NMSA 1978:

(a) certifying that the owner or operator has read the approved workplan and understands that the corrective action described in the workplan shall be completed at the identified facility;

(b) certifying that all matters and facts contained in that application, and in any subsequent applications for payment for the same workplan, are and will be truthful and that all invoices reflect actual costs paid or otherwise incurred;

(c) consenting to an audit of financial records pertaining to the current and any future claims for the same workplan; and

(d) agreeing to return to the department, upon demand, any and all amounts paid from the fund if the department determines that the owner or operator misrepresented or omitted any relevant facts in this or any future application for payment for the same workplan;

(2) a signed, dated, and notarized disclosure statement indicating the site name and number where the release occurred; the type of tank (UST or AST); the facility ID number; the name, address, and telephone number of the entity that performed the work for which payment is claimed; the full name of all owners and operators of the tank for which payment is claimed; the name of each individual and business entity that owns or controls the entity that performed the work for which payment is claimed; and the name of every business concern that is a partner or subsidiary of the entity that performed the work for which payment is claimed;

(3) a completed internal revenue service W-9 form (request for taxpayer identification number and certification form);

(4) information about insurance coverage, including: whether the owner or operator has insurance for releases of regulated substances at the site of the release for which a claim is being made; the name, address, and telephone number of the insurance company; the name, address, and telephone number of a contact person within the insurance company; the amount of coverage; whether the applicant has filed an insurance claim for this release, and if so, the amount sought; and the amount the insurance company has paid; and

(5) copies of any insurance policies in effect on the date of the report or at the time of the release that may insure the owner or operator against all or part of the costs of corrective action.

F. After the first application for payment of corrective action costs for each workplan, an owner or operator who has properly submitted the documents required by subsection E of this section and received a payment need not submit these documents with future applications for payment unless any information provided in the first application has changed or the department has modified the scope of the work or the budget of the workplan.

G. The owner or operator shall not submit costs of any portion of a minimum site assessment in the same application for payment of costs of other required corrective action.

H. Documents submitted as part of an application for payment of corrective action costs shall not contain alterations, corrections, or erasures.

[20.5.123.2316 NMAC – Rp. 20.5.123.2316 NMAC, 12/27/2018]

[The department provides forms that may be used to comply with this section. The forms are available on the petroleum storage tank bureau's pages on the department website or by contacting the petroleum storage tank bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.123.2317      CONTENTS OF APPLICATION FOR PAYMENT AT STATE-LEAD SITES:**

When a deliverable is completed and the department has determined in writing that the work for which payment is sought is satisfactory, the contractor shall submit one original and one copy of the application for payment to the department. All applications shall include:

- A. the payee's name, mailing address, email address and telephone number;
- B. the contractor's name, mailing address, email address and telephone number;
- C. information about the workplan, including: the date the workplan was approved, the workplan identification number, the deliverable identification numbers and the date or dates each deliverable was delivered;
- D. information about the facility, including: the name, physical address, release ID, and facility ID number of the facility for which payment is sought; the phase of corrective action being claimed; the contract number; and the expiration date of the contract;
- E. the invoice number or numbers and the amount of each invoice for which payment is sought;
- F. copies of each invoice for which payment is sought; and
- G. copies of the workplan approval letter and any subsequent amendments to the workplan.

[20.5.123.2317 NMAC – Rp. 20.5.123.2317 NMAC, 12/27/2018]

[The department provides a form on the petroleum storage tank bureau's pages on the department website that may be used to comply with this section. The form may also be obtained by contacting the bureau at 505-476-4397 or 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

**20.5.123.2318      APPLICATION AND PAYMENT PROCESS:**

- A. All applications for payment shall be received by the department within 90 days of the date upon which the owner, operator or contractor received a notice of approval of the deliverable from the department, pursuant to 20.5.123.2309 NMAC. The department shall not grant extensions of the deadline for applications for payment

except for good cause shown, in which case the department shall grant a 30-day extension. For purposes of this section, "good cause" means unavoidable circumstances beyond the owner's, operator's, or contractor's control. All requests for an extension shall describe the reason or reasons an extension is necessary and shall be submitted to the department in writing within the 90-day period for submitting an application for payment.

B. Applications for payment shall be sent to the New Mexico environment department, petroleum storage tank bureau, reimbursement section.

C. The department shall review all applications for payment in the order received and shall, within 60 days of receipt, either:

(1) pay the owner, operator or contractor for all eligible costs or as required by 20.5.121.2105 NMAC; or

(2) reject the application and notify the owner, operator or contractor in writing of the inadequacies in the application that caused the rejection.

D. The department may reject an application for payment:

(1) of the cost of any deliverable if:

(a) the application is received after the deadlines imposed by this section;

(b) the application does not contain all of the information or documents required by 20.5.123.2316 or 20.5.123.2317 NMAC (including but not limited to, all required disclosures, affirmations, timesheets, receipts, logs, and invoices);

(c) the application itself or the attached documents are incomplete, inaccurate or unclear;

(d) the application contains information that is intentionally misleading or false;

(e) the application seeks payment for work that was not pre-approved by the department;

(f) the application seeks payment for work that was not approved by the department as satisfactory; or

(g) the application seeks payment of costs that exceed the amount approved in the workplan; and

(2) of the cost of any deliverable other than an MSA if:

- (a) the department has not made a compliance determination; or
- (b) tank fees are past due.

E. The owner, operator or contractor may correct any inadequacies in the application and resubmit one completed original application and one copy within 30 days of the date of the notice of inadequacies.

F. Upon receiving a resubmitted application, the department shall follow the procedures in subsections C, D and H of this section for reviewing and accepting or rejecting applications for payment.

G. The owner, operator or contractor may submit a total of three applications (an initial application and two resubmitted applications) for any deliverable. After the owner, operator or contractor submits a total of three inadequate applications, the department may decline to review additional applications for the same deliverable.

H. Payment for eligible costs shall occur no later than 60 days, or in accordance with 20.5.121.2105 NMAC, after the department determines the application is complete and approves the technical adequacy of the application. The department shall mail the check for payment to the person designated as payee in the application.

I. Payment under this section shall not foreclose the department's right to recover excessive or illegal payments.

[20.5.123.2318 NMAC – Rp. 20.5.123.2318 NMAC, 12/27/2018]

[The address of the department's petroleum storage tank bureau, reimbursement section, is: 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505.]

#### **20.5.123.2319 SUBROGATION:**

A. The department has a right of subrogation to any insurance policies in existence at the time of the release to the extent of any rights the owner or operator of a site may have had under that policy, pursuant to Subsection D of Section 74-6B-8 NMSA 1978. The department's subrogation rights are limited to the extent of the department's expenditures from the corrective action fund or other sources. The owner or operator shall include in the first application for payment a copy of any insurance policies which were in effect on the date of the report, as well as any policies which were in existence at the time the release may have occurred and which may insure the owner or operator against all or part of the costs of taking corrective action. The owner or operator shall also report to the department any claims filed against any policy identified in accordance with this section or Subsection G of 20.5.123.2310 NMAC.

B. The department has a right of subrogation against any third party who caused or also contributed to the release, pursuant to Subsection D of Section 74-6B-8 NMSA

1978. This right of subrogation shall apply regardless of any applications for payment the owner or operator may have made or intends to make for payment from the fund. The owner or operator shall report to the department the identity of any third party against whom a claim is filed and provide a copy of any claim filed against that party.

[20.5.123.2319 NMAC – Rp. 20.5.123.2319 NMAC, 12/27/2018]

#### **20.5.123.2320 ADMINISTRATIVE REVIEW:**

A. With the exception of compliance determinations under 20.5.123.2303 through 20.5.123.2305 NMAC, an owner, operator or contractor aggrieved by a decision made by the department under 20.5 NMAC may obtain review of the decision using the procedures and subject to the limitations set forth in 20.5.125 NMAC.

B. An offeror aggrieved by a selection decision made by the department and the owner or operator pursuant to 20.5.123.2306 through 20.5.123.2307 NMAC may obtain review of the decision from the secretary by submitting a written request for hearing.

(1) Timelines. The request must be made in writing to the secretary by the offeror within 10 days after the department has notified the owner or operator and all submitting firms of the highest scoring proposal. If an appeal is received within the 10-day time limit, the secretary shall hold a hearing within 15 days after receipt of the request, unless the parties agree to an alternate timeframe. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail.

(2) Burden of proof. In the appeal hearing, the burden of proof is on the person who requested the hearing.

(3) Procedures.

(a) Appeal hearings shall be held at a place designated by the secretary, unless other mutually agreed upon arrangements are made. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

(b) The department shall make an audio recording of the hearing. If either party wants the hearing transcribed, that party shall bear the costs of transcription.

(c) In appeal hearings, the rules governing civil procedure and evidence in district court shall not apply. Hearings shall be conducted so that all relevant views, arguments, and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits, and to cross-examine persons who testify. All testimony shall be taken under oath. At

the end of the hearing, the secretary shall decide and announce if the hearing record will remain open, for how long, and for what reason(s) it will be left open.

(4) Secretary's decision. Based upon the evidence presented at the hearing, the secretary or designee shall sustain, modify, or reverse the action of the department. The secretary or designee's decision shall be by written final order within five business days following the close of the hearing record. The order shall include the reason(s) on which the decision is based, and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice.

(5) Stay of action. The filing of an administrative appeal shall stay execution of the contract by the owner or operator until the secretary or designee issues a final order on the appeal.

(6) Judicial review. Judicial review of the secretary or designee's final order shall be as provided by law. The filing of a judicial appeal shall not stay the execution of the contract, corrective action, compliance with the regulations, or any other action required by the secretary.

C. An individual denied designation by the department as a representative pursuant to 20.5.123.2311 NMAC may obtain review of the department's decision using the procedures and subject to the limitations set forth in 20.5.125 NMAC.

D. Compliance determinations shall be appealed as provided in 20.5.123.2321 and 20.5.123.2322 NMAC.

[20.5.123.2320 NMAC – Rp. 20.5.123.2320 NMAC, 12/27/2018]

#### **20.5.123.2321 REVIEW OF DETERMINATIONS OF COMPLIANCE:**

A. Any owner or operator aggrieved by a decision made by the department regarding determinations of compliance in accordance with 20.5.123.2303 through 20.5.123.2305 NMAC may appeal the decision by submitting a request for reconsideration of the decision to the director. Any owner or operator aggrieved by a decision made under these regulations by the director may appeal the decision by submitting a request for reconsideration to the director. The reconsideration will be based on written submittals. Any such request for reconsideration shall be in writing and shall specify the grounds upon which the petitioner objects to the decision. The request shall be accompanied by any and all written material and argument which the owner or operator wishes the director to consider upon reconsideration. The request for reconsideration shall be postmarked within 15 days of the date of the determination.

B. Department staff shall respond to the request for reconsideration within 15 days of receipt of the complete submittal of the owner or operator's request for reconsideration. The response of the department staff shall be sent to both the director and the owner or operator and shall be accompanied by any and all written materials

and argument in support of the position of the staff on the issues raised by the owner or operator.

C. For good cause shown, the director may permit either party additional time in which to submit the supporting written materials or argument pursuant to subsections A and B of this section. Any request for additional time and all evidence for good cause shall be submitted in writing prior to the end of the 15-day period described in subsection A of this section. The department shall act on the request for additional time within a reasonable period of time.

D. The director's action on the request for reconsideration shall be based on the written materials and argument submitted pursuant to this section unless the director, in the director's discretion, schedules a conference on the request for reconsideration.

E. The director's action on the request for reconsideration shall be by written decision and shall state the reason therefor. The director shall send a copy of the decision to the owner or operator and furnish a copy to department staff promptly after the decision is rendered.

F. The owner or operator may appeal the decision of the director made under subsection E of this section by requesting a hearing in accordance with 20.5.123.2322 NMAC.

[20.5.123.2321 NMAC – Rp. 20.5.123.2321 NMAC, 12/27/2018]

**20.5.123.2322      REQUEST FOR HEARING ON DETERMINATIONS OF COMPLIANCE:**

A. An owner or operator may obtain review by the secretary of a decision by the director made pursuant to subsection E of 20.5.123.2321 NMAC by filing a written request for a hearing as provided in the environment department adjudicatory procedures, 20.1.5 NMAC, within 30 days after the date the owner or operator receives the director's decision pursuant to Subsection E of 20.5.123.2321 NMAC. The procedures set forth in the environment department adjudicatory procedures, 20.1.5 NMAC, shall govern the proceeding.

B. The complainant shall attach to the request for hearing a copy of the determination for which review is sought.

C. With the request for hearing, the complainant shall file a reply to the determination. The reply shall address each of the findings in the determination, including any facts which support the complainant's position that the complainant has complied with the requirements of subsection B of Section 74-6B-8 NMSA 1978.

D. The secretary shall schedule the hearing for no later than 90 days after service of the notice of docketing.

[20.5.123.2322 NMAC – Rp. 20.5.123.2322 NMAC, 12/27/2018]

**20.5.123.2323 EFFECT OF APPEAL ON PAYMENT, ENFORCEMENT:**

A request for hearing or other administrative review shall not delay payment for any phase of corrective action, other than that which is being contested. A request for hearing shall not affect the secretary's authority to issue compliance orders or otherwise seek enforcement of 20.5 NMAC under the provisions of the Hazardous Waste Act or relieve an owner or operator of any responsibility under 20.5 NMAC.

[20.5.123.2323 NMAC – Rp. 20.5.123.2323 NMAC, 12/27/2018]

**20.5.123.2324 CONTRACTOR FEE SCHEDULE:**

A. Hourly billing rates listed in subsection C below shall conform to the Professional Services categories defined in subsection B of this section. Payment will be based on task(s) performed. Professional services not explicitly listed in this fee schedule may not be billed without prior negotiation and pre-approval by the department. The department may require justification.

B. The professional services categories are defined as follows:

(1) Principal scientist – Administrative or professional head of organization. Directs professional staff. Charges a very limited number of hours per site, as in review of project documents.

(2) Senior scientist – Senior technical leader. Develops technical and budgetary approach to work orders. Duties include aquifer characterization, review of technical reports and remedial action plans. Supervises work activities of lower level professional staff. Coordinates and communicates with agency personnel and client regarding contracts, general direction and problems at work site. Generally, performs limited field work. Performs design and investigation work in technically complex situations often requiring innovative applications.

(3) Project scientist/engineer-manager – Identifies problems and develops investigative and remedial solutions to work site situations. Consults with higher-level professional staff. Prepares workplans, cost estimates and reports. Performs modeling. Analyzes and interprets field data. Supervises lower level technical personnel during on-site drilling, sampling, or remediation activities. Frequently communicates with agency personnel and client.

(4) Staff scientist/engineer – Implements field work for on-site investigation and remediation activities including site characterization, drilling supervision, and monitoring well installation and sampling activities. Assists in modeling, hydrogeologic data analysis, and report preparation. Consults with higher level professional staff.

(5) Field technician – Supervises installation, maintenance, and repair of investigative and remediation machinery and equipment. Conducts sampling and monitoring. Maintains machinery and equipment. Assists with field supervision of subcontractors.

(6) Draftsperson – Technically familiar with basic engineering principles and construction methodologies. Works independently; work product reviewed by Professional Engineer. Proficient with computer aided design drafting.

(7) Administrator – Tracks workplan costs, prepares and processes invoices, administers leasing and ordering of equipment, and performs general administrative work for report and workplan preparation.

(8) Secretary – Performs word processing and spreadsheet entry. Assists technical and senior personnel with report production, correspondence preparation and data entry.

(9) Clerk – Performs general office work, typing, filing, and document reproduction.

C. Professional Service Rates:

<b>Professional services</b>	<b>Hourly rate</b>
Principal scientist	\$175.00
Senior scientist	\$145.00
Project scientist/engineer-manager	\$115.00
Staff scientist/engineer	\$95.00
Field technician	\$85.00
Draftsperson	\$85.00
Administrator	\$80.00
Secretary	\$50.00
Clerk	\$45.00

D. Field Equipment Costs:

<b>Field equipment</b>	<b>Cost per day</b>
Carbon monoxide, sulphur dioxide oxide and oxygen meters	\$50.00
Water quality meter	\$50.00
Dissolved oxygen meter (water)	\$37.50
Electroconductivity meter	\$47.50
Explosimeter	\$42.50
Fluid field detector	\$30.00
Interface probe	\$65.00
Organic vapor meter	\$70.00
Photoionization detector	\$70.00
Flame ionization detector	\$75.00

pH Meter	\$22.50
Other. Costs shall be pre-approved by the department. The department may require justification.	

E. Per diem and mileage will be paid in accordance with 2.42.2 NMAC, Regulations Governing the Per Diem and Mileage Act. The department shall only approve mileage reimbursement for travel within New Mexico.

F. Earth-moving equipment. Costs shall be pre-approved by the department. The department may require justification:

- (1) backhoe, light duty (12 feet-19 feet);
- (2) backhoe, medium duty (14 feet-19 feet);
- (3) trackhoe, light duty;
- (4) trackhoe, medium duty;
- (5) trackhoe, heavy duty; and
- (6) Other. Costs shall be pre-approved by the department. The department may require justification.

G. Well Supplies. Costs shall be pre-approved by the department. The department may require justification:

- (1) two-inch blank;
- (2) four-inch blank;
- (3) two- inch screen PVC 10 feet;
- (4) four-inch screen PVC 10 feet;
- (5) filter pack, per 100 pounds;
- (6) bentonite pellets, per 50 pounds;
- (7) bentonite chips, per 50 pounds;
- (8) bentonite gel, per 100 pounds;
- (9) grout, per 50 pounds.;
- (10) eight-inch manhole;

(11) 12-inch manhole; and

(12) Other. Costs shall be pre-approved by the department. The department may require justification.

H. Drilling. Costs shall be pre-approved by the department. The department may require justification:

(1) mobilization/demobilization;

(2) hollow stem auger;

(3) air rotary;

(4) Sonic drilling;

(5) other drilling methods;

(6) plug and abandon; and

(7) Other. Costs shall be pre-approved by the department. The department may require justification.

I. Lab services. Costs shall be pre-approved by the department. The department may require justification:

(1) EPA methods.

(a) 8310;

(b) 601/8010, 602/8020;

(c) Modified 8015;

(d) 418.1;

(e) 610/8100;

(f) 624/8240;

(g) 625/8270;

(h) 8260; and

(i) RCRA 8 metals.

- (2) benzene, toluene, ethyl benzene, and xylenes; methyl tertiary-butyl ether;
- (3) pH;
- (4) total organic carbon;
- (5) Geotechnical soil analyses:
  - (a) sieve analysis;
  - (b) soil moisture;
  - (c) density;
  - (d) porosity;
  - (e) fraction organic carbon; and

(6) Other. Costs shall be pre-approved by the department. The department may require justification.

J. The contractor shall provide justification or documentation upon request of the department for proposed costs subject to this part.

K. Subcontractor costs shall be billed at cost. The department may require three bids for subcontracted services.

[20.5.123.2324 NMAC – Rp. 20.5.123.2324 NMAC, 12/27/2018]

## **PART 124: LENDER LIABILITY**

### **20.5.124.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.124.1 NMAC - N, 07/24/2018]

### **20.5.124.2 SCOPE:**

This part applies to all storage tank systems in this state except as provided in Subsections B and D of 20.5.101.2 NMAC. This part also applies to owners and operators of AST systems with capacities of 55,000 gallons or more associated with airport hydrant fuel distribution systems and owners and operators of AST systems with capacities of 55,000 gallons or more associated with UST systems with field-constructed tanks as these terms are defined in 20.5.101 NMAC.

[20.5.124.2 NMAC - N, 07/24/2018]

**20.5.124.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-1-14 NMSA 1978, and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-15 NMSA 1978.

[20.5.124.3 NMAC - N, 07/24/2018]

**20.5.124.4 DURATION:**

Permanent.

[20.5.124.1 NMAC - N, 07/24/2018]

**20.5.124.5 EFFECTIVE DATE:**

July 24, 2018, unless later date is indicated in the bracketed note at the end of a section.

[20.5.124.1 NMAC - N, 07/24/2018]

**20.5.124.6 OBJECTIVE:**

This part is adopted to limit the regulatory obligations of lending institutions and other persons who hold a security interest in a storage tank system, or in real estate containing a storage tank, or that acquire a title or deed to a storage tank or a facility or property on which a storage tank is located.

[20.5.124.1 NMAC - N, 07/24/2018]

**20.5.124.7 DEFINITIONS:**

The definitions in 20.5.101 NMAC apply to this part. In addition, when used in this part, the following terms shall have the meanings given below:

**A.** "Storage tank technical standards," as used in this part, refers to the requirements of 20.5.102, 20.5.104, 20.5.106 through 20.5.111 NMAC, 20.5.114 and 20.5.115 NMAC, and 20.5.118.1800 NMAC through Subsection A of 20.5.118.1801 NMAC.

**B.** Petroleum production, refining, and marketing.

**(1)** "Petroleum production" means the production of crude oil or other forms of petroleum (as defined in 20.5.101.7 NMAC) as well as the production of petroleum products from purchased materials.

**(2)** "Petroleum refining" means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

**(3)** "Petroleum marketing" means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

**C.** "Indicia of ownership" means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

**D.** A "holder" is a person who maintains indicia of ownership primarily to protect a security interest in a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

**E.** A "borrower," "debtor," or "obligor" is a person whose petroleum storage tank or storage tank system or facility or property on which the petroleum storage tank or storage tank system is located is encumbered by a security interest. These terms may be used interchangeably.

**F.** "Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

**(1)** "Security interest" means an interest in a petroleum storage tank or storage tank system or in the facility or property on which a petroleum storage tank or storage tank system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security

interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in a storage tank or storage tank system or in the facility or property on which the storage tank or storage tank system is located, for the purpose of securing a loan or other obligation.

**(2)** "Primarily to protect a security interest," as used in this part, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership indicia are held must be as protection for a security interest.

**G.** "Operation" means, for purposes of this part, the use, storage, filling, or dispensing of petroleum contained in a storage tank or storage tank system.

**H.** "Participating in the management of a storage tank or storage tank system" means that the holder is engaging in decision-making control of, or activities related to, operation of the storage tank or storage tank system, as defined herein. Participation in management does not include the mere capacity or ability to influence or the unexercised right to control storage tank or storage tank system operations.

**I.** "Foreclosure" means that legal, marketable or equitable title or deed has been issued, approved, and recorded, and that the holder has obtained access to the storage tank, storage tank system, storage tank facility, and property on which the storage tank or storage tank system is located, provided that the holder acted diligently to acquire marketable title or deed and to gain access to the storage tank, storage tank system, storage tank facility, and property on which the storage tank or storage tank system is located.

**J.** "Loan work out" means those actions by which a holder, at any time prior to foreclosure, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

**K.** "Written, bona fide, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, including

all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform.

[20.5.124.7 NMAC - N, 07/24/2018]

#### **20.5.124.8-20.5.124.2399 [RESERVED]**

#### **20.5.124.2400 ACTIONS THAT ARE PARTICIPATION IN MANAGEMENT:**

**A.** Participation in the management of a storage tank or storage tank system means, for purposes of this part, actual participation by the holder in the management or control of decision-making related to the operation of a storage tank or storage tank system. A holder is participating in the management of the storage tank or storage tank system only if the holder either:

**(1)** Exercises decision-making control over the operational (as opposed to financial or administrative) aspects of the storage tank or storage tank system, such that the holder has undertaken responsibility for all or substantially all of the management of the storage tank or storage tank system; or

**(2)** Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decision-making of the enterprise with respect to all, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise.

**B.** Operational aspects of the enterprise relate to the use, storage, filling, or dispensing of petroleum contained in a storage tank or storage tank system, and include functions such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

**C.** Financial or administrative aspects include functions such as that of a credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions.

**D.** Operational aspects of the enterprise do not include the financial or administrative aspects of the enterprise, or actions associated with environmental compliance, or actions undertaken voluntarily to protect the environment in accordance with applicable requirements in 20.5 NMAC.

[20.5.124.2400 NMAC - N, 07/24/2018]

#### **20.5.124.2401 ACTIONS THAT ARE NOT PARTICIPATION IN MANAGEMENT PRE-FORECLOSURE:**

**A.** Actions at the inception of the loan or other transaction.

**(1)** No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this subpart.

**(2)** A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located (in which indicia of ownership are to be held), or requires a prospective borrower to clean up contamination from the storage tank or storage tank system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation, is not by such action considered to be participating in the management of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located.

**B.** Loan policing and work out.

**(1)** Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this part.

**(2)** The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower.

**(3)** Loan policing and work out activities cover and include all such activities up to foreclosure, exclusive of any activities that constitute participation in management.

**(4)** Policing activities.

**(a)** Policing the security interest or loan. A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the storage tank or storage tank system as provided in Subsection A of this section. Such policing actions include, but are not limited to, the following activities:

**(i)** requiring the borrower to clean up contamination from the storage tank or storage tank system during the term of the security interest;

**(ii)** requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest;

**(iii)** securing or exercising authority to monitor or inspect the storage tank or storage tank system or facility or property on which the storage tank or storage

tank system is located (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or

(iv) taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(b) Environmental policing activities. Policing activities also include undertaking by the holder of storage tank environmental compliance actions and voluntary environmental actions taken in compliance with 20.5 NMAC, provided that the holder does not otherwise participate in the management or daily operation of the storage tank or storage tank system as provided in Subsection A of this section, 20.5.124.2404 and 20.5.124.2405 NMAC. A holder who undertakes these actions shall do so in compliance with the applicable requirements in 20.5 NMAC. A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the storage tank or storage tank system. Such allowable actions include, but are not limited to:

- (i) release detection and release reporting;
- (ii) release response and corrective action;
- (iii) temporary or permanent closure of a storage tank or storage tank system;
- (iv) storage tank upgrading or replacement; and
- (v) maintenance of corrosion protection.

(5) Loan work out. A holder who engages in loan work out activities prior to foreclosure will remain within the exemption provided that the holder does not together with other actions participate in the management of the storage tank or storage tank system as provided in Subsection A of this section.

[20.5.124.2401 NMAC - N, 07/24/2018]

**20.5.124.2402 FORECLOSURE ON A STORAGE TANK OR STORAGE TANK SYSTEM OR FACILITY OR PROPERTY ON WHICH A STORAGE TANK OR STORAGE TANK SYSTEM IS LOCATED, AND PARTICIPATION IN MANAGEMENT ACTIVITIES POST-FORECLOSURE:**

A. Foreclosure.

**(1)** Indicia of ownership that are held primarily to protect a security interest include legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, taking all facts and circumstances into consideration, and provided that the holder does not participate in management (as defined in 20.5.124.7 NMAC) prior to or after foreclosure.

**(2)** For purposes of establishing that a holder is seeking to sell, re-lease pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or divest in a reasonably expeditious manner a storage tank or storage tank system or facility or property on which the storage or storage tank system is located, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, or may employ the means specified in Subsection B of this section.

**(3)** A holder that outbids, rejects, or fails to act upon a written bona fide, firm offer of fair consideration for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, as provided in Subsection B of this section, is not considered to hold indicia of ownership primarily to protect a security interest.

**B.** Holding foreclosed property for disposition and liquidation.

**(1)** A holder may conduct the following activities without voiding the security interest exemption, subject to the requirements of this part:

**(a)** A holder, who does not participate in management prior to or after foreclosure, may sell, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, liquidate, wind up operations, and take measures, prior to sale or other disposition, to preserve, protect, or prepare the secured storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located.

**(b)** A holder may arrange for an existing or new operator to continue or initiate operation of the storage tank or storage tank system.

**(2)** A holder establishes that the ownership indicia maintained after foreclosure continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the storage tank or storage tank system or the facility or property on which the storage tank or storage tank system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the location of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located.

**(a)** For purposes of this provision, the 12-month period begins to run from the date that the marketable title or deed has been issued, approved and recorded, and the holder has obtained access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located provided that the holder acted diligently to acquire marketable title or deed and to obtain access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located.

**(b)** If the holder fails to act diligently to acquire marketable title or deed or to gain access to the storage tank or storage tank system, the 12-month period begins to run from the date on which the holder first acquires either title to or possession of the secured storage tank or storage tank system, or facility or property on which the storage tank or storage tank system is located.

**(3)** A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the storage tank or storage tank system or the facility or property on which the storage tank or storage tank system is located, establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

**(a)** Fair consideration, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, is the value of the security interest as defined in this section.

**(i)** The value of the security interest includes all debt and costs incurred by the security interest holder, and is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a

lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure).

**(ii)** The value of the security interest also includes all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure, retention, preserving, protecting, and preparing, prior to sale, the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, re-lease, pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), of a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, or other disposition.

**(iii)** The value of the security interest also includes environmental investigation costs (which could include a site assessment, inspection, and/or audit of the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located), and corrective action costs incurred under 20.5.118, 20.5.119, or 20.5.120 NMAC or any other costs incurred as a result of reasonable efforts to comply with any other applicable federal, state or local law or regulation; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower (if not already applied to the borrower's obligations) subsequent to the acquisition of full title (or possession in the case of a lease financing transaction) pursuant to foreclosure.

**(iv)** In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in this paragraph.

**(b)** Outbids, rejects, or fails to act upon an offer of fair consideration means that the holder outbids, rejects, or fails to act upon within 90 days of receipt, a written, bona fide, firm offer of fair consideration for the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located received at any time after six months following foreclosure, as defined in 20.5.124.7 NMAC.

**(i)** For purposes of this provision, the six-month period begins to run from the date that marketable title or deed has been issued, approved and recorded to the holder, and the holder has obtained access to the storage tank, storage tank system, storage tank facility and property on which the storage tank or storage tank system is located, provided that the holder was acting diligently to acquire marketable title or deed and to obtain access to the storage tank or storage tank system, storage tank facility and property on which the storage tank or storage tank system is located.

**(ii)** If the holder fails to act diligently to acquire marketable title or deed or to gain access to the storage tank or storage tank system, the six-month period

begins to run from the date on which the holder first acquires either title to or possession of the secured storage tank or storage tank system, or facility or property on which the storage tank or storage tank system is located.

**C. Actions that are not participation in management post-foreclosure.**

**(1)** A holder is not considered to be participating in the management of a storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located when undertaking actions under 20.5 NMAC, provided that the holder does not otherwise participate in the management or daily operation of the storage tank or storage tank system as provided in Subsection A of this section and in 20.5.124.2400 NMAC. Such allowable actions include, but are not limited to, release detection and release reporting, release response and corrective action, temporary or permanent closure of a storage tank system, storage tank upgrading or replacement, and maintenance of corrosion protection.

**(2)** A holder who undertakes these actions shall do so in compliance with the applicable requirements in 20.5 NMAC.

**(3)** A holder may directly oversee these environmental compliance actions and voluntary environmental actions, and directly hire contractors to perform the work, and is not by such action considered to be participating in the management of the storage tank or storage tank system.

[20.5.124.2402 NMAC - N, 07/24/2018]

**20.5.124.2403 OWNERSHIP OF A STORAGE TANK OR STORAGE TANK SYSTEM OR FACILITY OR PROPERTY ON WHICH A STORAGE TANK OR STORAGE TANK SYSTEM IS LOCATED:**

A holder is not an "owner" of a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located for purposes of compliance with the storage tank technical standards as defined in 20.5.124.7 NMAC; the corrective action requirements under 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC; and the financial responsibility requirements under 20.5.117 NMAC, provided the person:

**A.** does not participate in the management of the storage tank or storage tank system as defined in 20.5.124.2400 NMAC, 20.5.124.2401 NMAC, and 20.5.124.2402 NMAC; and

**B.** does not engage in petroleum production, refining, and marketing, as defined in 20.5.124.7 NMAC.

[20.5.124.2403 NMAC - N, 07/24/2018]

**20.5.124.2404 OPERATING A STORAGE TANK OR STORAGE TANK SYSTEM PRIOR TO FORECLOSURE:**

A holder, prior to foreclosure, as defined in 20.5.124.7 NMAC, is not an "operator" of a petroleum storage tank or storage tank system for purposes of compliance with the storage tank technical standards as defined in 20.5.124.7 NMAC; the corrective action requirements under 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC; and the financial responsibility requirements under 20.5.117 NMAC, provided that the holder is not in control of or does not have responsibility for the daily operation of the storage tank or storage tank system.

[20.5.124.2404 NMAC - N, 07/24/2018]

**20.5.124.2405 OPERATING A STORAGE TANK OR STORAGE TANK SYSTEM AFTER FORECLOSURE:**

The following provisions apply to a holder who, through foreclosure, as defined in 20.5.124.7 NMAC, acquires a petroleum storage tank or storage tank system or facility or property on which a petroleum storage tank or storage tank system is located.

**A.** A holder is not an "operator" of a petroleum storage tank or storage tank system for purposes of compliance with 20.5 NMAC if there is an operator, other than the holder, who is in control of or has responsibility for the daily operation of the storage tank or storage tank system, and who can be held responsible for compliance with applicable requirements of 20.5 NMAC.

**B.** If another operator does not exist, as provided for under Subsection A of this section, a holder is not an "operator" of the storage tank or storage tank system, for purposes of compliance with the storage tank technical standards as defined in 20.5.124.7 NMAC; the corrective action requirements under 20.5.118 NMAC, 20.5.119 NMAC, and 20.5.120 NMAC; and the storage tank financial responsibility requirements under 20.5.117 NMAC, provided that the holder:

**(1)** empties all of its known storage tanks and storage tank systems within 60-calendar days after foreclosure or another reasonable time period specified by the department, so that, in the case of both USTs and ASTs, no more than two and one-half centimeters (one inch) of residue, or three-tenths percent by weight of the total capacity of the storage tank system, remains in the system; leaves vent lines open and functioning; caps and secures all other lines, pumps, manways, and ancillary equipment; and, for ASTs, disconnects and caps all associated piping from the AST; and

**(2)** empties those storage tanks and storage tank systems that are discovered after foreclosure within 60-calendar days after discovery or another reasonable time period specified by the department, so that, in the case of both ASTs and USTs, no more than two and one-half centimeters (one inch) of residue, or three-tenths percent

by weight of the total capacity of the storage tank system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment; and, for ASTs, disconnects and caps all associated piping from the AST.

**C.** For purposes of this subsection, the 12-month period begins to run from the date on which the storage tank system is emptied and secured under Subsection B of this section. If another operator does not exist, as provided for under Subsections A and B of this section, in addition to satisfying the conditions under Subsection B of this section, the holder shall either:

(1) permanently close the storage tank or storage tank system in accordance with 20.5.115 NMAC, except 20.5.115.1501 NMAC and Subsection B of 20.5.115.1504 NMAC; however, the holder is required to notify the department of a release or a suspected release in accordance with 20.5.118 NMAC; or

(2) temporarily close the storage tank or storage tank system in accordance with the following:

(a) continue operation and maintenance of corrosion protection in accordance with 20.5.107.705 NMAC;

(b) report suspected releases to the department in accordance with 20.5.118 NMAC; and

(c) conduct a site assessment in accordance with Subsection A of 20.5.115.1504 NMAC if the storage tank system is temporarily closed for more than 12 months and the storage tank system does not meet either the performance standards in 20.5.106 NMAC for new underground storage tank systems or, for AST systems, the upgrading requirements in 20.5.109 NMAC, except that the spill and overfill equipment requirements do not have to be met.

**D.** The storage tank system can remain in temporary closure until a subsequent purchaser has acquired marketable title to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located. Once a subsequent purchaser acquires marketable title to the storage tank or storage tank system or facility or property on which the storage tank or storage tank system is located, the purchaser shall decide whether to operate or close the storage tank or storage tank system in accordance with applicable requirements in 20.5 NMAC.

[20.5.124.2405 NMAC - N, 07/24/2018]

## **PART 125: ADMINISTRATIVE REVIEW**

### **20.5.125.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.5.125.1 NMAC - N, 07/24/2018]

**20.5.125.2 SCOPE:**

This part applies to aggrieved parties as defined in this part.

[20.5.125.2 NMAC - N, 07/24/2018]

**20.5.125.3 STATUTORY AUTHORITY:**

This part is promulgated pursuant to the provisions of the Hazardous Waste Act, Sections 74-4-1 through 74-4-14 NMSA 1978; the Ground Water Protection Act, Sections 74-6B-1 through 74-6B-14 NMSA 1978; and the general provisions of the Environmental Improvement Act, Sections 74-1-1 through 74-1-17 NMSA 1978.

[20.5.125.3 NMAC - N, 07/24/2018]

**20.5.125.4 DURATION:**

Permanent.

[20.5.125.4 NMAC - N, 07/24/2018]

**20.5.125.5 EFFECTIVE DATE:**

July 24, 2018, unless a later date is indicated in the bracketed history note at the end of a section.

[20.5.125.5 NMAC - N, 07/24/2018]

**20.5.125.6 OBJECTIVE:**

The purpose of this part is to provide aggrieved parties a means of seeking expedited review or reconsideration of decisions made by the department under 20.5 NMAC in regulating storage tank systems in order to protect the public health, safety and welfare and the environment of the state.

[20.5.125.6 NMAC - N, 07/24/2018]

**20.5.125.7 DEFINITIONS:**

- A. The definitions in 20.5.101 NMAC apply to this part.
- B. As used in this part, the term "aggrieved party" means:

(1) an owner, operator, person designated as a representative under 20.5.123.2311 NMAC or product deliverer aggrieved by a decision by the department pursuant to 20.5 NMAC;

(2) a contractor aggrieved by a decision by the department under 20.5.123 NMAC;

(3) a person that has been denied designation as a representative under 20.5.123.2311 NMAC; or

(4) a person that has been denied qualification or disqualified under 20.5.122 NMAC.

[20.5.125.7 NMAC - N, 07/24/2018]

#### **20.5.125.8-20.5.125.2499 [RESERVED]**

#### **20.5.125.2500 INITIATION OF ADMINISTRATIVE REVIEW:**

**A.** Except for appeals as provided for in 20.5.123 NMAC for compliance determinations, any aggrieved party may obtain review of the decision by either:

(1) submitting to the department a written request for informal review pursuant to 20.5.125.2501 NMAC; or

(2) submitting to the secretary or the secretary's designee a written request for review on written submittals pursuant to 20.5.125.2502 NMAC.

**B.** Any request for administrative review initiated pursuant to Subsection A of this section must be postmarked within 15 days of the date of the decision.

**C.** An aggrieved party may request review on written submittals under 20.5.125.2502 NMAC without first requesting informal review under 20.5.125.2501 NMAC. If, however, an aggrieved party first requests informal review under 20.5.125.2501 NMAC, the aggrieved party thereafter may request review on written submittals under 20.5.125.2502 NMAC of the determination made by the department pursuant to Subsection D of 20.5.125.2501 NMAC, provided that the request for review on written submittals under 20.5.125.2502 NMAC is postmarked within 15 days of the date of the determination made by the department pursuant to Subsection D of 20.5.125.2501 NMAC.

**D.** Review under this part does not stay the decision being reviewed, unless otherwise ordered by the secretary or secretary's designee, nor does it apply to or affect the secretary's authority to issue compliance orders or otherwise seek enforcement of these regulations, 20.5 NMAC, under the provisions of the Hazardous Waste Act or the Ground Water Protection Act.

[20.5.125.2500 NMAC - N, 07/24/2018]

**20.5.125.2501      INFORMAL REVIEW:**

**A.** A request for informal review by an aggrieved party shall be in writing and shall specify the grounds upon which the aggrieved party objects to the decision. Every request for informal review shall be submitted to the department by the deadline set out in Subsection B of 20.5.125.2500 NMAC.

**B.** The department shall afford prompt opportunity for an informal conference at which the aggrieved party may present the aggrieved party's views on the issues raised in the request for review and offer any supporting documentation or testimony. The department shall notify the aggrieved party of the time, date and place of the informal conference.

**C.** If the decision to be reviewed was based on an inspection or field test performed or witnessed by an employee of the department, the member of department staff conducting the review must be someone other than the employee who conducted or witnessed the inspection or test.

**D.** After considering all written and oral views presented, the department shall affirm, modify or reverse the original decision and shall furnish the aggrieved party with a written notification of its determination.

[20.5.125.2501 NMAC - N, 07/24/2018]

**20.5.125.2502      REVIEW BY THE SECRETARY OR THE SECRETARY'S  
DESIGNEE ON WRITTEN SUBMITTALS:**

**A.** Every request for review by the secretary or the secretary's designee on written submittals shall be in writing and shall specify the grounds upon which the aggrieved party objects to the decision. The request shall be accompanied by any and all written materials and argument which the aggrieved party wishes the secretary or the secretary's designee to consider upon review. The request and all written materials and argument shall be submitted to the secretary or the secretary's designee by the deadline set out in Subsections B and C of 20.5.125.2500 NMAC.

**B.** Within 15 days after the filing of the aggrieved party's request for review and submittal of all the aggrieved party's supporting material, department staff shall provide to the secretary or the secretary's designee any and all written materials and argument in support of the position of department staff on the issues raised by the aggrieved party.

**C.** For good cause shown, the secretary or the secretary's designee may permit either party (that is, either department staff or the aggrieved party) additional time in which to submit the supporting written materials and argument allowed by Subsections

A and B of this section. Any extension of time to submit written submittals shall not include the authority to extend the time to file a request for review under this part.

**D.** The action of the secretary or the secretary's designee on the request for review shall be based on the written materials and argument submitted pursuant to this section unless the secretary or the secretary's designee schedules a hearing on the request for review as set forth below.

**E.** The secretary or the secretary's designee may exercise discretion in determining if there is significant public interest for a public hearing and, if so, may provide notice of the time and place of the hearing to the aggrieved party, and may provide notice to interested persons other than the aggrieved party and provide for public participation in the review process described in this section, as the secretary or the secretary's designee deems appropriate.

**F.** If the secretary chooses to hold a hearing as described in Subsection E of this section, the secretary shall hold the hearing within 60 days after receiving the written materials and argument described in Subsection A or after receiving the request for a hearing, whichever occurs last. In the event the department holds a hearing, the cost of the court reporter and transcript shall be paid by the party that requested the hearing. The hearing shall be conducted in accordance with 20.1.5 NMAC.

**G.** The action of the secretary or the secretary's designee on the request for review shall be by written order and shall state the decision and the reason therefore. The secretary or the secretary's designee shall send a copy of the order to the aggrieved party and furnish a copy to department staff promptly after the order is entered. This written order shall be the department's final action on the request for review. Any judicial review of this final order shall be as provided by applicable law.

[20.5.125.2502 NMAC - N, 07/24/2018]

## **CHAPTER 6: WATER QUALITY**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: GROUND AND SURFACE WATER PROTECTION**

#### **20.6.2.1 ISSUING AGENCY:**

Water Quality Control Commission

[12-1-95; 20.6.2.1 NMAC - Rn, 20 NMAC 6.2.I.1000, 1-15-01]

#### **20.6.2.2 SCOPE:**

All persons subject to the Water Quality Act, NMSA 1978, Sections 74-6-1 et seq.

[12-1-95; 20.6.2.2 NMAC - Rn, 20 NMAC 6.2.I.1001, 1-15-01]

**20.6.2.3 STATUTORY AUTHORITY:**

Standards and Regulations are adopted by the commission under the authority of the Water Quality Act, NMSA 1978, Sections 74-6-1 through 74-6-17.

[2-18-77, 9-20-82, 12-1-95; 20.6.2.3 NMAC - Rn, 20 NMAC 6.2.I.1002, 1-15-01]

**20.6.2.4 DURATION:**

Permanent.

[12-1-95; 20.6.2.4 NMAC - Rn, 20 NMAC 6.2.I.1003, 1-15-01]

**20.6.2.5 EFFECTIVE DATE:**

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

[12-1-95, 11-15-96; 20.6.2.5 NMAC - Rn, 20 NMAC 6.2.I.1004, 1-15-01; A, 1-15-01]

**20.6.2.6 OBJECTIVE:**

The objective of this Part is to implement the Water Quality Act, NMSA 1978, Sections 74-6-1 et seq.

[12-1-95; 20.6.2.6 NMAC - Rn, 20 NMAC 6.2.I.1005, 1-15-01]

**20.6.2.7 DEFINITIONS:**

The following terms, as used in this part shall have the following meanings; terms defined in the Water Quality Act, but not defined in this part, will have the meaning given in the act.

**A.** Definitions that begin with the letter "A."

**(1) "abandoned well"** means a well whose use has been permanently discontinued or which is in a state of disrepair such that it cannot be rehabilitated for its intended purpose or other purposes including monitoring and observation;

**(2) "abate" or "abatement"** means the investigation, containment, removal or other mitigation of water pollution;

**(3) "abatement plan"** means a description of any operational, monitoring, contingency and closure requirements and conditions for the prevention, investigation

and abatement of water pollution, and includes Stage 1, Stage 2, or Stage 1 and 2 of the abatement plan, as approved by the secretary;

(4) **"adjacent properties"** means properties that are contiguous to the discharge site or property that would be contiguous to the discharge site but for being separated by a public or private right of way, including roads and highways.

**B.** Definitions that begin with the letter "B."

(1) **"background"** means, for purposes of ground water abatement plans only and for no other purposes in this part or any other regulations including but not limited to surface water standards, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or water contaminants which the responsible person establishes are occurring from a source other than the responsible person's facility; this definition shall not prevent the secretary from requiring abatement of commingled plumes of pollution, shall not prevent responsible persons from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the secretary from exercising enforcement authority under any applicable statute, regulation or common law;

**C.** Definitions that begin with the letter "C."

(1) **"casing"** means pipe or tubing of appropriate material, diameter and weight used to support the sides of a well hole and thus prevent the walls from caving, to prevent loss of drilling mud into porous ground, or to prevent fluid from entering or leaving the well other than to or from the injection zone;

(2) **"cementing"** means the operation whereby a cementing slurry is pumped into a drilled hole and/or forced behind the casing;

(3) **"cesspool"** means a **"drywell"** that receives untreated domestic liquid waste containing human excreta, and which sometimes has an open bottom and/or perforated sides; a large capacity cesspool means a cesspool that receives liquid waste greater than that regulated by 20.7.3 NMAC;

(4) **"collapse"** means the structural failure of overlying materials caused by removal of underlying materials;

(5) **"commission"** means:

- (a) the New Mexico water quality control commission or
- (b) the department, when used in connection with any administrative and enforcement activity;

(6) **"confining zone"** means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement from an injection zone;

(7) **"conventional mining"** means the production of minerals from an open pit or underground excavation; underground excavations include mine shafts, workings and air vents, but does not include excavations primarily caused by in situ extraction activities;

**D. Definitions that begin with the letter "D."**

(1) **"daily composite sample"** means a sample collected over any twenty-four hour period at intervals not to exceed one hour and obtained by combining equal volumes of the effluent collected, or means a sample collected in accordance with federal permit conditions where a permit has been issued under the national pollutant discharge elimination system or for those facilities which include a waste stabilization pond in the treatment process where the retention time is greater than twenty (20) days, means a sample obtained by compositing equal volumes of at least two grab samples collected within a period of not more than twenty-four (24) hours;

(2) **"department", "agency", or "division"** means the New Mexico environment department or a constituent agency designated by the commission;

(3) **"discharge permit"** means a discharge plan approved by the department;

(4) **"discharge permit modification"** means a change to the requirements of a discharge permit that result from a change in the location of the discharge, a significant increase in the quantity of the discharge, a significant change in the quality of the discharge; or as required by the secretary;

(5) **"discharge permit renewal"** means the re-issuance of a discharge permit for the same, previously permitted discharge;

(6) **"discharge plan"** means a description of any operational, monitoring, contingency, and closure requirements and conditions for any discharge of effluent or leachate which may move directly or indirectly into ground water;

(7) **"discharge site"** means the entire site where the discharge and associated activities will take place;

(8) **"disposal"** means to abandon, deposit, inter or otherwise discard a fluid as a final action after its use has been achieved;

(9) **"domestic liquid waste"** means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including but not limited to waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

(10) **"domestic liquid waste treatment unit"** means a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including but not limited to aerobic treatment units and septic tanks;

(11) **"drywell"** means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so that its bottom and sides are typically dry except when receiving fluids;

E. Definitions that begin with the letter "E."

**"experimental technology"** means a technology which has not been proven feasible under the conditions in which it is being tested;

F. Definitions that begin with the letter "F."

**"fluid"** means material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state;

G. Definitions that begin with the letter "G."

**"ground water"** means interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply;

H. Definitions that begin with the letter "H."

**"hazard to public health"** exists when water which is used or is reasonably expected to be used in the future as a human drinking water supply exceeds at the time and place of such use, one or more of the standards of Subsection A of 20.6.2.3103 NMAC, or the naturally occurring concentrations, whichever is higher in determining whether a discharge would cause a hazard to public health to exist, the secretary shall investigate and consider the purification and dilution reasonably expected to occur from the time and place of discharge to the time and place of withdrawal for use as human drinking water;

I. Definitions that begin with the letter "I."

(1) **"improved sinkhole"** means a naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface;

(2) **"injection"** means the subsurface emplacement of fluids through a well;

(3) **"injection zone"** means a geological formation, group of formations, or part of a formation receiving fluids through a well;

J Definitions that begin with the letter "J." [RESERVED]

K. Definitions that begin with the letter "K." [RESERVED]

L. Definitions that begin with the letter "L." [RESERVED]

M. Definitions that begin with the letter "M."

**"motor vehicle waste disposal well"** means a well which receives or has received fluids from vehicular repair or maintenance activities;

N. Definitions that begin with the letter "N."

**"non-aqueous phase liquid"** means an interstitial body of liquid oil, petroleum product, petrochemical, or organic solvent, including an emulsion containing such material;

O. Definitions that begin with the letter "O."

(1) **"operational area"** means a geographic area defined in a project discharge permit where a group of wells or well fields in close proximity comprise a single class III well operation;

(2) **"owner of record"** means an owner of property according to the property records of the tax assessor in the county in which the discharge site is located at the time the application was deemed administratively complete;

P. Definitions that begin with the letter "P."

(1) **"packer"** means a device lowered into a well to produce a fluid-tight seal within the casing;

(2) **"person"** means an individual or any other entity including partnerships, corporation, associations, responsible business or association agents or officers, the state or a political subdivision of the state or any agency, department or instrumentality of the United States and any of its officers, agents or employees;

(3) **"petitioner"** means a person seeking a variance from a regulation of the commission pursuant to Section 74-6-4(H) NMSA 1978;

(4) **"plugging"** means the act or process of stopping the flow of water, oil or gas into or out of a geological formation, group of formations or part of a formation through a borehole or well penetrating these geologic units;

(5) **"project discharge permit"** means a discharge permit which describes the operation of similar class III wells or well fields within one or more individual operational areas;

Q. Definitions that begin with the letter "Q." **[RESERVED]**

R. Definitions that begin with the letter "R."

(1) **"refuse"** includes food, swill, carrion, slops and all substances from the preparation, cooking and consumption of food and from the handling, storage and sale of food products, the carcasses of animals, junked parts of automobiles and other machinery, paper, paper cartons, tree branches, yard trimmings, discarded furniture, cans, oil, ashes, bottles, and all unwholesome material;

(2) **"responsible person"** means a person who is required to submit an abatement plan or who submits an abatement plan pursuant to this part;

S. Definitions that begin with the letter "S."

(1) **"secretary"** or **"director"** means the secretary of the New Mexico department of environment or the director of a constituent agency designated by the commission;

(2) **"sewer system"** means pipelines, conduits, pumping stations, force mains, or other structures, devices, appurtenances or facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal;

(3) **"sewerage system"** means a system for disposing of wastes, either by surface or underground methods, and includes sewer systems, treatment works, disposal wells and other systems;

(4) **"significant modification of Stage 2 of the abatement plan"** means a change in the abatement technology used excluding design and operational parameters, or re-location of 25 percent or more of the compliance sampling stations, for any single medium, as designated pursuant to Paragraph (4) of Subsection E of 20.6.2.4106 NMAC;

(5) **"subsurface fluid distribution system"** means an assemblage of perforated pipes, drain tiles, or other mechanisms intended to distribute fluids below the surface of the ground;

(6) **"subsurface water"** means ground water and water in the vadose zone that may become ground water or surface water in the reasonably foreseeable future or may be utilized by vegetation;

T. Definitions that begin with the letter "T."

**(1)** "TDS" means total dissolved solids as determined by the "calculation method" (sum of constituents), by the "residue on evaporation method at 180 degrees" of the "*U.S. geological survey techniques of water resource investigations*," or by conductivity, as the secretary may determine;

**(2)** "toxic pollutant" means any water contaminant or combination of the water contaminants in the list below

**(a)** acrolein (CAS 107-02-8)

**(b)** acrylonitrile (CAS 107-13-1)

**(c)** benzene and alkylbenzenes

**(i)** benzene (CAS 71-43-2)

**(ii)** toluene (methylbenzene) (CAS 108-88-3)

**(iii)** ethylbenzene (CAS 100-41-4)

**(iv)** xylenes (dimethyl benzene isomers): o-xylene (CAS 95-47-6); m-xylene (CAS 108-38-3); and p-xylene (CAS 106-42-3)

**(v)** styrene (ethenylbenzene) (CAS 100-42-5)

**(d)** chlorinated benzenes

**(i)** monochlorobenzene (CAS 108-90-7)

**(ii)** 1,2-dichlorobenzene (ortho-dichlorobenzene) (CAS 95-50-1)

**(iii)** 1,4-dichlorobenzene (para-dichlorobenzene) (CAS 106-46-7)

**(iv)** 1,2,4-trichlorobenzene (CAS 120-82-1)

**(v)** 1,2,4,5-tetrachlorobenzene (CAS 95-94-3)

**(vi)** pentachlorobenzene (CAS 608-93-5)

**(vii)** hexachlorobenzene (CAS 118-74-1)

**(e)** chlorinated phenols

**(i)** 2,4-dichlorophenol (CAS 120-83-2)

**(ii)** 2,4,5-trichlorophenol (CAS 95-95-4)



**(vi)** tetrachloroethene (perchloroethylene, PCE) (CAS 127-18-4)

**(l)** halogenated methanes

**(i)** bromodichloromethane (CAS 75-27-4)

**(ii)** bromomethane (CAS 74-83-9)

**(iii)** chloromethane (CAS 74-87-3)

**(iv)** dichlorodifluoromethane (fluorocarbon-12) (CAS 75-71-8)

**(v)** dichloromethane (methylene chloride) (CAS 75-09-2)

**(vi)** tribromomethane (bromoform) (CAS 75-25-2)

**(vii)** trichloromethane (chloroform) (CAS 67-66-3)

**(viii)** tetrachloromethane (carbon tetrachloride) (CAS 56-23-5)

**(ix)** trichlorofluoromethane (fluorocarbon-11) (CAS 75-69-4)

**(m)** hexachlorobutadiene (CAS 87-68-3)

**(n)** isophorone (CAS 78-59-1)

**(o)** methyl tertiary-butyl-ether (MTBE) (CAS 1634-04-4)

**(p)** nitroaromatics and high explosives (HE)

**(i)** nitrobenzene (CAS 98-95-3)

**(ii)** 2,4-dinitrotoluene (2,4-DNT) (CAS 121-14-2)

**(iii)** 2,6-dinitrotoluene (2,6-DNT) (CAS 606-20-2)

**(iv)** octrahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine (HMX) (CAS 2691-

41-0)

**(v)** hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX) (CAS 121-82-4)

**(vi)** 2,4,6-trinitrotoluene (TNT) (CAS 118-96-7)

**(vii)** 2,4-dinitro-o-cresol (CAS 534-52-1)

**(viii)** dinitrophenols (CAS 51-28-5)

**(q)** nitrosamines

- (i)** N-nitrosodiethylamine (CAS 55-18-5)
- (ii)** N-nitrosodimethylamine (CAS 62-75-9)
- (iii)** N-nitrosodibutylamine (CAS 924-16-3)
- (iv)** N-nitrosodiphenylamine (CAS 86-30-6)
- (v)** N-nitrosopyrrolidine (CAS 930-55-2)

**(r)** perchlorate (CAS 14797-73-0)

**(s)** perfluorinated-chemicals (PFCs)

- (i)** perfluorohexane sulfonic acid (PHHS) (CAS 355-46-4)
- (ii)** perfluorooctane sulfonate (PFOS) (CAS 1763-23-1)
- (iii)** perfluorooctanoic acid (PFOA) (CAS 335-67-1)

**(t)** pesticides

- (i)** Aldrin (CAS 309-00-2)
- (ii)** atrazine (CAS 1912-24-9)
- (iii)** chlordane (CAS 57-74-9)
- (iv)** DDT (CAS 50-29-3)
- (v)** dieldrin (CAS 60-57-1)
- (vi)** endosulfan (CAS 115-29-7)
- (vii)** endrin (CAS 72-20-8)
- (viii)** heptachlor (CAS 76-44-8)
- (ix)** hexachlorocyclohexane (HCH, lindane): alpha-HCH (CAS 319-84-6); beta-HCH (CAS 319-85-7); gamma-HCH (CAS 58-89-9); and, technical-HCH (CAS 608-73-1)
- (x)** hexachlorocyclopentadiene (CAS 77-47-4)

**(xi)** prometon (CAS 1610-18-0)

**(xii)** toxaphene (CAS 8001-35-2)

**(u)** phenol (CAS 108-95-2)

**(v)** phthalate esters

**(i)** dibutyl phthalate (CAS 84-74-2)

**(ii)** di-2-ethylhexyl phthalate (DEHP) (CAS 117-81-7)

**(iii)** diethyl phthalate (DEP) (CAS 84-66-2)

**(iv)** dimethyl phthalate (DMP) (CAS 131-11-3)

**(w)** polycyclic compounds

**(i)** benzidine (CAS 92-87-5)

**(ii)** dichlorobenzidine (CAS 91-94-1)

**(iii)** diphenylhydrazine (CAS 122-66-7)

**(iv)** polychlorinated biphenyls (PCBs) (CAS 1336-36-3)

**(x)** polynuclear aromatic hydrocarbons (PAHs)

**(i)** anthracene (CAS 120-12-7)

**(ii)** benzo(a)pyrene (CAS 50-32-8)

**(iii)** 3,4-benzofluoranthene (CAS 205-99-2)

**(iv)** benzo(k)fluoranthene (CAS 207-08-9)

**(v)** fluoranthene (CAS 206-44-0)

**(vi)** fluorene (CAS 86-73-7)

**(vii)** naphthalene (CAS 91-20-3)

**(viii)** 1-methylnaphthalene (CAS 90-12-0)

**(ix)** 2-methylnaphthalene (CAS 91-57-6)

(x) phenanthrene (CAS 85-01-8)

(xi) pyrene (CAS 129-00-0)

(y) thiolane 1,1 dioxide (sulfolane) (CAS 126-33-0)

U. Definitions that begin with the letter "U." **[RESERVED]**

V. Definitions that begin with the letter "V."

(1) "**vadose zone**" means earth material below the land surface and above ground water, or in between bodies of ground water

W. Definitions that begin with the letter "W."

(1) "**wastes**" means sewage, industrial wastes, or any other liquid, gaseous or solid substance which will pollute any waters of the state;

(2) "**water**" means all water including water situated wholly or partly within or bordering upon the state, whether surface or subsurface, public or private, except private waters that do not combine with other surface or subsurface water;

(3) "**water contaminant**" means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water; "water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954;

(4) "**watercourse**" means any river, creek, arroyo, canyon, draw, or wash, or any other channel having definite banks and beds with visible evidence of the occasional flow of water;

(5) "**water pollution**" means introducing or permitting the introduction into water, either directly or indirectly, of one or more water contaminants in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property;

(6) "**well**" means: (1) A bored, drilled, or driven shaft; (2) A dug hole whose depth is greater than the largest surface dimension; (3) An improved sinkhole; or (4) A subsurface fluid distribution system;

(7) "**well stimulation**" means a process used to clean the well, enlarge channels, and increase pore space in the interval to be injected, thus making it possible for fluids to move more readily into the injection zone; well stimulation includes, but is not limited to, (1) surging, (2) jetting, (3) blasting, (4) acidizing, (5) hydraulic fracturing.

X. Definitions that begin with the letter "X." **[RESERVED]**

Y. Definitions that begin with the letter "Y." **[RESERVED]**

Z. Definitions that begin with the letter "Z." **[RESERVED]**

[1-4-68, 4-20-68, 11-27-70, 9-3-72, 4-11-74, 8-13-76, 2-18-77, 6-26-80, 7-2-81, 1-29-82, 9-20-82, 11-17-84, 3-3-86, 8-17-91, 8-19-93, 12-1-95; 20.6.2.7 NMAC - Rn, 20 NMAC 6.2.I.1101, 1-15-01; A, 1-15-01; A, 12-1-01; A, 9-15-02; A, 9-26-04; A, 7-16-06; A, 8-1-14; A, 12-21-18]

#### **20.6.2.8 SEVERABILITY:**

If any section, subsection, individual standard or application of these standards or regulations is held invalid, the remainder shall not be affected.

[2-18-77, 12-1-95; 20.6.2.8 NMAC - Rn, 20 NMAC 6.2.I.1007, 1-15-01]

#### **20.6.2.9 DOCUMENTS:**

Documents referenced in the part may be viewed at the New Mexico environment department, ground water quality bureau, Harold Runnels building, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

[12-1-95; 20.6.2.9 NMAC - Rn, 20 NMAC 6.2.I.1006, 1-15-01; A, 12-1-01]

#### **20.6.2.10 LIMITATIONS:**

These regulations do not apply to the following:

**A.** Any activity or condition subject to the authority of the environmental improvement board pursuant to the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 to -14, the Ground Water Protection Act, NMSA 1978, Sections 74-6B-1 to -14, or the Solid Waste Act, NMSA 1978, Sections 74-9-1 to -25, except to abate water pollution or to control the disposal or use of septage and sludge; or

**B.** Any activity or condition subject to the authority of the oil conservation commission pursuant to the provisions of the Oil and Gas Act, NMSA 1978, Section 70-2-12 and other laws conferring power on the oil conservation commission and the oil conservation division of the energy, minerals and natural resources department to prevent or abate water pollution.

[N, 12-21-18]

**20.6.2.11-20.6.2.1199: [RESERVED]**

[12-1-95; 20.6.2.10 - 20.6.2.1199 NMAC - Rn, 20 NMAC 6.2.I.1008-1100, 1102-1199, 1-15-01]

#### **20.6.2.1200 PROCEDURES:**

[12-1-95; 20.6.2.1200 NMAC - Rn, 20 NMAC 6.2.I.1200, 1-15-01]

#### **20.6.2.1201 NOTICE OF INTENT TO DISCHARGE:**

**A.** Except for the notices specified in paragraphs (1) and (2) of this subsection, any person intending to make a new water contaminant discharge or to alter the character or location of an existing water contaminant discharge, unless the discharge is being made or will be made into a community sewer system or subject to the Liquid Waste Disposal Regulations adopted by the New Mexico environmental improvement board, shall file a notice with the ground water quality bureau of the department for discharges that may affect ground water, and/ or the surface water quality bureau of the department for discharges that may affect surface water.

**(1)** Notices regarding discharges from facilities for the production, refinement, pipeline transmission of oil and gas or products thereof, the oil field service industry as related to oil and gas production activities, oil field brine production wells, and carbon dioxide facilities shall be filed with the oil conservation division of the energy, minerals and natural resources department,

**(2)** Notices regarding discharges related to geothermal resources, as defined in Section 71-9-3 of the Geothermal Resources Development Act, NMSA 1978, Sections 71-9-1 to -11 (2016) shall be filed with the energy conservation and management division of the energy, minerals and natural resources department.

**B.** Except for the notices specified in paragraphs (1) and (2) of this subsection any person intending to inject fluids into a well, including a subsurface distribution system, unless the injection is being made subject to the Liquid Waste Disposal Regulations adopted by the New Mexico environmental improvement board, shall file a notice with the ground water quality bureau of the department.

**(1)** Notices regarding injections to wells associated with oil and gas facilities as described in Paragraph (1) of Subsection A of 20.6.2.1201 NMAC shall be filed with the oil conservation division.

**(2)** Notices regarding injections to wells associated with exploration, development or production of geothermal resources, as described in Paragraph (2) of Subsection A of 20.6.2.1201 NMAC, shall be filed with the energy conservation and management division of the energy, minerals and natural resources department pursuant to the Geothermal Resources Development Act, NMSA 1978, Sections 71-9-1 to -11 (2016).

**C. Notices shall state:**

- (1) the name of the person making the discharge;
  - (2) the address of the person making the discharge;
  - (3) the location of the discharge;
  - (4) an estimate of the concentration of water contaminants in the discharge;
- and
- (5) the quantity of the discharge.

**D.** Based on information provided in the notice of intent, the department will notify the person proposing the discharge as to which of the following apply:

- (1) a discharge permit is required;
- (2) a discharge permit is not required;
- (3) the proposed injection well will be added to the department's underground injection well inventory;
- (4) the proposed injection activity or injection well is prohibited pursuant to 20.6.2.5004 NMAC.

[1-4-68, 9-5-69, 9-3-72, 2-17-74, 2-20-81, 12-1-95; 20.6.2.1201 NMAC - Rn, 20 NMAC 6.2.I.1201, 1-15-01; A, 12-1-01; A, 12-21-18]

**20.6.2.1202 FILING OF PLANS AND SPECIFICATIONS--SEWERAGE SYSTEMS:**

**A.** Any person proposing to construct a sewerage system or proposing to modify any sewerage system in a manner that will change substantially the quantity or quality of the discharge from the system shall file plans and specifications of the construction or modification with ground water quality bureau of the department for discharges that may affect ground water, and/or the surface water quality bureau of the department for discharges that may affect surface water. Modifications having a minor effect on the character of the discharge from sewerage systems shall be reported as of January 1 and June 30 of each year to the ground water quality bureau of the department for discharges that may affect ground water, or the surface water quality bureau of the department for discharges that may affect surface water.

**B.** Plans, specifications and reports required by this section, if related to facilities for the production, refinement and pipeline transmission of oil and gas, or products thereof, shall be filed instead with the oil conservation division.

**C.** Plans and specifications required to be filed under this section must be filed prior to the commencement of construction.

[1-4-68, 9-3-72, 2-20-81, 12-1-95; 20.6.2.1202 NMAC - Rn, 20 NMAC 6.2.1.1202, 1-15-01; A, 12-1-01]

### **20.6.2.1203 NOTIFICATION OF DISCHARGE-REMOVAL:**

**A.** With respect to any discharge from any facility of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of property, the following notifications and corrective actions are required:

**(1)** As soon as possible after learning of such a discharge, but in no event more than twenty-four (24) hours thereafter, any person in charge of the facility shall orally notify the chief of the ground water quality bureau of the department, or the appropriate counterpart in any constituent agency delegated responsibility for enforcement of these rules as to any facility subject to such delegation. To the best of that person's knowledge, the following items of information shall be provided:

**(a)** the name, address, and telephone number of the person or persons in charge of the facility, as well as of the owner and/or operator of the facility;

**(b)** the name and address of the facility;

**(c)** the date, time, location, and duration of the discharge;

**(d)** the source and cause of discharge;

**(e)** a description of the discharge, including its chemical composition;

**(f)** the estimated volume of the discharge; and

**(g)** any actions taken to mitigate immediate damage from the discharge.

**(2)** When in doubt as to which agency to notify, the person in charge of the facility shall notify the chief of the ground water quality bureau of the department. If that department does not have authority pursuant to commission delegation, the department shall notify the appropriate constituent agency.

**(3)** Within one week after the discharger has learned of the discharge, the facility owner and/or operator shall send written notification to the same department official, verifying the prior oral notification as to each of the foregoing items and providing any appropriate additions or corrections to the information contained in the prior oral notification.

**(4)** The oral and written notification and reporting requirements contained in this Subsection A are not intended to be duplicative of discharge notification and reporting requirements promulgated by the oil conservation commission (OCC) or by the oil conservation division (OCD); therefore, any facility which is subject to OCC or OCD discharge notification and reporting requirements need not additionally comply with the notification and reporting requirements herein.

**(5)** As soon as possible after learning of such a discharge, the owner/operator of the facility shall take such corrective actions as are necessary or appropriate to contain and remove or mitigate the damage caused by the discharge.

**(6)** If it is possible to do so without unduly delaying needed corrective actions, the facility owner/operator shall endeavor to contact and consult with the chief of the ground water quality bureau of the department or appropriate counterpart in a delegated agency, in an effort to determine the department's views as to what further corrective actions may be necessary or appropriate to the discharge in question. In any event, no later than fifteen (15) days after the discharger learns of the discharge, the facility owner/operator shall send to said Bureau Chief a written report describing any corrective actions taken and/or to be taken relative to the discharge. Upon a written request and for good cause shown, the bureau chief may extend the time limit beyond fifteen (15) days.

**(7)** The bureau chief shall approve or disapprove in writing the foregoing corrective action report within thirty (30) days of its receipt by the department. In the event that the report is not satisfactory to the department, the bureau chief shall specify in writing to the facility owner/operator any shortcomings in the report or in the corrective actions already taken or proposed to be taken relative to the discharge, and shall give the facility owner/operator a reasonable and clearly specified time within which to submit a modified corrective action report. The bureau chief shall approve or disapprove in writing the modified corrective action report within fifteen (15) days of its receipt by the department.

**(8)** In the event that the modified corrective action report also is unsatisfactory to the department, the facility owner/operator has five (5) days from the notification by the bureau chief that it is unsatisfactory to appeal to the department secretary. The department secretary shall approve or disapprove the modified corrective action report within five (5) days of receipt of the appeal from the bureau chief's decision. In the absence of either corrective action consistent with the approved corrective action report or with the decision of the secretary concerning the shortcomings of the modified corrective action report, the department may take whatever enforcement or legal action it deems necessary or appropriate.

**(9)** If the secretary determines that the discharge causes or may with reasonable probability cause water pollution in excess of the standards and requirements of Section 20.6.2.4103 NMAC, and the water pollution will not be abated within one hundred and eighty (180) days after notice is required to be given pursuant to

Paragraph (1) of Subsection A of Section 20.6.2.1203 NMAC, the secretary may notify the facility owner/operator that he is a responsible person and that an abatement plan may be required pursuant to Section 20.6.2.4104 and Subsection A of Section 20.6.2.4106 NMAC.

**B.** Exempt from the requirements of this section are continuous or periodic discharges which are made:

(1) in conformance with regulations of the commission and rules, regulations or orders of other state or federal agencies; or

(2) in violation of regulations of the commission, but pursuant to an assurance of discontinuance or schedule of compliance approved by the commission or one of its duly authorized constituent agencies.

**C.** As used in this section and in Sections 20.6.2.4100 through 20.6.2.4115 NMAC, but not in other sections of this part:

(1) "discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is a reasonable probability that the discharged substance will reach surface or subsurface water;

(2) "facility" means any structure, installation, operation, storage tank, transmission line, motor vehicle, rolling stock, or activity of any kind, whether stationary or mobile;

(3) "oil" means oil of any kind or in any form including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes;

(4) "operator" means the person or persons responsible for the overall operations of a facility; and

(5) "owner" means the person or persons who own a facility, or part of a facility.

**D.** Notification of discharge received pursuant to this part or information obtained by the exploitation of such notification shall not be used against any such person in any criminal case, except for perjury or for giving a false statement.

**E.** Any person who has any information relating to any discharge from any facility of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of property, is urged to notify the chief of the ground water quality bureau of the department. Upon such notification, the secretary may require an owner/operator or a responsible person to perform

corrective actions pursuant to Paragraphs (5) and (9) of Subsection A of Section 20.6.2.1203 NMAC.

[2-17-74, 2-20-81, 12-24-87, 12-1-95; 20.6.2.1203 NMAC - Rn, 20 NMAC 6.2.I.1203, 1-15-01; A, 12-1-01; A, 12-21-18]

**20.6.2.1204-20.6.2.1209 [RESERVED]**

[12-1-95; 20.6.2.1204 - 20.6.2.1209 NMAC - Rn, 20 NMAC 6.2.I.1204-1209, 1-15-01]

**20.6.2.1210 VARIANCE PETITIONS:**

**A.** Any person seeking a variance pursuant to Section 74-6-4(H) NMSA 1978, shall do so by filing a written petition with the commission. The petitioner may submit with his petition any relevant documents or material which the petitioner believes would support his petition. Petitions shall:

- (1) state the petitioner's name and address;
- (2) state the date of the petition;
- (3) describe the facility or activity for which the variance is sought;
- (4) state the address or description of the property upon which the facility is located;
- (5) describe the water body or watercourse affected by the discharge for which the variance is sought and provide information on uses of water that may be affected;
- (6) identify the regulation of the commission from which the variance is sought;
- (7) state in detail the extent to which the petitioner wishes to vary from the regulation;
- (8) state why the petitioner believes that compliance with the regulation will impose an unreasonable burden upon his activity; and
- (9) state in detail how any water pollution above standards will be abated; and
- (10) state the period of time for which the variance is desired including all reasons, data, reports and any other information demonstrating that such time period is justified and reasonable.

**B.** The variance petition shall be reviewed in accordance with the adjudicatory procedures of 20 NMAC 1.3.

**C.** The commission may grant the requested variance, in whole or in part, may grant the variance subject to conditions, or may deny the variance. If the variance is granted in whole or in part, or subject to conditions, the commission shall specify the length of time that the variance shall be in place.

**D.** For variances associated with a discharge permit or abatement plan, the existence and nature of the variance shall be disclosed in all public notices applicable to the discharge permit or abatement plan.

**E.** For variances granted for a period in excess of five years, the petitioner shall provide to the department for review a variance compliance report at five year intervals to demonstrate that the conditions of the variance are being met, including notification of any changed circumstances or newly-discovered facts that are material to the variance. At such time as the department determines the report is administratively complete, the department shall post the report on its website, and mail or e-mail notice of its availability to those persons on a general and facility-specific list maintained by the department who have requested notice of discharge permit applications, and any person who participated in the variance process. If such conditions are not being met, or there is evidence indicating changed circumstances or newly-discovered facts or conditions that were unknown at the time the variance was initially granted, any person, including the department, may request a hearing before the commission to revoke, modify, or otherwise reconsider the variance within 90 days of the issuance of the notice of availability of the report.

**F.** An order of the commission is final and bars the petitioner from petitioning for the same variance without special permission from the commission. The commission may consider, among other things, the development of new information and techniques to be sufficient justification for a second petition. If the petitioner, or his authorized representative, fails to appear at the public hearing on the variance petition, the commission shall proceed with the hearing on the basis of the petition. A variance may not be extended or renewed unless a new petition is filed and processed in accordance with the procedures established by this section.

[7-19-68, 11-27-70, 9-3-72, 2-20-81, 11-15-96; 20.6.2.1210 NMAC - Rn, 20 NMAC 6.2.I.1210, 1-15-01; A, 12-21-18]

**20.6.2.1211-20.6.2.1219 [RESERVED]**

[12-1-95; 20.6.2.1211 - 20.6.2.1219 NMAC - Rn, 20 NMAC 6.2.I.1211-1219, 1-15-01]

**20.6.2.1220 PENALTIES ENFORCEMENT, COMPLIANCE ORDERS, PENALTIES, ASSURANCE OF DISCONTINUANCE.:**

Failure to comply with the Water Quality Act, or any regulation or standard promulgated pursuant to the Water Quality Act is a prohibited act. If the secretary determines that a person has violated or is violating a requirement of the Water Quality Act or any regulation promulgated thereunder or is exceeding any water quality standard or ground water standard contained in commission regulations, or is not complying with a condition or provision of an approved or modified abatement plan, discharge plan, or permit issued pursuant to the Water Quality Act, the secretary may issue a compliance order, assess a penalty, commence a civil action in district court, or accept an assurance of discontinuance in accordance with NMSA 1978, Section 74-6-10 of the Water Quality Act.

[12-1-95; 20.6.2.1220 NMAC - Rn, 20 NMAC 6.2.I.1220, 1-15-01]

**20.6.2.1221-20.6.2.1999 [RESERVED]**

[12-1-95; 20.6.2.1221 - 20.6.2.1999 NMAC - Rn, 20 NMAC 6.2.I.1221-2099, 1-15-01]

**20.6.2.2000 SURFACE WATER PROTECTION:**

[12-1-95; 20.6.2.2000 NMAC - Rn, 20 NMAC 6.2.II, 1-15-01]

**20.6.2.2001 PROCEDURES FOR CERTIFICATION OF FEDERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMITS:**

**A.** This section applies to the state certification of draft national pollutant discharge elimination system (NPDES) permits under Section 401 of the federal Clean Water Act. The purpose of such certification is to reasonably ensure that the permitted activities will be conducted in a manner that will comply with applicable water quality standards, including the antidegradation policy, and the statewide water quality management plan.

**B.** After review of a draft permit, the department will either: (1) certify that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the federal Clean Water Act and with appropriate requirements of state law; (2) certify that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of state law upon inclusion of specified conditions in the permit and include the justification for the conditions; or (3) deny certification and include reasons for the denial. If the department does not act on the certification within the time prescribed by the federal permitting agency for such action, the authority to do so shall be waived.

**C.** Pursuant to federal regulations at 40 CFR 124.10(c), the U.S. environmental protection agency provides notice of draft NPDES permits to the applicant (except for general permits); various local, state, federal, tribal and pueblo government agencies; and other interested parties, and it allows at least 30 days of public comment. To the extent practicable, the department will provide public notice that the department is

reviewing a draft NPDES permit for the purpose of preparing a state certification or denial pursuant to Section 401 of the federal Clean Water Act jointly with the notice provided by the U.S. environmental protection agency. The department will also post notice on its website.

**D.** When joint notice is impractical, the department shall provide notice that the department is reviewing a draft NPDES permit for purpose of preparing a state certification or denial pursuant to Section 401 of the federal Clean Water Act as follows:

**(1)** for general permits by:

**(a)** posting notice on the department's website;

**(b)** publishing notice in at least one newspaper of general circulation;

**(c)** mailing or e-mailing notice to those persons on the general mailing list maintained by the department who have requested such notice; and

**(d)** mailing or e-mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department; or

**(2)** for individual permits by:

**(a)** posting notice on the department's website;

**(b)** publishing notice in a newspaper of general circulation in the location of the discharge;

**(c)** mailing notice to the applicant;

**(d)** mailing or e-mailing notice to those persons on the general and facility-specific mailing list maintained by the department who have requested such notice; and

**(e)** mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department.

**E.** Public notices may describe more than one permit or permit action. The notice provided under Subsections C and D of 20.6.2.2001 NMAC shall include:

**(1)** for general permits:

**(a)** a statement that the department will accept written comments on the draft permit during the comment period including the address where comments may be submitted;

**(b)** a brief description of the activities that produce the discharge; and

(c) a description of the geographic area to be covered by the permit; or

(2) for individual permits:

(a) a statement that the department will accept written comments on the draft permit during the comment period including the address where comments may be submitted;

(b) the name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

(c) a brief description of the activities that produce the discharge; and

(d) a general description of the location of the discharge and the name of the receiving water.

**F.** Following the public notice provided under Subsections C or D of 20.6.2.2001 NMAC, there shall be a period of at least 30 days during which interested persons may submit written comments to the department. The 30-day comment period shall begin on the date of the public notice provided under Subsections C or D of 20.6.2.2001 NMAC. The department shall consider all pertinent comments.

**G.** Following the public comment period provided under Subsection F of 20.6.2.2001 NMAC, the department shall issue a final permit certification including any conditions that the department places on the certification, or issue a statement of denial including the reasons for the denial. The final certification will generally be issued within 45 days from the date a request to grant, deny or waive certification is received by the department, unless the department in consultation with the U.S. environmental protection agency regional administrator finds that unusual circumstances require a longer time. The department shall send a copy of the final permit certification or denial to the U.S. environmental protection agency, the applicant (except for general permits), and those members of the public who submitted comments to the department.

(1) The permit certification shall be in writing and shall include:

(a) the name of the applicant (except for general permits) and the NPDES permit number;

(b) a statement that the department has examined the application or other relevant information and bases its certification upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;

(c) a statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;

**(d)** a statement of any conditions which the department deems necessary or desirable with respect to the discharge of the activity;

**(e)** identification of any condition more stringent than that in the draft permit required to assure compliance with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of state law citing the Clean Water Act or state law upon which the condition is based;

**(f)** a statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of state law, including water quality standards; and

**(g)** such other information as the department may determine to be appropriate.

**(2)** With justification, including any of the reasons listed in the New Mexico Water Quality Act, NMSA 1978, Section 74-6-5(E), the department may deny permit certification. Denial of permit certification shall be in writing and shall include:

**(a)** the name of the applicant (except for general permits) and the NPDES permit number;

**(b)** a statement that the department has examined the application or other relevant information and bases its denial upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;

**(c)** a statement of denial including the reasons for the denial; and

**(d)** such other information as the department may determine to be appropriate.

**H.** Any person who is adversely affected by the certification or denial of a specific permit may appeal such certification or denial by filing a petition for review with the secretary within 30 days after the department issues the final permit certification or statement of denial. Such petition shall be in writing and shall include a concise statement of the reasons for the appeal and the relief requested. The secretary may hold a hearing on the appeal. In any such appeal hearing, the procedures of 20.1.4 NMAC shall not apply. The department shall give notice of the appeal hearing at least 30 days prior to the hearing. The notice shall state the date, time, and location of the appeal hearing and shall include the pertinent information listed in Subparagraphs (b), (c), and (d) of Paragraph (2) of Subsection E of 20.6.2.2001 NMAC. The secretary shall appoint a hearing officer to preside over the appeal hearing. Any person may present oral or written statements, data, technical information, legal arguments, or other information on the permit certification or denial during the appeal hearing. Any person may present oral or written statements, data, technical information, legal arguments, or

other information in rebuttal of that presented by another person. Reasonable time limits may be placed on oral statements, and the submission of written statements may be required. The hearing officer may question persons presenting oral testimony. Cross examination of persons presenting oral statements shall not otherwise be allowed. Within 30 days after the completion of the hearing, or such other time as the secretary may order given the complexities of the case, the hearing officer shall submit recommendations to the secretary. The secretary shall issue a final decision on the appeal within 30 days after receiving the recommendation, or such other time as the secretary may order given the complexities of the case.

I. Pursuant to the New Mexico Water Quality Act, NMSA 1978, Section 74-6-5(O), any person who is adversely affected by the secretary's final decision may file with the commission a petition for review of that decision based on the administrative record.

[20.6.2.2001 NMAC - N, 5-18-11]

#### **20.6.2.2002 PROCEDURES FOR CERTIFICATION OF FEDERAL PERMITS FOR DISCHARGE OF DREDGED OR FILL MATERIAL:**

A. This section applies to the state certification of draft permits or permit applications for the discharge of dredged or fill material under Section 401 of the federal Clean Water Act. The purpose of such certification is to reasonably ensure that the permitted activities will be conducted in a manner that will comply with applicable water quality standards, including the antidegradation policy, and the statewide water quality management plan.

B. After review of a draft permit or permit application, the department will either: (1) certify that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the federal Clean Water Act and with appropriate requirements of state law; (2) certify that the discharge will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of state law upon inclusion of specified conditions in the permit and include the justification for the conditions; or (3) deny certification and include reasons for the denial. If the department does not act on the certification within the time prescribed by the federal permitting agency for such action, the authority to do so shall be waived.

C. Pursuant to federal regulations at 33 CFR 325.3 and 33 CFR 330.5, the U.S. army corps of engineers provides notice of draft dredged or fill permits and permit applications to the applicant (except for general or nationwide permits); various local, state, federal, tribal and pueblo government agencies; and other interested parties, and it allows at least 15 days of public comment. To the extent practicable, the department will provide public notice that the department is reviewing a draft permit or permit application for the purpose of preparing a state certification or denial pursuant to Section 401 of the federal Clean Water Act jointly with the notice provided by the U.S. army corps of engineers. The department will also post notice on its website.

**D.** When joint notice is impractical, the department shall provide notice that the department is reviewing a draft dredged or fill permit or permit application for purpose of preparing a state certification or denial pursuant to Section 401 of the federal Clean Water Act as follows:

**(1)** for general permits by:

**(a)** posting notice on the department's website;

**(b)** publishing notice in at least one newspaper of general circulation;

**(c)** mailing or e-mailing notice to those persons on the general mailing list maintained by the department who have requested such notice; and

**(d)** mailing or e-mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department; or

**(2)** for individual permit applications by:

**(a)** posting notice on the department's website;

**(b)** publishing notice in a newspaper of general circulation in the location of the discharge;

**(c)** mailing notice to the applicant;

**(d)** mailing or e-mailing notice to those persons on the general and facility-specific mailing list maintained by the department who have requested such notice; and

**(e)** mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department.

**E.** Public notices may describe more than one permit or permit action. The notice provided under Subsections C and D of 20.6.2.2002 NMAC shall include:

**(1)** for general permits:

**(a)** a statement that the department will accept written comments on the draft permit during the comment period including the address where comments may be submitted;

**(b)** a brief description of the activities that produce the discharge; and

**(c)** a description of the geographic area to be covered by the permit; or

**(2)** for individual permit applications:

**(a)** a statement that the department will accept written comments on the permit application during the comment period including the address where comments may be submitted;

**(b)** the name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;

**(c)** a brief description of the activities that produce the discharge; and

**(d)** a general description of the location of the discharge and the name of the receiving water.

**F.** Following the public notice provided under Subsections C or D of 20.6.2.2002 NMAC, there shall be a period of at least 30 days during which interested persons may submit written comments to the department. The 30-day comment period shall begin on the date of the public notice provided under Subsections C or D of 20.6.2.2002 NMAC. The department shall consider all pertinent comments.

**G.** The public notice provisions in Subsection C and D of Section 20.6.2.2002 NMAC and the public comment provisions in Subsection F of Section 20.6.2.2002 NMAC shall not apply to permits issued using emergency procedures under 33 CFR 325.2(e)(4). However, even in emergency situations, reasonable efforts shall be made to receive comments from interested state and local agencies and the affected public.

**H.** Following the public comment period provided under Subsection F of 20.6.2.2002 NMAC, the department shall issue a final permit certification including any conditions that the department places on the certification, or issue a statement of denial including the reasons for the denial. The final certification will generally be issued within 60 days from the date a request to grant, deny or waive certification is received by the department, unless the department in consultation with the U.S. army corps of engineers district engineer finds that unusual circumstances require a longer time. The department shall send a copy of the final permit certification or denial to the army corps of engineers, the applicant (except for general or nationwide permits), and those members of the public who submitted comments to the department.

**(1)** The permit certification or denial shall be in writing and shall include:

**(a)** the name of the applicant (except for general permits) and the permit number;

**(b)** a statement that the department has examined the application or other relevant information and bases its certification upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;

**(c)** a statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;

**(d)** a statement of any conditions which the department deems necessary or desirable with respect to the discharge of the activity; and

**(e)** such other information as the department may determine to be appropriate.

**(2)** With justification, including any of the reasons listed in the New Mexico Water Quality Act, NMSA 1978, Section 74-6-5(E), the department may deny permit certification. Denial of permit certification shall be in writing and shall include:

**(a)** the name of the applicant (except for general permits) and the permit number;

**(b)** a statement that the department has examined the application or other relevant information and bases its denial upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;

**(c)** a statement of denial including the reasons for the denial; and

**(d)** such other information as the department may determine to be appropriate.

**I.** Any person who is adversely affected by the certification or denial of a specific permit may appeal such certification or denial by filing a petition for review with the secretary within 30 days after the department issues the final permit certification or statement of denial. Such petition shall be in writing and shall include a concise statement of the reasons for the appeal and the relief requested. The secretary may hold a hearing on the appeal. In any such appeal hearing, the procedures of 20.1.4 NMAC shall not apply. The department shall give notice of the appeal hearing at least 30 days prior to the hearing. The notice shall state the date, time, and location of the appeal hearing and shall include the pertinent information listed in Subparagraphs (b), (c), and (d) of Paragraph (2) of Subsection E of 20.6.2.2002 NMAC. The secretary shall appoint a hearing officer to preside over the appeal hearing. Any person may present oral or written statements, data, technical information, legal arguments, or other information on the permit certification or denial during the appeal hearing. Any person may present oral or written statements, data, technical information, legal arguments, or other information in rebuttal of that presented by another person. Reasonable time limits may be placed on oral statements, and the submission of written statements may be required. The hearing officer may question persons presenting oral testimony. Cross examination of persons presenting oral statements shall not otherwise be allowed. Within 30 days after the completion of the hearing, or such other time as the secretary may order given the complexities of the case, the hearing officer shall submit

recommendations to the secretary. The secretary shall issue a final decision on the appeal within 30 days after receiving the recommendation, or such other time as the secretary may order given the complexities of the case.

**J.** Pursuant to the New Mexico Water Quality Act, NMSA 1978, Section 74-6-5(O), any person who is adversely affected by the secretary's final decision may file with the commission a petition for review of that decision based on the administrative record.

[20.6.2.2002 NMAC - N, 5-18-11]

### **20.6.2.2003 PROCEDURES FOR CERTIFICATION OF OTHER FEDERAL PERMITS:**

**A.** This section applies to the state certification of draft federal permits, permit applications or licenses under Section 401 of the federal Clean Water Act, except for NPDES permits or permits for the discharge of dredged or fill material. For example, this section applies to certification of permits or licenses issued by the federal energy regulatory commission (FERC) and to permits or licenses issued under the Rivers and Harbors Act of 1899. The purpose of such certification is to reasonably ensure that the permitted activities will be conducted in a manner that will comply with applicable water quality standards, including the antidegradation policy, and the statewide water quality management plan.

**B.** After review of a draft permit, permit application or license, the department will either: (1) certify that the activity will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the federal Clean Water Act and with appropriate requirements of state law; (2) certify that the activity will comply with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of state law upon inclusion of specified conditions in the permit and include the justification for the conditions; or (3) deny certification and include reasons for the denial. If the department does not act on the certification within the time prescribed by the federal permitting agency for such action, the authority to do so shall be waived.

**C.** To the extent practicable, the department will provide public notice that the department is reviewing a draft federal permit, permit application or license for the purpose of preparing a state certification or denial jointly with the notice provided by the federal permitting or licensing agency. The department will also post notice on its website.

**D.** When joint notice is impractical, the department shall provide notice that the department is reviewing a draft federal permit, permit application or license for purpose of preparing a state certification or denial pursuant to Section 401 of the federal Clean Water Act as follows:

**(1)** for general permits or licenses by:

- (a)** posting notice on the department's website;
- (b)** publishing notice in at least one newspaper of general circulation;
- (c)** mailing or e-mailing notice to those persons on the general mailing list maintained by the department who have requested such notice; and
- (d)** mailing or e-mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department; or

**(2)** for individual permits or licenses by:

- (a)** posting notice on the department's website;
- (b)** publishing notice in a newspaper of general circulation in the location of the permitted or licensed activity;
- (c)** mailing notice to the applicant;
- (d)** mailing or e-mailing notice to those persons on the general and facility-specific mailing list maintained by the department who have requested such notice; and
- (e)** mailing notice to any affected local, state, federal, tribal, or pueblo government agency, as identified by the department.

**E.** Public notices may describe more than one license, permit or permit action. The notice provided under Subsections C and D of 20.6.2.2003 NMAC shall include:

**(1)** for general permits or licenses:

- (a)** a statement that the department will accept written comments on the permit or license during the comment period including the address where comments may be submitted; and
- (b)** a brief description of the permitted or licensed activities; and
- (c)** a description of the geographic area to be covered by the permit; or

**(2)** for individual permits or licenses:

- (a)** a statement that the department will accept written comments on the permit or license during the comment period including the address where comments may be submitted;
- (b)** the name and address of the licensee, permittee or permit or license applicant and, if different, of the facility or activity regulated by the permit or license;

**(c)** a brief description of the permitted or licensed activities; and

**(d)** a general description of the location of the permitted or licensed activities and the name of the receiving water.

**F.** Following the public notice provided under Subsections C or D of 20.6.2.2003 NMAC, there shall be a period of at least 30 days during which interested persons may submit written comments to the department. The 30-day comment period shall begin on the date of the public notice provided under Subsections C or D of 20.6.2.2003 NMAC. The department shall consider all pertinent comments.

**G.** Following the public comment period provided under Subsection F of 20.6.2.2003 NMAC, the department shall issue a final certification including any conditions that the department places on the certification, or issue a statement of denial including the reasons for the denial. The final certification will generally be issued within 60 days from the date a request to grant or deny certification is received by the department, unless the department in consultation with the federal permitting or licensing agency finds that unusual circumstances require a longer time. The department shall send a copy of the final certification or denial to the federal permitting or licensing agency, the applicant (except for general permits), and those members of the public who submitted comments to the department.

**(1)** The certification or denial shall be in writing and shall include:

**(a)** the name of the applicant (except for general permits) and the permit or license number;

**(b)** a statement that the department has examined the application or other relevant information and bases its certification upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;

**(c)** a statement that there is a reasonable assurance that the activity will be conducted in a manner which will not violate applicable water quality standards;

**(d)** a statement of any conditions which the department deems necessary or desirable with respect to the discharge of the activity;

**(e)** identification of any condition more stringent than that in the draft permit or license required to assure compliance with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of state law citing the Clean Water Act or state law upon which the condition is based;

**(f)** a statement of the extent to which each condition of the draft permit or license can be made less stringent without violating the requirements of state law, including water quality standards; and

**(g)** Such other information as the department may determine to be appropriate.

**(2)** With justification, including any of the reasons listed in the New Mexico Water Quality Act, NMSA 1978, Section 74-6-5(E), the department may deny certification. Denial of certification shall be in writing and shall include:

**(a)** the name of the applicant (except for general permits) and the permit or license number;

**(b)** a statement that the department has examined the application or other relevant information and bases its denial upon an evaluation of the information contained in such application or other information which is relevant to water quality considerations;

**(c)** a statement of denial including the reasons for the denial; and

**(d)** such other information as the department may determine to be appropriate.

**H.** Any person who is adversely affected by the certification or denial of a specific permit or license may appeal such certification or denial by filing a petition for review with the secretary within 30 days after the department issues the final certification or statement of denial. Such petition shall be in writing and shall include a concise statement of the reasons for the appeal and the relief requested. The secretary may hold a hearing on the appeal. In any such appeal hearing, the procedures of 20.1.4 NMAC shall not apply. The department shall give notice of the appeal hearing at least 30 days prior to the hearing. The notice shall state the date, time, and location of the appeal hearing and shall include the pertinent information listed in Subparagraphs (b), (c), and (d) of Paragraph (2) of Subsection E of 20.6.2.2003 NMAC. The secretary shall appoint a hearing officer to preside over the appeal hearing. Any person may present oral or written statements, data, technical information, legal arguments, or other information on the certification or denial during the appeal hearing. Any person may present oral or written statements, data, technical information, legal arguments, or other information in rebuttal of that presented by another person. Reasonable time limits may be placed on oral statements, and the submission of written statements may be required. The hearing officer may question persons presenting oral testimony. Cross examination of persons presenting oral statements shall not otherwise be allowed. Within 30 days after the completion of the hearing, or such other time as the secretary may order given the complexities of the case, the hearing officer shall submit recommendations to the secretary. The secretary shall issue a final decision on the appeal within 30 days after receiving the recommendation, or such other time as the secretary may order given the complexities of the case.

I. Pursuant to the New Mexico Water Quality Act, NMSA 1978, Section 74-6-5(O), any person who is adversely affected by the secretary's final decision may file with the commission a petition for review of that decision based on the administrative record.

[20.6.2.2003 NMAC - N, 5-18-11]

**20.6.2.2004-20.6.2.2099 [RESERVED]**

[12-1-95; 20.6.2.2001 - 20.6.2.2099 NMAC - Rn, 20 NMAC 6.2.I.1221-2099, 1-15-01; A, 5-18-11]

**20.6.2.2100 APPLICABILITY:**

The requirements of Section 20.6.2.2101 and 20.6.2.2102 NMAC shall not apply to any discharge which is subject to a permit under the National Pollutant Discharge Elimination System of P. L. 92-500; provided that any discharger who is given written notice of National Pollutant Discharge Elimination System permit violation from the Administrator of the Environmental Protection Agency and who has not corrected the violation within thirty days of receipt of said notice shall be subject to Section 20.6.2.2101 and 20.6.2.2102 NMAC until in compliance with the National Pollution Discharge Elimination System permit conditions; provided further that nothing in this Part shall be construed as a deterrent to action under Section 74-6-11 NMSA, 1978.

[8-13-76; 20.6.2.2100 NMAC - Rn, 20 NMAC 6.2.II.2100, 1-15-01]

**20.6.2.2101 GENERAL REQUIREMENTS:**

A. Except as otherwise provided in Sections 20.6.2.2000 through 20.6.2.2201 NMAC, no person shall cause or allow effluent to discharge to a watercourse if the effluent as indicated by:

- (1) any two consecutive daily composite samples;
- (2) more than one daily composite sample in any thirty-day period (in which less than ten (10) daily composite samples are examined);
- (3) more than ten percent (10%) of the daily composite samples in any thirty-day period (in which ten (10) or more daily composite samples are examined); or
- (4) a grab sample collected during flow from an intermittent or infrequent discharge

does not conform to the following:

- (a) Bio-chemical Oxygen Demand (BOD) Less than 30 mg/l

(b) Chemical Oxygen Demand (COD)	Less than 125 mg/l
(c) Settleable Solids	Less than 0.5 mg/l
(d) Fecal Coliform Bacteria	Less than 500 organisms per 100 ml
(e) pH	Between 6.6 and 8.6

**B.** Upon application, the secretary may eliminate the pH requirement for any effluent source that the secretary determines does not unreasonably degrade the water into which the effluent is discharged.

**C.** Subsection A of this Section does not apply to the weight of constituents in the water diverted.

**D.** Samples shall be examined in accordance with the most current edition of Standard Methods for the Examination of Water and Wastewater published by the American Public Health Association or the most current edition of Methods for Chemical Analysis of Water and Wastes published by the Environmental Protection Agency, where applicable.

[4-20-68, 3-14-71, 10-8-71, 8-13-76, 2-20-81, 12-1-95; 20.6.2.2101 NMAC - Rn, 20 NMAC 6.2.II.2101, 1-15-01]

**20.6.2.2102 RIO GRANDE BASIN--COMMUNITY SEWERAGE SYSTEMS:**

**A.** No person shall cause or allow effluent from a community sewerage system to discharge to a watercourse in the Rio Grande Basin between the headwaters of Elephant Butte Reservoir and Angostura Diversion Dam as described in Subsection E of this Section if the effluent, as indicated by:

- (1) any two consecutive daily composite samples;
- (2) more than one daily composite sample in any thirty-day period (in which less than ten (10) daily composite samples are examined);
- (3) more than ten percent (10%) of the daily composite samples in any thirty-day period (in which ten (10) or more daily composite samples are examined); or
- (4) a grab sample collected during flow from an intermittent or infrequent discharge

does not conform to the following:

- (a) Bio-chemical Oxygen Demand (BOD) Less than 30 mg/l

	<b>(b)</b> Chemical Oxygen Demand (COD)	Less than 80 mg/l
	<b>(c)</b> Settleable Solids	Less than 0.1 mg/l
ml	<b>(d)</b> Fecal Coliform Bacteria	Less than 500 organisms per 100
	<b>(e)</b> pH	Between 6.6 and 8.6

**B.** Upon application, the secretary may eliminate the pH requirement for any effluent source that the secretary determines does not unreasonably degrade the water into which the effluent is discharged.

**C.** Subsection A of this Section does not apply to the weight of constituents in the water diverted.

**D.** Samples shall be examined in accordance with the most current edition of Standard Methods for the Analysis of Water and Wastewater published by the American Public Health Association or the most current edition of Methods for Chemical Analysis of Water and Wastes published by the Environmental Protection Agency, where applicable.

**E.** The following is a description of the Rio Grande Basin from the headwaters of Elephant Butte Reservoir to Angostura Diversion Dam as used in this Section. Begin at San Marcial USGS gauging station, which is the headwaters of Elephant Butte Reservoir Irrigation Project, thence northwest to U.S. Highway 60, nine miles + west of Magdalena; thence west along the northeast edge of the San Agustin Plains closed basin; thence north along the east side of the north plains closed basin to the Continental Divide; thence northly along the Continental Divide to the community of Regina on State Highway 96; thence southeasterly along the crest of the San Pedro Mountains to Cerro Toledo Peak; thence southwesterly along the Sierra de Los Valles ridge and the Borrego Mesa to Bodega Butte; thence southerly to Angostura Diversion Dam which is the upper reach of the Rio Grande in this basin; thence southeast to the crest and the crest of the Manzano Mountains and the Los Pinos Mountains; thence southerly along the divide that contributes to the Rio Grande to San Marcial gauging station to the point and place of beginning; excluding all waters upstream of Jemez Pueblo which flow into the Jemez River drainage and the Bluewater Lake. Counties included in the basin are:

- (1)** north portion of Socorro County;
- (2)** northeast corner of Catron County;
- (3)** east portion of Valencia County;
- (4)** west portion of Bernalillo County;

- (5) east portion of McKinley County; and
- (6) most of Sandoval County.

[3-14-71, 9-3-72, 8-13-76, 2-20-81, 12-1-95; 20.6.2.2102 NMAC - Rn, 20 NMAC 6.2.II.2102, 1-15-01]

**20.6.2.2103-20.6.2.2199 [RESERVED]**

[12-1-95; 20.6.2.2103 - 20.6.2.2199 NMAC - Rn, 20 NMAC 6.2.II.2103-2199, 1-15-01]

**20.6.2.2200 WATERCOURSE PROTECTION:**

[12-1-95; 20.6.2.2200 NMAC - Rn, 20 NMAC 6.2.II.2200, 1-15-01]

**20.6.2.2201 DISPOSAL OF REFUSE:**

No person shall dispose of any refuse in a natural watercourse or in a location and manner where there is a reasonable probability that the refuse will be moved into a natural watercourse by leaching or otherwise. Solids diverted from the stream and returned thereto are not subject to abatement under this Section.

[4-20-68, 9-3-72; 20.6.2.2201 NMAC - Rn, 20 NMAC 6.2.II.2201, 1-15-01]

**20.6.2.2202-20.6.2.2999 [RESERVED]**

[12-1-95; 20.6.2.2202 - 20.6.2.2999 NMAC - Rn, 20 NMAC 6.2.II.2202-3100, 1-15-01]

**20.6.2.3000 PERMITTING AND GROUND WATER STANDARDS:**

[12-1-95; 20.6.2.3000 NMAC - Rn, 20 NMAC 6.2.III, 1-15-01]

**20.6.2.3001-20.6.2.3100 [RESERVED]**

[12-1-95; 20.6.2.3001 - 20.6.2.3100 NMAC - Rn, 20 NMAC 6.2.II.2202-3100, 1-15-01]

**20.6.2.3101 PURPOSE:**

A. The purpose of Sections 20.6.2.3000 through 20.6.2.3114 NMAC controlling discharges onto or below the surface of the ground is to protect all ground water of the state of New Mexico which has an existing concentration of 10,000 mg/l or less TDS, for present and potential future use as domestic and agricultural water supply, and to protect those segments of surface waters which are gaining because of ground water inflow, for uses designated in the New Mexico Water Quality Standards. Sections 20.6.2.3000 through 20.6.2.3114 NMAC are written so that in general:

(1) if the existing concentration of any water contaminant in ground water is in conformance with the standard of 20.6.2.3103 NMAC, degradation of the ground water up to the limit of the standard will be allowed; and

(2) if the existing concentration of any water contaminant in ground water exceeds the standard of Section 20.6.2.3103 NMAC, no degradation of the ground water beyond the existing concentration will be allowed.

**B.** Ground water standards are numbers that represent the pH range and maximum concentrations of water contaminants in the ground water which still allow for the present and future use of ground water resources.

**C.** The standards are not intended as maximum ranges and concentrations for use, and nothing herein contained shall be construed as limiting the use of waters containing higher ranges and concentrations.

[2-18-77; 20.6.2.3101 NMAC - Rn, 20 NMAC 6.2.III.3101, 1-15-01]

#### **20.6.2.3102 [RESERVED]**

[12-1-95; 20.6.2.3102 NMAC - Rn, 20 NMAC 6.2.III.3102, 1-15-01]

#### **20.6.2.3103 STANDARDS FOR GROUND WATER OF 10,000 mg/l TDS CONCENTRATION OR LESS:**

The following standards are the allowable pH range and the maximum allowable concentration in ground water for the contaminants specified unless the existing condition exceeds the standard or unless otherwise provided in Subsection E of Section 20.6.2.3109 NMAC. Regardless of whether there is one contaminant or more than one contaminant present in ground water, when an existing pH or concentration of any water contaminant exceeds the standard specified in Subsection A, B, or C of this section, the existing pH or concentration shall be the allowable limit, provided that the discharge at such concentrations will not result in concentrations at any place of withdrawal for present or reasonably foreseeable future use in excess of the standards of this section. These standards shall apply to the dissolved portion of the contaminants specified with a definition of dissolved being that given in the publication "*methods for chemical analysis of water and waste of the U.S. environmental protection agency*," with the exception that standards for mercury, organic compounds and non-aqueous phase liquids shall apply to the total nonfiltered concentrations of the contaminants. If the secretary determines that there is a reasonable probability of facilitated contaminant transport by colloids or organic macromolecules, or that proper filtration procedures are not being followed, the discharger may be required to test for both filtered and nonfiltered portions of inorganic contaminants to develop appropriate protocol for monitoring contaminants that have the potential to migrate through the aquifer.

#### **A. Human Health Standards**

**(1) Numerical Standards**

<b>(a)</b> Antimony (Sb) (CAS 7440-36-0).....	0.006 mg/l
<b>(b)</b> Arsenic (As) (CAS 7440-38-2).....	0.01 mg/l
<b>(c)</b> Barium (Ba) (CAS 7440-39-3).....	2 mg/l
<b>(d)</b> Beryllium (be) (CAS 7440-41-7).....	0.004 mg/l
<b>(e)</b> Cadmium (Cd) (CAS 7440-43-9).....	0.005 mg/l
<b>(f)</b> Chromium (Cr) (CAS 7440-47-3).....	0.05 mg/l
<b>(g)</b> Cyanide (CN) (CAS 57-12-5).....	0.2 mg/l
<b>(h)</b> Fluoride (F) (CAS 16984-48-8).....	1.6 mg/l
<b>(i)</b> Lead (Pb) (CAS 7439-92-1).....	0.015 mg/l
<b>(j)</b> Total Mercury (Hg) (CAS 7439-97-6).....	0.002 mg/l
<b>(k)</b> Nitrate (NO <sub>3</sub> as N) (CAS 14797-55-8).....	10.0 mg/l
<b>(l)</b> Nitrite (NO <sub>2</sub> as N) (CAS 10102-44-0).....	1.0 mg/l
<b>(m)</b> Selenium (Se) (CAS 7782-49-2).....	0.05 mg/l
<b>(n)</b> Silver (Ag) (CAS 7440-224).....	0.05 mg/l
<b>(o)</b> Thallium (Tl) (CAS 7440-28-0).....	0.002 mg/l
<b>(p)</b> Uranium (U) (CAS 7440-61-1).....	0.03 mg/l
<b>(q)</b> Radioactivity: Combined Radium-226 (CAS 13982-63-3) and Radium-228 (CAS 15262-20-1).....	5 pCi/l
<b>(r)</b> Benzene (CAS 71-43-2).....	0.005 mg/l
<b>(s)</b> Polychlorinated biphenyls (PCB's) (CAS 1336-36-3).....	0.0005 mg/l
<b>(t)</b> Toluene (CAS 108-88-3).....	1 mg/l
<b>(u)</b> Carbon Tetrachloride (CAS 56-23-5).....	0.005 mg/l

	<b>(v)</b> 1,2-dichloroethane (EDC) (CAS 107-06-2).....	0.005 mg/l
	<b>(w)</b> 1,1-dichloroethylene (1,1-DCE) (CAS 75-35-4).....	0.007 mg/l
	<b>(x)</b> tetrachloroethylene (PCE) (CAS 127-18-4).....	0.005 mg/l
	<b>(y)</b> trichloroethylene (TCE) (CAS 79-01-6).....	0.005 mg/l
	<b>(z)</b> ethylbenzene (CAS 100-41-4).....	0.7 mg/l
mg/l	<b>(aa)</b> total xylenes (CAS 1330-20-7).....	0.62
mg/l	<b>(bb)</b> methylene chloride (CAS 75-09-2).....	0.005
mg/l	<b>(cc)</b> chloroform (CAS 67-66-3).....	0.1
	<b>(dd)</b> 1,1-dichloroethane (CAS 75-34-3).....	0.025 mg/l
	<b>(ee)</b> ethylene dibromide (EDB) (CAS 106-93-4).....	0.00005 mg/l
	<b>(ff)</b> 1,1,1-trichloroethane (CAS 71-55-6).....	0.2 mg/l
mg/l	<b>(gg)</b> 1,1,2-trichloroethane (CAS 79-00-5).....	0.005
	<b>(hh)</b> 1,1,2,2-tetrachloroethane (CAS 79-34-5).....	0.01 mg/l
	<b>(ii)</b> vinyl chloride (CAS 75-01-4).....	0.002 mg/l
...0.03 mg/l	<b>(jj)</b> PAHs: total naphthalene (CAS 91-20-3) plus monomethylnaphthalenes	
mg/l	<b>(kk)</b> benzo-a-pyrene (CAS 50-32-8).....	0.0002
mg/l	<b>(ll)</b> cis-1,2-dichloroethene (CAS 156-59-2).....	0.07
	<b>(mm)</b> trans-1,2-dichloroethene (CAS 156-60-5).....	0.1 mg/l

5)	(nn)	1,2-dichloropropane (PDC) (CAS 78-87-	0.005 mg/l
5)	(oo)	styrene (CAS 100-42-	0.1 mg/l
1)	(pp)	1,2-dichlorobenzene (CAS 95-50-	0.6 mg/l
7)	(qq)	1,4-dichlorobenzene (CAS 106-46-	0.075 mg/l
	(rr)	1,2,4-trichlorobenzene (CAS 120-82-1)	0.07 mg/l
5)	(ss)	pentachlorophenol (CAS 87-86-	0.001 mg/l
	(tt)	atrazine (CAS 1912-24-9)	0.003 mg/l

**(2) Standards for Toxic Pollutants.** A toxic pollutant shall not be present at a concentration shown by credible scientific data and other evidence appropriate under the Water Quality Act, currently available to the public, to have potential for causing one or more of the following effects upon exposure, ingestion, or assimilation either directly from the environment or indirectly by ingestion through food chains: (1) unreasonably threatens to injure human health, or the health of animals or plants which are commonly hatched, bred, cultivated or protected for use by man for food or economic benefit; as used in this definition injuries to health include death, histopathologic change, clinical symptoms of disease, behavioral abnormalities, genetic mutation, physiological malfunctions or physical deformations in such organisms or their offspring; or (2) creates a lifetime risk of more than one cancer per 100,000 exposed persons.

**(3) Standards for Non-Aqueous Phase Liquids.** Non-aqueous phase liquid shall not be present floating atop of or immersed within ground water, as can be reasonably measured.

**B. Other Standards for Domestic Water Supply**

6)	(1)	Chloride (Cl) (CAS 16887-00-	250.0 mg/l
8)	(2)	Copper (Cu) (CAS 7440-50-	1.0 mg/l
	(3)	Iron (Fe) (CAS 7439-89-6)	1.0 mg/l

5)	(4)	Manganese (Mn) (CAS 7439-96-)	0.2 mg/l
mg/l	(5)	Phenols	0.005
mg/l	(6)	Sulfate (SO <sub>4</sub> ) (CAS 14808-79-8)	600.0
TDS	(7)	Total Dissolved Solids (TDS)	1000.0 mg/l
6)	(8)	Zinc (Zn) (CAS 7440-66-)	10.0 mg/l
9	(9)	pH	between 6 and 9
4)	(10)	Methyl tertiary-butyl ether (MTBE) (CAS 1634-04-)	0.1 mg/l

**C. Standards for Irrigation Use - Ground water shall meet the standards of Subsection A, B, and C of this section unless otherwise provided.**

mg/l	(1)	Aluminum (Al) (CAS 7429-90-5)	5.0
mg/l	(2)	Boron (B) (CAS 7440-42-8)	0.75
mg/l	(3)	Cobalt (Co) (CAS 7440-48-4)	0.05
mg/l	(4)	Molybdenum (Mo) (CAS 7439-98-7)	1.0
mg/l	(5)	Nickel (Ni) (CAS 7440-02-0)	0.2

**D.** For purposes of application of the amended numeric standards for arsenic, cadmium, lead, combined radium-226 & radium-228; benzene, PCBs, carbon tetrachloride, EDC, PCE, TCE, ethylbenzene, methylene chloride, EDB, 1,1,2-trichloroethane and benzo-a-pyrene, to past and current water discharges (as of July 1, 2017), the new standards will not become effective until July 1, 2020. With regard to sites for which the secretary has approved an abatement completion report as of the effective date of this rule pursuant to 20.6.2.4112 NMAC, the amended numeric

standards for arsenic, cadmium, lead, combined radium-226 & radium-228; benzene, PCBs, carbon tetrachloride, EDC, PCE, TCE, ethylbenzene, methylene chloride, EDB, 1,1,2-trichloroethane and benzo-a-pyrene shall not apply unless the secretary notifies the responsible person that the site is a source of these contaminants in ground water that pose a hazard to public health.

[2-18-77, 1-29-82, 11-17-83, 3-3-86, 12-1-95; 20.6.2.3103 NMAC - Rn, 20 NMAC 6.2.III.3103, 1-15-01; A, 9-26-04; A, 12-21-18]

[Note: For purposes of application of the amended numeric uranium standard to past and current water discharges (as of 9-26-04), the new standard will not become effective until June 1, 2007.]

#### **20.6.2.3104 DISCHARGE PERMIT REQUIRED:**

Unless otherwise provided by this Part, no person shall cause or allow effluent or leachate to discharge so that it may move directly or indirectly into ground water unless he is discharging pursuant to a discharge permit issued by the secretary. When a permit has been issued, discharges must be consistent with the terms and conditions of the permit. In the event of a transfer of the ownership, control, or possession of a facility for which a discharge permit is in effect, the transferee shall have authority to discharge under such permit, provided that the transferee has complied with Section 20.6.2.3111 NMAC, regarding transfers.

[2-18-77, 12-24-87, 12-1-95; Rn & A, 20.6.2.3104 NMAC - 20 NMAC 6.2.III.3104, 1-15-01; A, 12-1-01]

#### **20.6.2.3105 EXEMPTIONS FROM DISCHARGE PERMIT REQUIREMENT:**

Sections 20.6.2.3104 and 20.6.2.3106 NMAC do not apply to the following:

**A.** Effluent or leachate which conforms to all the standards in Subsections A, B, and C of Section 20.6.2.3103 NMAC and has a total nitrogen concentration of 10 mg/l or less. To determine conformance, samples may be taken by the agency before the effluent or leachate is discharged so that it may move directly or indirectly into ground water; provided that if the discharge is by seepage through non-natural or altered natural materials, the agency may take samples of the solution before or after seepage. If for any reason the agency does not have access to obtain the appropriate samples, this exemption shall not apply;

**B.** Effluent which is regulated pursuant to 20.7.3 NMAC, "Liquid Waste Disposal and Treatment" regulations;

**C.** Water used for irrigated agriculture, for watering of lawns, trees, gardens or shrubs, or for irrigation for a period not to exceed five years for the revegetation of any disturbed land area, unless that water is received directly from any sewerage system;

**D.** Discharges resulting from the transport or storage of water diverted, provided that the water diverted has not had added to it after the point of diversion any effluent received from a sewerage system, that the source of the water diverted was not mine workings, and that the secretary has not determined that a hazard to public health may result;

**E.** Effluent which is discharged to a watercourse which is naturally perennial; discharges to dry arroyos and ephemeral streams are not exempt from the discharge permit requirement, except as otherwise provided in this section;

**F.** Those constituents which are subject to effective and enforceable effluent limitations in a National Pollutant Discharge Elimination System (NPDES) permit, where discharge onto or below the surface of the ground so that water contaminants may move directly or indirectly into ground water occurs downstream from the outfall where NPDES effluent limitations are imposed, unless the secretary determines that a hazard to public health may result. For purposes of this subsection, monitoring requirements alone do not constitute effluent limitations;

**G.** Discharges resulting from flood control systems;

**H.** Leachate which results from the direct natural infiltration of precipitation through disturbed materials, unless the secretary determines that a hazard to public health may result;

**I.** Leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;

**J.** Natural ground water seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining process; this exemption does not apply to solution mining;

**K.** Effluent or leachate discharges resulting from activities regulated by permit issued by the mining and minerals division of the energy, minerals and natural resources department pursuant to the Surface Mining Act, NMSA 1978, Sections 69-25A-1 to 36, provided that this exemption shall not be construed as limiting the application of appropriate ground water protection requirements by the mining and minerals division and the New Mexico Coal Surface Mining Commission; or

**L.** Discharges resulting from activities regulated by the energy conservation and management division of the energy, minerals and natural resources department under the authority of the Geothermal Resources Development Act, NMSA 1978, Sections 71-9-1 to -11 (2016).

[2-18-77, 6-26-80, 7-2-81, 12-24-87, 12-1-95; 20.6.2.3105 NMAC - Rn, 20 NMAC 6.2.III.3105, 1-15-01; A, 12-1-01; A, 8-1-14; A, 12-21-18]

### **20.6.2.3106 APPLICATION FOR DISCHARGE PERMITS, RENEWALS, AND MODIFICATIONS:**

**A.** Any person who, before or on June 18, 1977, is discharging any of the water contaminants listed in 20.6.2.3103 NMAC or any toxic pollutant so that they may move directly or indirectly into ground water shall, within 120 days of receipt of written notice from the secretary that a discharge permit is required, or such longer time as the secretary shall for good cause allow, submit a discharge plan to the secretary for approval; such person may discharge without a discharge permit until 240 days after written notification by the secretary that a discharge permit is required or such longer time as the secretary shall for good cause allow.

**B.** Any person who intends to begin, after June 18, 1977, discharging any of the water contaminants listed in 20.6.2.3103 NMAC or any toxic pollutant so that they may move directly or indirectly into ground water shall notify the secretary giving the information enumerated in Subsection B of 20.6.2.1201 NMAC; the secretary shall, within 60 days, notify such person if a discharge permit is required; upon submission of a discharge plan, the secretary shall review the discharge plan pursuant to 20.6.2.3108 and 20.6.2.3109 NMAC. For good cause shown the secretary may allow such person to discharge without a discharge permit for a period not to exceed 120 days.

**C.** Any person who intends to modify the discharge of any of the water contaminants listed in 20.6.2.3103 NMAC or any toxic pollutant in a manner that is a discharge permit modification as defined in this part shall submit a discharge plan for modification that contains the information required in Subsection D of 20.6.2.3106 NMAC; upon submission of a discharge plan for modification, the secretary shall review the discharge plan for modification pursuant to 20.6.2.3108 and 20.6.2.3109 NMAC.

**D.** A proposed discharge plan shall set forth in detail the methods or techniques the discharger proposes to use or processes expected to naturally occur which will ensure compliance with this part. At least the following information shall be included in the plan:

- (1)** quantity, quality and flow characteristics of the discharge;
- (2)** location of the discharge and of any bodies of water, watercourses and ground water discharge sites within one mile of the outside perimeter of the discharge site, and existing or proposed wells to be used for monitoring;
- (3)** depth to and TDS concentration of the ground water most likely to be affected by the discharge;
- (4)** flooding potential of the site;
- (5)** location and design of site(s) and method(s) to be available for sampling, and for measurement or calculation of flow;

(6) depth to and lithological description of rock at base of alluvium below the discharge site if such information is available;

(7) any additional information that may be necessary to demonstrate that the discharge permit will not result in concentrations in excess of the standards of 20.6.2.3103 NMAC at any place of withdrawal of water for present or reasonably foreseeable future use; detailed information on site geologic and hydrologic conditions may be required for a technical evaluation of the applicant's proposed discharge plan; and

(8) additional detailed information required for a technical evaluation of underground injection control wells as provided in 20.6.2.5000 through 20.6.2.5399 NMAC.

E. An applicant for a discharge permit shall pay fees as specified in 20.6.2.3114 and 20.6.2.5302 NMAC.

F. An applicant for a permit to dispose of or use septage or sludge, or within a source category designated by the commission, may be required by the secretary to file a disclosure statement as specified in 74-6-5.1 of the Water Quality Act.

G. If the holder of a discharge permit submits an application for discharge permit renewal at least 120 days before the discharge permit expires, and the discharger is not in violation of the discharge permit on the date of its expiration, then the existing discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved. A discharge permit continued under this provision remains fully effective and enforceable. An application for discharge permit renewal must include and adequately address all of the information necessary for evaluation of a new discharge permit. Previously submitted materials may be included by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

[2-18-77, 6-26-80, 7-2-81, 9-20-82, 8-17-91, 12-1-95; 20.6.2.3106 NMAC - Rn, 20 NMAC 6.2.III.3106, 1-15-01; A, 12-1-01; A, 9-15-02; A, 8-31-15; A, 12-21-18]

#### **20.6.2.3107 MONITORING, REPORTING, AND OTHER REQUIREMENTS:**

A. Each discharge plan shall provide for the following as the secretary may require:

- (1) the installation, use, and maintenance of effluent monitoring devices;
- (2) the installation, use, and maintenance of monitoring devices for the ground water most likely to be affected by the discharge;
- (3) monitoring in the vadose zone;

- (4) continuation of monitoring after cessation of operations;
- (5) periodic submission to the secretary of results obtained pursuant to any monitoring requirements in the discharge permit and the methods used to obtain these results;
- (6) periodic reporting to the secretary of any other information that may be required as set forth in the discharge permit;
- (7) the discharger to retain for a period of at least five years any monitoring data required in the discharge permit;
- (8) a system of monitoring and reporting to verify that the permit is achieving the expected results;
- (9) procedures for detecting failure of the discharge system;
- (10) contingency plans to cope with failure of the discharge permit or system;
- (11) a closure plan to prevent the exceedance of standards of 20.6.2.3103 NMAC in ground water after the cessation of operation which includes: a description of closure measures, maintenance and monitoring plans, post-closure maintenance and monitoring plans, financial assurance, and other measures necessary to prevent or abate such contamination; the obligation to implement the closure plan as well as the requirements of the closure plan, if any is required, survives the termination or expiration of the permit; a closure plan for any underground injection control well must also incorporate the applicable requirements of 20.6.2.5005, 20.6.2.5209, and 20.6.2.5361 NMAC.

**B.** Sampling and analytical techniques shall conform with the following references unless otherwise specified by the secretary:

- (1) standard methods for the examination of water and wastewater, latest edition, American public health association; or
- (2) methods for chemical analysis of water and waste, and other publications of the analytical quality laboratory, EPA; or
- (3) techniques of water resource investigations of the U.S. geological survey;  
or
- (4) annual book of ASTM standards; Part 31; water, latest edition, American society for testing and materials; or
- (5) federal register, latest methods published for monitoring pursuant to Resource Conservation and Recovery Act regulations; or

(6) national handbook of recommended methods for water-data acquisition, latest edition, prepared cooperatively by agencies of the United States government under the sponsorship of the U.S. geological survey.

C. The discharger shall notify the secretary of any facility expansion, production increase or process modification that would result in any significant modification in the discharge of water contaminants.

D. Any discharger of effluent or leachate shall allow any authorized representative of the secretary to:

(1) inspect and copy records required by a discharge permit;

(2) inspect any treatment works, monitoring and analytical equipment;

(3) sample any effluent before or after discharge;

(4) use monitoring systems and wells installed pursuant to a discharge permit requirement in order to collect samples from ground water or the vadose zone.

E. Each discharge permit for an underground injection control well shall incorporate the applicable requirements of 20.6.2.5000 through 20.6.2.5399 NMAC.

[2-18-77, 9-20-82, 11-17-83, 12-1-95; 20.6.2.3107 NMAC - Rn, 20 NMAC 6.2.III.3107, 1-15-01; A, 12-1-01; A, 8-31-15; A, 12-21-18]

#### **20.6.2.3108 PUBLIC NOTICE AND PARTICIPATION:**

A. Within 15 days of receipt of an application for a discharge permit, modification or renewal, the department shall review the application for administrative completeness. To be deemed administratively complete, an application shall provide all of the information required by Paragraphs (1) through (5) of Subsection F of 20.6.2.3108 NMAC and shall indicate, for department approval, the proposed locations and newspaper for providing notice required by Paragraphs (1) and (4) of Subsection B or Paragraph (2) of Subsection C of 20.6.2.3108 NMAC. The department shall notify the applicant in writing when the application is deemed administratively complete. If the department determines that the application is not administratively complete, the department shall notify the applicant of the deficiencies in writing within 30 days of receipt of the application and state what additional information is necessary.

B. Within 30 days of the department deeming an application for discharge permit or discharge permit modification administratively complete, the applicant shall provide notice, in accordance with the requirements of Subsection F of 20.6.2.3108 NMAC, to the general public in the locale of the proposed discharge in a form provided by the department by each of the methods listed below:

**(1)** for each 640 contiguous acres or less of a discharge site, prominently posting a synopsis of the public notice at least 2 feet by 3 feet in size, in English and in Spanish, at a place conspicuous to the public, approved by the department, at or near the proposed facility for 30 days; one additional notice, in a form approved by and may be provided by the department, shall be posted at a place located off the discharge site, at a place conspicuous to the public and approved by the department; the department may require a second posting location for more than 640 contiguous acres or when the discharge site is not located on contiguous properties;

**(2)** providing written notice of the discharge by mail or electronic mail, to owners of record of all properties within a 1/3 mile distance from the boundary of the property where the discharge site is located; if there are no properties other than properties owned by the discharger within a 1/3 mile distance from the boundary of property where the discharge site is located, the applicant shall provide notice to owners of record of the next nearest adjacent properties not owned by the discharger;

**(3)** providing notice by certified mail, return receipt requested, to the owner of the discharge site if the applicant is not the owner; and

**(4)** publishing a synopsis of the notice in English and in Spanish, in a display ad at least three inches by four inches not in the classified or legal advertisements section, in a newspaper of general circulation in the location of the proposed discharge.

**C.** Within 30 days of the department deeming an application for discharge permit renewal administratively complete, the applicant shall provide notice, in accordance with the requirements of Subsection F of 20.6.2.3108 NMAC, to the general public in the locale of the proposed discharge in a form provided by the department by each of the methods listed below:

**(1)** providing notice by certified mail to the owner of the discharge site if the applicant is not the owner; and

**(2)** publishing a synopsis of the notice, in English and in Spanish, in a display ad at least two inches by three inches, not in the classified or legal advertisements section, in a newspaper of general circulation in the location of the discharge.

**D.** Within 15 days of completion of the public notice requirements in Subsections B or C of 20.6.2.3108 NMAC, the applicant shall submit to the department proof of notice, including an affidavit of mailing(s) and the list of property owner(s), proof of publication, and an affidavit of posting, as appropriate.

**E.** Within 30 days of determining an application for a discharge permit, modification or renewal is administratively complete, the department shall post a notice on its website and shall mail notice to any affected local, state, federal, tribal or pueblo governmental agency, political subdivisions, ditch associations and land grants, as identified by the department. The department shall also mail or e-mail notice to those

persons on a general and facility-specific list maintained by the department who have requested notice of discharge permit applications. The notice shall include the information listed in Subsection F of 20.6.2.3108 NMAC.

**F.** The notice provided under Subsection B, C and E of 20.6.2.3108 NMAC shall include:

- (1) the name and address of the proposed discharger;
- (2) the location of the discharge, including a street address, if available, and sufficient information to locate the facility with respect to surrounding landmarks;
- (3) a brief description of the activities that produce the discharge described in the application;
- (4) a brief description of the expected quality and volume of the discharge;
- (5) the depth to and total dissolved solids concentration of the ground water most likely to be affected by the discharge;
- (6) the address and phone number within the department by which interested persons may obtain information, submit comments, and request to be placed on a facility-specific mailing list for future notices; and
- (7) a statement that the department will accept comments and statements of interest regarding the application and will create a facility-specific mailing list for persons who wish to receive future notices.

**G.** All persons who submit comments or statements of interest to the department or previously participated in a public hearing and who provide a mail or e-mail address shall be placed on a facility-specific mailing list and the department shall send those persons the public notice issued pursuant to Subsection J of 20.6.2.3108 NMAC, and notice of any public meeting or hearing scheduled on the application. All persons who contact the department to inquire about a specific facility shall be informed of the opportunity to be placed on the facility-specific mailing list.

**H.** Within 60 days after the department makes its administrative completeness determination and all required technical information is available, the department shall make available a draft permit or a notice of intent to deny an application for a discharge permit, modification or renewal. The draft permit shall include all proposed effluent limitations or other conditions on proposed discharge, and all proposed monitoring, recordkeeping, and reporting requirements. A draft permit for a permit modification shall only include those permit conditions proposed to be modified.

**I.** The department shall prepare a fact sheet for every draft permit for a discharge at a federal facility, except for discharges comprised solely of domestic liquid

waste, and for other draft permits as determined by the Secretary. The fact sheet shall include:

- (1)** the information in Paragraphs 1 - 4 of Subsection F of 20.6.2.3108 NMAC;
- (2)** the information in Subsection J of 20.6.2.3108 NMAC; and
- (3)** a brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record.

**J.** The department shall mail by certified mail a copy of the draft permit and fact sheet or notice of intent to deny to the applicant and shall provide notice of the draft permit or the notice of intent to deny by:

- (1)** posting on the department's website;
- (2)** publishing notice in a newspaper of general circulation in this state and a newspaper of general circulation in the location of the facility;
- (3)** mailing or e-mailing to those persons on a facility-specific mailing list;
- (4)** mailing to any affected local, state, or federal governmental agency, ditch associations and land grants, as identified by the department; and
- (5)** mailing to the governor, chairperson, or president of each Indian tribe, pueblo or nation within the state of New Mexico, as identified by the department.

**K.** The public notice issued under Subsection H shall include the information in Subsection F of 20.6.2.3108 NMAC and the following information:

- (1)** a brief description of the procedures to be followed by the secretary in making a final determination;
- (2)** a statement of the comment period and description of the procedures for a person to request a hearing on the application; and
- (3)** the address, telephone number, and email address at which interested persons may obtain a copy of the draft permit and fact sheet or the notice of intent to deny.

**L.** In the event that the draft permit or notice of intent to deny is available for review within 30 days of deeming the application administratively complete, the department may combine the public notice procedures of Subsections E and H of 20.6.2.3108 NMAC.

**M.** Following the public notice of the draft permit or notice of intent to deny, and prior to a final decision by the secretary, there shall be a period of at least 30 days during which written comments may be submitted to the department and/or a public hearing may be requested in writing. The 30-day comment period shall begin on the date of publication of notice in the newspaper. All comments will be considered by the department. Requests for a hearing shall be in writing and shall set forth the reasons why a hearing should be held. A public hearing shall be held if the secretary determines there is substantial public interest. The department shall notify the applicant and any person requesting a hearing of the decision whether to hold a hearing and the reasons therefore in writing.

**N.** If a hearing is held, pursuant to Subsection M of 20.6.2.3108 NMAC, notice of the hearing shall be given by the department at least 30 days prior to the hearing in accordance with Subsection H of 20.6.2.3108 NMAC. The notice shall include the information identified in Subsection F of 20.6.2.3108 NMAC in addition to the time and place of the hearing and a brief description of the hearing procedures. The hearing shall be held pursuant to 20.6.2.3110 NMAC.

[2-18-77, 12-24-87, 12-1-95, 11-15-96; 20.6.2.3108 NMAC - Rn, 20 NMAC 6.2.III.3108, 1-15-01; A, 12-1-01; A, 9-15-02; A, 7-16-06; A, 12-21-18]

#### **20.6.2.3109 SECRETARY APPROVAL, DISAPPROVAL, MODIFICATION OR TERMINATION OF DISCHARGE PERMITS, AND REQUIREMENT FOR ABATEMENT PLANS:**

**A.** The department shall evaluate the application for a discharge permit, modification or renewal based on information contained in the department's administrative record. The department may request from the discharger, either before or after the issuance of any public notice, additional information necessary for the evaluation of the application. The administrative record shall consist of the application, any additional information required by the department, any information submitted by the discharger or the general public, other information considered by the department, the proposed approval or disapproval of an application for a discharge permit, modification or renewal prepared pursuant to Subsection H of 20.6.2.3108 NMAC, and, if a public hearing is held, all of the documents filed with the hearing clerk, all exhibits offered into evidence at the hearing, the written transcript or tape recording of the hearing, any hearing officer report, and any post hearing submissions.

**B.** The secretary shall, within 30 days after the administrative record is complete and all required information is available, approve, approve with conditions or disapprove the proposed discharge permit, modification or renewal based on the administrative record. The Secretary shall issue a response to comments which shall specify which provisions, if any, in the draft permit were changed and the reasons for the change, and shall briefly describe and respond to all significant comments on the draft permit raised during the public comment period or at any hearing. The secretary shall notify the applicant or permittee by certified mail of the action taken and the reasons for such

action and shall include a copy of the response to comments. Notice shall also be given by mail or email to persons who participated in the permitting action.

**C.** Provided that the other requirements of this part are met and the proposed discharge plan, modification or renewal demonstrates that neither a hazard to public health nor undue risk to property will result, the secretary shall approve the proposed discharge plan, modification or renewal if the following requirements are met:

**(1)** ground water that has a TDS concentration of 10,000 mg/l or less will not be affected by the discharge; or

**(2)** the person proposing to discharge demonstrates that approval of the proposed discharge plan, modification or renewal will not result in either concentrations in excess of the standards of 20.6.2.3103 NMAC at any place of withdrawal of water for present or reasonably foreseeable future use, except for contaminants in the water diverted as provided in Subsection E of 20.6.2.3109 NMAC; or

**(3)** the proposed discharge plan conforms to either Subparagraph (a) or (b) below and Subparagraph (c) below:

**(a)** municipal, other domestic discharges, and discharges from sewerage systems handling only animal wastes: the effluent is entirely domestic, is entirely from a sewerage system handling only animal wastes or is from a municipality and conforms to the following:

**(i)** the discharge is from an impoundment or a leach field existing on February 18, 1977 which receives less than 10,000 gallons per day and the secretary has not found that the discharge may cause a hazard to public health; or

**(ii)** the discharger has demonstrated that the total nitrogen in effluent that enters the subsurface from a leach field or surface impoundment will not exceed 200 pounds per acre per year and that the effluent will meet the standards of 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection E of 20.6.2.3109 NMAC; or

**(iii)** the total nitrogen in effluent that is applied to a crop which is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop and the effluent shall meet the standards of 20.6.2.3103 NMAC except for nitrates and except for contaminants in the water diverted as provided in Subsection E of 20.6.2.3109 NMAC;

**(b)** discharges from industrial, mining or manufacturing operations:

**(i)** the discharger has demonstrated that the amount of effluent that enters the subsurface from a surface impoundment will not exceed 0.5 acre-feet per acre per year; or

**(ii)** the discharger has demonstrated that the total nitrogen in effluent that enters the subsurface from a leach field or surface impoundment shall not exceed 200 pounds per acre per year and the effluent shall meet the standards of 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection E of 20.6.2.3109 NMAC; or

**(iii)** the total nitrogen in effluent that is applied to a crop that is harvested shall not exceed by more than 25 percent the maximum amount of nitrogen reasonably expected to be taken up by the crop and the effluent shall meet the standards of 20.6.2.3103 NMAC except for nitrate and contaminants in the water diverted as provided in Subsection D of 20.6.2.3109 NMAC;

**(c)** all discharges:

**(i)** the monitoring system proposed in the discharge plan includes adequate provision for sampling of effluent and adequate flow monitoring so that the amount being discharged onto or below the surface of the ground can be determined;

**(ii)** the monitoring data is reported to the secretary at a frequency determined by the secretary.

**D.** The secretary shall allow the following unless he determines that a hazard to public health may result:

**(1)** the weight of water contaminants in water diverted from any source may be discharged provided that the discharge is to the aquifer from which the water was diverted or to an aquifer containing a greater concentration of the contaminants than contained in the water diverted; and provided further that contaminants added as a result of the means of diversion shall not be considered to be part of the weight of water contaminants in the water diverted;

**(2)** the water contaminants leached from undisturbed natural materials may be discharged provided that:

**(a)** the contaminants were not leached as a product or incidentally pursuant to a solution mining operation; and

**(b)** the contaminants were not leached as a result of direct discharge into the vadose zone from municipal or industrial facilities used for the storage, disposal, or treatment of effluent;

**(3)** the water contaminants leached from undisturbed natural materials as a result of discharge into ground water from lakes used as a source of cooling water.

**E.** If data submitted pursuant to any monitoring requirements specified in the discharge permit or other information available to the secretary indicates that this part is

being or may be violated or that the standards of 20.6.2.3103 NMAC are being or will be exceeded in ground water at any place of withdrawal for present or reasonably foreseeable future use, or that the water quality standards for interstate and intrastate streams in New Mexico are being or may be violated in surface water, due to the discharge, except as provided in Subsection D of 20.6.2.3109 NMAC.

**(1)** The secretary may require a discharge permit modification within the shortest reasonable time so as to achieve compliance with this part and to provide that any exceeding of standards in ground water at any place of withdrawal for present or reasonably foreseeable future use, or in surface water, due to the discharge except as provided in Subsection E of 20.6.2.3109 NMAC will be abated or prevented. If the secretary requires a discharge permit modification to abate water pollution:

**(a)** the abatement shall be consistent with the requirements and provisions of 20.6.2.4101, 20.6.2.4103, Subsections C and E of 20.6.2.4106, 20.6.2.4107, 20.6.2.4108 and 20.6.2.4112 NMAC; and

**(b)** the discharger may request of the secretary approval to carry out the abatement under 20.6.2.4000 through 20.6.2.4115 NMAC, in lieu of modifying the discharge permit; the discharger shall make the request in writing and shall include the reasons for the request.

**(2)** The secretary may terminate a discharge permit when a discharger fails to modify the permit in accordance with Paragraph (1) of Subsection E of 20.6.2.3109 NMAC.

**(3)** The secretary may require modification, or may terminate a discharge permit for a Class I well, a Class III well or other type of well specified in Subsection A of 20.6.2.5101 NMAC, pursuant to the requirements of Subsection I of 20.6.2.5101 NMAC.

**(4)** If a discharge permit is terminated, the secretary shall notify the permittee by certified mail of the action taken and the reasons for that action. Notice of the termination shall also be given by mail or electronic mail to persons who participated in the permitting action and to those persons on the facility-specific list maintained by the department.

**F.** If a discharge permit expires or is terminated for any reason and the standards of 20.6.2.3103 NMAC are being or will be exceeded in ground water, or that the water quality standards for interstate and intrastate streams in New Mexico are being or may be violated, the secretary may require the discharger to submit an abatement plan pursuant to 20.6.2.4104 and Subsection A of 20.6.2.4106 NMAC.

**G.** At the request of the discharger, a discharge permit may be modified in accordance with 20.6.2.3000 through 20.6.2.3114 NMAC.

**H.** The secretary shall not approve a proposed discharge plan, modification, or renewal for:

- (1)** any discharge for which the discharger has not provided a site and method for flow measurement and sampling;
- (2)** any discharge that will cause any stream standard to be violated;
- (3)** the discharge of any water contaminant which may result in a hazard to public health; or
- (4)** a period longer than five years, except that for new discharges, the term of the discharge permit approval shall commence on the date the discharge begins, but in no event shall the term of the approval exceed seven years from the date the permit was issued; for those permits expiring more than five years from the date of issuance, the discharger shall give prior written notification to the department of the date the discharge is to commence; the term of the permit shall not exceed five years from that date.

[2-18-77, 6-26-80, 9-20-82, 7-2-81, 3-3-86, 12-1-95, 11-15-96; 20.6.2.3109 NMAC - Rn, 20 NMAC 6.2.III.3109, 1-15-01; A, 12-1-01; A, 9-15-02; A, 7-16-06; A, 8-31-15; A, 12-21-18]

#### **20.6.2.3110 PUBLIC HEARING PARTICIPATION:**

**A.** The secretary may appoint an impartial hearing officer to preside over the hearing. The hearing officer may be a department employee other than an employee of the bureau evaluating the application.

**B.** The hearing shall be at a place in the area affected by the facility for which the discharge permit proposal, modification or renewal is sought.

**C.** Any person who wishes to present technical evidence at the hearing shall, no later than ten (10) days prior to the hearing, file with the department, and if filed by a person who is not the applicant, serve on the applicant, a statement of intent to present evidence. A person who does not file a statement of intent to present evidence may present a general non-technical statement in support of or in opposition to the proposed discharge plan, modification or renewal. The statement of intent to present technical evidence shall include:

- (1)** the name of the person filing the statement;
- (2)** indication of whether the person filing the statement supports or opposes the proposed discharge plan proposal, modification or renewal;
- (3)** the name of each witness;

- (4) an estimate of the length of the direct testimony of each witness;
- (5) a list of exhibits, if any, to be offered into evidence at the hearing; and
- (6) a summary or outline of the anticipated direct testimony of each witness.

**D.** At the hearing, the New Mexico Rules of Civil Procedure, SCRA 1986, 1-001 to 1-102 and the New Mexico Rules of Evidence, SCRA 1986, 11-101 to 11-1102 shall not apply. At the discretion of the hearing officer, the rules may be used as guidance. Any reference to the Rules of Civil Procedure and the Rules of Evidence shall not be construed to extend or otherwise modify the authority and jurisdiction of the department under the Act.

**E.** The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in the proceedings.

**F.** At the hearing, all persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

**G.** Unless otherwise allowed by the hearing officer, testimony shall be presented in the following order:

(1) testimony by and examination of the applicant or permittee proving the facts relied upon to justify the proposed discharge plan, renewal or modification and meeting the requirements of the regulations;

(2) testimony by and examination of technical witnesses supporting or opposing approval, approval subject to conditions, or disapproval of the proposed discharge plan, renewal or modification, in any reasonable order;

(3) testimony by the general public; and

(4) rebuttal testimony, if appropriate.

**H.** The secretary may provide translation service at a public hearing conducted in a locale where the Department can reasonably expect to receive testimony from non-English speaking people.

**I.** If determined useful by the hearing officer, within thirty (30) days after conclusion of the hearing, or within such time as may be fixed by the hearing officer, the hearing officer may allow proposed findings of fact and conclusions of law and closing argument. All such submissions, if allowed, shall be in writing, shall be served upon the applicant or permittee, the department and all persons who request copies in advance

in writing, and shall contain adequate references to the record and authorities relied on. No new evidence shall be presented unless specifically allowed by the hearing officer.

**J.** The department shall make an audio recording of the hearing. If the applicant or permittee, or a participant requests a written transcript or certified copy of the audio recording, the requestor shall pay the cost of the transcription or audio copying.

**K.** The hearing officer shall issue a report within thirty (30) days after the close of the hearing record. The report may include findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefore. The report shall be served on the applicant or permittee, the department, and all persons who request copies in advance in writing. The report will be available for public inspection at the department's office in Santa Fe and at the field office closest to the point of the proposed discharge.

**L.** The secretary shall issue a decision in the matter no later than thirty (30) days of receipt of the hearing report. The decision shall be served and made available for inspection pursuant to Subsection K of this section.

**M.** Any person who testifies at the hearing or submits a written statement for the record will be considered a participant for purposes of Subsection 20.6.2.3113 NMAC and NMSA 1978, Section 74-6-5.N.

[2-18-77, 12-1-95, 11-15-96; 20.6.2.3110 NMAC - Rn, 20 NMAC 6.2.III.3110, 1-15-01; A, 12-1-01]

#### **20.6.2.3111 TRANSFER OF DISCHARGE PERMIT:**

No purported transfer of any discharge permit shall be effective to create, alter or extinguish any right or responsibility of any person subject to this Part, unless the following transfer requirements are met:

**A.** Prior to any transfer of ownership, control, or possession (whether by lease, conveyance or otherwise) of a facility with a discharge permit, the transferor shall notify the transferee in writing of the existence of the discharge permit, and shall deliver or send by certified mail to the department a copy of such written notification, together with a certification or other proof that such notification has in fact been received by the transferee.

**B.** Upon receipt of such notification, the transferee shall have the duty to inquire into all of the provisions and requirements contained in such discharge permit, and the transferee shall be charged with notice of all such provisions and requirements as they appear of record in the department's file or files concerning such discharge permit.

**C.** Until both ownership and possession of the facility have been transferred to the transferee, the transferor shall continue to be responsible for any discharge from the facility.

**D.** Upon assuming either ownership or possession of the facility, the transferee shall have the same rights and responsibilities under the discharge permit as were applicable to the transferor.

**E.** Nothing in this section or in this part shall be construed to relieve any person of responsibility or liability for any act or omission which occurred while that person owned, controlled or was in possession of the facility.

[2-18-77, 12-24-87, 12-1-95, 11-15-96; 20.6.2.3111 NMAC - Rn, 20 NMAC 6.2.III.3111, 1-15-01; A, 12-1-01]

#### **20.6.2.3112 APPEALS OF SECRETARY'S DECISIONS:**

**A.** If the secretary approves, approves subject to conditions, or disapproves a proposed discharge plan, renewal or modification, or modifies or terminates a discharge permit, appeal therefrom shall be in accordance with the provisions of Sections 74-6-5(N), (O) and (P), NMSA 1978. The filing of an appeal does not act as a stay of any provision of the Act, the regulations, or any permit issued pursuant to the Act, unless otherwise ordered by the secretary or the commission.

**B.** If the secretary determines that a discharger is not exempt from obtaining a discharge permit, or that the material to be discharged contains any toxic pollutant listed in 20.6.2.7 NMAC, which is not included in the numerical standards of Paragraph (1) of Subsection A of 20.6.2.3103 NMAC, then the discharger may appeal such determination by filing with the commission's secretary a notice of appeal to the commission within thirty days after receiving the secretary's written determination, and the appeal therefrom and any action of the commission thereon shall be in accordance with the provisions of Sections 74-6-5(O), (P), (Q), (R) and (S) NMSA 1978.

**C.** Proceedings before the commission shall be conducted in accordance with the commission's adjudicatory procedures, 20 NMAC 1.3.

[2-18-77, 7-2-81, 12-1-95, 11-15-96; 20.6.2.3112 NMAC - Rn, 20 NMAC 6.2.III.3112, 1-15-01; A, 12-1-01; A, 7-16-06; A, 12-21-18]

#### **20.6.2.3113 APPEALS OF COMMISSION DECISIONS:**

An applicant, permittee or a person who participated in a permitting action and who is adversely affected by such action may appeal the decision of the commission in accordance with the provisions of Section 74-6-7(A), NMSA 1978.

[2-18-77, 12-1-95, 11-15-96; 20.6.2.3113 NMAC - Rn, 20 NMAC 6.2.III.3113, 1-15-01; A, 12-1-01]

**20.6.2.3114 FEES:**

**A. FEE AMOUNT AND SCHEDULE OF PAYMENT** - Every facility submitting a discharge permit application for approval or renewal shall pay the permit fees specified in Table 1 of this section and shall pay a filing fee as specified in Table 2 of this section to the Water Quality Management Fund. Every facility submitting a request for temporary permission to discharge pursuant to Subsection B of Section 20.6.2.3106 NMAC, or financial assurance pursuant to Paragraph 11 of Subsection A of Section 20.6.2.3107 NMAC shall pay the fees specified in Table 2 of this section to the Water Quality Management Fund.

**B.** Facilities applying for discharge permits which are subsequently withdrawn or denied shall pay one-half of the permit fee at the time of denial or withdrawal.

**C.** Every facility submitting an application for discharge permit modification will be assessed a filing fee plus one-half of the permit fee. Applications for both renewal and modification will pay the filing fee plus the permit fee.

**D.** If the secretary requires a discharge permit modification as a component of an enforcement action, the facility shall pay the applicable discharge permit modification fee. If the secretary requires a discharge permit modification outside the context of an enforcement action, the facility shall not be assessed a fee.

**E.** The secretary may waive or reduce fees for discharge permit modifications or renewals which require little or no cost for investigation or issuance.

**F.** Facilities shall pay the filing fee at the time of discharge permit application. The filing fee is nonrefundable. The required permit fees may be paid in a single payment at the time of discharge permit approval or in equal installments over the term of the discharge permit. Installment payments shall be remitted yearly, with the first installment due on the date of discharge permit approval. Subsequent installment payments shall be remitted yearly thereafter. The discharge permit or discharge permit application review of any facility shall be suspended or terminated if the facility fails to submit an installment payment by its due date.

**G.** Every three years beginning in 2004, the department shall review the fees specified in Table 1 and 2 of this section and shall provide a report to the commission. The department shall revise the fees as necessary in accordance with Section 74-6-5(J), NMSA 1978.

<b>20.6.2.3114 TABLE 1</b> (gpd=gallons per day)	<b>Permit Fee</b>
Agriculture <10,000 gpd	\$ 1,150

Agriculture 10,000 to 49,999 gpd	\$ 2,300
Agriculture 50,000 to 99,999 gpd	\$ 3,450
Agriculture 100,000 gpd or greater	\$ 4,600
Domestic Waste <10,000 gpd	\$ 1,150
Domestic Waste 10,000 to 49,999 gpd	\$ 2,300
Domestic Waste 50,000 to 99,999 gpd	\$ 3,450
Domestic Waste 100,000 to 999,999 gpd	\$ 4,600
Domestic Waste 1,000,000 to 9,999,999 gpd	\$ 7,000
Domestic Waste 10,000,000 gpd or greater	\$ 9,200
Food Processing <10,000 gpd	\$ 1,150
Food Processing 10,000 to 49,999 gpd	\$ 2,300
Food Processing 50,000 to 99,999 gpd	\$ 3,450
Food Processing 100,000 to 999,999 gpd	\$ 4,600
Food Processing 1,000,000 or greater	\$ 7,000
Grease/Septage surface disposal <10,000 gpd	\$ 1,725
Grease/Septage surface disposal 10,000 gpd or greater	\$ 3,450
Industrial <10,000 gpd; or <10,000 yd <sup>3</sup> of contaminated solids	\$ 1,725
Industrial 10,000 to 99,999 gpd; or 10,000 to 99,999 yd <sup>3</sup> of contaminated solids	\$ 3,450
Industrial 100,000 to 999,999 gpd; or 100,000 to 999,999 yd <sup>3</sup> of contaminated solids or greater	\$ 6,900
Industrial 1,000,000 gpd or greater; or 1,000,000 yd <sup>3</sup> of contaminated solids or greater	\$10,350
Discharge of remediation system effluent - remediation plan approved under separate regulatory authority	\$ 1,600
Mining dewatering	\$ 3,250
Mining leach dump	\$13,000
Mining tailings	\$13,000
Mining waste rock	\$13,000
Mining in-situ leach (except salt) and old stope leaching	\$13,000
Mining other (mines with minimal environmental impact, post closure operation and maintenance, evaporation lagoons and land application at uranium mines)	\$ 4,750
Gas Compressor Stations 0 to 1000 Horsepower	\$ 400

Gas Compressor Stations >1001 Horsepower	\$ 1,700
Gas Processing Plants	\$ 4,000
Injection Wells: Class I ( <u>non-hazardous</u> )	\$ 4,500
Injection Wells: Class III and Geothermal	\$ 1,700
Oil and Gas Service Companies	\$ 1,700
Refineries	\$ 8,400
Crude Pump Station	\$ 1,200
Underground Gas Storage	\$ 1,700
Abatement of ground water and vadose zone contamination	\$ 2,600
General permit	\$ 600

**20.6.2.3114 Table 2**

	<b>Fee Amount</b>
Filing fee	\$100
Temporary permission	\$50
Financial assurance: approval of instrument	greater of \$250 or .01%
Financial assurance: annual review	greater of \$100 or .001%

[8-17-91, 12-1-95; 20.6.2.3114, Rn & A, 20 NMAC 6.2.III.3114, 01-01-01; A, 12-21-18]

**20.6.2.3115-20.6.2.3999 [RESERVED]**

[12-1-95; 20.6.2.3115 - 20.6.2.3999 NMAC - Rn, 20 NMAC 6.2.III.3115-4100, 1-15-01]

**20.6.2.4000 PREVENTION AND ABATEMENT OF WATER POLLUTION:**

[12-1-95; 20.6.2.4000 NMAC - Rn, 20 NMAC 6.2.IV, 1-15-01]

**20.6.2.4001-20.6.2.4100 [RESERVED]**

[12-1-95; 20.6.2.4001 - 20.6.2.4100 NMAC - Rn, 20 NMAC 6.2.III.3115-4100, 1-15-01]

**20.6.2.4101 PURPOSE:**

**A.** The purposes of Sections 20.6.2.4000 through 20.6.2.4115 NMAC are to:

**(1)** Abate pollution of subsurface water so that all ground water of the State of New Mexico which has a background concentration of 10,000 mg/L or less TDS, is

either remediated or protected for use as domestic and agricultural water supply, and to remediate or protect those segments of surface waters which are gaining because of subsurface water inflow, for uses designated in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC); and

**(2)** Abate surface water pollution so that all surface waters of the State of New Mexico are remediated or protected for designated or attainable uses as defined in the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC).

**B.** If the background concentration of any water contaminant exceeds the standard or requirement of Subsections A, B, and C of Section 20.6.2.4103 NMAC, pollution shall be abated by the responsible person to the background concentration.

**C.** The standards and requirements set forth in Section 20.6.2.4103 NMAC are not intended as maximum ranges and concentrations for use, and nothing herein contained shall be construed as limiting the use of waters containing higher ranges and concentrations.

[12-1-95; 20.6.2.4101 NMAC - Rn, 20 NMAC 6.2.IV.4101, 1-15-01; A, 12-21-18]

#### **20.6.2.4102 [RESERVED]**

[12-1-95; 20.6.2.4102 NMAC - Rn, 20 NMAC 6.2.IV.4102, 1-15-01]

#### **20.6.2.4103 ABATEMENT STANDARDS AND REQUIREMENTS:**

**A.** The vadose zone shall be abated as follows:

**(1)** water contaminants in the vadose zone shall not be capable of contaminating ground water or surface water, in excess of the standards in Subsections B and C below, through leaching, percolation or as the water table elevation fluctuates; and

**(2)** any constituent listed in 20.6.2.3103 NMAC or any toxic pollutant in the vadose zone shall be abated so that it is not capable of endangering human health due to inhalation of vapors that may accumulate in structures, utility infrastructure, or construction excavations.

**B.** Ground water pollution at any place of withdrawal for present or reasonably foreseeable future use, where the TDS concentration is 10,000 mg/L or less, shall be abated to meet the standards of Subsections A, B, and C of Section 20.6.2.3103 NMAC.

**C.** Surface water pollution shall be abated to conform to the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC).

**D.** Subsurface water and surface water abatement shall not be considered complete until a minimum of eight (8) consecutive sampling events collected from all compliance sampling stations approved by the secretary, with a minimum of ninety (90) days between sampling events spanning a time period no greater than four (4) years, meet the abatement standards of Subsections A, B, and C of this section. Abatement of water contaminants measured in solid-matrix samples of the vadose zone shall be considered complete after one-time sampling from compliance stations approved by the secretary.

**E.** Alternative Abatement Standards: If the person abating water pollution pursuant to an approved abatement plan, or pursuant to the exemptions of 20.6.2.4105 NMAC, is unable to fully meet an abatement standard set forth in Subsections A and C of this section, the person may file a petition with the commission seeking approval of an alternative abatement standard.

**(1)** A petition for an alternative abatement standard shall demonstrate at least one of the following criteria:

**(a)** compliance with the standard set forth in Subsections A and B of this section would not be feasible by the maximum use of commercially accepted abatement technology;

**(b)** compliance with the standard set forth in Subsections A and B of this section would not be feasible by the maximum use of technology within the economic capability of the person;

**(c)** there is no reasonable relationship between the economic and social costs and benefits of attainment of the standard set forth in Subsections A and B of this section; or

**(d)** compliance with the standard set forth in Subsections A and B of this section is technically infeasible following the maximum use of commercially accepted abatement technology, as demonstrated by a statistically valid extrapolation of the decrease in concentration of any water contaminant over a twenty (20) year period, such that projected future reductions during that time would be less than 20 percent of the concentration at the time technical infeasibility is proposed. Technical infeasibility proposals that involved the use of experimental abatement technology shall be considered at the discretion of the commission. A statistically valid decrease cannot be demonstrated by fewer than eight (8) consecutive sampling events. Sampling events demonstrating a statistically valid decrease shall be collected with a minimum of ninety (90) days between sampling events and shall not span a time period greater than four (4) years.

**(2)** A petition for alternative abatement standards shall specify, in addition to the information required by Subsection A of 20.6.2.1210 NMAC the following:

(a) the water contaminant for which the alternative abatement standard is proposed;

(b) the alternative abatement standard proposed;

(c) the three-dimensional body of water pollution for which approval is sought;

(d) a summary of all actions taken to abate water pollution to standards; and

(e) other information as deemed necessary, which may include a transport, fate and risk assessment in accordance with accepted methods.

(3) The commission may approve an alternative abatement standard if the petitioner demonstrates that:

(a) at least one of the criteria set forth in Paragraph 1 of Subsection E of this Section has been met;

(b) the proposed alternative abatement standard is technically achievable and cost benefit justifiable; and

(c) compliance with the proposed alternative abatement standard will not create a present or future hazard to public health or undue damage to property.

(4) An alternative abatement standard shall only be granted after a public hearing, as required by NMSA 1978, Section 74-6-4(H) of the water Quality Act.

(5) The commission shall review petitions for alternative abatement standards in accordance with the procedures for review of variance petitions provided in the commission's adjudicatory procedures, 20.1.3 NMAC.

**F.** For a site where abatement activities include post-completion monitoring, maintenance of engineering controls, remediation systems, affirmation of non-residential use, or port-closure care, institutional controls such as well drilling restrictions under 19.27.5 NMAC, deed restrictions, easements or other legal restrictions binding on successors in interest to the site may be required by the secretary.

[12-1-95, 11-15-96; 20.6.2.4103 NMAC - Rn, 20 NMAC 6.2.IV.4103, 1-15-01; A, 12-21-18]

#### **20.6.2.4104 ABATEMENT PLAN REQUIRED:**

**A.** Unless otherwise provided by this Part, all responsible persons who are abating, or who are required to abate, water pollution in excess of the standards and requirements set forth in Section 20.6.2.4103 NMAC of this Part shall do so pursuant to

an abatement plan approved by the secretary. When an abatement plan has been approved, all actions leading to and including abatement shall be consistent with the terms and conditions of the abatement plan.

**B.** In the event of a transfer of the ownership, control or possession of a facility for which an abatement plan is required or approved, where the transferor is a responsible person, the transferee also shall be considered a responsible person for the duration of the abatement plan, and may jointly share the responsibility to conduct the actions required by this Part with other responsible persons. The transferor shall notify the transferee in writing, at least thirty (30) days prior to the transfer, that an abatement plan has been required or approved for the facility, and shall deliver or send by certified mail to the secretary a copy of such notification together with a certificate or other proof that such notification has in fact been received by the transferee. The transferor and transferee may agree to a designated responsible person who shall assume the responsibility to conduct the actions required by this Part. The responsible persons shall notify the secretary in writing if a designated responsible person is agreed upon. If the secretary determines that the designated responsible person has failed to conduct the actions required by this Part, the secretary shall notify all responsible persons of this failure in writing and allow them thirty (30) days, or longer for good cause shown, to conduct the required actions before issuing a compliance order pursuant to Section 20.6.2.1220 NMAC.

**C.** The secretary may require the responsible person(s) to submit a financial assurance plan which covers the estimated costs to conduct the actions required by the abatement plan. Such a financial assurance plan shall be consistent with any financial assurance requirements adopted by the commission.

**D.** The Secretary may require an oversight funding agreement with the responsible person for abatement plans which compensates the department for reasonable costs associated with the oversight of activities.

[12-1-95; 20.6.2.4104 NMAC - Rn, 20 NMAC 6.2.IV.4104, 1-15-01; A, 12-21-18]

#### **20.6.2.4105 EXEMPTIONS FROM ABATEMENT PLAN REQUIREMENTS:**

**A.** Except as provided in Subsection B of this Section, Sections 20.6.2.4104 and 20.6.2.4106 NMAC do not apply to a person who is abating water pollution:

**(1)** from a storage tank, under the authority of the Petroleum Storage Tank Regulations (20.5 NMAC) adopted by the New Mexico Environmental Improvement Board, or in accordance with the New Mexico Ground Water Protection Act;

**(2)** under the authority of the U.S. Environmental Protection Agency pursuant to either the federal Comprehensive Environmental Response, Compensation and Liability Act, and amendments, or the Resource Conservation and Recovery Act;

**(3)** under the authority of the secretary pursuant to the Hazardous Waste Management Regulations (20.4.1 NMAC) adopted by the New Mexico Environmental Improvement Board;

**(4)** under the authority of the U.S. Nuclear Regulatory Commission or the U.S. Department of Energy pursuant to the Atomic Energy Act;

**(5)** from a solid waste landfill, under the authority of the secretary pursuant to the Solid Waste Management Regulations (20.9.1 NMAC) adopted by the N.M. Environmental Improvement Board;

**(6)** under the authority of a ground water discharge plan approved by the secretary, provided that such abatement is consistent with the requirements and provisions of Sections 20.6.2.4101, 20.6.2.4103, Subsections C and E of Section 20.6.2.4106, Sections 20.6.2.4107 and 20.6.2.4112 NMAC;

**(7)** under the authority of a Letter of Understanding, Settlement Agreement or Administrative Order on Consent signed by the secretary prior to December 1, 1995, provided that abatement is being performed in full compliance with the terms of the Letter of Understanding, Settlement Agreement or Administrative Order on Consent; and

**(8)** on an emergency basis, or while abatement plan approval is pending, or in a manner that will result in compliance with the standards and requirements set forth in Section 20.6.2.4103 NMAC within one hundred and eighty (180) days after notice is required to be given pursuant to Paragraph (1) of Subsection A of Section 20.6.2.1203 NMAC, provided that the delegated agency does not object to the abatement action pursuant to Paragraphs (6) and (7) of Subsection A of Section 20.6.2.1203 NMAC.

**B.** If the secretary determines that abatement of water pollution subject to Subsection A of this section will not meet the standards of Subsections A, B, and C of Section 20.6.2.4103 NMAC, or that additional action is necessary to protect health, welfare, environment or property, the secretary may notify a responsible person, by certified mail, to submit an abatement plan pursuant to Section 20.6.2.4104 and Subsection A of Section 20.6.2.4106 NMAC. The notification shall state the reasons for the secretary's determination. In any appeal of the secretary's determination under this Section, the secretary shall have the burden of proof.

**C.** Sections 20.6.2.4104 and 20.6.2.4106 NMAC do not apply to the following activities:

**(1)** Discharges subject to an effective and enforceable National Pollutant Discharge Elimination System (NPDES) permit;

**(2)** Land application of ground water contaminated with nitrogen originating from human or animal waste and not otherwise exceeding the standards of Subsection

A of Section 20.6.2.3103 NMAC, provided that it is done in compliance with a discharge plan approved by the secretary;

(3) Abatement of water pollution resulting from the withdrawal and decontamination or blending of polluted water for use as a public or private drinking-water supply, by any person other than a responsible person, unless the secretary determines that a hazard to public health may result; and

(4) Reasonable operation and maintenance of irrigation and flood control facilities.

[12-1-95; 20.6.2.4105 NMAC - Rn, 20 NMAC 6.2.IV.4105, 1-15-01; A, 10-15-03; A, 12-21-18]

### **20.6.2.4106 ABATEMENT PLAN PROPOSAL:**

A. Except as provided for in Section 20.6.2.4105 NMAC, a responsible person shall, within sixty (60) days of receipt of written notice from the secretary that an abatement plan is required, submit an abatement plan proposal to the secretary for approval. For good cause shown, the secretary may allow for a total of one hundred and twenty (120) days to prepare and submit the abatement plan proposal.

#### **B. Voluntary Abatement:**

(1) Any person wishing to abate water pollution in excess of the standards and requirements set forth in Section 20.6.2.4103 NMAC may submit a Stage 1 abatement plan proposal to the secretary for approval. Following approval by the secretary of a final site investigation report prepared pursuant to Stage 1 of an abatement plan, any person may submit a Stage 2 abatement plan proposal to the secretary for approval.

(2) Following approval of a Stage 1 or Stage 2 abatement plan proposal under Paragraph (1) of Subsection B of this Section, the person submitting the approved plan shall be a responsible person under Sections 20.6.2.4000 through 20.6.2.4115 NMAC for the purpose of performing the approved Stage 1 or Stage 2 abatement plan. Nothing in this Section shall preclude the secretary from applying Paragraph (9) of Subsection A of Section 20.6.2.1203 NMAC to a responsible person if applicable.

C. **Stage 1 Abatement Plan:** The purpose of Stage 1 of the abatement plan shall be to design and conduct a site investigation that will adequately define site conditions, and provide the data necessary to select and design an effective abatement option. Stage 1 of the abatement plan may include, but not necessarily be limited to, the following information depending on the media affected, and as reasonably needed to select and implement an expeditious abatement option:

(1) Descriptions of the site, including a site map, and of site history including the nature of the discharge that caused the water pollution, and a summary of previous investigations;

(2) Site investigation workplan to define:

(a) site geology and hydrogeology, the vertical and horizontal extent and magnitude of vadose-zone and ground water contamination, subsurface hydraulic parameters including hydraulic conductivity, transmissivity, storativity, and rate and direction of contaminant migration, inventory of water wells inside and within one (1) mile from the perimeter of the three-dimensional body where the standards set forth in Subsection B of Section 20.6.2.4103 NMAC are exceeded, and location and number of such wells actually or potentially affected by the pollution; and

(b) surface water hydrology, seasonal stream flow characteristics, ground water/surface water relationships, the vertical and horizontal extent and magnitude of contamination and impacts to surface water and stream sediments. The magnitude of contamination and impacts on surface water may be, in part, defined by conducting a biological assessment of fish, benthic macroinvertebrates and other wildlife populations. Seasonal variations should be accounted for when conducting these assessments.

(3) Monitoring program, including sampling stations and frequencies, for the duration of the abatement plan that may be modified, after approval by the secretary, as additional sampling stations are created;

(4) Quality assurance plan, consistent with the sampling and analytical techniques listed in Subsection B of Section 20.6.2.3107 NMAC and with Section 20.6.4.10 NMAC of the Water Quality Standards for Interstate and Intrastate Streams in New Mexico (20.6.4 NMAC), for all work to be conducted pursuant to the abatement plan;

(5) Site health and safety plan for all work to be performed pursuant to the abatement plan;

(6) A schedule for all Stage 1 abatement plan activities, including the submission of summary quarterly progress reports, and the submission, for approval by the secretary, of a detailed final site investigation report; and

(7) Any additional information that may reasonably be required to design and perform an adequate site investigation.

**D. Stage 2 Abatement Plan:** Any responsible person shall submit a Stage 2 abatement plan proposal to the secretary for approval within sixty (60) days after approval by the secretary of the final site investigation report prepared pursuant to Stage 1 of the abatement plan. The secretary may grant approval for an extension of time to submit a State 2 abatement plan for good cause shown.

**E.** The purpose of Stage 2 of the abatement plan shall be to select and design, if necessary, an abatement option that, when implemented, will result in attainment of the abatement standards and requirements set forth in Section 20.6.2.4103 NMAC, including post-closure maintenance activities. Stage 2 of the abatement plan should include, at a minimum, the following information:

- (1) Brief description of the current situation at the site;
- (2) Development and assessment of abatement options;
- (3) Description, justification and design, if necessary, of preferred abatement option;
- (4) Modification, if necessary, of the monitoring program approved pursuant to Stage 1 of the abatement plan, including the designation of pre and post abatement-completion sampling stations and sampling frequencies to be used to demonstrate compliance with the standards and requirements set forth in Section 20.6.2.4103 NMAC;
- (5) Site maintenance activities, if needed, proposed to be performed after termination of abatement activities;
- (6) A schedule for the duration of abatement activities, including the submission of summary quarterly progress reports;
- (7) A public notification proposal designed to satisfy the requirements of Subsections B and C of Sections 20.6.2.4108 and 20.6.2.4108 NMAC; and
- (8) Any additional information that may be reasonably required to select, describe, justify and design an effective abatement option.

[12-1-95; 20.6.2.4106 NMAC - Rn, 20 NMAC 6.2.IV.4106, 1-15-01; A, 12-21-18]

**20.6.2.4107 OTHER REQUIREMENTS:**

**A.** Any responsible person shall allow any authorized representative of the secretary to:

- (1) upon presentation of proper credentials, enter the facility at reasonable times;
- (2) inspect and copy records required by an abatement plan;
- (3) inspect any treatment works, monitoring and analytical equipment;

(4) sample any wastes, ground water, surface water, stream sediment, plants, animals, or vadose-zone material including vadose-zone vapor;

(5) use monitoring systems and wells under such responsible person's control in order to collect samples of any media listed in Paragraph (4) of Subsection A of this section; and

(6) gain access to off-site property not owned or controlled by such responsible person, but accessible to such responsible person through a third-party access agreement, provided that it is allowed by the agreement.

**B.** Any responsible person shall provide the secretary, or a representative of the secretary, with at least four (4) working days advance notice of any sampling to be performed pursuant to an abatement plan, or any well plugging, abandonment or destruction at any facility where an abatement plan has been required.

**C.** Any responsible person wishing to plug, abandon or destroy a monitoring or water supply well within the perimeter of the 3-dimensional body where the standards set forth in Subsection B of Section 20.6.2.4103 NMAC are exceeded, at any facility where an abatement plan has been required, shall propose such action by certified mail to the secretary for approval, unless such approval is required from the State Engineer. The proposed action shall be designed to prevent water pollution that could result from water contaminants migrating through the well or borehole. The proposed action shall not take place without written approval from the secretary, unless written approval or disapproval is not received by the responsible person within thirty (30) days of the date of receipt of the proposal.

[12-1-95; 20.6.2.4107 NMAC - Rn, 20 NMAC 6.2.IV.4107, 1-15-01]

#### **20.6.2.4108 PUBLIC NOTICE AND PARTICIPATION:**

**A.** Within thirty (30) days of filing of a Stage 1 abatement plan proposal, the secretary shall issue a news release summarizing:

(1) the source, extent, magnitude and significance of water pollution, as known at that time;

(2) the proposed Stage 1 abatement plan investigation; and

(3) the name and telephone number of an agency contact who can provide additional information.

**B.** Any person proposing a Stage 2 abatement plan, a significant modification to a Stage 2 abatement plan, or an alternative abatement standard shall provide notice of the proposal to the following persons:

**(1)** the public, who shall be notified through publication of a notice in newspapers of general circulation in this state and in the county where the abatement will occur or where the water body that would be affected by a proposed alternative abatement standard is located, and, in areas with large percentages of non-English speaking people, through the mailing of the public notice in English to a bilingual radio station serving the area where the abatement will occur with a request that it be aired as a public service announcement in the predominant non-English language of the area;

**(2)** those persons, as identified by the secretary, who have requested notification, who shall be notified by mail or email;

**(3)** the New Mexico Trustee for Natural Resources, and any other local, state or federal governmental agency affected, as identified by the secretary, which shall be notified by certified mail;

**(4)** owners and residents of surface property located inside, and within one (1) mile from, the perimeter of the geographic area where the standards and requirements set forth in Section 20.6.2.4103 NMAC are exceeded who shall be notified by a means approved by the secretary; and

**(5)** the Governor or President of each Indian Tribe, Pueblo or Nation within the state of New Mexico, as identified by the secretary, who shall be notified by mail or email.

**C.** The public notice proposal for a Stage 2 abatement plan proposal or significant modification of a Stage 2 abatement plan shall be submitted to the secretary for approval with a proposed Stage 2 abatement plan, or significant modification of a Stage 2 abatement plan, and shall include:

**(1)** name and address of the responsible person;

**(2)** location of the proposed abatement;

**(3)** brief description of the nature of the water pollution and of the proposed abatement action;

**(4)** brief description of the procedures followed by the secretary in making a final determination;

**(5)** statement on the comment period;

**(6)** statement that a copy of the abatement plan can be viewed by the public at the department's main office or at the department field office for the area in which the discharge occurred;

**(7)** statement that written comments on the abatement plan, and requests for a public meeting or hearing that include the reasons why a meeting or hearing should be held, will be accepted for consideration if sent to the secretary within sixty (60) days after the date of public notice; and

**(8)** address and phone number at which interested persons may obtain further information.

**D.** The public notice proposal for a proposed alternative abatement standard shall be submitted to the secretary for approval thirty (30) days prior to the filing of a petition for alternative abatement standards, and shall include:

**(1)** name and address of the responsible person;

**(2)** location of the proposed alternative abatement standards;

**(3)** brief description of the nature of the water pollution and of the proposed alternative abatement standards;

**(4)** brief description of the procedures followed by the commission in making a final determination on a petition for alternate abatement standards;

**(5)** statement that a copy of the petition for alternate abatement standards petition can be viewed by the public at the department's main office or at the department field office for the area in which the affected water body is occurring;

**(6)** statement on how the public can request to be placed on a facility-specific mailing list for notification of any hearing conducted on the petition for alternate abatement standards pursuant to 20.1.3 NMAC; and

**(7)** address and phone number at which interested persons may obtain further information.

**E.** Within thirty (30) days of the secretary's approval of a Stage 2 abatement plan public notice proposal, any responsible person shall provide to the secretary proof of public notice to the persons listed in Subsection B of 20.6.2.4108 NMAC.

**F.** For a proposed Stage 2 abatement plan or significant modification of a Stage 2 abatement plan, a public meeting or hearing may be held if the secretary determines there is significant public interest. Notice of the time and place of the meeting or hearing shall be given at least thirty (30) days prior to the meeting or hearing pursuant to Subsections A and B above. The secretary may appoint a meeting facilitator or hearing officer. The secretary may require the responsible person to prepare for approval by the secretary a fact sheet, to be distributed at the public meeting or hearing and afterwards upon request, written in English and Spanish, describing site history, the nature and extent of water pollution, and the proposed abatement. The record of the meeting or hearing, requested under this Section, consists of a tape recorded or transcribed session, provided that the cost of a court

recorder shall be paid by the person requesting the transcript. If requested by the secretary, the responsible person will provide a translator approved by the secretary at a public meeting or hearing conducted in a locale where testimony from non-English speaking people can reasonably be expected. At the meeting or hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing, and to ask questions of the secretary or the secretary's designee and of the responsible person, or their authorized representatives.

**G.** An alternative abatement standard shall only be granted after a public hearing before the commission, as required by NMSA 1978, Section 74-6-4(H) of the Water Quality Act. The commission shall review petitions for alternative abatement standards in accordance with the procedures for review of variance petitions provided in the commission's adjudicatory procedures, 20.1.3 NMAC.

[12-1-95; 20.6.2.4108 NMAC - Rn, 20 NMAC 6.2.IV.4108, 1-15-01; A, 12-21-18]

#### **20.6.2.4109 SECRETARY APPROVAL OR NOTICE OF DEFICIENCY OF SUBMITTALS:**

**A.** The secretary shall, within sixty (60) days of receiving a Stage 1 abatement plan proposal, a site investigation report, or an abatement completion report, approve the document, or notify the responsible person of the document's deficiency, based upon the information available.

**B.** The secretary shall, within thirty (30) days of receiving a fact sheet, or Stage 2 abatement plan public notice proposal, approve or notify the responsible person of the document's deficiency, based upon the information available.

**C.** If no public meeting or hearing is held pursuant to Subsection E of Section 20.6.2.4108 NMAC, then the secretary shall, within 120 days of receiving a Stage 2 abatement plan proposal, approve the plan, or notify the responsible person of the plan's deficiency, based upon the information available.

**D.** If a public meeting or hearing is held pursuant to Subsection E of Section 20.6.2.4108, then the secretary shall, within sixty (60) days of receipt of all required information, approve Stage 2 of the abatement plan proposal, or notify the responsible person of the plan's deficiency, based upon the information contained in the plan and information submitted at the meeting or hearing.

**E.** If the secretary notifies a responsible person of any deficiencies in a site investigation report, or in a Stage 1 or Stage 2 abatement plan proposal, the responsible person shall submit a modified document to cure the deficiencies specified by the secretary within thirty (30) days of receipt of the notice of deficiency. The responsible person shall be in violation of Sections 20.6.2.4000 through 20.6.2.4115 NMAC if he fails to submit a modified document within the required time, or if the

modified document does not make a good faith effort to cure the deficiencies specified by the secretary.

**F.** Provided that the other requirements of this Part are met and provided further that Stage 2 of the abatement plan, if implemented, will result in the standards and requirements set forth in Section 20.6.2.4103 NMAC being met within a schedule that is reasonable given the particular circumstances of the site, the secretary shall approve the plan.

[12-1-95; 20.6.2.4109 NMAC - Rn, 20 NMAC 6.2.IV.4109, 1-15-01; A, 12-21-18]

#### **20.6.2.4110 INVESTIGATION AND ABATEMENT:**

Any responsible person who receives approval for Stage 1 and/or Stage 2 of an abatement plan shall conduct all investigation, abatement, monitoring and reporting activity in full compliance with Sections 20.6.2.4000 through 20.6.2.4115 NMAC and according to the terms and schedules contained in the approved abatement plans.

[12-1-95; 20.6.2.4110 NMAC - Rn, 20 NMAC 6.2.IV.4110, 1-15-01]

#### **20.6.2.4111 ABATEMENT PLAN MODIFICATION:**

**A.** Any approved abatement plan may be modified, at the written request of the responsible person, in accordance with Sections 20.6.2.4000 through 20.6.2.4115 NMAC, and with written approval of the secretary.

**B.** If data submitted pursuant to any monitoring requirements specified in the approved abatement plan or other information available to the secretary indicates that the abatement action is ineffective, or is creating unreasonable injury to or interference with health, welfare, environment or property, the secretary may require a responsible person to modify an abatement plan within the shortest reasonable time so as to effectively abate water pollution which exceeds the standards and requirements set forth in Section 20.6.2.4103 NMAC, and to abate and prevent unreasonable injury to or interference with health, welfare, environment or property.

[12-1-95; 20.6.2.4111 NMAC - Rn, 20 NMAC 6.2.IV.4111, 1-15-01]

#### **20.6.2.4112 COMPLETION AND TERMINATION:**

**A.** Abatement shall be considered complete when the standards and requirements set forth in Section 20.6.2.4103 NMAC are met. At that time, the responsible person shall submit an abatement completion report, documenting compliance with the standards and requirements set forth in Section 20.6.2.4103 NMAC, to the secretary for approval. The abatement completion report also shall propose any changes to long term monitoring and site maintenance activities, if needed, to be performed after termination of the abatement plan.

**B.** Provided that the other requirements of this Part are met and provided further that the standards and requirements set forth in Section 20.6.2.4103 NMAC have been met, the secretary shall approve the abatement completion report. When the secretary approves the abatement completion report, he shall also notify the responsible person in writing that the abatement plan is terminated.

[12-1-95; 20.6.2.4112 NMAC - Rn, 20 NMAC 6.2.IV.4112, 1-15-01]

#### **20.6.2.4113 DISPUTE RESOLUTION:**

In the event of any technical dispute regarding the requirements of Paragraph (9) of Subsection A and Subsection E of Section 20.6.2.1203, Sections 20.6.2.4103, 20.6.2.4105, 20.6.2.4106, 20.6.2.4111 or 20.6.2.4112 NMAC, including notices of deficiency, the responsible person may notify the secretary by certified mail that a dispute has arisen, and desires to invoke the dispute resolution provisions of this Section, provided that such notification must be made within thirty (30) days after receipt by the responsible person of the decision of the secretary that causes the dispute. Upon such notification, all deadlines affected by the technical dispute shall be extended for a thirty (30) day negotiation period, or for a maximum of sixty (60) days if approved by the secretary for good cause shown. During this negotiation period, the secretary or his/her designee and the responsible person shall meet at least once. Such meeting(s) may be facilitated by a mutually agreed upon third party, but the third party shall assume no power or authority granted or delegated to the secretary by the Water Quality Act or by the commission. If the dispute remains unresolved after the negotiation period, the decision of secretary shall be final.

[12-1-95; 20.6.2.4113 NMAC - Rn, 20 NMAC 6.2.IV.4113, 1-15-01]

#### **20.6.2.4114 APPEALS FROM SECRETARY'S DECISIONS:**

**A.** If the secretary determines that an abatement plan is required pursuant to Paragraph (9) of Subsection A of 20.6.2.1203, Subsection F of 20.6.2.3109, or Subsection B of 20.6.2.4105 NMAC, approves or provides notice of deficiency of a proposed abatement plan, or abatement completion report, or modifies or terminates an approved abatement plan, he shall provide written notice of such action by certified mail to the responsible person and any person who participated in the action.

**B.** Any person who participated in the action before the secretary and who is adversely affected by the action listed in Subsection A of 20.6.2.4114 NMAC may file a petition requesting a review before the commission.

**C.** The petition shall be made in writing to the commission and shall be filed with the commission's secretary within thirty (30) days after receiving notice of the secretary's action. The petition shall specify the portions of the action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered to the secretary, and to the applicant or permittee if the petitioner is not the applicant or

permittee, and attach a copy of the action for which review is sought. Unless a timely petition for hearing is made, the secretary's action is final.

**D.** The proceedings before the commission shall be conducted as provided in the commission's adjudicatory procedures, 20 NMAC 1.3.

**E.** The cost of the court reporter for the hearing shall be paid by the petitioner.

**F.** The appeal provisions do not relieve the owner, operator or responsible person of their obligations to comply with any federal or state laws or regulations.

[12-1-95, 11-15-96; 20.6.2.4114 NMAC - Rn, 20 NMAC 6.2.IV.4114, 1-15-01; A, 7-16-06; A, 12-21-18]

#### **20.6.2.4115 COURT REVIEW OF COMMISSION DECISIONS:**

Court review of commission decisions shall be as provided by law.

[12-1-95; 20.6.2.4115 NMAC - Rn, 20 NMAC 6.2.IV.4115, 1-15-01]

#### **20.6.2.4116-20.6.2.4999 [RESERVED]**

[12-1-95; 20.6.2.4116 - 20.6.2.4999 NMAC - Rn, 20 NMAC 6.2.IV.4116-5100, 1-15-01]

#### **20.6.2.5000 UNDERGROUND INJECTION CONTROL:**

[12-1-95; 20.6.2.5000 NMAC - Rn, 20 NMAC 6.2.V, 1-15-01]

#### **20.6.2.5001 PURPOSE:**

The purpose of 20.6.2.5000 through 20.6.2.5399 NMAC controlling discharges from underground injection control wells is to protect all ground water of the state of New Mexico which has an existing concentration of 10,000 mg/l or less TDS, for present and potential future use as domestic and agricultural water supply, and to protect those segments of surface waters which are gaining because of ground water inflow for uses designated in the New Mexico water quality standards. 20.6.2.5000 through 20.6.2.5399 NMAC include notification requirements, and requirements for discharges directly into the subsurface through underground injection control wells.

[20.6.2.5001 NMAC - N, 12-1-01; A, 8-31-15]

#### **20.6.2.5002 UNDERGROUND INJECTION CONTROL WELL CLASSIFICATIONS:**

**A.** Underground injection control wells include the following.

(1) Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.

(2) Any septic tank or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste.

(3) Any subsurface distribution system, cesspool or other well which is used for the injection of wastes.

**B.** Underground injection control wells are classified as follows:

(1) Class I wells inject fluids beneath the lowermost formation that contains 10,000 milligrams per liter or less TDS. Class I hazardous or radioactive waste injection wells inject fluids containing any hazardous or radioactive waste as defined in 74-4-3 and 74-4A-4 NMSA 1978 or 20.4.1.200 NMAC (incorporating 40 C.F.R. Section 261.3), including any combination of these wastes. Class I non-hazardous waste injection wells inject non-hazardous and non-radioactive fluids, and they inject naturally-occurring radioactive material (NORM) as provided by 20.3.1.1407 NMAC.

(2) Class II wells inject fluids associated with oil and gas recovery;

(3) Class III wells inject fluids for extraction of minerals or other natural resources, including sulfur, uranium, metals, salts or potash by in situ extraction. This classification includes only in situ production from ore bodies that have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.

(4) Class IV wells inject fluids containing any radioactive or hazardous waste as defined in 74-4-3 and 74-4A-4 NMSA 1978, including any combination of these wastes, above or into a formation that contains 10,000 mg/l or less TDS.

(5) Class V wells inject a variety of fluids and are those wells not included in Class I, II, III or IV. Types of Class V wells include, but are not limited to, the following:

**(a)** domestic liquid waste injection wells:

(i) domestic liquid waste disposal wells used to inject liquid waste volumes greater than that regulated by 20.7.3 NMAC through subsurface fluid distribution systems or vertical wells;

(ii) septic system wells used to emplace liquid waste volumes greater than that regulated by 20.7.3 NMAC into the subsurface, which are comprised of a septic tank and subsurface fluid distribution system;

**(iii)** large capacity cesspools used to inject liquid waste volumes greater than that regulated by 20.7.3 NMAC, including drywells that sometimes have an open bottom or perforated sides;

**(b)** industrial waste injection wells:

**(i)** air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling;

**(ii)** dry wells used for the injection of wastes into a subsurface formation;

**(iii)** injection wells associated with the recovery of geothermal energy for heating, aquaculture and production of electrical power;

**(iv)** stormwater drainage wells used to inject storm runoff from the surface into the subsurface;

**(v)** motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities;

**(vi)** car wash waste disposal wells used to inject fluids from motor vehicle washing activities;

**(c)** mining injection wells:

**(i)** stopes leaching wells used for solution mining of conventional mines;

**(ii)** brine injection wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts;

**(iii)** backfill wells used to inject a mixture of water and sand, mill tailings or other solids into mined out portions of subsurface mines whether water injected is a radioactive waste or not;

**(iv)** injection wells used for in situ recovery of lignite, coal, tar sands, and oil shale;

**(d)** ground water management injection wells:

**(i)** ground water remediation injection wells used to inject contaminated ground water that has been treated to ground water quality standards;

**(ii)** in situ ground water remediation wells used to inject a fluid that facilitates vadose zone or ground water remediation.

(iii) recharge wells used to replenish the water in an aquifer, including use to reclaim or improve the quality of existing ground water;

(iv) barrier wells used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality;

(v) subsidence control wells (not used for purposes of oil or natural gas production) used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(vi) wells used in experimental technologies;

(e) agricultural injection wells - drainage wells used to inject fluids into ground water to prevent the intrusion of saline or contaminated water into ground water of better quality.

[20.6.2.5002 NMAC - N, 12-1-01; A, 8-1-14; A, 8-31-15; A, 12-21-18]

#### **20.6.2.5003 NOTIFICATION AND GENERAL OPERATION REQUIREMENTS FOR ALL UNDERGROUND INJECTION CONTROL WELLS:**

All operators of underground injection control wells, except those wells regulated under the Oil and Gas Act, the Geothermal Resources Development Act, and the Surface Mining Act, shall:

**A.** for existing underground injection control wells, submit to the secretary the information enumerated in Subsection C of 20.6.2.1201 NMAC of this part; provided, however, that if the information in Subsection C of 20.6.2.1201 NMAC has been previously submitted to the secretary and acknowledged by him, the information need not be resubmitted; and

**B.** operate and continue to operate in conformance with 20.6.2.1 through 20.6.2.5399 NMAC;

**C.** for new underground injection control wells, submit to the secretary the information enumerated in Subsection C of 20.6.2.1201 NMAC of this part at least 120 days prior to well construction.

[9-20-82, 12-1-95; 20.6.2.5300 NMAC - Rn, 20 NMAC 6.2.V.5300, 1-15-01; 20.6.2.5003 NMAC - Rn, 20.6.2.5300 NMAC, 12-1-01; A, 12-1-01; A, 9-15-02; A, 8-31-15; A, 12-21-18]

#### **20.6.2.5004 PROHIBITED UNDERGROUND INJECTION CONTROL ACTIVITIES AND WELLS:**

**A.** No person shall perform the following underground injection activities nor operate the following underground injection control wells.

**(1)** The injection of fluids into a motor vehicle waste disposal well is prohibited. Motor vehicle waste disposal wells are prohibited. Any person operating a new motor vehicle waste disposal well (for which construction began after April 5, 2000) must close the well immediately. Any person operating an existing motor vehicle waste disposal well must cease injection immediately and must close the well by December 31, 2002, except as provided in this subsection.

**(2)** The injection of fluids into a large capacity cesspool is prohibited. Large capacity cesspools are prohibited. Any person operating a new large capacity cesspool (for which construction began after April 5, 2000) must close the cesspool immediately. Any person operating an existing large capacity cesspool must cease injection immediately and must close the cesspool by December 31, 2002.

**(3)** The injection of any hazardous or radioactive waste into a well is prohibited, except as provided in 20.6.2.5300 through 20.6.2.5399 NMAC or this subsection.

**(a)** Class I radioactive waste injection wells are prohibited, except naturally-occurring radioactive material (NORM) regulated under 20.3.1.1407 NMAC is allowed as a Class I non-hazardous waste injection well pursuant to Paragraph (1) of Subsection B of 20.6.2.5002 NMAC.

**(b)** Class IV wells are prohibited, except for wells re-injecting treated ground water into the same formation from which it was drawn as part of a removal or remedial action if the injection has prior approval from the environmental protection agency (EPA) or the department under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA).

**(4)** Barrier wells, drainage wells, recharge wells, return flow wells, and motor vehicle waste disposal wells are prohibited, except when the discharger can demonstrate that the discharge will not adversely affect the health of persons, and

**(a)** the injection fluid does not contain a constituent or exhibit a physical parameter (which could include pH, redox condition or temperature) which may cause an exceedance at any place of present or reasonable foreseeable future use of any primary state drinking water maximum contaminant level as specified in the water supply regulations, "Drinking Water" (20.7.10 NMAC), adopted by the environmental improvement board under the Environmental Improvement Act or the standard of 20.6.2.3103 NMAC, whichever is more stringent;

**(b)** the discharger can demonstrate that the injection will result in an overall or net improvement in water quality as determined by the secretary.

**B.** Closure of prohibited underground injection control wells shall be in accordance with 20.6.2.5005 and 20.6.2.5209 NMAC.

[20.6.2.5004 NMAC - N, 12-1-01; A, 8-31-15; A, 12-21-18]

**20.6.2.5005 PRE-CLOSURE NOTIFICATION AND CLOSURE REQUIREMENTS:**

**A.** Any person proposing to close a Class I, III, IV or V underground injection control well must submit pre-closure notification to the department at least 30 days prior to closure. Pre-closure notification must include the following information:

- (1) Name of facility.
- (2) Address of facility.
- (3) Name of Owner/Operator.
- (4) Address of Owner/Operator.
- (5) Contact Person.
- (6) Phone Number.
- (7) Type of Well(s).
- (8) Number of Well(s).
- (9) Well Construction (e.g. drywell, improved sinkhole, septic tank, leachfield, cesspool, other...).
- (10) Type of Discharge.
- (11) Average Flow (gallons per day).
- (12) Year of Well Construction.
- (13) Proposed Well Closure Activities (e.g. sample fluids/sediment, appropriate disposal of remaining fluids/sediments, remove well and any contaminated soil, clean out well, install permanent plug, conversion to other type well, ground water and vadose zone investigation, other).
- (14) Proposed Date of Well Closure.
- (15) Name of Preparer.
- (16) Date.

(17) Well plugging plan as submitted to the Office of the State Engineer pursuant to 19.27.4 NMAC.

B. Proposed well closure activities must be approved by the department prior to implementation.

[20.6.2.5005 NMAC - N, 12-1-01; A; 12-21-18]

**20.6.2.5006 DISCHARGE PERMIT REQUIREMENTS FOR CLASS V INJECTION WELLS:**

Class V injection wells must meet the requirements of Sections 20.6.2.3000 through 20.6.2.3999 NMAC and Sections 20.6.2.5000 through 20.6.2.5006 NMAC. Class V injection wells or surface impoundments constructed as recharge basins used to replenish the water in an aquifer, including use to reclaim or improve the quality of existing water must additionally provide documentation of compliance with 19.25.8 NMAC (Underground Storage and Recovery) and shall not be subject to the exemptions of 20.6.2.3105 NMAC.

[20.6.2.5006 NMAC - N, 12-1-01; A, 12-21-18]

**20.6.2.5007-20.6.2.5100 [RESERVED]**

[12-1-95; 20.6.2.5001 - 20.6.2.5100 NMAC - Rn, 20 NMAC 6.2.IV.4116-5100, 1-15-01; 20.6.2.5007 -20.6.2.5100 NMAC - Rn 20.6.2.5001 - 20.6.2.5100 NMAC, 12-1-01]

**20.6.2.5101 DISCHARGE PERMIT AND OTHER REQUIREMENTS FOR CLASS I WELLS AND CLASS III WELLS:**

A. Class I wells and Class III wells must meet the requirements of 20.6.2.5000 through 20.6.2.5399 NMAC in addition to other applicable requirements of the commission regulations. The secretary may also require that some Class IV and Class V wells comply with the requirements for Class I wells in 20.6.2.5000 through 20.6.2.5399 NMAC if the secretary determines that the additional requirements are necessary to prevent the movement of water contaminants from a specified injection zone into ground water having 10,000 mg/l or less TDS. No Class I well or Class III well may be approved which allows for movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to 20.6.2.5103 NMAC, or pursuant to a temporary designation as provided in Paragraph (2) of Subsection C of 20.6.2.5101 NMAC.

B. Operation of a Class I well or Class III well must be pursuant to a discharge permit meeting the requirements of 20.6.2.3000 through 20.6.2.3999 NMAC and 20.6.2.5000 through 20.6.2.5399 NMAC.

**C.** Discharge permits for Class I wells, or Class III wells affecting ground water of 10,000 mg/l or less TDS submitted for secretary approval shall:

**(1)** receive an aquifer designation if required in 20.6.2.5103 NMAC prior to discharge permit issuance; or

**(2)** for Class III wells only, address the methods or techniques to be used to restore ground water so that upon final termination of operations including restoration efforts, ground water at any place of withdrawal for present or reasonably foreseeable future use will not contain either concentrations in excess of the standards of 20.6.2.3103 NMAC or any toxic pollutant; issuance of a discharge permit or project discharge permit for Class III wells that provides for restoration of ground water in accordance with the requirements of this subsection shall substitute for the aquifer designation provisions of 20.6.2.5103 NMAC; the approval shall constitute a temporary aquifer designation for a mineral bearing or producing aquifer, or portion thereof, to allow injection as provided for in the discharge permit; such temporary designation shall expire upon final termination of operations including restoration efforts.

**D.** The exemptions from the discharge permit requirement listed in 20.6.2.3105 NMAC do not apply to underground injection control wells except as provided below:

**(1)** wells regulated by the energy conservation management division of the energy, minerals and natural resources department under the "Geothermal Resources Development Act";

**(2)** wells regulated by the mining and minerals division of the energy, minerals and natural resources department under the "Surface Mining Act";

**(3)** wells for the disposal of effluent from systems which are regulated under the "Liquid Waste Disposal and Treatment" regulations (20.7.3 NMAC) adopted by the environmental improvement board under the "Environmental Improvement Act".

**E.** Project permits for Class III wells.

**(1)** The secretary may consider a project discharge permit for Class III wells, if the wells are:

**(a)** within the same well field, facility site or similar unit;

**(b)** within the same aquifer and ore deposit;

**(c)** of similar construction;

**(d)** of the same purpose; and

**(e)** operated by a single owner or operator.

**(2)** A project discharge permit does not allow the discharger to commence injection in any individual operational area until the secretary approves an application for injection in that operational area (operational area approval).

**(3)** A project discharge permit shall:

**(a)** specify the approximate locations and number of wells for which operational area approvals are or will be sought with approximate time frames for operation and restoration (if restoration is required) of each area; and

**(b)** provide the information required under the following sections of this part, except for such additional site-specific information as needed to evaluate applications for individual operational area approvals: Subsection C of 20.6.2.3106, 20.6.2.3107, 20.6.2.5204 through 20.6.2.5209, and Subsection B of 20.6.2.5210 NMAC.

**(4)** Applications for individual operational area approval shall include the following:

**(a)** site-specific information demonstrating that the requirements of this part are met; and

**(b)** information required under 20.6.2.5202 through 20.6.2.5210 NMAC and not previously provided pursuant to Subparagraph (b) of Paragraph (3) of Subsection E of this section.

**(5)** Applications for project discharge permits and for operational area approval shall be processed in accordance with the same procedures provided for discharge permits under 20.6.2.3000 through 20.6.2.3114 NMAC, allowing for public notice on the project discharge permit and on each application for operational area approval pursuant to 20.6.2.3108 NMAC with opportunity for public hearing prior to approval or disapproval.

**(6)** The discharger shall comply with additional requirements that may be imposed by the secretary pursuant to this part on wells in each new operational area.

**F.** If the holder of a discharge permit for a Class I well, or Class III well submits an application for discharge permit renewal at least 120 days before discharge permit expiration, and the discharger is in compliance with his discharge permit on the date of its expiration, then the existing discharge permit for the same activity shall not expire until the application for renewal has been approved or disapproved. An application for discharge permit renewal must include and adequately address all of the information necessary for evaluation of a new discharge permit. Previously submitted materials may be included by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

**G.** Discharge permit signatory requirements: No discharge permit for a Class I well or Class III well may be issued unless:

**(1)** the application for a discharge permit has been signed as follows:

**(a)** for a corporation: by a principal executive officer of at least the level of vice-president, or a representative who performs similar policy-making functions for the corporation who has authority to sign for the corporation; or

**(b)** for a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

**(c)** for a municipality, state, federal, or other public agency: by either a principal executive officer who has authority to sign for the agency, or a ranking elected official; and

**(2)** all reports required by Class I hazardous waste injection well permits and other information requested by the director pursuant to a Class I hazardous waste injection well permit shall be signed by a person described in Paragraph (1) of this subsection, or by a duly authorized representative of that person; a person is a duly authorized representative only if:

**(a)** the authorization is made in writing by a person described in Paragraph (1) of this subsection;

**(b)** the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility; (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

**(c)** the written authorization is submitted to the director.

**(3)** *Changes to authorization.* If an authorization under Paragraph (2) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Paragraph (2) of this subsection must be submitted to the director prior to or together with any reports, information, or applications to be signed by an authorized representative.

**(4)** The signature on an application, report or other information requested by the director must be directly preceded by the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant

penalties for submitting false information including the possibility of fine and imprisonment."

**H.** Transfer of Class I non-hazardous waste injection well and Class III well discharge permits.

**(1)** The transfer provisions of 20.6.2.3111 NMAC do not apply to a discharge permit for a Class I non-hazardous waste injection well or Class III well.

**(2)** A Class I non-hazardous waste injection well or Class III well discharge permit may be transferred if:

**(a)** the secretary receives written notice 30 days prior to the transfer date; and

**(b)** the secretary does not object prior to the proposed transfer date; the secretary may require modification of the discharge permit as a condition of transfer, and may require demonstration of adequate financial responsibility.

**(3)** The written notice required by Subparagraph (a) of Paragraph (2) of Subsection H above shall:

**(a)** have been signed by the discharger and the succeeding discharger, including an acknowledgement that the succeeding discharger shall be responsible for compliance with the discharge permit upon taking possession of the facility; and

**(b)** set a specific date for transfer of discharge permit responsibility, coverage and liability; and

**(c)** include information relating to the succeeding discharger's financial responsibility required by Paragraph (17) of Subsection B of 20.6.2.5210 NMAC.

**I.** Modification or termination of a discharge permit for a Class I well or Class III well: If data submitted pursuant to any monitoring requirements specified in the discharge permit or other information available to the secretary indicate that this part are being or may be violated, the secretary may require modification or, if it is determined by the secretary that the modification may not be adequate, may terminate a discharge permit for a Class I well, or Class III well or well field, that was approved pursuant to the requirements of this under 20.6.2.5000 through 20.6.2.5399 NMAC for the following causes:

**(1)** noncompliance by the discharger with any condition of the discharge permit; or

**(2)** the discharger's failure in the discharge permit application or during the discharge permit review process to disclose fully all relevant facts, or the discharger's misrepresentation of any relevant facts at any time; or

**(3)** a determination that the permitted activity may cause a hazard to public health or undue risk to property and can only be regulated to acceptable levels by discharge permit modification or termination.

[9-20-82, 12-1-95, 11-15-96; 20.6.2.5101 NMAC - Rn, 20 NMAC 6.2.V.5101, 1-15-01; A, 12-1-01; A, 9-15-02; A, 8-1-14; A, 8-31-15; A, 12-21-18]

### **20.6.2.5102 PRE-CONSTRUCTION REQUIREMENTS FOR CLASS I WELLS AND CLASS III WELLS:**

#### **A. Discharge permit requirement for Class I wells.**

**(1)** Prior to construction of a Class I well or conversion of an existing well to a Class I well, an approved discharge permit is required that incorporates the requirements of 20.6.2.5000 through 20.6.2.5399 NMAC, except Subsection C of 20.6.2.5210 NMAC. As a condition of discharge permit issuance, the operation of the Class I well under the discharge permit will not be authorized until the secretary has:

**(a)** reviewed the information submitted for his consideration pursuant to Subsection C of 20.6.2.5210 NMAC; and

**(b)** determined that the information submitted demonstrates that the operation will be in compliance with this part and the discharge permit.

**(2)** If conditions encountered during construction represent a substantial change which could adversely impact ground water quality from those anticipated in the discharge permit, the secretary shall require a discharge permit modification or may terminate the discharge permit pursuant to Subsection I of 20.6.2.5101 NMAC, and the secretary shall publish public notice and allow for comments and hearing in accordance with 20.6.2.3108 NMAC.

#### **B. Notification requirement for Class III wells.**

**(1)** The discharger shall notify the secretary in writing prior to the commencement of drilling or construction of wells which are expected to be used for in situ extraction, unless the discharger has previously received a discharge permit or project discharge permit for the Class III well operation.

**(a)** Any person proposing to drill or construct a new Class III well or well field, or convert an existing well to a Class III well, shall file plans, specifications and pertinent documents regarding such construction or conversion, with the ground water quality bureau of the environment department.

**(b)** Plans, specifications, and pertinent documents required by this section, if pertaining to carbon dioxide facilities, or facilities for the exploration, production,

refinement or pipeline transmission of oil and natural gas, shall be filed instead with the oil conservation division of the energy, minerals and natural resources department.

**(c)** Plans, specifications and pertinent documents required to be filed under this section must be filed 90 days prior to the planned commencement of construction or conversion.

**(d)** The following plans, specifications and pertinent documents shall be provided with the notification:

**(i)** information required in Subsection C of 20.6.2.3106 NMAC;

**(ii)** a map showing the Class III wells which are to be constructed; the map must also show, in so far as is known or is reasonably available from the public records, the number, name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads, that are within the expected area of review (20.6.2.5202 NMAC) of the Class III well or well field perimeter;

**(iii)** maps and cross-sections indicating the general vertical and lateral limits of all ground water having 10,000 mg/l or less TDS within one mile of the site, the position of such ground water within this area relative to the injection formation, and the direction of water movement, where known, in each zone of ground water which may be affected by the proposed injection operation;

**(iv)** maps and cross-sections detailing the geology and geologic structure of the local area, including faults, if known or suspected;

**(v)** the proposed formation testing program to obtain an analysis or description, whichever the secretary requires, of the chemical, physical, and radiological characteristics of, and other information on, the receiving formation;

**(vi)** the proposed stimulation program;

**(vii)** the proposed injection procedure;

**(viii)** schematic or other appropriate drawings of the surface and subsurface construction details of the well;

**(ix)** proposed construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program;

**(x)** information, as described in Paragraph (17) of Subsection B of 20.6.2.5210 NMAC, showing the ability of the discharger to undertake measures necessary to prevent ground water contamination; and

**(xi)** a plugging and abandonment plan showing that the requirements of Subsections B, C and D of 20.6.2.5209 NMAC will be met.

**(2)** Prior to construction, the discharger shall have received written notice from the secretary that the information submitted under item 10 of Subparagraph (d) of Paragraph (1) of Subsection B of 20.6.2.5102 NMAC is acceptable. Within 30 days of submission of the above information the secretary shall notify the discharger that the information submitted is acceptable or unacceptable.

**(3)** Prior to construction, the secretary shall review said plans, specifications and pertinent documents and shall comment upon their adequacy of design for the intended purpose and their compliance with pertinent sections of this part. Review of plans, specifications and pertinent documents shall be based on the criteria contained in 20.6.2.5205, Subsection E of 20.6.2.5209, and Subparagraph (d) of Paragraph (1) of Subsection B of 20.6.2.5102 NMAC.

**(4)** Within 30 days of receipt, the secretary shall issue public notice, consistent with Subsection B of 20.6.2.3108 NMAC, that notification was submitted pursuant to Subsection B of 20.6.2.5102 NMAC. The secretary shall allow a period of at least 30 days during which comments may be submitted. The public notice shall include:

- (a)** name and address of the proposed discharger;
- (b)** location of the discharge;
- (c)** brief description of the proposed activities;
- (d)** statement of the public comment period; and
- (e)** address and telephone number at which interested persons may obtain further information.

**(5)** The secretary shall comment in writing upon the plans and specifications within 60 days of their receipt by the secretary.

**(6)** Within 30 days after completion, the discharger shall submit written notice to the secretary that the construction or conversion was completed in accordance with submitted plans and specifications, or shall submit as-built plans detailing changes from the originally submitted plans and specifications.

(7) In the event a discharge permit application is not submitted or approved, all wells which may cause ground water contamination shall be plugged and abandoned by the applicant pursuant to the plugging and abandonment plan submitted in the notification; these measures shall be consistent with any comments made by the secretary in his review. If the wells are not to be permanently abandoned and the discharger demonstrates that plugging at this time is unnecessary to prevent ground water contamination, plugging pursuant to the notification is not required. Financial responsibility established pursuant to 20.6.2.5000 through 20.6.2.5299 NMAC will remain in effect until the discharger permanently abandons and plugs the wells in accordance with the plugging and abandonment plan.

[9-20-82, 12-24-87, 12-1-95; 20.6.2.5102 NMAC - Rn, 20 NMAC 6.2.V.5102, 1-15-01; A, 12-1-01; A, 8-31-15; A, 12-21-18]

### **20.6.2.5103 DESIGNATED AQUIFERS FOR CLASS I WELLS AND CLASS III WELLS:**

**A.** Any person may file a written petition with the secretary seeking commission consideration of certain aquifers or portions of aquifers as "designated aquifers". The purpose of aquifer designation is:

(1) for Class I wells, to allow as a result of injection, the addition of water contaminants into ground water, which before initiation of injection has a concentration between 5,000 and 10,000 mg/l TDS; or

(2) for Class III wells, to allow as a result of injection, the addition of water contaminants into ground water, which before initiation of injection has a concentration between 5,000 and 10,000 mg/l TDS, and not provide for restoration or complete restoration of that ground water pursuant to Paragraph (2) of Subsection C of 20.6.2.5101 NMAC.

**B.** The applicant shall identify (by narrative description, illustrations, maps or other means) and describe such aquifers, in geologic and geometric terms (such as vertical and lateral limits and gradient) which are clear and definite.

**C.** An aquifer or portion of an aquifer may be considered for aquifer designation under Subsection A of this section, if the applicant demonstrates that the following criteria are met:

(1) it is not currently used as a domestic or agricultural water supply; and

(2) there is no reasonable relationship between the economic and social costs of failure to designate and benefits to be obtained from its use as a domestic or agricultural water supply because:

**(a)** it is situated at a depth or location which makes recovery of water for drinking or agricultural purposes economically or technologically impractical at present and in the reasonably foreseeable future; or

**(b)** it is already so contaminated that it would be economically or technologically impractical to render that water fit for human consumption or agricultural use at present and in the reasonably foreseeable future.

**D.** The petition shall state the extent to which injection would add water contaminants to ground water and why the proposed aquifer designation should be approved. For Class III wells, the applicant shall state whether and to what extent restoration will be carried out.

**E.** The secretary shall either transmit the petition to the commission within 60 recommending that a public hearing be held, or refuse to transmit the petition and notify the applicant in writing citing reasons for such refusal.

**F.** If the secretary transmits the petition to the commission, the commission shall review the petition and determine to either grant or deny a public hearing on the petition. If the commission grants a public hearing, it shall issue a public notice, including the following information:

- (1)** name and address of the applicant;
- (2)** location, depth, TDS, areal extent, general description and common name or other identification of the aquifer for which designation is sought;
- (3)** nature of injection and extent to which the injection will add water contaminants to ground water; and
- (4)** address and telephone number at which interested persons may obtain further information.

**G.** If the secretary refuses to transmit the petition to the commission, then the applicant may appeal the secretary's disapproval of the proposed aquifer designation to the commission within 30 days, and address the issue of whether the proposed aquifer designation meets the criteria of Subsections A, B, C, and D of this section.

**H.** If the commission grants a public hearing, the hearing shall be held in accordance with the provisions of Section 74-6-6 NMSA 1978.

**I.** If the commission does not grant a public hearing on the petition, the aquifer designation shall not be approved.

**J.** After public hearing and consideration of all facts and circumstances included in Section 74-6-4(D) NMSA 1978, the commission may authorize the secretary to approve

a proposed designated aquifer if the commission determines that the criteria of Subsections A, B, C, and D of this section are met.

**K.** Approval of a designated aquifer petition does not alleviate the applicant from complying with other sections of 20.6.2.5000 through 20.6.2.5399 NMAC, or of the responsibility for protection, pursuant to this part, of other nondesignated aquifers containing ground water having 10,000 mg/l or less TDS.

**L.** Persons other than the petitioner may add water contaminants as a result of injection into an aquifer designated for injection, provided the person receives a discharge permit pursuant to the requirements of 20.6.2.5000 through 20.6.2.5399 NMAC. Persons, other than the original petitioner or his designee, requesting addition of water contaminants as a result of injection into aquifers previously designated only for injection with partial restoration shall file a petition with the commission pursuant to the requirements of Subsections A, B, C, and D of this section.

[9-20-82, 12-1-95; 20.6.2.5103 NMAC - Rn, 20 NMAC 6.2.V.5103, 1-15-01; A, 12-1-01; A, 8-31-15]

#### **20.6.2.5104 WAIVER OF REQUIREMENT BY SECRETARY FOR CLASS I WELLS AND CLASS III WELLS:**

**A.** Where a Class I well or a Class III well or well field, does not penetrate, or inject into or above, and which will not affect, ground water having 10,000 mg/l of less TDS, the secretary may:

**(1)** issue a discharge permit for a well or well field with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required by 20.6.2.5000 through 20.6.2.5399 NMAC; or

**(2)** for Class III wells only, issue a discharge permit pursuant to the requirements of 20.6.2.3000 through 20.6.2.3114 NMAC.

**B.** Authorization of a reduction in requirements under Subsection A of this section shall be granted only if injection will not result in an increased risk of movement of fluids into ground water having 10,000 mg/l or less TDS, except for fluid movement approved pursuant to 20.6.2.5103 NMAC.

[9-20-82, 12-1-95; 20.6.2.5104 NMAC - Rn & A, 20 NMAC 6.2.V.5104, 1-15-01; A, 12-1-01; A, 8-31-15]

#### **20.6.2.5105-20.6.2.5199 [RESERVED]**

[12-1-95; 20.6.2.5105 - 20.6.2.5199 NMAC - Rn, 20 NMAC 6.2.V.5105-5199, 1-15-01]

**20.6.2.5200 TECHNICAL CRITERIA AND PERFORMANCE STANDARDS FOR CLASS I WELLS AND CLASS III WELLS:**

[12-1-95; 20.6.2.5200 NMAC - Rn, 20 NMAC 6.2.V.5200, 1-15-01; A, 12-1-01; A, 8-31-15]

**20.6.2.5201 PURPOSE:**

20.6.2.5200 through 20.6.2.5210 NMAC provide the technical criteria and performance standards for Class I wells and Class III wells. (20.6.2.5300 through 20.6.2.5399 NMAC provide certain additional technical and performance standards for Class I hazardous waste injection wells.)

[9-20-82; 20.6.2.5201 NMAC - Rn, 20 NMAC 6.2.V.5201, 1-15-01; A, 12-1-01; A, 8-31-15; A, 12-21-18]

**20.6.2.5202 AREA OF REVIEW:**

**A.** The area of review is the area surrounding a Class I non-hazardous waste injection well or Class III well or the area within and surrounding a well field that is to be examined to identify possible fluid conduits, including the location of all known wells and fractures which may penetrate the injection zone.

**B.** The area of review for each Class I non-hazardous waste injection well, or each Class III well or well field shall be an area which extends:

- (1) two and one half (2 1/2) miles from the well, or well field; or
- (2) one-quarter (1/4) mile from a well or well field where the area of review is calculated to be zero pursuant to Paragraph (3) of Subsection B below, or where the well field production at all times exceeds injection to produce a net withdrawal; or
- (3) a suitable distance, not less than one-quarter (1/4) mile, proposed by the discharger and approved by the secretary, based upon a mathematical calculation to determine the area of review; computations to determine the area of review may be based upon the parameters listed below and should be calculated for an injection time period equal to the expected life of the Class I non-hazardous waste injection well, or Class III well or well field; the following modified Theis equation illustrates one form which the mathematical model may take to compute the area of review; the discharger must demonstrate that any equation or simulation used to compute the area of review applies to the hydrogeologic conditions in the area of review.

Where:

$$4BKH (H_w - H_{bo}) \times S_p G_b$$

$r$  = Radius of the area of review for a Class I non-hazardous waste injection well or Class III well (length)

$K$  = Hydraulic conductivity of the injection zone (length/time)

$H$  = Thickness of the injection zone (length)

$t$  = Time of injection (time)

$S$  = Storage coefficient (dimensionless)

$Q$  = Injection rate (volume/time)

$H_{bo}$  = Observed original hydrostatic head of injection zone (length) measured from the base of the lowest aquifer containing ground water of 10,000 mg/l or less TDS

$H_w$  = Hydrostatic head of underground source of drinking water (length) measured from the base of the lowest aquifer containing ground water of 10,000 mg/l or less TDS

$S_p G_b$  = Specific gravity of fluid in the injection zone (dimensionless)

$B$  = 3.142 (dimensionless)

**(4)** The above equation is based on the following assumptions:

**(a)** the injection zone is homogenous and isotropic;

**(b)** the injection zone has infinite areal extent;

**(c)** the Class I non-hazardous waste injection well or Class III well penetrates the entire thickness of the injection zone;

**(d)** the well diameter is infinitesimal compared to "r" when injection time is longer than a few minutes; and

**(e)** the emplacement of fluid into the injection zone creates an instantaneous increase in pressure.

**C.** The secretary shall require submittal by the discharger of information regarding the area of review including the information to be considered by the secretary in Subsection B of Section 20.6.2.5210 NMAC.

[9-20-82, 12-1-95; 20.6.2.5202 NMAC - Rn, 20 NMAC 6.2.V.5202, 1-15-01; A, 12-1-01; A, 12-21-18]

### **20.6.2.5203 CORRECTIVE ACTION FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:**

**A.** Persons applying for approval of a Class I non-hazardous waste injection well, or a Class III well or well field shall identify the location of all known wells, drill holes, shafts, stopes and other conduits within the area of review which may penetrate the injection zone, in so far as is known or is reasonably available from the public records. For such wells or other conduits which are improperly sealed, completed, or abandoned, or otherwise provide a pathway for the migration of contaminants, the discharger shall address in the proposed discharge plan such steps or modifications (corrective action) as are necessary to prevent movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC.

**B.** Prior to operation, or continued operation of a well for which corrective action is required pursuant to Subsections A or D of Section 20.6.2.5203 NMAC, the discharger must demonstrate that:

(1) all required corrective action has been taken; or

(2) injection pressure is to be limited so that pressure in the injection zone does not cause fluid movement through any well or other conduit within the area of review into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC; this pressure limitation may be removed after all required corrective action has been taken.

**C.** In determining the adequacy of corrective action proposed in the discharge permit application, the following factors will be considered by the secretary:

(1) chemical nature and volume of the injected fluid;

(2) chemical nature of native fluids and by-products of injection;

(3) geology and hydrology;

(4) history of the injection and production operation;

(5) completion and plugging records;

(6) abandonment procedures in effect at the time a well, drill hole, or shaft was abandoned; and

(7) hydraulic connections with waters having 10,000 mg/l or less TDS

**D.** In the event that, after approval for a Class I non-hazardous waste injection well or Class III well has been granted, additional information is submitted or it is discovered

that a well or other conduit within the applicable area of review might allow movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC, the secretary may require action in accordance with Subsection I of Section 20.6.2.5101 and Subsection B Section 20.6.2.5203 NMAC.

[9-20-82, 12-1-95; 20.6.2.5203 NMAC - Rn, 20 NMAC 6.2.V.5203, 1-15-01; A, 12-1-01]

#### **20.6.2.5204 MECHANICAL INTEGRITY FOR CLASS I WELLS AND CLASS III WELLS:**

**A.** A Class I well or Class III well has mechanical integrity if there is no detectable leak in the casing, tubing or packer which the secretary considers to be significant at maximum operating temperature and pressure; and no detectable conduit for fluid movement out of the injection zone through the well bore or vertical channels adjacent to the well bore which the secretary considers to be significant.

**B.** Prior to well injection and at least once every five years or more frequently as the secretary may require for good cause during the life of the well, the discharger must demonstrate that a Class I well or Class III well has mechanical integrity. The demonstration shall be made through use of the following tests:

**(1)** for evaluation of leaks:

**(a)** monitoring of annulus pressure (after an initial pressure test with liquid or gas before operation commences); or

**(b)** pressure test with liquid or gas;

**(2)** for determination of conduits for fluid movement:

**(a)** the results of a temperature or noise log; or

**(b)** where the nature of the casing used for Class III wells precludes use of these logs, cementing records and an appropriate monitoring program as the secretary may require which will demonstrate the presence of adequate cement to prevent such movement;

**(3)** other appropriate tests as the secretary may require.

**C.** The secretary may consider the use by the discharger of equivalent alternative test methods to determine mechanical integrity. The discharger shall submit information on the proposed test and all technical data supporting its use. The secretary may approve the request if it will reliably demonstrate the mechanical integrity of wells for which its use is proposed. For Class III wells this demonstration may be made by submission of adequate monitoring data after the initial mechanical integrity tests.

**D.** In conducting and evaluating the tests enumerated in this section or others to be allowed by the secretary, the discharger and the secretary shall apply methods and standards generally accepted in the affected industry. When the discharger reports the results of mechanical integrity tests to the secretary, he shall include a description of the test(s), the method(s) used, and the test results. In making an evaluation, the secretary's review shall include monitoring and other test data submitted since the previous evaluation.

[9-20-82, 12-1-95; 20.6.2.5204 NMAC - Rn, 20 NMAC 6.2.V.5204, 1-15-01; A, 12-1-01; A, 8-31-15]

### **20.6.2.5205 CONSTRUCTION REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:**

**A.** General Construction Requirements Applicable to Class I non-hazardous waste injection wells and Class III wells.

**(1)** Construction of all Class I non-hazardous waste injection wells and all new Class III wells shall include casing and cementing. Prior to well injection, the discharger shall demonstrate that the construction and operation of:

**(a)** Class I non-hazardous waste injection wells will not cause or allow movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC;

**(b)** Class III wells will not cause or allow movement of fluids out of the injection zone into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC.

**(2)** The construction of each newly drilled well shall be designed for the proposed life expectancy of the well.

**(3)** In determining if the discharger has met the construction requirements of this section and has demonstrated adequate construction, the secretary shall consider the following factors:

**(a)** depth to the injection zone;

**(b)** injection pressure, external pressure, annular pressure, axial loading, and other stresses that may cause well failure;

**(c)** hole size;

**(d)** size and grade of all casing strings, including wall thickness, diameter, nominal weight, length, joint specification, and construction material;

**(e)** type and grade of cement;

**(f)** rate, temperature, and volume of injected fluid;

**(g)** chemical and physical characteristics of the injected fluid, including corrosiveness, density, and temperature;

**(h)** chemical and physical characteristics of the formation fluids including pressure and temperature;

**(i)** chemical and physical characteristics of the receiving formation and confining zones including lithology and stratigraphy, and fracture pressure; and

**(j)** depth, thickness and chemical characteristics of penetrated formations which may contain ground water.

**(4)** To demonstrate adequate construction, appropriate logs and other tests shall be conducted during the drilling and construction of new Class I non-hazardous waste injection wells or Class III wells or during work-over of existing wells in preparation for reactivation or for change to injection use. A descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the secretary for review prior to well injection. The logs and tests appropriate to each type of injection well shall be based on the intended function, depth, construction and other characteristics of the well, availability of similar data in the area of the drilling site and the need for additional information that may arise from time to time as the construction of the well progresses.

**(a)** The discharger shall demonstrate through use of sufficiently frequent deviation checks, or another equivalent method, that a Class I non-hazardous waste injection well or Class III well drilled using a pilot hole then enlarged by reaming or another method, does not allow a vertical avenue for fluid migration in the form of diverging holes created during drilling.

**(b)** The secretary may require use by the discharger of the following logs to assist in characterizing the formations penetrated and to demonstrate the integrity of the confining zones and the lack of vertical avenues for fluid migration:

**(i)** for casing intended to protect ground water having 10,000 mg/l or less TDS: resistivity, spontaneous potential, and caliper logs before the casing is installed; and a cement bond, or temperature log after the casing is set and cemented.

**(ii)** for intermediate and long strings of casing intended to facilitate injection: resistivity, spontaneous potential, porosity, and gamma ray logs before the casing is installed; and fracture finder or spectral logs; and a cement bond or temperature log after the casing is set and cemented.

**(5)** In addition to the requirements of Section 20.6.2.5102 NMAC, the discharger shall provide notice prior to commencement of drilling, cementing and casing, well logging, mechanical integrity tests, and any well work-over to allow opportunity for on-site inspection by the secretary or his representative.

**B.** Additional construction requirements for Class I non-hazardous waste injection wells.

**(1)** All Class I non-hazardous waste injection wells shall be sited in such a manner that they inject into a formation which is beneath the lowermost formation containing, within one quarter mile of the well bore, ground water having 10,000 mg/l TDS or less except as approved pursuant to Section 20.6.2.5103 NMAC.

**(2)** All Class I non-hazardous waste injection wells shall be cased and cemented by circulating cement to the surface.

**(3)** All Class I non-hazardous waste injection wells, except those municipal wells injecting noncorrosive wastes, shall inject fluids through tubing with a packer set in the annulus immediately above the injection zone, or tubing with an approved fluid seal as an alternative. The tubing, packer, and fluid seal shall be designed for the expected length of service.

**(a)** The use of other alternatives to a packer may be allowed with the written approval of the secretary. To obtain approval, the operator shall submit a written request to the secretary which shall set forth the proposed alternative and all technical data supporting its use. The secretary may approve the request if the alternative method will reliably provide a comparable level of protection to ground water. The secretary may approve an alternative method solely for an individual well or for general use.

**(b)** In determining the adequacy of the specifications proposed by the discharger for tubing and packer, or a packer alternative, the secretary shall consider the following factors:

- (i)** depth of setting;
- (ii)** characteristics of injection fluid (chemical nature or characteristics, corrosiveness, and density);
- (iii)** injection pressure;
- (iv)** annular pressure;
- (v)** rate, temperature and volume of injected fluid; and
- (vi)** size of casing.

**C. Additional construction requirements for Class III wells.**

**(1)** Where injection is into a formation containing ground water having 10,000 mg/l or less TDS, monitoring wells shall be completed into the injection zone and into the first formation above the injection zone containing ground water having 10,000 mg/l or less TDS which could be affected by the extraction operation. If ground water having 10,000 mg/l or less TDS below the injection zone could be affected by the extraction operation, monitoring of such ground water may be required. These wells shall be of sufficient number, located and constructed so as to detect any excursion of injection fluids, process byproducts, or formation fluids outside the extraction area or injection zone. The requirement for monitoring wells in aquifers designated pursuant to Section 20.6.2.5103 NMAC may be waived by the secretary, provided that the absence of monitoring wells does not result in an increased risk of movement of fluids into protected ground waters having 10,000 mg/l or less TDS.

**(2)** Where injection is into a formation which does not contain ground water having 10,000 mg/l or less TDS, no monitoring wells are necessary in the injection zone. However, monitoring wells may be necessary in adjoining zones with ground water having 10,000 mg/l or less TDS that could be affected by the extraction operation.

**(3)** In an area that the secretary determines is subject to subsidence or collapse, the required monitoring wells may be required to be located outside the physical influence of that area.

**(4)** In determining the adequacy of monitoring well location, number, construction and frequency of monitoring proposed by the discharger, the secretary shall consider the following factors:

- (a)** the local geology and hydrology;
- (b)** the operating pressures and whether a negative pressure gradient to the monitor well is being maintained;
- (c)** the nature and volume of injected fluid, formation water, and process by-products; and
- (d)** the number and spacing of Class III wells in the well field.

[9-20-82, 12-1-95; 20.6.2.5205 NMAC - Rn, 20 NMAC 6.2.V.5205, 1-15-01; A, 12-1-01]

**20.6.2.5206 OPERATING REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:**

**A.** General operating requirements applicable to Class I non-hazardous waste injection wells and Class III wells.

(1) The maximum injection pressure at the wellhead shall not initiate new fractures or propagate existing fractures in the confining zone, or cause the movement of injection or formation fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC.

(2) Injection between the outermost casing and the well bore is prohibited in a zone other than the authorized injection zone.

**B.** Additional operating requirements for Class I non-hazardous waste injection wells.

(1) Except during well stimulation, the maximum injection pressure shall not initiate new fractures or propagate existing fractures in the injection zone.

(2) Unless an alternative to a packer has been approved under Subparagraph (c) of Paragraph (3) of Subsection B of Section 20.6.2.5205 NMAC, the annulus between the tubing and the long string of casing shall be filled with a fluid approved by the secretary and a pressure, also approved by the secretary shall be maintained on the annulus.

**C.** Additional operating requirements for Class III wells: Initiation of new fractures or propagation of existing fractures in the injection zone will not be approved by the secretary as part of a discharge permit unless it is done during well stimulation and the discharger demonstrates:

(1) that such fracturing will not cause movement of fluids out of the injection zone into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC; and

(2) that the provisions of Subsection D of Section 20.6.2.3109 and Subsection C of Section 20.6.2.5101 NMAC for protection of ground water are met.

[9-20-82, 12-1-95; 20.6.2.5206 NMAC - Rn, 20 NMAC 6.2.V.5206, 1-15-01; A, 12-1-01; A, 12-21-18]

#### **20.6.2.5207 MONITORING REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:**

**A.** The discharger shall demonstrate mechanical integrity for each Class I non-hazardous waste injection well or Class III well at least once every five years during the life of the well pursuant to Section 20.6.2.5204 NMAC.

**B.** Additional monitoring requirements for Class I non-hazardous waste injection wells.

**(1)** The discharger shall provide analysis of the injected fluids at least quarterly or, if necessary, more frequently to yield data representative of their characteristics.

**(2)** Continuous monitoring devices shall be used to provide a record of injection pressure, flow rate, flow volume, and pressure on the annulus between the tubing and the long string of casing.

**(3)** The discharger shall provide wells within the area of review as required by the discharge permit to be used by the discharger to monitor pressure in, and possible fluid movement into, ground water having 10,000 mg/l or less TDS except for such ground waters designated pursuant to Section 20.6.2.5103 NMAC. This Section does not require monitoring wells for Class I non-hazardous waste injection wells unless monitoring wells are necessary due to possible flow paths within the area of review.

**C.** Additional monitoring requirements for Class III wells.

**(1)** The discharger shall provide an analysis or description, whichever the secretary requires, of the injected fluids at least quarterly or, if necessary, more frequently to yield representative data.

**(2)** The discharger shall perform:

**(a)** appropriate monitoring of injected and produced fluid volumes by whichever of the following methods the secretary requires:

**(i)** recording injection pressure and either flow rate or volume every two weeks; or

**(ii)** metering and daily recording of fluid volumes;

**(b)** monitoring every two weeks, or more frequently as the secretary determines, of the monitor wells, required in Subsection C of Section 20.6.2.5205 NMAC for:

**(i)** water chemistry parameters used to detect any migration from the injection zone;

**(ii)** fluid levels adjacent to the injection zone; and

**(c)** other necessary monitoring as the secretary for good cause may require to detect movement of fluids from the injection zone into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to Section 20.6.2.5103 NMAC.

**(3)** With the approval of the secretary, all Class III wells may be monitored on a well field basis by manifold monitoring rather than on an individual well basis. Manifold monitoring to determine the quality, pressure, and flow rate of the injected fluid may be approved in cases of facilities consisting of more than one Class III well, operating with a common manifold, provided that the discharger demonstrates that manifold monitoring is comparable to individual well monitoring.

[9-20-82, 12-1-95; 20.6.2.5207 NMAC - Rn, 20 NMAC 6.2.V.5207, 1-15-01; A, 12-1-01]

**20.6.2.5208 REPORTING REQUIREMENTS FOR CLASS I NON-HAZARDOUS WASTE INJECTION WELLS AND CLASS III WELLS:**

**A.** Reporting requirements for Class I non-hazardous waste injection wells.

**(1)** If a Class I non-hazardous waste injection well is found to be discharging or is suspected of discharging fluids into a zone or zones other than the permitted or authorized injection zone, the discharger shall within 24 hours notify the secretary of the circumstances and action taken. The discharger shall provide subsequent written reports as required by the secretary.

**(2)** The discharger shall provide reports quarterly to the secretary on:

**(a)** the physical, chemical and other relevant characteristics of injection fluids;

**(b)** monthly average, maximum and minimum values for injection pressure, flow rate and volume, and annular pressure; and

**(c)** the results of monitoring prescribed under Subsection B of Section 20.6.2.5207 NMAC.

**(3)** The discharger shall report, no later than the first quarterly report after completion, the results of:

**(a)** periodic tests of mechanical integrity as required in Sections 20.6.2.5204 and 20.6.2.5207 NMAC;

**(b)** any other test of the Class I non-hazardous waste injection well conducted by the discharger if required by the secretary;

**(c)** any well work-over; and

**(d)** any changes within the area of review which might impact subsurface conditions.

**B.** Reporting requirements for Class III wells.

(1) The discharger shall notify the secretary within 48 hours of the detection or suspected detection of a leachate excursion, and provide subsequent reports as required by the secretary.

(2) The discharger shall provide to the secretary:

(a) reports on required monitoring quarterly, or more frequently as required by the secretary; and

(b) results of mechanical integrity testing as required in Sections 20.6.2.5204 and 20.6.2.5207 NMAC and any other periodic tests required by the secretary; these results are to be reported no later than the first regular report after the completion of the test.

(3) Where manifold monitoring is permitted, monitoring results may be reported on a well field basis, rather than individual well basis.

**C. Report signatory requirements.**

(1) All reports submitted pursuant to this section shall be signed and certified as provided in Subsection G of Section 20.6.2.5101 NMAC, or by a duly authorized representative.

(2) For a person to be a duly authorized representative, authorization must:

(a) be made in writing by a signatory described in Paragraph (1) of Subsection G of Section 20.6.2.5101 NMAC;

(b) specify either an individual or a position having responsibility for the overall operation of that regulated facility or activity, such as the position of plant manager, operator of a well or well field, superintendent, or position of equivalent responsibility; and

(c) have been submitted to the secretary.

[9-20-82, 12-1-95; 20.6.2.5208 NMAC - Rn, 20 NMAC 6.2.V.5208, 1-15-01; A, 12-1-01]

**20.6.2.5209 PLUGGING AND ABANDONMENT FOR CLASS I WELLS AND CLASS III WELLS:**

**A.** The discharger shall submit as part of the discharge permit application, a plan for plugging and abandonment of a Class I well or a Class III well that meets the requirements of Subsection D of 20.6.2.3109, Subsection C of 20.6.2.5101, and 20.6.2.5005 NMAC for protection of ground water. If requested, a revised or updated abandonment plan shall be submitted for approval prior to closure. The obligation to

implement the plugging and abandonment plan as well as the requirements of the plan survives the termination or expiration of the permit.

**B.** Prior to abandonment of a well used in a Class I well or Class III well operation, the well shall be plugged in a manner which will not allow the movement of fluids through the well bore out of the injection zone or between other zones of ground water. Cement plugs shall be used unless a comparable method has been approved by the secretary for the plugging of Class III wells at that site.

**C.** Prior to placement of the plugs, the well to be abandoned shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method approved by the secretary.

**D.** Placement of the plugs shall be accomplished by one of the following:

- (1) the balance method; or
- (2) the dump bailer method; or
- (3) the two-plug method; or
- (4) an equivalent method with the approval of the secretary.

**E.** The following shall be considered by the secretary in determining the adequacy of a plugging and abandonment plan:

- (1) the type and number of plugs to be used;
- (2) the placement of each plug, including the elevation of the top and bottom;
- (3) the type, grade and quantity of cementing slurry to be used;
- (4) the method of placement of the plugs;
- (5) the procedure to be used to plug and abandon the well; and
- (6) such other factors that may affect the adequacy of the plan.

**F.** The discharger shall retain all records concerning the nature and composition of injected fluids until five years after completion of any plugging and abandonment procedures.

[9-20-82, 12-1-95; 20.6.2.5209 NMAC - Rn, 20 NMAC 6.2.V.5209, 1-15-01; A, 12-1-01; A, 8-31-15; A, 12-21-18]

## **20.6.2.5210 INFORMATION TO BE CONSIDERED BY THE SECRETARY FOR CLASS I WELLS AND CLASS III WELLS:**

**A.** This section sets forth the information to be considered by the secretary in authorizing construction and use of a Class I well or Class III well or well field. Certain maps, cross-sections, tabulations of all wells within the area of review, and other data may be included in the discharge permit application submittal by reference provided they are current, readily available to the secretary and sufficiently identified to be retrieved.

**B.** Prior to the issuance of a discharge permit or project discharge permit allowing construction of a new Class I well, operation of an existing Class I well, or operation of a new or existing Class III well or well field, or conversion of any well to injection use, the secretary shall consider the following:

- (1)** information required in Subsection C of 20.6.2.3106 NMAC;
- (2)** a map showing the Class I well, or Class III well or well fields, for which approval is sought and the applicable area of review; within the area of review, the map must show, in so far as is known or is reasonably available from the public records, the number, name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads;
- (3)** a tabulation of data on all wells within the area of review which may penetrate into the proposed injection zone; such data shall include, as available, a description of each well's type, the distance and direction to the injection well or well field, construction, date drilled, location, depth, record of plugging or completion, and any additional information the secretary may require;
- (4)** for wells within the area of review which penetrate the injection zone, but are not properly completed or plugged, the corrective action proposed to be taken under 20.6.2.5203 NMAC;
- (5)** maps and cross-sections indicating the general vertical and lateral limits of all ground water having 10,000 mg/l or less TDS within the area of review, the position of such ground water within the area of review relative to the injection formation, and the direction of water movement, where known, in each zone of ground water which may be affected by the proposed injection operation;
- (6)** maps and cross-sections detailing the geology and geologic structure of the local area, including faults, if known or suspected;
- (7)** generalized maps and cross-sections illustrating the regional geologic setting;

- (8)** proposed operating data, including:
- (a)** average and maximum daily flow rate and volume of the fluid to be injected;
  - (b)** average and maximum injection pressure;
  - (c)** source of injection fluids and an analysis or description, whichever the secretary requires, of their chemical, physical, radiological and biological characteristics;
- (9)** results of the formation testing program to obtain an analysis or description, whichever the secretary requires, of the chemical, physical, and radiological characteristics of, and other information on, the receiving formation, provided that the secretary may issue a conditional approval of a discharge permit if he finds that further formation testing is necessary for final approval;
- (10)** expected pressure changes, native fluid displacement, and direction of movement of the injected fluid;
- (11)** proposed stimulation program;
- (12)** proposed or actual injection procedure;
- (13)** schematic or other appropriate drawings of the surface and subsurface construction details of the well;
- (14)** construction procedures, including a cementing and casing program, logging procedures, deviation checks, and a drilling, testing, and coring program;
- (15)** contingency plans to cope with all shut-ins or well failures so as to prevent movement of fluids into ground water having 10,000 mg/l or less TDS except for fluid movement approved pursuant to 20.6.2.5103 NMAC;
- (16)** plans, including maps, for meeting the monitoring requirements of 20.6.2.5207 NMAC; and
- (17)** the ability of the discharger to undertake measures necessary to prevent contamination of ground water having 10,000 mg/l or less TDS after the cessation of operation, including the proper closing, plugging and abandonment of a well, ground water restoration if applicable, and any post-operational monitoring as may be needed; methods by which the discharger shall demonstrate the ability to undertake these measures shall include submission of a surety bond or other adequate assurances, such as financial statements or other materials acceptable to the secretary, such as: (1) a surety bond; (2) a trust fund with a New Mexico bank in the name of the state of New Mexico, with the state as beneficiary; (3) a non-renewable letter of credit made out to the state of New Mexico; (4) liability insurance specifically covering the contingencies

listed in this paragraph; or (5) a performance bond, generally in conjunction with another type of financial assurance; such bond or materials shall be approved and executed prior to discharge permit issuance and shall become effective upon commencement of construction; if an adequate bond is posted by the discharger to a federal or another state agency, and this bond covers all of the measures referred to above, the secretary shall consider this bond as satisfying the bonding requirements of 20.6.2.5000 through 20.6.2.5299 NMAC wholly or in part, depending upon the extent to which such bond is adequate to ensure that the discharger will fully perform the measures required hereinabove.

**C.** Prior to the secretary's approval that allows the operation of a new or existing Class I well or Class III well or well field, the secretary shall consider the following:

- (1) update of pertinent information required under Subsection B of 20.6.2.5210 NMAC;
- (2) all available logging and testing program data on the well;
- (3) the demonstration of mechanical integrity pursuant to 20.6.2.5204 NMAC;
- (4) the anticipated maximum pressure and flow rate at which the permittee will operate;
- (5) the results of the formation testing program;
- (6) the physical, chemical, and biological interactions between the injected fluids and fluids in the injection zone, and minerals in both the injection zone and the confining zone; and
- (7) the status of corrective action on defective wells in the area of review.

[9-20-82, 12-24-87, 12-1-95; 20.6.2.5210 NMAC - Rn, 20 NMAC 6.2.V.5210, 1-15-01; A, 12-1-01; A, 8-31-15]

#### **20.6.2.5211-20.6.2.5299 [RESERVED]**

[12-1-95; 20.6.2.5211 - 20.6.2.5299 NMAC - Rn, 20 NMAC 6.2.V.5211-5299, 1-15-01]

#### **20.6.2.5300 REQUIREMENTS FOR CLASS I HAZARDOUS WASTE INJECTION WELLS:**

**A.** Except as otherwise provided for in 20.6.2.5300 through 20.6.2.5399 NMAC, Class I hazardous waste wells are subject to the minimum permit requirements for all Class I wells in 20.6.2.5000 through 20.6.2.5299 NMAC, in addition to the requirements of 20.6.2.5300 through 20.6.2.5399 NMAC. To the extent any requirement in 20.6.2.5300 through 20.6.2.5399 NMAC conflicts with a requirement of 20.6.2.5000

through 20.6.2.5299 NMAC, Class I hazardous waste injection wells must comply with 20.6.2.5300 through 20.6.2.5399 NMAC.

**B.** Class I hazardous waste injection wells are only authorized for use by petroleum refineries for the waste generated by the refinery ("generator").

**C.** The New Mexico energy, minerals and natural resources department, oil conservation division will administer and oversee all permitting of Class I hazardous waste wells pursuant to 20.6.2.5300 through 20.6.2.5399 NMAC.

[20.6.2.5300 NMAC - N, 8-31-15]

#### **20.6.2.5301 DEFINITIONS:**

As used in 20.6.2.5300 through 20.6.2.5399 NMAC:

**A. "cone of influence"** means that area around the well within which increased injection zone pressures caused by injection into the hazardous waste injection well would be sufficient to drive fluids into groundwater of the state of New Mexico;

**B. "director"** means the director of the New Mexico energy, minerals and natural resources department, oil conservation division or his/her designee;

**C. "existing well"** means a Class I hazardous waste injection well which has become a Class I hazardous waste injection well as a result of a change in the definition of the injected waste which would render the waste hazardous under 20.4.1.200 NMAC (incorporating 40 C.F.R. Section 261.3);

**D. "ground water of the state of New Mexico"** means, consistent with 20.6.2.5001 NMAC, an aquifer that contains ground water having a TDS concentration of 10,000 mg/l or less;

**E. "injection interval"** means that part of the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced;

**F. "new well"** means any Class I hazardous waste injection well which is not an existing well;

**G. "transmissive fault or fracture"** is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

[20.6.2.5301 NMAC - N, 8-31-15]

#### **20.6.2.5302 FEES FOR CLASS I HAZARDOUS WASTE INJECTION WELLS:**

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of 20.6.2.3114 NMAC.

**A. *Filing Fee.*** Every facility submitting a discharge permit application for approval of a Class I hazardous waste injection well shall pay a filing fee of \$100 to the water quality management fund at the time the permit application is submitted. The filing fee is nonrefundable.

**B. *Permit fee.***

**(1)** Every facility submitting a discharge permit application for approval of a Class I hazardous waste injection well shall pay a permit fee of \$30,000 to the water quality management fund. The permit fee may be paid in a single payment at the time of permit approval or in equal installments over the term of the permit. Installment payments shall be remitted yearly, with the first installment due on the date of permit approval. Subsequent installments shall be remitted yearly thereafter. The permit or permit application review of any facility shall be suspended or terminated if the facility fails to submit an installment payment by its due date.

**(2)** Facilities applying for permits which are subsequently withdrawn or denied shall pay one-half of the permit fee at the time of denial or withdrawal.

**C. *Annual administration fee.*** Every facility that receives a Class I hazardous waste injection well permit shall pay an annual administrative fee of \$20,000 to the water quality management fund. The initial administrative fee shall be remitted one year after commencement of disposal operations pursuant to the permit. Subsequent administrative fees shall be remitted annually thereafter.

**D. *Renewal fee.***

**(1)** Every facility submitting a discharge permit application for renewal of a Class I hazardous waste injection well shall pay a renewal fee of \$10,000 to the water quality management fund. The renewal fee may be paid in a single payment at the time of permit renewal or in equal installments over the term of the permit. Installment payments shall be remitted yearly, with the first installment due on the date of permit renewal. Subsequent installments shall be remitted yearly thereafter. The permit or permit renewal review of any facility shall be suspended or terminated if the facility fails to submit an installment payment by its due date.

**(2)** The director may waive or reduce fees for discharge permit renewals which require little or no cost for investigation or issuance.

**E. *Modification fees.***

(1) Every facility submitting an application for a discharge permit modification of a Class I hazardous waste injection well will be assessed a filing fee plus a modification fee of \$10,000 to the water quality management fund.

(2) Every facility submitting an application for other changes to a Class I hazardous waste injection well discharge permit will be assessed a filing fee plus a minor modification fee of \$1,000 to the water quality management fund.

(3) Applications for both renewal and modification shall pay a filing fee plus renewal fee.

(4) If the director requires a discharge permit change as a component of an enforcement action, the facility shall pay the applicable modification fee. If the director requires a discharge permit change outside the context of an enforcement action, the facility shall not be assessed a fee.

(5) The director may waive or reduce fees for discharge permit changes which require little or no cost for investigation or issuance.

**F. Financial assurance fees.**

(1) Facilities with approved Class I hazardous waste injection well permits shall pay the financial assurance fees specified in Table 2 of 20.6.2.3114 NMAC.

(2) Facilities relying on the corporate guarantee for financial assurance shall pay an additional fee of \$5,000 to the water quality management fund.

[20.6.2.5302 NMAC - N, 8-31-15]

**20.6.2.5303 CONVERSION OF EXISTING INJECTION WELLS:**

An existing Class I non-hazardous waste injection well may be converted to a Class I hazardous waste injection well provided the well meets the modeling, design, compatibility, and other requirements set forth in 20.6.2.5300 through 20.6.2.5399 NMAC and the permittee receives a Class I hazardous waste permit pursuant to those sections.

[20.6.2.5303 NMAC - N, 8-31-15]

**20.6.2.5304-20.6.2.5309 [RESERVED]**

**20.6.2.5310 REQUIREMENTS FOR WELLS INJECTING HAZARDOUS WASTE REQUIRED TO BE ACCOMPANIED BY A MANIFEST:**

**A. Applicability.** The regulations in this section apply to all generators of hazardous waste, and to the owners or operators of all hazardous waste management facilities,

using any class of well to inject hazardous wastes accompanied by a manifest. (See also Subparagraph (b) of Paragraph (3) of Subsection A of 20.6.2.5004 NMAC.)

**B. Authorization.** The owner or operator of any well that is used to inject hazardous waste required to be accompanied by a manifest or delivery document shall apply for authorization to inject as specified in 20.6.2.5102 NMAC within six months after the approval or promulgation of the state UIC program.

**C. Requirements.** In addition to complying with the applicable requirements of this part, the owner or operator of each facility meeting the requirements of Subsection B of this section, shall comply with the following.

**(1) Notification.** The owner or operator shall comply with the notification requirements of 42 U.S.C. Section 6930.

**(2) Identification number.** The owner or operator shall comply with the requirements of 20.4.1.500 NMAC (incorporating 40 CFR Section 264.11).

**(3) Manifest system.** The owner or operator shall comply with the applicable recordkeeping and reporting requirements for manifested wastes in 20.4.1.500 NMAC (incorporating 40 CFR Section 264.71).

**(4) Manifest discrepancies.** The owner or operator shall comply with 20.4.1.500 NMAC (incorporating 40 CFR Section 264.72).

**(5) Operating record.** The owner or operator shall comply with 20.4.1.500 NMAC (incorporating 40 CFR Sections 264.73(a), (b)(1), and (b)(2)).

**(6) Annual report.** The owner or operator shall comply with 20.4.1.500 NMAC (incorporating 40 CFR Section 264.75).

**(7) Unmanifested waste report.** The owner or operator shall comply with 20.4.1.500 NMAC (incorporating 40 CFR Section 264.75).

**(8) Personnel training.** The owner or operator shall comply with the applicable personnel training requirements of 20.4.1.500 NMAC (incorporating 40 CFR Section 264.16).

**(9) Certification of closure.** When abandonment is completed, the owner or operator must submit to the director certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in 20.6.2.5209 NMAC.

[20.6.2.5310 NMAC - N, 8-31-15]

**20.6.2.5311-20.6.2.5319 [RESERVED]**

**20.6.2.5320 ADOPTION OF 40 CFR PART 144, SUBPART F (FINANCIAL RESPONSIBILITY):**

**CLASS I HAZARDOUS WASTE INJECTION WELLS):** Except as otherwise provided, the regulations of the United States environmental protection agency set forth in 40 CFR Part 144, Subpart F are hereby incorporated by reference.

[20.6.2.5320 NMAC - N, 8-31-15]

**20.6.2.5321 MODIFICATIONS, EXCEPTIONS, AND OMISSIONS:**

Except as otherwise provided, the following modifications, exceptions, and omissions are made to the incorporated federal regulations.

**A.** The following term defined in 40 CFR Section 144.61 has the meaning set forth herein, in lieu of the meaning set forth in 40 CFR Section 144.61: "plugging and abandonment plan" means the plan for plugging and abandonment prepared in accordance with the requirements of 20.6.2.5341 NMAC.

**B.** The following terms not defined in 40 CFR Part 144, Subsection F have the meanings set forth herein when the terms are used in this part:

**(1)** "administrator," "regional administrator" and other similar variations means the director of the New Mexico energy, minerals and natural resources department, oil conservation division or his/her designee;

**(2)** "United States environmental protection agency" or "EPA" means New Mexico energy, minerals and natural resources department, oil conservation division or OCD, except when used in 40 CFR Section 144.70(f).

**C.** The following provisions of 40 CFR Part 144, Subpart F are modified in 20.6.2.5321 NMAC:

**(1)** cross references to 40 CFR Part 144 shall be replaced by cross references to 20.6.2.5300 through 20.6.2.5399 NMAC;

**(2)** the cross reference to Sections 144.28 and 144.51 in Section 144.62(a) shall be replaced by a cross reference to 20.6.2.5341 NMAC;

**(3)** the cross references to 40 CFR Parts 264, Subpart H and 265, Subpart H shall be modified to include cross references to 40 CFR Parts 264, Subpart H and 265, Subpart H and 20.4.1.500 and 20.4.1.600 NMAC;

**(4)** references to EPA identification numbers in financial assurance documents shall be replaced by references to API well numbers (US well numbers);

(5) the first sentence of 40 CFR Section 144.63(f)(1) shall be replaced with the following sentence: "An owner or operator may satisfy the requirements of this section by obtaining a guarantee from a corporate parent that meets the requirements of 40 CFR Section 144.63(f)(10), including the guarantor meeting the requirements for the owner or operator under the financial test specified in this paragraph.";

(6) trust agreements prepared in accordance with 40 CFR Section 144.70(a) must state that they will be administered, construed, and enforced according to the laws of New Mexico;

(7) surety companies issuing bonds prepared in accordance with 40 CFR Section 144, Subpart F must be registered with the New Mexico office of superintendent of insurance;

D. The following provisions of 40 CFR Part 144, Subpart F are omitted from 20.6.2.5320 NMAC:

(1) Section 144.65;

(2) Section 144.66;

(3) the third sentence in 40 CFR Section 144.63(h).

[20.6.2.5321 NMAC - N, 8-31-15]

**20.6.2.5322-20.6.2.5340 [RESERVED]**

**20.6.2.5341 CONDITIONS APPLICABLE TO ALL PERMITS:**

The following conditions apply to all Class I hazardous permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

**A. *Duty to comply.*** The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the New Mexico Water Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application; except that the permittee need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in a variance issued under 20.6.2.1210 NMAC.

**B. *Duty to reapply.*** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a permit renewal pursuant to Subsection F of 20.6.2.3106 NMAC.

**C. *Need to halt or reduce activity not a defense.*** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

**D. *Duty to mitigate.*** The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

**E. *Proper operation and maintenance.*** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

**F. *Permit actions.*** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

**G. *Property rights.*** This permit does not convey any property rights of any sort, or any exclusive privilege.

**H. *Duty to provide information.*** The permittee shall furnish to the director, within a time specified, any information which the director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the director, upon request, copies of records required to be kept by this permit.

**I. *Duty to provide notice.*** Public notice, when required, shall be provided as set forth in 20.6.2.3108 NMAC except that the following notice shall be provided in lieu of the notice required by Paragraph (2) of Subsection B of 20.6.2.3108 NMAC: a written notice must be sent by certified mail, return receipt requested, to all surface and mineral owners of record within a ½ mile radius of the proposed well or wells.

**J. *Inspection and entry.*** The permittee shall allow the director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

**(3)** inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

**(4)** sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the 20.6.2.5300 through 20.6.2.5399 NMAC, any substances or parameters at any location.

**K. *Monitoring and records.***

**(1)** Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

**(2)** The permittee shall retain records of all monitoring information, including the following:

**(a)** calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report, or application; this period may be extended by request of the director at any time; and

**(b)** the nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under 20.6.2.5351 through 20.6.2.5363 NMAC; the director may require the owner or operator to deliver the records to the director at the conclusion of the retention period.

**(3)** Records of monitoring information shall include:

**(a)** the date, exact place, and time of sampling or measurements;

**(b)** the individual(s) who performed the sampling or measurements;

**(c)** the date(s) analyses were performed;

**(d)** the individual(s) who performed the analyses;

**(e)** the analytical techniques or methods used; and

**(f)** the results of such analyses.

**L. *Signatory requirement.*** All applications, reports, or information submitted to the director shall be signed and certified. (See Subsection G of 20.6.2.5101 NMAC.)

**M. *Reporting requirements.***

**(1)** *Planned changes.* The permittee shall give notice to the director as soon as possible of any planned physical alterations or additions to the permitted facility.

**(2)** *Anticipated noncompliance.* The permittee shall give advance notice to the director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

**(3)** *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

**(4)** *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.

**(5)** *Twenty-four hour reporting.* The permittee shall report any noncompliance which may endanger health or the environment, including:

**(a)** any monitoring or other information which indicates that any contaminant may cause an endangerment to ground water of the state of New Mexico; or

**(b)** any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between ground water of the state of New Mexico; any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances; a written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances; the written submission shall contain a description of the noncompliance and its cause; the area affected by the noncompliance, including any ground water of the state of New Mexico; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; the date and time the permittee became aware of the noncompliance; and steps taken or planned to reduce, remediate, eliminate, and prevent reoccurrence of the noncompliance.

**(6)** *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under Paragraphs (3), (4), and (5) of Subsection M of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in Paragraph (5) of Subsection M of this section.

**(7)** *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the director, it shall promptly submit such facts or information.

**N.** *Requirements prior to commencing injection.* A new injection well may not commence injection until construction is complete; and

(1) the permittee has submitted notice of completion of construction to the director; and

(2) the director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or the permittee has not received notice from the director of his or her intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in Paragraph (1) of Subsection N of this section, in which case prior inspection or review is waived and the permittee may commence injection; the director shall include in his notice a reasonable time period in which he shall inspect the well.

O. The permittee shall notify the director at such times as the permit requires before conversion or abandonment of the well.

P. The permittee shall meet the requirements of 20.6.2.5209 NMAC.

Q. *Plugging and abandonment report.* Within 60 days after plugging a well or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a report to the director. If the quarterly report is due less than 15 days before completion of plugging, then the report shall be submitted within 60 days. The report shall be certified as accurate by the person who performed the plugging operation. Such report shall consist of either:

(1) a statement that the well was plugged in accordance with the plan previously submitted to the director; or

(2) where actual plugging differed from the plan previously submitted, and updated version of the plan on the form supplied by the director, specifying the differences.

R. *Duty to establish and maintain mechanical integrity.*

(1) The permittee shall meet the requirements of 20.6.2.5204 NMAC.

(2) When the director determines that a Class I hazardous well lacks mechanical integrity pursuant to 20.6.2.5204 NMAC, the director shall give written notice of the director's determination to the owner or operator. Unless the director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the director's determination. The director may allow plugging of the well pursuant to the requirements of 20.6.2.5209 NMAC or require the permittee to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between ground water of the state of New Mexico caused by the lack of mechanical integrity. The owner or operator may resume injection upon written notification from the director that the owner or operator has demonstrated mechanical integrity pursuant to 20.6.2.5204 and 20.6.2.5358 NMAC.

**(3)** The director may allow the owner or operator of a well which lacks mechanical integrity pursuant to Subsection A of 20.6.2.5204 NMAC to continue or resume injection, if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between groundwater of the state of New Mexico.

**S. *Transfer of a permit.*** The operator shall not transfer a permit without the director's prior written approval. A request for transfer of a permit shall identify officers, directors and owners of 25% or greater in the transferee. Unless the director otherwise orders, public notice or hearing are not required for the transfer request's approval. If the director denies the transfer request, it shall notify the operator and the proposed transferee of the denial by certified mail, return receipt requested, and either the operator or the proposed transferee may request a hearing with 10 days after receipt of the notice. Until the director approves the transfer and the required financial assurance is in place, the director shall not release the transferor's financial assurance.

[20.6.2.5341 NMAC - N, 8-31-15]

#### **20.6.2.5342 ESTABLISHING PERMIT CONDITIONS:**

**A.** In addition to conditions required in 20.6.2.5341 NMAC, the director shall establish conditions, as required on a case-by-case basis under Subsection I of 20.6.2.3109 NMAC, Subsection A of 20.6.2.5343 NMAC, and 20.6.2.5344 NMAC. Permits for owners or operators of hazardous waste injection wells shall also include conditions meeting the requirements of 20.6.2.5310 NMAC, Paragraphs (1) and (2) of Subsection A of this section, and 20.6.2.5351 through 20.6.2.5363 NMAC.

**(1) *Financial responsibility.***

**(a)** The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the director until:

**(i)** the well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to Subsection P of 20.6.2.5341 NMAC, and 20.6.2.5209 NMAC, and submitted a plugging and abandonment report pursuant to Subsection Q of 20.6.2.5341 NMAC; or

**(ii)** the well has been converted in compliance with the requirements of Subsection O of 20.6.2.5341 NMAC; or

**(iii)** the transferor of a permit has received notice from the director that the transfer has been approved and that the transferee's required financial assurance is in place.

(b) The owner or operator of a well injecting hazardous waste must comply with the financial responsibility requirements of 20.6.2.5320 NMAC.

(2) *Additional conditions.* The director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into ground water of the state of New Mexico.

**B. Applicable requirements.**

(1) In addition to conditions required in all permits the director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of this part.

(2) An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of the permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit.

(3) New or renewed permits, and to the extent allowed under 20.6.2.3109 NMAC modified or terminated permits, shall incorporate each of the applicable requirements referenced in 20.6.2.5342 NMAC.

**C. Incorporation.** All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

[20.6.2.5342 NMAC - N, 8-31-15]

**20.6.2.5343 SCHEDULE OF COMPLIANCE:**

**A. General.** The permit may, when appropriate, specify a schedule of compliance leading to compliance with this part.

(1) *Time for compliance.* Any schedules of compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit.

(2) *Interim dates.* Except as provided in Subparagraph (b) of Paragraph (1) of Subsection B of this section, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(a) The time between interim dates shall not exceed one year.

(b) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall

specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

**(3) Reporting.** The permit shall be written to require that if Paragraph (1) of Subsection A of this section is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

**B. Alternative schedules of compliance.** A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows.

**(1)** If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

**(a)** the permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

**(b)** the permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

**(2)** If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

**(3)** If the permittee is undecided whether to cease conducting regulated activities, the director may issue or modify a permit to contain two schedules as follows:

**(a)** both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

**(b)** one schedule shall lead to timely compliance with applicable requirements;

**(c)** the second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

**(d)** each permit containing two schedules shall include a requirement that after the permittee has made a final decision under Subparagraph (a) of Paragraph (3) of Subsection B of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the director, such as a resolution of the board of directors of a corporation.

[20.6.2.5343 NMAC - N, 8-31-15]

**20.6.2.5344 REQUIREMENTS FOR RECORDING AND REPORTING OF MONITORING RESULTS:**

All permits shall specify:

**A.** requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

**B.** required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring;

**C.** applicable reporting requirements based upon the impact of the regulated activity and as specified in 20.6.2.5359 NMAC; reporting shall be no less frequent than specified in the above regulations.

[20.6.2.5344 NMAC - N, 8-31-15]

**20.6.2.5345-20.6.2.5350 [RESERVED]**

**20.6.2.5351 APPLICABILITY:**

20.6.2.5351 through 20.6.2.5363 NMAC establish criteria and standards for underground injection control programs to regulate Class I hazardous waste injection wells. Unless otherwise noted, these sections supplement the requirements of 20.6.2.5000 through 20.6.2.5299 NMAC and apply instead of any inconsistent requirements for Class I non-hazardous waste injection wells.

[20.6.2.5351 NMAC - N, 8-31-15]

**20.6.2.5352 MINIMUM CRITERIA FOR SITING:**

**A.** All Class I hazardous waste injection wells shall be sited such that they inject into a formation that is beneath the lowermost formation containing within one quarter mile of the well bore groundwater of the state of New Mexico.

**B.** The siting of Class I hazardous waste injection wells shall be limited to areas that are geologically suitable. The director shall determine geologic suitability based upon:

**(1)** an analysis of the structural and stratigraphic geology, the hydrogeology, and the seismicity of the region;

**(2)** an analysis of the local geology and hydrogeology of the well site, including, at a minimum, detailed information regarding stratigraphy, structure and rock properties, aquifer hydrodynamics and mineral resources; and

**(3)** a determination that the geology of the area can be described confidently and that limits of waste fate and transport can be accurately predicted through the use of models.

**C.** Class I hazardous waste injection wells shall be sited such that:

**(1)** the injection zone has sufficient permeability, porosity, thickness and areal extent to prevent migration of fluids into ground water of the state of New Mexico; and

**(2)** the confining zone:

**(a)** is laterally continuous and free of transecting, transmissive faults or fractures over an area sufficient to prevent the movement of fluids into ground water of the state of New Mexico; and

**(b)** contains at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing vertical propagation of fractures.

**D.** The owner or operator shall demonstrate to the satisfaction of the director that:

**(1)** the confining zone is separated from the base of the lowermost ground water of the state of New Mexico by at least one sequence of permeable and less permeable strata that will provide an added layer of protection for ground water of the state of New Mexico in the event of fluid movement in an unlocated borehole or transmissive fault; or

**(2)** within the area of review, the piezometric surface of the fluid in the injection zone is less than the piezometric surface of the lowermost groundwater of the state of New Mexico, considering density effects, injection pressures and any significant pumping in the overlying ground water of the state of New Mexico; or

**(3)** there is no ground water of the state of New Mexico present.

**(4)** The director may approve a site which does not meet the requirements in Paragraphs (1), (2), or (3) of Subsections D of this section if the owner or operator can demonstrate to the director that because of the geology, nature of the waste, or other considerations, abandoned boreholes or other conduits would not cause endangerment of ground water of the state of New Mexico.

[20.6.2.5352 NMAC - N, 8-31-15]

**20.6.2.5353 AREA OF REVIEW:**

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of 20.6.2.5202 NMAC. The area of review for Class I hazardous waste injection wells shall be a two-mile radius around the well bore. The director may specify a larger area of review based on the calculated cone of influence of the well.

[20.6.2.5353 NMAC - N, 8-31-15]

**20.6.2.5354 CORRECTIVE ACTION FOR WELLS IN THE AREA OF REVIEW:**

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of 20.6.2.5203 NMAC.

**A.** The owner or operator of a Class I hazardous waste well shall as part of the permit application submit a plan to the director outlining the protocol used to:

(1) identify all wells penetrating the confining zone or injection zone within the area of review; and

(2) determine whether wells are adequately completed or plugged.

**B.** The owner or operator of a Class I hazardous waste well shall identify the location of all wells within the area of review that penetrate the injection zone or the confining zone and shall submit as required in Subsection A of 20.6.2.5360 NMAC:

(1) a tabulation of all wells within the area of review that penetrate the injection zone or the confining zone; and

(2) a description of each well or type of well and any records of its plugging or completion.

**C.** For wells that the director determines are improperly plugged, completed, or abandoned, or for which plugging or completion information is unavailable, the applicant shall also submit a plan consisting of such steps or modification as are necessary to prevent movement of fluids into or between groundwater of the state of New Mexico. Where the plan is adequate, the director shall incorporate it into the permit as a condition. Where the director's review of an application indicates that the permittee's plan is inadequate (based at a minimum on the factors in Subsection E of this section), the director shall:

(1) require the applicant to revise the plan;

(2) prescribe a plan for corrective action as a condition of the permit; or

- (3) deny the application.

**D. Requirements.**

(1) Existing injection wells. Any permit issued for an existing Class I hazardous waste injection well requiring corrective action other than pressure limitations shall include a compliance schedule requiring any corrective action accepted or prescribed under Subsection C of this section. Any such compliance schedule shall provide for compliance no later than two years following issuance of the permit and shall require observance of appropriate pressure limitations under Paragraph (3) of Subsection D until all other corrective action measures have been implemented.

(2) New injection wells. No owner or operator of a new Class I hazardous waste injection well may begin injection until all corrective actions required under this section have been taken.

(3) The director may require pressure limitations in lieu of plugging. If pressure limitations are used in lieu of plugging, the director shall require as a permit condition that injection pressure be so limited that pressure in the injection zone at the site of any improperly completed or abandoned well within the area of review would not be sufficient to drive fluids into or between groundwater of the state of New Mexico. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation may be made part of a compliance schedule and may be required to be maintained until all other required corrective actions have been implemented.

**E.** In determining the adequacy of corrective action proposed by the applicant under Subsection C of this section and in determining the additional steps needed to prevent fluid movement into and between groundwater of the state of New Mexico, the following criteria and factors shall be considered by the director:

- (1) nature and volume of injected fluid;
- (2) nature of native fluids or byproducts of injection;
- (3) geology;
- (4) hydrology;
- (5) history of the injection operation;
- (6) completion and plugging records;
- (7) closure procedures in effect at the time the well was closed;
- (8) hydraulic connections with groundwater of the state of New Mexico;

(9) reliability of the procedures used to identify abandoned wells; and

(10) any other factors which might affect the movement of fluids into or between ground water of the state of New Mexico.

[20.6.2.5354 NMAC - N, 8-31-15]

#### **20.6.2.5355 CONSTRUCTION REQUIREMENTS:**

**A. General.** All existing and new Class I hazardous waste injection wells shall be constructed and completed to:

(1) prevent the movement of fluids into or between ground water of the state of New Mexico or into any unauthorized zones;

(2) permit the use of appropriate testing devices and workover tools; and

(3) permit continuous monitoring of injection tubing and long string casing as required pursuant to Subsection F of 20.6.2.5357 NMAC.

**B. Compatibility.** All well materials must be compatible with fluids with which the materials may be expected to come into contact. A well shall be deemed to have compatibility as long as the materials used in the construction of the well meet or exceed standards developed for such materials by the American petroleum institute, ASTM, or comparable standards acceptable to the director.

**C. Casing and cementing of new wells.**

(1) Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post-closure care period. The casing and cementing program shall be designed to prevent the movement of fluids into or between ground water of the state of New Mexico, and to prevent potential leaks of fluids from the well. In determining and specifying casing and cementing requirements, the director shall consider the following information as required by 20.6.2.5360 NMAC:

(a) depth to the injection zone;

(b) injection pressure, external pressure, internal pressure and axial loading;

(c) hole size;

(d) size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification and construction material);

(e) corrosiveness of injected fluid, formation fluids and temperature;

**(f)** lithology of injection and confining zones;

**(g)** type or grade of cement; and

**(h)** quantity and chemical composition of the injected fluid.

**(2)** One surface casing string shall, at a minimum, extend into the confining bed below the lowest formation that contains ground water of the state of New Mexico and be cemented by circulating cement from the base of the casing to the surface, using a minimum of 120% of the calculated annual volume. The director may require more than 120% when the geology or other circumstances warrant it.

**(3)** At least one long string casing, using a sufficient number of centralizers, shall extend to the injection zone and shall be cemented by circulating cement to the surface in one or more stages:

**(a)** of sufficient quantity and quality to withstand the maximum operating pressure; and

**(b)** in a quantity no less than 120% of the calculated volume necessary to fill the annular space; the director may require more than 120% when the geology or other circumstances warrant it.

**(4)** Circulation of cement may be accomplished by staging. The director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate by using logs that the cement is continuous and does not allow fluid movement behind the well bore.

**(5)** Casings, including any casing connections, must be rated to have sufficient structural strength to withstand, for the design life of the well:

**(a)** the maximum burst and collapse pressures which may be experienced during the construction, operation and closure of the well; and

**(b)** the maximum tensile stress which may be experienced at any point along the length of the casing during the construction, operation, and closure of the well.

**(6)** At a minimum, cement and cement additives must be of sufficient quality and quantity to maintain integrity over the design life of the well.

**D. Tubing and packer.**

**(1)** All Class I hazardous waste injection wells shall inject fluids through tubing with a packer set at a point specified by the director.

**(2)** In determining and specifying requirements for tubing and packer, the following factors shall be considered:

- (a)** depth of setting;
- (b)** characteristics of injection fluid (chemical content, corrosiveness, temperature and density);
- (c)** injection pressure;
- (d)** annular pressure;
- (e)** rate (intermittent or continuous), temperature and volume of injected fluid;
- (f)** size of casing; and
- (g)** tubing tensile, burst, and collapse strengths.

**(3)** The director may approve the use of a fluid seal if he determines that the following conditions are met:

- (a)** the operator demonstrates that the seal will provide a level of protection comparable to a packer;
- (b)** the operator demonstrates that the staff is, and will remain, adequately trained to operate and maintain the well and to identify and interpret variations in parameters of concern;
- (c)** the permit contains specific limitations on variations in annular pressure and loss of annular fluid;
- (d)** the design and construction of the well allows continuous monitoring of the annular pressure and mass balance of annular fluid; and
- (e)** a secondary system is used to monitor the interface between the annulus fluid and the injection fluid and the permit contains requirements for testing the system every three months and recording the results.

[20.6.2.5355 NMAC - N, 8-31-15]

**20.6.2.5356 LOGGING, SAMPLING, AND TESTING PRIOR TO NEW WELL OPERATION:**

**A.** During the drilling and construction of a new Class I hazardous waste injection well, appropriate logs and tests shall be run to determine or verify the depth, thickness, porosity, permeability, and rock type of, and the salinity of any entrained fluids in, all

relevant geologic units to assure conformance with performance standards in 20.6.2.5355 NMAC, and to establish accurate baseline data against which future measurements may be compared. A descriptive report interpreting results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the director. At a minimum, such logs and tests shall include:

**(1)** deviation checks during drilling on all holes constructed by drilling pilot holes which are enlarged by reaming or another method; such checks shall be at sufficiently frequent intervals to determine the location of the borehole and to assure that vertical avenues for fluid movement in the form of diverging holes are not created during drilling; and

**(2)** such other logs and tests as may be needed after taking into account the availability of similar data in the area of the drilling site, the construction plan, and the need for additional information that may arise from time to time as the construction of the well progresses; at a minimum, the following logs shall be required in the following situations:

**(a)** upon installation of the surface casing:

**(i)** resistivity, spontaneous potential, and caliper logs before the casing is installed; and

**(ii)** a cement bond and variable density log, and a temperature log after the casing is set and cemented;

**(b)** upon installation of the long string casing:

**(i)** resistivity, spontaneous potential, porosity, caliper, gamma ray, and fracture finder logs before the casing is installed; and

**(ii)** a cement bond and variable density log, and a temperature log after the casing is set and cemented;

**(c)** the director may allow the use of an alternative to the above logs when an alternative will provide equivalent or better information; and

**(3)** a mechanical integrity test consisting of:

**(a)** a pressure test with liquid or gas;

**(b)** a radioactive tracer survey;

**(c)** a temperature or noise log;

**(d)** a casing inspection log, if required by the director; and

(e) any other test required by the director.

**B.** Whole cores or sidewall cores of the confining and injection zones and formation fluid samples from the injection zone shall be taken. The director may accept cores from nearby wells if the owner or operator can demonstrate that core retrieval is not possible and that such cores are representative of conditions at the well. The director may require the owner or operator to core other formations in the borehole.

**C.** The fluid temperature, pH, conductivity, pressure and the static fluid level of the injection zone must be recorded.

**D.** At a minimum, the following information concerning the injection and confining zones shall be determined or calculated for Class I hazardous waste injection wells:

- (1) fracture pressure;
- (2) other physical and chemical characteristics of the injection and confining zones; and
- (3) physical and chemical characteristics of the formation fluids in the injection zone.

**E.** Upon completion, but prior to operation, the owner or operator shall conduct the following tests to verify hydrogeologic characteristics of the injection zone:

- (1) a pump test; or
- (2) injectivity tests.

**F.** The director shall have the opportunity to witness all logging and testing required by 20.6.2.5351 through 20.6.2.5363 NMAC. The owner or operator shall submit a schedule of such activities to the director 30 days prior to conducting the first test.

[20.6.2.5356 NMAC - N, 8-31-15]

#### **20.6.2.5357 OPERATING REQUIREMENTS:**

**A.** Except during stimulation, the owner or operator shall assure that injection pressure at the wellhead does not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. The owner or operator shall assure that the injection pressure does not initiate fractures or propagate existing fractures in the confining zone, nor cause the movement of injection or formation fluids into ground water of the state of New Mexico.

**B.** Injection between the outermost casing protecting ground water of the state of New Mexico and the well bore is prohibited.

**C.** The owner or operator shall maintain an annulus pressure that exceeds the operating injection pressure, unless the director determines that such a requirement might harm the integrity of the well. The fluid in the annulus shall be noncorrosive, or shall contain a corrosion inhibitor.

**D.** The owner or operator shall maintain mechanical integrity of the injection well at all times.

**E.** Permit requirements for owners or operators of hazardous waste wells which inject wastes which have the potential to react with the injection formation to generate gases shall include:

- (1) conditions limiting the temperature, pH or acidity of the injected waste; and
- (2) procedures necessary to assure that pressure imbalances which might cause a backflow or blowout do not occur.

**F.** The owner or operator shall install and use continuous recording devices to monitor: the injection pressure; the flow rate, volume, and temperature of injected fluids; and the pressure on the annulus between the tubing and the long string casing, and shall install and use:

- (1) automatic alarm and automatic shut-off systems, designed to sound and shut-in the well when pressures and flow rates or other parameters approved by the director exceed a range or gradient specified in the permit; or
- (2) automatic alarms, designed to sound when the pressures and flow rates or other parameters approved by the director exceed a rate or gradient specified in the permit, in cases where the owner or operator certifies that a trained operator will be on-site at all times when the well is operating.

**G.** If an automatic alarm or shutdown is triggered, the owner or operator shall immediately investigate and identify as expeditiously as possible the cause of the alarm or shutoff. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under Subsection F of this section otherwise indicates that the well may be lacking mechanical integrity, the owner or operator shall:

- (1) cease injection of waste fluids unless authorized by the director to continue or resume injection;
  - (2) take all necessary steps to determine the presence or absence of a leak;
- and

(3) notify the director within 24 hours after the alarm or shutdown.

H. If a loss of mechanical integrity is discovered pursuant to Subsection G of this section or during periodic mechanical integrity testing, the owner or operator shall:

(1) immediately cease injection of waste fluids;

(2) take all steps reasonably necessary to determine whether there may have been a release of hazardous wastes or hazardous waste constituents into any unauthorized zone;

(3) notify the director within 24 hours after loss of mechanical integrity is discovered;

(4) notify the director when injection can be expected to resume; and

(5) restore and demonstrate mechanical integrity to the satisfaction of the director prior to resuming injection of waste fluids.

I. Whenever the owner or operator obtains evidence that there may have been a release of injected wastes into an unauthorized zone:

(1) the owner or operator shall immediately cease injection of waste fluids, and:

(a) notify the director within 24 hours of obtaining such evidence;

(b) take all necessary steps to identify and characterize the extent of any release;

(c) comply with any remediation plan specified by the director;

(d) implement any remediation plan approved by the director; and

(e) where such release is into ground water of the state of New Mexico currently serving as a water supply, place a notice in a newspaper of general circulation.

(2) The director may allow the operator to resume injection prior to completing cleanup action if the owner or operator demonstrates that the injection operation will not endanger groundwater of the state of New Mexico.

J. The owner or operator shall notify the director and obtain his approval prior to conducting any well workover.

[20.6.2.5357 NMAC - N, 8-31-15]

**20.6.2.5358 TESTING AND MONITORING REQUIREMENTS:**

Testing and monitoring requirements shall at a minimum include.

**A. Monitoring of the injected wastes.**

(1) The owner or operator shall develop and follow an approved written waste analysis plan that describes the procedures to be carried out to obtain a detailed chemical and physical analysis of a representative sample of the waste, including the quality assurance procedures used. At a minimum, the plan shall specify:

(a) the parameters for which the waste will be analyzed and the rationale for the selection of these parameters;

(b) the test methods that will be used to test for these parameters; and

(c) the sampling method that will be used to obtain a representative sample of the waste to be analyzed.

(2) The owner or operator shall repeat the analysis of the injected wastes as described in the waste analysis plan at frequencies specified in the waste analysis plan and when process or operating changes occur that may significantly alter the characteristics of the waste stream.

(3) The owner or operator shall conduct continuous or periodic monitoring of selected parameters as required by the director.

(4) The owner or operator shall assure that the plan remains accurate and the analyses remain representative.

**B. Hydrogeologic compatibility determination.** The owner or operator shall submit information demonstrating to the satisfaction of the director that the waste stream and its anticipated reaction products will not alter the permeability, thickness or other relevant characteristics of the confining or injection zones such that they would no longer meet the requirements specified in 20.6.2.5352 NMAC.

**C. Compatibility of well materials.**

(1) The owner or operator shall demonstrate that the waste stream will be compatible with the well materials with which the waste is expected to come into contact, and submit to the director a description of the methodology used to make that determination. Compatibility for purposes of this requirement is established if contact with injected fluids will not cause the well materials to fail to satisfy any design requirement imposed under Subsection B of 20.6.2.5355 NMAC.

(2) The director shall require continuous corrosion monitoring of the construction materials used in the well for wells injecting corrosive waste, and may require such monitoring for other waste, by:

(a) placing coupons of the well construction materials in contact with the waste stream; or

(b) routing the waste stream through a loop constructed with the material used in the well; or

(c) using an alternative method approved by the director.

(3) If a corrosion monitoring program is required:

(a) the test shall use materials identical to those used in the construction of the well, and such materials must be continuously exposed to the operating pressures and temperatures (measured at the well head) and flow rates of the injection operation; and

(b) the owner or operator shall monitor the materials for loss of mass, thickness, cracking, pitting and other signs of corrosion on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in Subsection B of 20.6.2.5355 NMAC.

**D. Periodic mechanical integrity testing.** In fulfilling the requirements of 20.6.2.5204 NMAC, the owner or operator of a Class I hazardous waste injection well shall conduct the mechanical integrity testing as follows:

(1) the long string casing, injection tube, and annular seal shall be tested by means of an approved pressure test with a liquid or gas annually and whenever there has been a well workover;

(2) the bottom-hole cement shall be tested by means of an approved radioactive tracer survey annually;

(3) an approved temperature, noise, or other approved log shall be run at least once every five years to test for movement of fluid along the borehole; the director may require such tests whenever the well is worked over;

(4) casing inspection logs shall be run whenever the owner or operator conducts a workover in which the injection string is pulled, unless the director waives this requirement due to well construction or other factors which limit the test's reliability, or based upon the satisfactory results of a casing inspection log run within the previous five years; the director may require that a casing inspection log be run every five years, if he has reason to believe that the integrity of the long string casing of the well may be adversely affected by naturally-occurring or man-made events;

(5) any other test approved by the director in accordance with the procedures in 40 CFR Section 146.8(d) may also be used.

**E. Ambient monitoring.**

**(1)** Based on a site-specific assessment of the potential for fluid movement from the well or injection zone, and on the potential value of monitoring wells to detect such movement, the director shall require the owner or operator to develop a monitoring program. At a minimum, the director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

**(2)** When prescribing a monitoring system the director may also require:

**(a)** continuous monitoring for pressure changes in the first aquifer overlying the confining zone; when such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the director;

**(b)** the use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the director, or to provide other site specific data;

**(c)** periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

**(d)** periodic monitoring of the ground water quality in the lowermost ground water of the state of New Mexico; and

**(e)** any additional monitoring necessary to determine whether fluids are moving into or between ground water of the state of New Mexico.

**F.** The director may require seismicity monitoring when he has reason to believe that the injection activity may have the capacity to cause seismic disturbances.

[20.6.2.5358 NMAC - N, 8-31-15]

**20.6.2.5359 REPORTING REQUIREMENTS:**

Reporting requirements shall, at a minimum, include:

**A.** quarterly reports to the director containing:

**(1)** the maximum injection pressure;

**(2)** a description of any event that exceeds operating parameters for annulus pressure or injection pressure as specified in the permit;

- (3) a description of any event which triggers an alarm or shutdown device required pursuant to Subsection F of 20.6.2.5357 NMAC and the response taken;
  - (4) the total volume of fluid injected;
  - (5) any change in the annular fluid volume;
  - (6) the physical, chemical and other relevant characteristics of injected fluids;
- and
- (7) the results of monitoring prescribed under 20.6.2.5358 NMAC;

**B.** reporting, within 30 days or with the next quarterly report whichever comes later, the results of:

- (1) periodic tests of mechanical integrity;
- (2) any other test of the injection well conducted by the permittee if required by the director; and
- (3) any well workover.

[20.6.2.5359 NMAC - N, 8-31-15]

#### **20.6.2.5360 INFORMATION TO BE EVALUATED BY THE DIRECTOR:**

This section sets forth the information which must be evaluated by the director in authorizing Class I hazardous waste injection wells. For a new Class I hazardous waste injection well, the owner or operator shall submit all the information listed below as part of the permit application. For an existing or converted Class I hazardous waste injection well, the owner or operator shall submit all information listed below as part of the permit application except for those items of information which are current, accurate, and available in the existing permit file. For both existing and new Class I hazardous waste injection wells, certain maps, cross-sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current and readily available to the director (for example, in the permitting agency's files) and sufficiently identifiable to be retrieved.

**A.** Prior to the issuance of a permit for an existing Class I hazardous waste injection well to operate or the construction or conversion of a new Class I hazardous waste injection well, the director shall review the following to assure that the requirements of 20.6.2.5000 through 20.6.2.5399 NMAC are met:

- (1) information required in 20.6.2.5102 NMAC;

**(2)** a map showing the injection well for which a permit is sought and the applicable area of review; within the area of review, the map must show the number or name and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads; the map should also show faults, if known or suspected;

**(3)** a tabulation of all wells within the area of review which penetrate the proposed injection zone or confining zone; such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging or completion and any additional information the director may require;

**(4)** the protocol followed to identify, locate and ascertain the condition of abandoned wells within the area of review which penetrate the injection or the confining zones;

**(5)** maps and cross-sections indicating the general vertical and lateral limits of all ground water of the state of New Mexico within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each groundwater of the state of New Mexico which may be affected by the proposed injection;

**(6)** maps and cross-sections detailing the geologic structure of the local area;

**(7)** maps and cross-sections illustrating the regional geologic setting;

**(8)** proposed operating data:

**(a)** average and maximum daily rate and volume of the fluid to be injected;  
and

**(b)** average and maximum injection pressure;

**(9)** proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the injection formation and the confining zone;

**(10)** proposed stimulation program;

**(11)** proposed injection procedure;

**(12)** schematic or other appropriate drawings of the surface and subsurface construction details of the well;

**(13)** contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any ground water of the state of New Mexico;

**(14)** plans (including maps) for meeting monitoring requirements of 20.6.2.5358 NMAC;

**(15)** for wells within the area of review which penetrate the injection zone or the confining zone but are not properly completed or plugged, the corrective action to be taken under 20.6.2.5354 NMAC;

**(16)** construction procedures including a cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing and coring program; and

**(17)** a demonstration pursuant to 20.6.2.5320 NMAC, that the applicant has the resources necessary to close, plug or abandon the well and for post-closure care.

**B.** Prior to the director's granting approval for the operation of a Class I hazardous waste injection well, the owner or operator shall submit and the director shall review the following information, which shall be included in the completion report:

- (1)** all available logging and testing program data on the well;
- (2)** a demonstration of mechanical integrity pursuant to 20.6.2.5358 NMAC;
- (3)** the anticipated maximum pressure and flow rate at which the permittee will operate;
- (4)** the results of the injection zone and confining zone testing program as required in Paragraph (9) of Subsection A of 20.6.2.5360 NMAC;
- (5)** the actual injection procedure;
- (6)** the compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone and with the materials used to construct the well;
- (7)** the calculated area of review based on data obtained during logging and testing of the well and the formation, and where necessary revisions to the information submitted under Paragraphs (2) and (3) of Subsection A of 20.6.2.5360 NMAC;
- (8)** the status of corrective action on wells identified in Paragraph (15) of Subsection A of 20.6.2.5360 NMAC; and
- (9)** evidence that the permittee has obtained an exemption under 40 C.F.R. Part 148, Subpart C for the hazardous wastes permitted for disposal through underground injection.

**C.** Prior to granting approval for the plugging and abandonment (*i.e.*, closure) of a Class I hazardous waste injection well, the director shall review the information required in Paragraph (4) of Subsection A of 20.6.2.5361 NMAC and Subsection A of 20.6.2.5362 NMAC.

**D.** Any permit issued for a Class I hazardous waste injection well for disposal on the premises where the waste is generated shall contain a certification by the owner or operator that:

(1) the generator of the hazardous waste has a program to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) injection of the waste is that practicable method of disposal currently available to the generator which minimizes the present and future threat to human health and the environment.

[20.6.2.5360 NMAC - N, 8-31-15]

#### **20.6.2.5361 CLOSURE:**

**A. Closure plan.** The owner or operator of a Class I hazardous waste injection well shall prepare, maintain, and comply with a plan for closure of the well that meets the requirements of Subsection D of this section and is acceptable to the director. The obligation to implement the closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain and implement an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the method of closure reflected in the plan for approval by the director no later than the date on which notice of closure is required to be submitted to the director under Subsection B of this section.

(3) The plan shall assure financial responsibility as required in Paragraph (1) of Subsection A of 20.6.2.5342 NMAC.

(4) The plan shall include the following information:

(a) the type and number of plugs to be used;

(b) the placement of each plug including the elevation of the top and bottom of each plug;

(c) the type and grade and quantity of material to be used in plugging;

(d) the method of placement of the plugs;

(e) any proposed test or measure to be made;

(f) the amount, size, and location (by depth) of casing and any other materials to be left in the well;

(g) the method and location where casing is to be parted, if applicable;

(h) the procedure to be used to meet the requirements of Paragraph (5) of Subsection D of this section;

(i) the estimated cost of closure; and

(j) any proposed test or measure to be made.

(5) The director may modify a closure plan following the procedures of 20.6.2.3109 NMAC.

(6) An owner or operator of a Class I hazardous waste injection well who ceases injection temporarily, may keep the well open provided he:

(a) has received authorization from the director; and

(b) has described actions or procedures, satisfactory to the director, that the owner or operator will take to ensure that the well will not endanger ground water of the state of New Mexico during the period of temporary disuse; these actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the director.

(7) The owner or operator of a well that has ceased operations for more than two years shall notify the director 30 days prior to resuming operation of the well.

**B. Notice of intent to close.** The owner or operator shall notify the director at least 60 days before closure of a well. At the discretion of the director, a shorter notice period may be allowed.

**C. Closure report.** Within 60 days after closure or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a closure report to the director. If the quarterly report is due less than 15 days after completion of closure, then the report shall be submitted within 60 days after closure. The report shall be certified

as accurate by the owner or operator and by the person who performed the closure operation (if other than the owner or operator). Such report shall consist of either:

- (1) a statement that the well was closed in accordance with the closure plan previously submitted and approved by the director; or
- (2) where actual closure differed from the plan previously submitted, a written statement specifying the differences between the previous plan and the actual closure.

**D. Standards for well closure.**

(1) Prior to closing the well, the owner or operator shall observe and record the pressure decay for a time specified by the director. The director shall analyze the pressure decay and the transient pressure observations conducted pursuant to Paragraph (1) of Subsection E of 20.6.2.5358 NMAC and determine whether the injection activity has conformed with predicted values.

(2) Prior to well closure, appropriate mechanical integrity testing shall be conducted to ensure the integrity of that portion of the long string casing and cement that will be left in the ground after closure. Testing methods may include:

- (a) pressure tests with liquid or gas;
- (b) radioactive tracer surveys;
- (c) noise, temperature, pipe evaluation, or cement bond logs; and
- (d) any other test required by the director.

(3) Prior to well closure, the well shall be flushed with a buffer fluid.

(4) Upon closure, a Class I hazardous waste well shall be plugged with cement in a manner that will not allow the movement of fluids into or between groundwater of the state of New Mexico.

(5) Placement of the cement plugs shall be accomplished by one of the following:

- (a) the balance method;
- (b) the dump bailer method;
- (c) the two-plug method; or

(d) an alternate method, approved by the director, that will reliably provide a comparable level of protection.

**(6)** Each plug used shall be appropriately tagged and tested for seal and stability before closure is completed.

**(7)** The well to be closed shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the director, prior to the placement of the cement plug(s).

[20.6.2.5361 NMAC - N, 8-31-15]

#### **20.6.2.5362 POST-CLOSURE CARE:**

**A.** The owner or operator of a Class I hazardous waste well shall prepare, maintain, and comply with a plan for post-closure care that meets the requirements of Subsection B of this section and is acceptable to the director. The obligation to implement the post-closure plan survives the termination of a permit or the cessation of injection activities. The requirement to maintain an approved plan is directly enforceable regardless of whether the requirement is a condition of the permit.

**(1)** The owner or operator shall submit the plan as a part of the permit application and, upon approval by the director, such plan shall be a condition of any permit issued.

**(2)** The owner or operator shall submit any proposed significant revision to the plan as appropriate over the life of the well, but no later than the date of the closure report required under Subsection C of 20.6.2.5361 NMAC.

**(3)** The plan shall assure financial responsibility as required in 20.6.2.5363 NMAC.

**(4)** The plan shall include the following information:

**(a)** the pressure in the injection zone before injection began;

**(b)** the anticipated pressure in the injection zone at the time of closure;

**(c)** the predicted time until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost ground water of the state of New Mexico;

**(d)** predicted position of the waste front at closure;

**(e)** the status of any cleanups required under 20.6.2.5354 NMAC; and

**(f)** the estimated cost of proposed post-closure care.

**(5)** At the request of the owner or operator, or on his own initiative, the director may modify the post-closure plan after submission of the closure report following the procedures in 20.6.2.3109 NMAC.

**B.** The owner or operator shall:

**(1)** continue and complete any cleanup action required under 20.6.2.5354 NMAC, if applicable;

**(2)** continue to conduct any ground water monitoring required under the permit until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost ground water of the state of New Mexico; the director may extend the period of post-closure monitoring if he determines that the well may endanger ground water of the state of New Mexico;

**(3)** submit a survey plat to the local zoning authority designated by the director; the plat shall indicate the location of the well relative to permanently surveyed benchmarks; a copy of the plat shall be submitted to the director;

**(4)** provide appropriate notification and information to such state and local authorities as have cognizance over drilling activities to enable such state and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the well's confining or injection zone;

**(5)** retain, for a period of three years following well closure, records reflecting the nature, composition and volume of all injected fluids; the director shall require the owner or operator to deliver the records to the director at the conclusion of the retention period, and the records shall thereafter be retained at a location designated by the director for that purpose.

**C.** Each owner of a Class I hazardous waste injection well, and the owner of the surface or subsurface property on or in which a Class I hazardous waste injection well is located, must record a notation on the deed to the facility property or on some other instrument which is normally examined during title search that will in perpetuity provide any potential purchaser of the property the following information:

**(1)** the fact that land has been used to manage hazardous waste;

**(2)** the name of the state agency or local authority with which the plat was filed, as well as the address of the director;

**(3)** the type and volume of waste injected, the injection interval or intervals into which it was injected, and the period over which injection occurred.

[20.6.2.5362 NMAC - N, 8-31-15]

### **20.6.2.5363 FINANCIAL RESPONSIBILITY FOR POST-CLOSURE CARE:**

The owner or operator shall demonstrate and maintain financial responsibility for post-closure by using a trust fund, surety bond, letter of credit, financial test, insurance or corporate guarantee that meets the specifications for the mechanisms and instruments revised as appropriate to cover closure and post-closure care in 20.6.2.5320 NMAC.

The amount of the funds available shall be no less than the amount identified in Subparagraph (f) of Paragraph (4) of Subsection A of 20.6.2.5362 NMAC. The obligation to maintain financial responsibility for post-closure care survives the termination of a permit or the cessation of injection. The requirement to maintain financial responsibility is enforceable regardless of whether the requirement is a condition of the permit.

[20.6.2.5363 NMAC - N, 8-31-15]

### **20.6.2.5364-20.6.2.5399 [RESERVED]**

## **PART 3: VOLUNTARY REMEDIATION**

### **20.6.3.1 ISSUING AGENCY:**

New Mexico Environment Department.

[7/15/99; 20.6.3.1 NMAC - Rn, 20 NMAC 6.3.I.101, Recompiled 11/27/01]

### **20.6.3.2 SCOPE:**

This Part provides for the expeditious, voluntary cleanup of contaminated properties in New Mexico in a manner that is protective of human health and the environment, and the promotion of their redevelopment and productive use.

[7/15/99; 20.6.3.2 NMAC - Rn, 20 NMAC 6.3.I.102, Recompiled 11/27/01]

### **20.6.3.3 STATUTORY AUTHORITY:**

These regulations are promulgated pursuant to the provisions of the Voluntary Remediation Act, NMSA 1978, Sections 74-4G-1 et seq.

[7/15/99; 20.6.3.3 NMAC - Rn, 20 NMAC 6.3.I.103, Recompiled 11/27/01]

### **20.6.3.4 DURATION:**

Permanent.

[7/15/99; 20.6.3.4 NMAC - Rn, 20 NMAC 6.3.I.104, Recompiled 11/27/01]

### **20.6.3.5 EFFECTIVE DATE:**

These regulations are effective as of July 15, 1999 unless a later date is cited at the end of a Section or Paragraph.

[7/15/99; 20.6.3.5 NMAC - Rn, 20 NMAC 6.3.I.105, Recompiled 11/27/01]

### **20.6.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 6 is:

A. to implement the Voluntary Remediation Act, NMSA 1978, Sections 74-4G-1 et seq.;

B. to provide incentives for the voluntary assessment and remediation of contaminated property, with state oversight; and

C. to remove future liability of lenders and landowners.

[7/15/99; 20.6.3.6 NMAC - Rn, 20 NMAC.6.3.I.106, Recompiled 11/27/01]

### **20.6.3.7 DEFINITIONS:**

The words and phrases used in this Part have the same meaning as in The Voluntary Remediation Act, NMSA 1978, Sections 74-4G-1 et seq. As used in this Part:

A. "Act" means the Voluntary Remediation Act, NMSA 1978, Sections 74-4G-1 et seq.

B. "background" means, for purposes of the voluntary remediation program only and for no other purposes in this Part and any other regulations, including but not limited to surface water standards, the amount of contaminants naturally occurring from undisturbed geologic sources or contaminants which the participant establishes are occurring solely from a source other than the participant's facility. This definition does not apply to any other program area in the department, nor shall this definition be interpreted as applicable to any other program area, and this definition shall not prevent the secretary from requiring remediation of commingled plumes of pollution, shall not prevent participants from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the secretary from exercising enforcement authority under any applicable statute, regulation or common law.

C. "facility" means any structure, installation, operation, storage tank, transmission line, motor vehicle, rolling stock, or activity of any kind, whether stationary or mobile;

D. "notice of violation" means a notice that alleges one or more violations of law and describes actions that should or must be taken to avoid an enforcement action;

E. "owner" means the person or persons who own a facility, or part of a facility;

F. "operator" means the person or persons responsible for the overall operations of a facility;

G. "secretary" means the Secretary of the New Mexico Environment Department or his or her designee;

[7/15/99; 20.6.3.7 NMAC - Rn, 20 NMAC.6.3.I.107, Recompiled 11/27/01]

#### **20.6.3.8 COMPLIANCE WITH OTHER LAW:**

Compliance with this Part does not relieve a person from the obligation to comply with other applicable federal, state and local law.

[7/15/99; 20.6.3.8 NMAC - Rn, 20 NMAC 6.3.I.108, Recompiled 11/27/01]

#### **20.6.3.9 VOLUNTARY REMEDIATION ACTIVITIES:**

Voluntary remediation activities may include, but are not limited to:

A. research to establish the history of ownership, release(s), contaminant use, storage, and management, and environmental permits and compliance;

B. research and subsurface investigations, including intrusive and non-intrusive techniques, to assess the site's hydrogeologic characteristics;

C. the collection and analysis of soil, sediment, surface water, ground water, soil gas, atmospheric, indoor air, and/or biological samples;

D. assessment of the nature and extent, migration pathways, and environmental fate and transport of contaminants;

E. performance of a human health and ecological risk assessment;

F. installation of waste or product recovery and water treatment systems;

G. installation of soil vapor extraction or other vadose zone remediation systems;

H. removal and on- or off-site treatment, recycling, or reuse of contaminated media;

I. removal of the contents of, or removal of, drums, barrels, tanks, or other bulk containers which contain or may contain contaminants;

J. capping or covering of contaminated media;

K. other measures to mitigate human health and ecological receptors' potential exposures and risks;

L. post-remediation verification sampling and/or monitoring; and

M. any other remediation action consistent with the purpose of achieving the performance standard of Subpart I, Section 110 of this Part.

[7/15/99; 20.6.3.9 NMAC - Rn, 20 NMAC 6.3.I.109, Recompiled 11/27/01]

### **20.6.3.10 PERFORMANCE STANDARD AND ASSOCIATED REQUIREMENTS:**

A. Activities performed pursuant to the Act shall be designed to collect, develop, and evaluate sufficient information to support proposed conclusions regarding:

(1) the source, nature and extent, migration pathways, and environmental fate and transport of contaminants in all environmental media present at the site (i.e., soil, ground water, surface water, sediment, and/or air);

(2) the risk of harm posed by the site to human health, safety, and the environment;

(3) the need to conduct remedial actions at the site to safeguard against such risks; and

(4) the remedial action selection and design, if appropriate.

B. If applicable standards are prescribed by law or regulation, voluntary remediation activities shall achieve applicable standards. Where applicable standards are not prescribed by law or regulation, voluntary remediation activities shall be performed in order to achieve a final site condition such that no contaminant will present a significant risk of harm to human health, safety, or the environment during any foreseeable period of time. Such level of cleanup shall be attained by reducing the risk from exposure to individual carcinogens or suspected carcinogens to an individual lifetime cancer risk of less than one cancer incident in 100,000 exposed persons ( $1 \times 10^{-5}$ ); and by reducing the risk from exposure to individual noncarcinogenic contaminants to a hazard quotient of less than 1. In order to achieve this performance standard, the applicant may evaluate the risk of harm posed by the site to human health, safety, or the environment by employing one of three general methods:

(1) Method 1: Comparison of site concentrations to site-specific background concentrations; or

(2) Method 2: Comparison of site concentrations to applicable water quality standards and soil guidelines approved by the Department, including but not limited to:

(a) risk-based soil remediation guidelines developed by the department;

(b) standards for water, as listed in the most recent version of the New Mexico Water Quality Control Commission (WQCC) Regulations, 20 NMAC 6.1 [20.6.1 NMAC] and 20 NMAC 6.2 [20.6.2 NMAC], or other more stringent applicable standards, as appropriate; and

(c) other applicable standards. Where more than one applicable standard exists, the most stringent applicable standard will be applied; or

(3) Method 3: Performance of a detailed, site-specific human health and, if applicable, environmental risk assessment. Such a Method 3 evaluation will be required to employ a cumulative exposure approach. In no case shall a Method 3 evaluation propose voluntary remediation activities that are not designed to meet all applicable standards.

C. Any risk assessment conducted under this Section shall be based on reasonable and conservative assumptions about exposures and pathways, shall take into consideration exposure of sensitive subgroups to contaminants and the possibility of future changes in land use, and shall incorporate an adequate margin of safety.

D. The selection of voluntary remediation activities that will achieve a permanent solution shall be required, unless the participant demonstrates and the secretary concurs that implementation of voluntary remediation activities to achieve a permanent solution would be infeasible or impracticable.

E. An environmental risk assessment shall be required only when ecological receptors are present at or in the near vicinity of a site. Such an environmental risk assessment shall be a Method 3 site-specific assessment, and may be combined with a Method 1, 2, or 3 evaluation of human health risks.

F. The department may approve voluntary remediation activities that do not achieve residential health-based levels in all environmental media of concern only if the participant provides an affirmation of future non-residential land use, or an easement or other legal document binding on successors in interest to the site, in a form satisfactory to the department.

G. The department, in its discretion, may require an easement or other legal document binding on successors in interest to the site where voluntary remediation activities include post-completion monitoring, maintenance of engineering controls, remediation systems, or post-closure care.

[7/15/99; 20.6.3.10 - Rn, 20 NMAC 6.3.1.110, Recompiled 11/27/01]

**20.6.3.11-20.6.3.199**

**[RESERVED]**

### **20.6.3.200 APPLICATION FOR DETERMINATION OF ELIGIBILITY, AND FEE:**

#### **A. Eligibility:**

- (1) To be eligible for a voluntary remediation agreement an applicant must:
  - (a) own the site;
  - (b) operate a facility located on the site;
  - (c) be a prospective owner of the site; or
  - (d) be a prospective operator of a facility at the site.
- (2) Multiple applicants may apply for a voluntary remediation agreement; however, a primary applicant who will serve as the department's point of contact must be designated.
- (3) The secretary shall reject an application for a voluntary remediation agreement if the secretary determines that one or more of the grounds for rejection specified in 74-4G-5(D), N.M.S.A., exist.
- (4) The secretary may reject an application for a voluntary remediation agreement if:
  - (a) the applicant has, within ten (10) years immediately preceding the date of the application, knowingly misrepresented a material fact in an application for a permit or plan submitted pursuant to federal or local environmental law or environmental law of a state other than New Mexico;
  - (b) a predecessor, successor, assign, parent, subsidiary, affiliate, officer, director, partner, managing agent or employee of the applicant has within ten (10) years immediately preceding the date of submission of the application engaged in conduct described in N.M.S.A. 74-4G-5(D)(7)(a)-(c) or Paragraph 1 of this subsection, or had an environmental permit revoked or suspended as described in N.M.S.A. 74-4G-5(D)(7)(d);
  - (c) a permit that addresses a contaminant described in the application was required for the site or facility under any state or federal law but the site or facility did not obtain the required permit; or
  - (d) a notice of violation that addresses a contaminant at the site or facility described in the application has been issued by any federal, state or local agency, and action has not been taken to remedy the alleged violations to the issuing agency's satisfaction.

(5) If the department determines that an application is incomplete or inaccurate, the secretary shall deny the application or notify the applicant in writing of the alleged incompleteness or inaccuracy and require the applicant to remedy the incompleteness or inaccuracies. If the secretary requires the applicant to remedy the incompleteness or inaccuracies, and the applicant does not remedy the alleged incompleteness or inaccuracies within thirty (30) days of receipt of written notice of such requirement, the secretary shall deny the application.

(6) Applicants having sites where remedial actions were completed under another state or federal program, or without any state or federal oversight, may be allowed to enter into a voluntary remediation agreement, at the discretion of the secretary. However, all other application requirements and eligibility criteria described in this Section must be met in order for such an application to be considered. In cases where an applicant has completed remedial action prior to the effective date of these regulations under another state or federal program and received agency approval, the applicant may be required to complete additional work in order to obtain a certificate of completion as described in Subpart V of this Part [20.6.3.500 NMAC] if:

(a) the remediation did not address all contaminants or contaminated media within the site;

(b) regulatory requirements have changed since the date of completion of remediation; or

(c) the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC] is not met.

(7) The secretary shall, on a first come, first-served basis or within thirty (30) calendar days of receipt of a complete application, conditionally determine whether the applicant is eligible to participate in a voluntary remediation agreement pursuant to the provisions of Subpart III of this Part [20.6.3.300 NMAC]. The secretary shall notify the applicant in writing as to its decision, and the reasons for an applicant's ineligibility, if applicable. The final eligibility determination will be made by the secretary no later than fifteen (15) calendar days after the close of the public comment period, or if a public meeting is held, within fifteen (15) calendar days of the public meeting, as described in Subpart III, Section 305 of this Part [Subsection E of 20.6.3.300 NMAC].

B. Application Process: An applicant may request to enter into a voluntary remediation agreement with the department by completing the "application for determination of eligibility" form provided by the department. The application shall include:

(1) general information disclosing:

(a) the name of the applicant;

(b) the site, its location, and past and current ownership, operator and use history;

(c) information for the ten (10) years preceding the date of submission of the application on past, present, and pending regulatory permits in New Mexico, and on administrative and judicial enforcement actions, permit revocations and suspensions, and approved remediation plans in New Mexico and other states; and

(d) other general information requested by the department.

(2) the following written "Declaration of Ability and Intent" signed by the applicant: "I attest under the pains and penalties of perjury that:

(a) I am the applicant [or title of office held, general partner, or similar responsible representative of applicant], and I am fully authorized to make this attestation on behalf of and to legally bind, the applicant;

(b) I have personally examined and am familiar with the requirements of the Voluntary Remediation Act, NMSA 1978 Sections 74-4G-1, et seq. and Voluntary Remediation Regulations, 20 NMAC 6.3 [20.6.3 NMAC];

(c) Based upon my inquiry of the person(s) employed or engaged to perform work pursuant to this application, and my/those person's(s') or entity's (ies') understanding as to the estimated costs of the proposed voluntary remediation actions, that the applicant has the technical, financial, and legal ability and intent to proceed with the proposed voluntary remediation actions in accordance with the Voluntary Remediation Act and 20 NMAC 6.3 [20.6.3 NMAC], and other applicable requirements; and

(d) The applicant will notify the department upon becoming aware of an inability to proceed with the proposed voluntary remediation actions because such actions are beyond the applicant's technical, financial, or legal ability to perform them."

(3) A Phase I environmental assessment of the site which generally conforms with the American Society for Testing and Materials (ASTM) Standard Practice E 1527, as amended, if available, or its equivalent, which at minimum includes:

(a) the legal description of the site, including a site map;

(b) the description of the physical, hydrological, and geological characteristics of the site, including the location of nearest water supply wells and surface water bodies;

(c) information of which the applicant is aware concerning the source(s), nature and extent of all contaminants or releases at the site and immediately contiguous to the site; and

(d) relevant information of which the applicant is aware concerning the potential for human or other exposure to contamination originating at the site, including but not limited to current land use, depth to groundwater, location of utilities, and potential human health and ecological receptors.

(4) a preliminary work plan describing the proposed voluntary remediation activities as they are currently envisioned as being submitted in a final voluntary remediation work plan, as described in Subpart IV of this part [20.6.3.400 NMAC].

(5) written consent by the property owner, if different from the applicant, supporting the proposed voluntary remediation activities, including any restrictions on property use.

C. Application Fee: An applicant shall pay at the time of submitting the application, a non-refundable application fee of \$1,000 per application that will pay for the department's costs of processing the application.

[7/15/99; 20.6.3.200, - Rn, 20 NMAC 6.3.II.200 to 203, Recompiled 11/27/01]

### **20.6.3.201-20.6.3.299 [RESERVED]**

### **20.6.3.300 VOLUNTARY REMEDIATION AGREEMENT:**

#### A. Agreement Provisions:

(1) After the secretary determines that an applicant is eligible, the secretary may enter into a voluntary remediation agreement with the applicant. Such an agreement shall be made final after receipt and incorporation of public comments, as described in Section 304 of this Subpart [Subsection D of 20.6.3.300 NMAC].

(2) The voluntary remediation agreement shall be set forth on a standard form developed by the department, and shall include:

(a) A provision for the Department's oversight, including:

- (i) access to the site;
- (ii) on-site collection of samples and inspection and copying of site and facility records;
- (iii) compensation for oversight costs in accordance with the fee structure specified in Section 310 of this Part [Subsection J of 20.6.3.300 NMAC];

(b) a reference to applicable statutes, regulations, standards, and guidance that must be complied with;

(c) a provision requiring the site to be remediated to applicable standards such that the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC] will be achieved;

(d) a preliminary work plan, describing the proposed voluntary remediation activities as they are currently envisioned as being submitted in a final voluntary remediation work plan, as described in Subpart IV of this Part [20.6.3.400 NMAC];

(e) identification of items to be submitted for department review and approval, including a work plan, quarterly status reports or status reports to be submitted at a different frequency, as determined by the department, and a final completion report that provides all information necessary to verify that all work contemplated by the voluntary remediation agreement has been completed, and that the applicable standards have been met;

(f) a provision requiring the applicant to obtain all applicable permits for the site and any required access agreements; and

(g) a schedule for completing significant proposed tasks, report submittals, and department review.

(3) The secretary shall not initiate an enforcement action, including an administrative or judicial action, against a participant for the contamination or release thereof, or for the activity that results in the contamination or release thereof, if the contamination is the subject of an agreement pursuant to these regulations. However, this Section shall not be a bar to any enforcement action if the agreement is not finalized, if the agreement is terminated or rescinded, or if the participant does not successfully initiate or implement the agreement within a reasonable time under the schedules set forth in the voluntary remediation agreement and approved work plans.

(4) The agreement shall become final and effective upon being signed by both the secretary and the applicant. The effective date of the agreement shall be the later date of signature by either the secretary or the applicant.

#### B. Public Notice and Comment:

(1) Before the voluntary remediation agreement becomes finalized, the applicant must:

(a) make the proposed voluntary remediation agreement available for public inspection at a location in reasonable proximity to the site, within ten (10) calendar days of the receipt of the conditional eligibility determination from the department;

(b) notify the following entities and advise them of the proposed voluntary remediation agreement, the location where the proposed agreement can be reviewed, and the opportunity to submit comments to the department;

(i) any local, state, federal, tribal or pueblo governmental agency potentially affected by the proposed voluntary remediation agreement, including at a minimum, the mayor and director of the board of health, or their equivalent, of the municipality in which the site is located;

(ii) those parties that have requested notification;

(iii) the general public by posting a notice at the site on a form provided by the department, and by publishing a notice in a newspaper of general circulation in the state and a newspaper published in the area where the site is located, such notice to be published in the legal advertisements section of the newspaper and at one other place in the newspaper chosen to give the general public the most effective notice, and if the department determines it is appropriate, shall be published in both English and Spanish;

(c) Include in the public notice:

(i) the name of the applicant;

(ii) the location of the site;

(iii) a brief description of the proposed remediation activities described in the preliminary voluntary remediation work plan;

(iv) the address to which comments may be submitted and the deadline for submitting comments;

(v) the address and telephone number at which persons may obtain further information; and

(d) submit to the department a copy of the public notice as well as an affidavit of publication and a signed statement affirming that the applicant has complied with the provisions of this Subsection [Paragraph].

(2) The secretary shall provide a comment period of at least thirty (30) calendar days following publication of the newspaper notice.

(3) During the comment period, interested parties may submit written comments to the department concerning the proposed voluntary remediation agreement activities.

(4) During the comment period, any interested person may submit a request for public meeting. The request shall be in writing to the department and shall set forth the reasons why the meeting should be held. A public meeting will be held at the applicant's expense if the secretary determines that there is significant public interest.

(5) If a public meeting is to be held, the applicant shall, at its expense, at least ten (10) calendar days before the meeting, mail a notice of the time and place of the meeting to all persons who have submitted written comments or a request for public meeting, and publish the notice in a newspaper of general circulation in the state and a newspaper published in the area where the site is located, in the legal advertisements section of the newspaper and at one other place in the newspaper chosen to give the general public the most effective notice. If the department determines it is appropriate, the notice shall be published in both English and Spanish.

C. Public Meeting:

(1) The department may appoint a meeting facilitator.

(2) The applicant and the department may prepare a fact sheet to be distributed at the public meeting, written in English and Spanish or other language as deemed appropriate, describing site history and the planned voluntary remediation activities.

(3) The record of the public meeting will consist of a tape recording. Tape copying and other transcript costs shall be paid by the person requesting the copy or transcript.

(4) Persons requiring assistance in the form of auxiliary aid or translation will have such assistance provided at the expense of the applicant.

(5) At the meeting, all interested persons shall be given a reasonable chance to submit data, views, or arguments orally or in writing, and to ask questions of the department and of the applicant, or its authorized representatives.

D. Consideration of Public Comments:

(1) In deciding whether to enter into a voluntary remediation agreement, and whether to approve the terms of such an agreement, the secretary shall consider public comments.

(2) If the secretary deems it appropriate, public comments will be incorporated into the final voluntary remediation agreement.

E. Approval of Voluntary Remediation Agreement: The secretary shall, within thirty (30) calendar days of the secretary's final determination that the applicant is eligible, approve, approve with modifications, or disapprove the proposed voluntary remediation agreement. The secretary shall mail notice of this determination to the applicant and all persons who presented written comments or presented oral comments at the public hearing.

F. Execution of Voluntary Remediation Agreement: If the secretary approves the voluntary remediation agreement as proposed, the secretary and applicant shall execute the agreement and the agreement shall become effective. If the secretary approves the voluntary remediation agreement with modifications and the modifications are acceptable to the applicant, the secretary and applicant shall execute the agreement and the agreement shall become effective.

G. Additional Public Participation: If members of the public request to participate in the voluntary remediation activities, then a mailing list of interested parties will be developed. These interested parties will be kept informed of the availability of key project submittals as they are received by the department. Such submittals will be made available by the department for public review and comment upon request.

H. Termination:

(1) If an agreement is not reached between an applicant and the secretary on or before the thirtieth (30th) calendar day after the secretary determines an applicant to be eligible pursuant to the provisions of Subparts II and III of this Part [20.6.3.200 and 20.6.3.300 NMAC], the applicant or the secretary may withdraw from the negotiations.

(2) The participant may terminate a voluntary remediation agreement with sixty (60) calendar days' written notice via certified mail, return receipt requested, to the department.

(3) The secretary may terminate a voluntary remediation agreement on a finding that the participant is not in compliance with the voluntary remediation agreement. Notice of termination will be made to the participant via certified mail, return receipt requested, and facts supporting the secretary's rationale for termination shall be set forth in the notification.

(4) The department's costs incurred or obligated before the date the notice of termination is received are recoverable by the department under the agreement if the agreement is terminated.

I. Dispute Resolution: In the event of any dispute regarding the requirements of the voluntary remediation agreement, oversight costs charged by the department to the participant, these regulations, or the Act, the participant may notify the secretary by certified mail that a dispute has arisen and the participant desires to invoke the dispute resolution provisions of this Section. Such notification must be made within fifteen (15) calendar days after the participant receives the decision of the secretary that causes the dispute, or the applicant waives its right to dispute the decision. Upon such notification, all deadlines affected by the dispute shall be extended for a thirty (30) calendar day negotiation period, or for a maximum of sixty (60) calendar days if approved by the secretary for good cause shown. During this negotiation period, the secretary and the participant shall meet at least once. Such meeting(s) may be facilitated by a mutually agreed upon third party, but the third party shall assume no power or authority granted

or delegated to the secretary by the Act. If the dispute remains unresolved after the negotiation period, the secretary shall issue a binding final decision, including a written statement of the reason for the decision.

J. Oversight Fee Structure: In accordance with the terms and schedule specified in the voluntary remediation agreement, the participant will compensate the department for all reasonable costs associated with the oversight of the voluntary remediation activities based upon a standard hourly rate to be calculated by the department on an annual basis. Oversight costs shall include direct and indirect costs of overhead, salaries, benefits, equipment and utility use fees, and legal, management, and support costs associated with the preparation of the voluntary remediation agreement, review of the participant's work plans and reports, and oversight of and performance of field activities (including but not limited to travel, sampling, and chemical analysis of samples), participation in dispute resolution activities, as well as long-term oversight performed by the department after its issue of a conditional certificate of completion, as described in Subpart V of this Part [20.6.3.500 NMAC]. Oversight will be invoiced based on actual hours of staff oversight, at the rate calculated per a formula established by the department. Travel and per diem costs will be invoiced at state-designated rates. Sampling and analysis costs will be invoiced at actual cost plus indirect overhead rate. The effective hourly rate for the first twelve (12) months following the effective date of these regulations shall be based on the department's best estimate of total operating costs, and total available technical staff hours. The hourly rate for subsequent periods will be calculated and subsequently updated on November 1 of each year, following a thirty (30) calendar day public comment period. [7/15/99], 20.6.3.300 NMAC - Rn, 20 NMAC 6.3.III.300 to 310, Recompiled 11/27/01]

**20.6.3.311-20.6.3.399 [RESERVED]**

**20.6.3.400 VOLUNTARY REMEDIATION WORK PLAN:**

A. Applicability: Unless the participant demonstrates that further investigation and/or cleanup are not required in order to comply with the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC], after a voluntary remediation agreement becomes effective, the participant shall submit to the department a proposed final voluntary remediation work plan for the site remediation.

B. Content: The final voluntary remediation work plan shall provide a detailed description of voluntary remediation activities to be undertaken to achieve the performance standard described in Subpart I, Section 110 of this part [20.6.3.10 NMAC]. At a minimum, the final voluntary remediation work plan shall include:

(1) a summary of site and contaminant use, storage, disposal, and release history, and the site investigation work performed to date;

(2) A detailed description, including plans and sketches, of any additional investigation to be conducted to determine the type, nature and extent of contaminants

at the site, including but not limited to: location and type of sample, sample collection techniques, monitoring techniques, sample analytical methods, and quality assurance/quality control methods;

(3) contaminants and media (including but not limited to air, surface water, groundwater, soil, and facility structures) to be addressed by the remediation;

(4) a statement of work to accomplish remediation of the site, and the method to reach the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC];

(5) a monitoring plan to be implemented during the duration of remediation activities, if applicable;

(6) confirmatory sampling and analytical methods to verify that remediation of the site has met the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC];

(7) post completion monitoring and maintenance to ensure that the closure conditions, including any engineering controls or affirmation of future non-residential land use upon which the final remedy is dependent, are maintained after completion, if applicable;

(8) an implementation schedule for all identified investigation and remediation tasks;

(9) a site-specific health and safety plan that complies with all applicable standards and guidelines;

(10) a plan describing the proposed management of investigation and remediation derived wastes, if applicable;

(11) copies of, or a schedule for obtaining, all necessary and applicable permits and access agreements required to accomplish remediation of the site; and

(12) any other pertinent information requested by the department which is reasonably necessary to meet the requirements of these regulations.

C. Schedule: The participant shall submit to the department a proposed final voluntary remediation work plan according to the schedule in the voluntary remediation agreement, but in no event shall the participant submit the work plan, or, if the work plan is to be prepared in phases, the work plan for the first phase, later than sixty (60) calendar days following the effective date of the voluntary remediation agreement.

D. Work Plan Modification: Any approved voluntary remediation work plan may be modified at the request of the participant and/or the department, with both parties'

approval. Following receipt of the modification request, the secretary shall determine whether or not the proposed modification is significant. If the secretary determines that the proposed modification is significant, the applicant shall make the proposed modification available for public inspection at a location in reasonable proximity to the site within ten (10) calendar days of the secretary's determination, and the applicant and department shall comply with Sections 302.A.2, 302.A.3, 302.A.4 [Subparagraphs (b), (c) and (d), Paragraph (1), Subsection (B) of 20.6.3.300 NMAC], 302.B., 302.C, 302.D. and 302.E. of this Part [Paragraphs (2), (3) (4) and (5), Subsection (B) of 20.6.3.300 NMAC] with respect to the proposed modification. If a public meeting is held on the proposed modification, Section 303 of this Part [Subsection (C) of 20.6.3.300 NMAC] shall apply to the meeting. If the secretary determines that the proposed modification is not significant, the applicant shall at its expense mail to all persons on the mailing list of interested persons maintained pursuant to Section 307 of this Part [Subsection (G) of 20.6.3.300 NMAC] notice of the proposed modification. The proposed modification will be made available by the department for public review and comment upon request. In all cases, the secretary shall consider public comments in determining whether to approve the proposed modification.

E. Review Process: Following submittal of a proposed final voluntary remediation work plan or work plan modification, the secretary shall review and approve, approve with conditions, or disapprove the work plan or work plan modification within forty-five (45) calendar days of receipt. If the secretary disapproves the work plan or work plan modification, the participant may be granted an opportunity to submit a revised version, as determined by the secretary.

[7/15/99; 20.6.3.400 NMAC - Rn, 20 NMAC 6.3.IV 400 to 405, Recompiled 11/27/01]

**20.6.3.401-20.6.3.499 [RESERVED]**

**20.6.3.500 CERTIFICATE OF COMPLETION:**

A. Applicability:

(1) If the participant files with the department a signed Affidavit of Completion of Voluntary Remediation, and the secretary determines that a participant has successfully complied with the voluntary remediation agreement and the site conditions meet the applicable standards, the secretary shall issue the participant a certificate of completion.

(2) For voluntary remediation activities completed on a portion of a site, the certificate of completion shall pertain only to that specific portion of the site, and shall include a legal description of that area.

(3) If the remediation requires post-completion monitoring, maintenance of engineering controls, remediation systems, post-closure care, or an affirmation of future non-residential land use, and the participant is satisfactorily implementing these

requirements, the secretary may issue a conditional certificate of completion. To keep a conditional certificate of completion valid, the participant must satisfactorily continue to implement and maintain the necessary monitoring, engineering controls, remediation systems, post-closure care, and affirmation of future non-residential land use upon which the final remedy is dependent.

B. Process:

(1) The participant shall demonstrate to the secretary that site conditions meet the applicable standards by submitting a voluntary remediation completion report to the department. The report shall include, as appropriate:

(a) a summary of remediation activities conducted at the site;

(b) sampling methods and results of verification sampling or monitoring that indicates that remediation is complete;

(c) the method used to evaluate potential risks posed by site-related contaminants that successfully demonstrates that the performance standard has been met, as described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC];

(d) a description of all monitoring, affirmation of future non-residential land use, or engineering controls upon which the final remedy is dependent;

(e) copies of all manifests, waste disposal records, or other documentation documenting the final disposition of all remediation-derived waste; and

(f) any other pertinent information requested by the department that is reasonably necessary to meet the requirements of these regulations.

(2) The report shall be submitted to the department with a signed Affidavit of Completion of Voluntary Remediation from the participant and legal description of the affected property that indicates that remediation is complete, in accordance with the voluntary remediation agreement and applicable regulations and guidance.

(3) No certificate of completion shall be issued to a participant who has not paid invoiced oversight costs in full to the department.

(4) The department shall review and determine the sufficiency of a completion report within forty-five (45) days of receipt. If the secretary approves the completion report, the secretary will issue a certificate of completion or a conditional certificate of completion, as appropriate. If the secretary does not approve the completion report, the secretary shall either issue a finding that the participant is not in compliance with the voluntary remediation agreement and terminate the agreement, or advise the participant in writing of data gaps in the report. The participant shall correct any identified data

gaps and resubmit the completion report within thirty (30) calendar days of receipt of notice of the data gaps.

(5) If a conditional certificate of completion has been issued, the department shall conduct audits to ensure that all engineering controls, remediation systems, post-closure care, or affirmation of future non-residential land use upon which the final remedy is dependent are being maintained appropriately. These audits shall be performed at least every other year for the first ten (10) years following the issuance of the conditional certificate of completion, and every five (5) years thereafter. If during the course of such an audit, the department finds that any of the monitoring requirements, engineering controls, remediation systems, post-closure care, or affirmation of future non-residential land use are not being properly maintained such that the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC] is no longer being met, the department may revoke the conditional certificate of completion and initiate an enforcement action.

[7/15/99; 20.6.3.500 NMAC - Rn, 20 NMAC 6.3.V.500 to 502, Recompiled 11/27/01]

**20.6.3.501-20.6.3.599 [RESERVED]**

**20.6.3.600 COVENANT NOT TO SUE:**

A. Applicability: After the secretary issues a certificate of completion or a conditional certificate of completion for a site, the secretary shall provide a covenant not to sue to a purchaser or prospective purchaser of the site that did not contribute to the site contamination, for any direct liability, including future liability for claims based upon the contamination covered by the agreement and over which the department has authority. Except as may be provided under federal law or as may be agreed to by a federal government entity, the covenant not to sue shall not release or otherwise apply to claims by the federal government for claims based on federal law. Except as may be agreed to by another department or agency of the state, the covenant not to sue shall not release or otherwise apply to claims of any other office, department or agency of the State. Except as may be agreed to by a third party, the covenant not to sue shall not release or otherwise affect a person's liability to third parties.

B. Reservation of Rights: The department expressly reserves the right to take any action, including any enforcement action, to address any contamination not covered by the voluntary remediation agreement, including any release of a contaminant that occurs after issuance of the certificate of completion, or any release of a contaminant not covered by the voluntary remediation agreement. The secretary's covenant not to sue under this part shall not apply to any such release.

C. Transferability: The secretary's covenant not to sue under this part shall be transferable with title to the site, unless the title is transferred to a party who has contributed to the site contamination, or is an officer, director, parent, subsidiary, affiliate, partner, managing agent, or employee thereof.

[7/15/99; 20.6.3.600 NMAC - Rn, 20 NMAC 6.3.VI.600 to 603, Recompiled 11/27/01]

**20.6.3.601-20.6.3.699 [RESERVED]**

**20.6.3.700 RESCISSION:**

The Secretary may rescind a certificate of completion, conditional certificate of completion, or a covenant not to sue if the Department determines that:

A. based on reasonable evidence, contamination addressed in the agreement still poses, following remediation, an unreasonable threat to human health or the environment, or that the performance standard described in Subpart I, Section 110 of this Part [20.6.3.10 NMAC] has not been met;

B. the voluntary remediation agreement was performed in a manner that fails to comply substantially with the terms and conditions of the agreement or voluntary remediation work plan;

C. any monitoring requirements, engineering controls, remediation systems, post-closure care, or affirmation of future non-residential land use upon which the final remedy is dependent are not being implemented satisfactorily;

D. the voluntary remediation agreement is a result of fraud; or

E. contamination was present at the site at the time the voluntary remediation agreement was signed or the voluntary remediation work plan was approved, but the department was not properly informed of the type, extent, or magnitude of the contaminants.

[7/15/99; 20.6.3.700 NMAC - Rn, 20 NMAC 6.3.VII.700 and 701, Recompiled 11/27/01]

**20.6.3.701-20.6.3.799 [RESERVED]**

**PART 4: STANDARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS**

**20.6.4.1 ISSUING AGENCY:**

Water Quality Control commission.

[20.6.4.1 NMAC - Rp 20 NMAC 6.1.1001, 10/12/2000]

**20.6.4.2 SCOPE:**

Except as otherwise provided by statute or regulation of the water quality control commission, this part governs all surface waters of the state of New Mexico, which are

subject to the New Mexico Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978.

[20.6.4.2 NMAC - Rp 20 NMAC 6.1.1002, 10/12/2000; A, 5/23/2005]

**20.6.4.3 STATUTORY AUTHORITY:**

This part is adopted by the water quality control commission pursuant to Subsection C of Section 74-6-4 NMSA 1978.

[20.6.4.3 NMAC - Rp 20 NMAC 6.1.1003, 10/12/2000]

**20.6.4.4 DURATION:**

Permanent.

[20.6.4.4 NMAC - Rp 20 NMAC 6.1.1004, 10/12/2000]

**20.6.4.5 EFFECTIVE DATE:**

October 12, 2000, unless a later date is indicated in the history note at the end of a section.

[20.6.4.5 NMAC - Rp 20 NMAC 6.1.1005, 10/12/2000]

**20.6.4.6 OBJECTIVE:**

**A.** The purpose of this part is to establish water quality standards that consist of the designated use or uses of surface waters of the state, the water quality criteria necessary to protect the use or uses and an antidegradation policy.

**B.** The state of New Mexico is required under the New Mexico Water Quality Act (Subsection C of Section 74-6-4 NMSA 1978) and the federal Clean Water Act, as amended (33 U.S.C. Section 1251 et seq.) to adopt water quality standards that protect the public health or welfare, enhance the quality of water and are consistent with and serve the purposes of the New Mexico Water Quality Act and the federal Clean Water Act. It is the objective of the federal Clean Water Act to restore and maintain the chemical, physical and biological integrity of the nation's waters, including those in New Mexico. This part is consistent with Section 101(a)(2) of the federal Clean Water Act, which declares that it is the national goal that wherever attainable, an interim goal of water quality that provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water be achieved by July 1, 1983. Agricultural, municipal, domestic and industrial water supply are other essential uses of New Mexico's surface water; however, water contaminants resulting from these activities will not be permitted to lower the quality of surface waters of the state below

that required for protection and propagation of fish, shellfish and wildlife and recreation in and on the water, where practicable.

**C.** Pursuant to Subsection A of Section 74-6-12 NMSA 1978, this part does not grant to the water quality control commission or to any other entity the power to take away or modify property rights in water.

**D.** These surface water quality standards serve to respond to the inherent threats of climate change and provide resiliency for the continued protection and enhancement of water quality.

[20.6.4.6 NMAC - Rp 20 NMAC 6.1.1006, 10/12/2000; A, 5/23/2005; A, 4/23/2022]

#### **20.6.4.7 DEFINITIONS:**

Terms defined in the New Mexico Water Quality Act, but not defined in this part will have the meaning given in the Water Quality Act.

##### **A. Terms beginning with numerals or the letter "A," and abbreviations for units.**

(1) "4Q3" means the critical low flow as determined by the minimum average flow over four consecutive days that occurs with a frequency of once in three years.

(2) "4T3 temperature" means the temperature not to be exceeded for four or more consecutive hours in a 24-hour period on more than three consecutive days.

(3) "6T3 temperature" means the temperature not to be exceeded for six or more consecutive hours in a 24-hour period on more than three consecutive days.

(4) Abbreviations used to indicate units are defined as follows:

(a) "cfu/100 mL" means colony-forming units per 100 milliliters; the results for E. coli may be reported as either colony forming units (CFU) or the most probable number (MPN), depending on the analytical method used;

(b) "cfs" means cubic feet per second;

(c) "µg/L" means micrograms per liter, equivalent to parts per billion when the specific gravity of the solution equals 1.0;

(d) "µS/cm" means microsiemens per centimeter; one µS/cm is equal to one µmho/cm;

(e) "mg/kg" means milligrams per kilogram, equivalent to parts per million;

(f) "mg/L" means milligrams per liter, equivalent to parts per million when the specific gravity of the solution equals 1.0;

(g) "MPN/100 mL" means most probable number per 100 milliliters; the results for *E. coli* may be reported as either CFU or MPN, depending on the analytical method used;

(h) "NTU" means nephelometric turbidity unit;

(i) "pCi/L" means picocuries per liter;

(j) "pH" means the measure of the acidity or alkalinity and is expressed in standard units (su).

(5) "Acute toxicity" means toxicity involving a stimulus severe enough to induce a response in 96 hours of exposure or less. Acute toxicity is not always measured in terms of lethality, but may include other toxic effects that occur within a short time period.

(6) "Adjusted gross alpha" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample, including radium-226, but excluding radon-222 and uranium. Also excluded are source, special nuclear and by-product material as defined by the Atomic Energy Act of 1954.

(7) "Aquatic life" means any plant or animal life that uses surface water as primary habitat for at least a portion of its life cycle, but does not include avian or mammalian species.

(8) "Attainable Use" means a use that is achievable by the imposition of effluent limits required under sections 301(b) and 306 of the federal Clean Water Act and implementation of cost-effective and reasonable best management practices for nonpoint source control. An attainable use may or may not have criteria as stringent as the criteria for the designated use.

## **B. Terms beginning with the letter "B".**

(1) "Best management practices" or "BMPs":

(a) for national pollutant discharge elimination system (NPDES) permitting purposes means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollution of "waters of the United States;" BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage; or

(b) for nonpoint source pollution control purposes means methods, measures or practices selected by an agency to meet its nonpoint source control needs; BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures; BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters; BMPs for nonpoint source pollution control purposes shall not be mandatory except as required by state or federal law.

(2) "Bioaccumulation" refers to the uptake and retention of a substance by an organism from its surrounding medium and food.

(3) "Bioaccumulation factor" is the ratio of a substance's concentration in tissue versus its concentration in ambient water, in situations where the organism and the food chain are exposed.

(4) "Biomonitoring" means the use of living organisms to test the suitability of effluents for discharge into receiving waters or to test the quality of surface waters of the state.

### **C. Terms beginning with the letter "C".**

(1) "CAS number" means an assigned number by chemical abstract service (CAS) to identify a substance. CAS numbers index information published in chemical abstracts by the American chemical society.

(2) "Chronic toxicity" means toxicity involving a stimulus that lingers or continues for a relatively long period relative to the life span of an organism. Chronic effects include, but are not limited to, lethality, growth impairment, behavioral modifications, disease and reduced reproduction.

(3) "Classified water of the state" means a surface water of the state, or reach of a surface water of the state, for which the commission has adopted a segment description and has designated a use or uses and applicable water quality criteria in 20.6.4.101 through 20.6.4.899 NMAC.

(4) "Climate change" refers to any significant change in the measures of climate lasting for an extended period of time, typically decades or longer, and includes major changes in temperature, precipitation, wind patterns or other weather-related effects.

(5) "Closed basin" is a basin where topography prevents the surface outflow of water and water escapes by evapotranspiration or percolation.

(6) "Coldwater" in reference to an aquatic life use means a surface water of the state where the water temperature and other characteristics are suitable for the support or propagation or both of coldwater aquatic life.

(7) "Coolwater" in reference to an aquatic life use means the water temperature and other characteristics are suitable for the support or propagation of aquatic life whose physiological tolerances are intermediate between and may overlap those of warm and coldwater aquatic life.

(8) "Commission" means the New Mexico water quality control commission.

(9) "Criteria" are elements of state water quality standards, expressed as constituent concentrations, levels or narrative statements, representing a quality of water that supports a use. When criteria are met, water quality will protect the designated use.

#### **D. Terms beginning with the letter "D".**

(1) "DDT and derivatives" means 4,4'-DDT (CAS number 50293), 4,4'-DDE (CAS number 72559) and 4,4'-DDD (CAS number 72548).

(2) "Department" means the New Mexico environment department.

(3) "Designated use" means a use specified in 20.6.4.97 through 20.6.4.899 NMAC for a surface water of the state whether or not it is being attained.

(4) "Dissolved" refers to the fraction of a constituent of a water sample that passes through a 0.45-micrometer pore-size filter. The "dissolved" fraction is also termed "filterable residue."

(5) "Domestic water supply" means a surface water of the state that could be used for drinking or culinary purposes after disinfection.

#### **E. Terms beginning with the letter "E".**

(1) "E. coli" means the bacteria Escherichia coli.

(2) "Emerging contaminants" refer to water contaminants that may cause significant ecological or human health effects at low concentrations. Emerging contaminants are generally chemical compounds recognized as having deleterious effects at environmental concentrations whose negative impacts have not been fully quantified and may not have regulatory numeric criteria.

(3) "Ephemeral" when used to describe a surface water of the state means the water body contains water briefly only in direct response to precipitation; its bed is always above the water table of the adjacent region.

(4) "Existing use" means a use actually attained in a surface water of the state on or after November 28, 1975, whether or not it is a designated use.

#### **F. Terms beginning with the letter "F".**

(1) "Fish culture" means production of coldwater or warmwater fishes in a hatchery or rearing station.

(2) "Fish early life stages" means the egg and larval stages of development of fish ending when the fish has its full complement of fin rays and loses larval characteristics.

#### **G. Terms beginning with the letter "G". [RESERVED]**

#### **H. Terms beginning with the letter "H".**

(1) "Hardness" means the measure of dissolved calcium and magnesium salts in water expressed in units of dissolved calcium carbonate (CaCO<sub>3</sub>) concentration unless otherwise noted.

(2) "Harmonic mean flow" is the number of daily flow measurements divided by the sum of the reciprocals of the flows; that is, it is the reciprocal of the arithmetic mean of reciprocal daily flow measurements consistent with the equations in Paragraph (1) of Subsection B of 20.6.4.11 NMAC.

(3) "High quality coldwater" in reference to an aquatic life use means a perennial surface water of the state in a minimally disturbed condition with considerable aesthetic value and superior coldwater aquatic life habitat. A surface water of the state to be so categorized must have water quality, stream bed characteristics and other attributes of habitat sufficient to protect and maintain a propagating coldwater aquatic life population.

(4) "Human health-organism only" means the health of humans who ingest fish or other aquatic organisms from waters that contain pollutants.

#### **I. Terms beginning with the letter "I".**

(1) "Industrial water supply" means the use or storage of water by a facility for process operations unless the water is supplied by a public water system. Industrial water supply does not include irrigation or other agricultural uses.

(2) "Intermittent" when used to describe a surface water of the state means the water body contains water for extended periods only at certain times of the year, such as when it receives seasonal flow from springs or melting snow.

(3) "Interstate waters" means all surface waters of the state that cross or form a part of the border between states.

(4) "Intrastate waters" means all surface waters of the state that are not interstate waters.

(5) "Irrigation" means application of water to land areas to supply the water needs of beneficial plants.

(6) "Irrigation storage" means storage of water to supply the needs of beneficial plants.

**J. Terms beginning with the letter "J". [RESERVED]**

**K. Terms beginning with the letter "K". [RESERVED]**

**L. Terms beginning with the letter "L".**

(1) "LC-50" means the concentration of a substance that is lethal to fifty percent of the test organisms within a defined time period. The length of the time period, which may vary from 24 hours to one week or more, depends on the test method selected to yield the information desired.

(2) "Limited aquatic life" as a designated use, means the surface water is capable of supporting only a limited community of aquatic life. This subcategory includes surface waters that support aquatic species selectively adapted to take advantage of naturally occurring rapid environmental changes, low-flow, high turbidity, fluctuating temperature, low dissolved oxygen content or unique chemical characteristics.

(3) "Livestock watering" means the use of a surface water of the state as a supply of water for consumption by livestock.

**M. Terms beginning with the letter "M".**

(1) "Marginal coldwater" in reference to an aquatic life use means that natural habitat conditions severely limit maintenance of a coldwater aquatic life population during at least some portion of the year or historical data indicate that the temperature of the surface water of the state may exceed that which could continually support aquatic life adapted to coldwater .

(2) "Marginal warmwater" in reference to an aquatic life use means natural intermittent or low flow or other natural habitat conditions severely limit the ability of the surface water of the state to sustain a natural aquatic life population on a continuous annual basis; or historical data indicate that natural water temperature routinely exceeds 32.2°C (90°F).

(3) "Maximum temperature" means the instantaneous temperature not to be exceeded at any time.

(4) "Minimum quantification level" means the minimum quantification level for a constituent determined by official published documents of the United States environmental protection agency.

**N. Terms beginning with the letter "N".**

(1) "Natural background" means that portion of a pollutant load in a surface water resulting only from non-anthropogenic sources. Natural background does not include impacts resulting from historic or existing human activities.

(2) "Natural causes" means those causal agents that would affect water quality and the effect is not caused by human activity but is due to naturally occurring conditions.

(3) "Nonpoint source" means any source of pollutants not regulated as a point source that degrades the quality or adversely affects the biological, chemical or physical integrity of surface waters of the state.

**O. Terms beginning with the letter "O".**

(1) "Organoleptic" means the capability to produce a detectable sensory stimulus such as odor or taste.

(2) "Oversight agency" means a state or federal agency, such as the United States department of agriculture forest service, that is responsible for land use or water quality management decisions affecting nonpoint source discharges where an outstanding national resource water is located.

**P. Terms beginning with the letter "P".**

(1) "Playa" means a shallow closed basin lake typically found in the high plains and deserts.

(2) "Perennial" when used to describe a surface water of the state means the water body typically contains water throughout the year and rarely experiences dry periods.

(3) "Persistent toxic pollutants" means pollutants, generally organic, that are resistant to environmental degradation through chemical, biological and photolytic processes and can bioaccumulate in organisms, causing adverse impacts on human health and aquatic life.

(4) "Point source" means any discernible, confined and discrete conveyance from which pollutants are or may be discharged into a surface water of the state, but does not include return flows from irrigated agriculture.

(5) "Practicable" means that which may be done, practiced or accomplished; that which is performable, feasible, possible.

(6) "Primary contact" means any recreational or other water use in which there is prolonged and intimate human contact with the water, such as swimming and water skiing, involving considerable risk of ingesting water in quantities sufficient to pose a significant health hazard. Primary contact also means any use of surface waters of the state for cultural, religious or ceremonial purposes in which there is intimate human contact with the water, including but not limited to ingestion or immersion, that could pose a significant health hazard.

(7) "Public water supply" means the use or storage of water to supply a public water system as defined by New Mexico's Drinking Water Regulations, 20.7.10 NMAC. Water provided by a public water system may need to undergo treatment to achieve drinking water quality.

**Q. Terms beginning with the letter "Q". [RESERVED]**

**R. Terms beginning with the letter "R". [RESERVED]**

**S. Terms beginning with the letter "S".**

(1) "Secondary contact" means any recreational or other water use in which human contact with the water may occur and in which the probability of ingesting appreciable quantities of water is minimal, such as fishing, wading, commercial and recreational boating and any limited seasonal contact.

(2) "Segment" means a classified water of the state described in 20.6.4.101 through 20.6.4.899 NMAC. The water within a segment should have the same uses, similar hydrologic characteristics or flow regimes, and natural physical, chemical and biological characteristics and exhibit similar reactions to external stresses, such as the discharge of pollutants.

(3) "Specific conductance" is a measure of the ability of a water solution to conduct an electrical current.

(4) "State" means the state of New Mexico.

(5) "Surface water(s) of the state"

(a) means all surface waters situated wholly or partly within or bordering upon the state, including the following:

(i) lakes;

(ii) rivers;

- (iii) streams (including intermittent and ephemeral streams);
- (iv) mudflats;
- (v) sandflats;
- (vi) wetlands;
- (vii) sloughs;
- (viii) prairie potholes;
- (ix) wet meadows;
- (x) playa lakes;
- (xi) reservoirs; and
- (xii) natural ponds.

(b) also means all tributaries of such waters, including adjacent wetlands, any manmade bodies of water that were originally created in surface waters of the state or resulted in the impoundment of surface waters of the state, and any "waters of the United States" as defined under the Clean Water Act that are not included in the preceding description.

(c) does not include private waters that do not combine with other surface or subsurface water or any water under tribal regulatory jurisdiction pursuant to Section 518 of the Clean Water Act. Waste treatment systems, including treatment ponds or lagoons designed and actively used to meet requirements of the Clean Water Act (other than cooling ponds as defined in 40 CFR Part 423.11(m) that also meet the criteria of this definition), are not surface waters of the state, unless they were originally created in surface waters of the state or resulted in the impoundment of surface waters of the state.

#### **T. Terms beginning with the letter "T".**

(1) "TDS" means total dissolved solids, also termed "total filterable residue."

(2) "Toxic pollutant" means those pollutants, or combination of pollutants, including disease-causing agents, that after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, shortened life spans, disease, adverse behavioral changes, reproductive or physiological impairment or physical deformations in such organisms or their offspring.

(3) "Tributary" means a perennial, intermittent or ephemeral waterbody that flows into a larger waterbody, and includes a tributary of a tributary.

(4) "Turbidity" is an expression of the optical property in water that causes incident light to be scattered or absorbed rather than transmitted in straight lines.

#### **U. Terms beginning with the letter "U". [RESERVED]**

(1) "Unclassified waters of the state" means those surface waters of the state not identified in 20.6.4.101 through 20.6.4.899 NMAC.

(2) "Use attainability analysis" means a scientific study conducted for the purpose of assessing the factors affecting the attainment of a use.

#### **V. Terms beginning with the letter "V". [RESERVED]**

#### **W. Terms beginning with the letter "W".**

(1) "Warmwater" with reference to an aquatic life use means that water temperature and other characteristics are suitable for the support or propagation or both of warmwater aquatic life.

(2) "Water contaminant" means any substance that could alter if discharged or spilled the physical, chemical, biological or radiological qualities of water. "Water contaminant" does not mean source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, but may include all other radioactive materials, including but not limited to radium and accelerator-produced isotopes.

(3) "Water pollutant" means a water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or to unreasonably interfere with the public welfare or the use of property.

(4) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico. Wetlands that are constructed outside of a surface water of the state for the purpose of providing wastewater treatment and that do not impound a surface water of the state are not included in this definition.

(5) "Wildlife habitat" means a surface water of the state used by plants and animals not considered as pathogens, vectors for pathogens or intermediate hosts for pathogens for humans or domesticated livestock and plants.

#### **X. Terms beginning with the letters "X" through "Z". [RESERVED]**

[20.6.4.7 NMAC - Rp 20 NMAC 6.1.1007, 10/12/2000; A, 7/19/2001; A, 5/23/2005; A, 7/17/2005; A, 8/1/2007; A, 12/1/2010; A, 1/14/2011; A, 3/2/2017; A, 4/23/2022]

#### **20.6.4.8 ANTIDegradation Policy and Implementation Plan:**

**A. Antidegradation Policy:** This antidegradation policy applies to all surface waters of the state.

(1) Existing uses, as defined in Paragraph (4) of Subsection E of 20.6.4.7 NMAC, and the level of water quality necessary to protect the existing uses shall be maintained and protected in all surface waters of the state.

(2) Where the quality of a surface water of the state exceeds levels necessary to support the propagation of fish, shellfish, and wildlife, and recreation in and on the water, that quality shall be maintained and protected unless the commission finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the state's continuing planning process, that allowing lower water quality is necessary to accommodate important economic and social development in the area in which the water is located. In allowing such degradation or lower water quality, the state shall assure water quality adequate to protect existing uses fully. Further, the state shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable BMPs for nonpoint source control. Additionally, the state shall encourage the use of watershed planning as a further means to protect surface waters of the state.

(3) No degradation shall be allowed in waters designated by the commission as outstanding national resource waters (ONRWs), except as provided in Subparagraphs (a) through (e) of this paragraph and in Paragraph (4) of this Subsection A.

(a) After providing a minimum 30-day public review and comment period, the commission determines that allowing temporary and short-term degradation of water quality is necessary to accommodate public health or safety activities in the area in which the ONRW is located. Examples of public health or safety activities include but are not limited to replacement or repair of a water or sewer pipeline or a roadway bridge. In making its decision, the commission shall consider whether the activity will interfere with activities implemented to restore or maintain the chemical, physical or biological integrity of the water. In approving the activity, the commission shall require that:

(i) the degradation shall be limited to the shortest possible time and shall not exceed six months;

(ii) the degradation shall be minimized and controlled by best management practices or in accordance with permit requirements as appropriate; all

practical means of minimizing the duration, magnitude, frequency and cumulative effects of such degradation shall be utilized;

(iii) the degradation shall not result in water quality lower than necessary to protect any existing use in the ONRW; and

(iv) the degradation shall not alter the essential character or special use that makes the water an ONRW.

(b) Prior to the commission making a determination, the department or appropriate oversight agency shall provide a written recommendation to the commission. If the commission approves the activity, the department or appropriate oversight agency shall oversee implementation of the activity.

(c) Where an emergency response action that may result in temporary and short-term degradation to an ONRW is necessary to mitigate an immediate threat to public health or safety, the emergency response action may proceed prior to providing notification required by Subparagraph (a) of this paragraph in accordance with the following:

(i) only actions that mitigate an immediate threat to public health or safety may be undertaken pursuant to this provision; non-emergency portions of the action shall comply with the requirements of Subparagraph (a) of this paragraph;

(ii) the discharger shall make best efforts to comply with requirements (i) through (iv) of Subparagraph (a) of this paragraph;

(iii) the discharger shall notify the department of the emergency response action in writing within seven days of initiation of the action;

(iv) within 30 days of initiation of the emergency response action, the discharger shall provide a summary of the action taken, including all actions taken to comply with requirements (i) through (iv) of Subparagraph (a) of this paragraph.

(d) Preexisting land-use activities, including grazing, allowed by federal or state law prior to designation as an ONRW, and controlled by best management practices (BMPs), shall be allowed to continue so long as there are no new or increased discharges resulting from the activity after designation of the ONRW.

(e) Acequia operation, maintenance, and repairs are not subject to new requirements because of ONRW designation. However, the use of BMPs to minimize or eliminate the introduction of pollutants into receiving waters is strongly encouraged.

(4) This antidegradation policy does not prohibit activities that may result in degradation in surface waters of the state when such activities will result in restoration or maintenance of the chemical, physical or biological integrity of the water.

(a) For ONRWs, the department or appropriate oversight agency shall review on a case-by-case basis discharges that may result in degradation from restoration or maintenance activities, and may approve such activities in accordance with the following:

- (i) the degradation shall be limited to the shortest possible time;
- (ii) the degradation shall be minimized and controlled by best management practices or in accordance with permit requirements as appropriate, and all practical means of minimizing the duration, magnitude, frequency and cumulative effects of such degradation shall be utilized;
- (iii) the degradation shall not result in water quality lower than necessary to protect any existing use of the surface water; and
- (iv) the degradation shall not alter the essential character or special use that makes the water an ONRW.

(b) For surface waters of the state other than ONRWs, the department shall review on a case-by-case basis discharges that may result in degradation from restoration or maintenance activities, and may approve such activities in accordance with the following:

- (i) the degradation shall be limited to the shortest possible time;
- (ii) the degradation shall be minimized and controlled by best management practices or in accordance with permit requirements as appropriate, and all practical means of minimizing the duration, magnitude, frequency and cumulative effects of such degradation shall be utilized; and
- (iii) the degradation shall not result in water quality lower than necessary to protect any existing use of the surface water.

(5) In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy and implementing method shall be consistent with Section 316 of the federal Clean Water Act.

(6) In implementing this section, the commission through the appropriate regional offices of the United States environmental protection agency will keep the administrator advised and provided with such information concerning the surface waters of the state as he or she will need to discharge his or her responsibilities under the federal Clean Water Act.

**B. Implementation Plan:** The department, acting under authority delegated by the commission, implements the water quality standards, including the antidegradation policy, by describing specific methods and procedures in the continuing planning

process and by establishing and maintaining controls on the discharge of pollutants to surface waters of the state. The steps summarized in the following paragraphs, which may not all be applicable in every water pollution control action, list the implementation activities of the department. These implementation activities are supplemented by detailed antidegradation review procedures developed under the state's continuing planning process. The department:

(1) obtains information pertinent to the impact of the effluent on the receiving water and advises the prospective discharger of requirements for obtaining a permit to discharge;

(2) reviews the adequacy of existing data and conducts a water quality survey of the receiving water in accordance with an annually reviewed, ranked priority list of surface waters of the state requiring total maximum daily loads pursuant to Section 303(d) of the federal Clean Water Act;

(3) assesses the probable impact of the effluent on the receiving water relative to its attainable or designated uses and numeric and narrative criteria;

(4) requires the highest and best degree of wastewater treatment practicable and commensurate with protecting and maintaining the designated uses and existing water quality of surface waters of the state;

(5) develops water quality based effluent limitations and comments on technology based effluent limitations, as appropriate, for inclusion in any federal permit issued to a discharger pursuant to Section 402 of the federal Clean Water Act;

(6) requires that these effluent limitations be included in any such permit as a condition for state certification pursuant to Section 401 of the federal Clean Water Act;

(7) coordinates its water pollution control activities with other constituent agencies of the commission, and with local, state and federal agencies, as appropriate;

(8) develops and pursues inspection and enforcement programs to ensure that dischargers comply with state regulations and standards, and complements EPA's enforcement of federal permits;

(9) ensures that the provisions for public participation required by the New Mexico Water Quality Act and the federal Clean Water Act are followed;

(10) provides continuing technical training for wastewater treatment facility operators through the utility operators training and certification programs;

(11) provides funds to assist the construction of publicly owned wastewater treatment facilities through the wastewater construction program authorized by Section

601 of the federal Clean Water Act, and through funds appropriated by the New Mexico legislature;

(12) conducts water quality surveillance of the surface waters of the state to assess the effectiveness of water pollution controls, determines whether water quality standards are being attained, and proposes amendments to improve water quality standards;

(13) encourages, in conjunction with other state agencies, implementation of the best management practices set forth in the New Mexico statewide water quality management plan and the nonpoint source management program, such implementation shall not be mandatory except as provided by federal or state law;

(14) evaluates the effectiveness of BMPs selected to prevent, reduce or abate sources of water pollutants;

(15) develops procedures for assessing use attainment as required by 20.6.4.15 NMAC and establishing site-specific standards; and

(16) develops list of surface waters of the state not attaining designated uses, pursuant to Sections 305(b) and 303(d) of the federal Clean Water Act.

[20.6.4.8 NMAC - Rp 20 NMAC 6.1.1101, 10/12/2000; A, 5/23/2005; A, 8/1/2007; A, 1/14/2011; A, 4/23/2022]

#### **20.6.4.9 OUTSTANDING NATIONAL RESOURCE WATERS:**

**A.** Procedures for nominating an ONRW: Any person may nominate a surface water of the state for designation as an ONRW by filing a petition with the commission pursuant to 20.1.6 NMAC, Rulemaking Procedures - Water Quality Control Commission. A petition to designate a surface water of the state as an ONRW shall include:

(1) a map of the surface water of the state, including the location and proposed upstream and downstream boundaries;

(2) a written statement and evidence based on scientific principles in support of the nomination, including specific reference to one or more of the applicable ONRW criteria listed in Subsection B of this section;

(3) water quality data including chemical, physical or biological parameters, if available, to establish a baseline condition for the proposed ONRW;

(4) a discussion of activities that might contribute to the reduction of water quality in the proposed ONRW;

(5) any additional evidence to substantiate such a designation, including a discussion of the economic impact of the designation on the local and regional economy within the state of New Mexico and the benefit to the state; and

(6) affidavit of publication of notice of the petition in a newspaper of general circulation in the affected counties and in a newspaper of general statewide circulation.

**B. Criteria for ONRWs:** A surface water of the state, or a portion of a surface water of the state, may be designated as an ONRW where the commission determines that the designation is beneficial to the state of New Mexico, and:

(1) the water is a significant attribute of a state special trout water, national or state park, national or state monument, national or state wildlife refuge or designated wilderness area, or is part of a designated wild river under the federal Wild and Scenic Rivers Act; or

(2) the water has exceptional recreational or ecological significance; or

(3) the existing water quality is equal to or better than the numeric criteria for protection of aquatic life and contact uses and the human health-organism only criteria, and the water has not been significantly modified by human activities in a manner that substantially detracts from its value as a natural resource.

**C.** Pursuant to a petition filed under Subsection A of this section, the commission may classify a surface water of the state or a portion of a surface water of the state as an ONRW if the criteria set out in Subsection B of this section are met.

**D. Waters classified as ONRWs:** The following waters are classified as ONRWs:

(1) Rio Santa Barbara, including the west, middle and east forks from their headwaters downstream to the boundary of the Pecos Wilderness; and

(2) the waters within the United States forest service Valle Vidal special management unit including:

(a) Rio Costilla, including Comanche, La Cueva, Fernandez, Chuckwagon, Little Costilla, Powderhouse, Holman, Gold, Grassy, LaBelle and Vidal creeks, from their headwaters downstream to the boundary of the United States forest service Valle Vidal special management unit;

(b) Middle Ponil creek, including the waters of Greenwood Canyon, from their headwaters downstream to the boundary of the Elliott S. Barker wildlife management area;

(c) Shuree lakes;

(d) North Ponil creek, including McCrystal and Seally Canyon creeks, from their headwaters downstream to the boundary of the United States forest service Valle Vidal special management unit; and

(e) Leandro creek from its headwaters downstream to the boundary of the United States forest service Valle Vidal special management unit.

(3) the named perennial surface waters of the state, identified in Subparagraph (a) below, located within United States department of agriculture forest service wilderness. Wilderness are those lands designated by the United States congress as wilderness pursuant to the Wilderness Act. Wilderness areas included in this designation are the Aldo Leopold wilderness, Apache Kid wilderness, Blue Range wilderness, Chama River Canyon wilderness, Cruces Basin wilderness, Dome wilderness, Gila wilderness, Latir Peak wilderness, Pecos wilderness, San Pedro Parks wilderness, Wheeler Peak wilderness, and White Mountain wilderness.

(a) The following waters are designated in the Rio Grande basin:

(i) in the Aldo Leopold wilderness: Byers Run, Circle Seven creek, Flower canyon, Holden Prong, Indian canyon, Las Animas creek, Mud Spring canyon, North Fork Palomas creek, North Seco creek, Pretty canyon, Sids Prong, South Animas canyon, Victorio Park canyon, Water canyon;

(ii) in the Apache Kid wilderness Indian creek and Smith canyon;

(iii) in the Chama River Canyon wilderness: Chavez canyon, Ojitos canyon, Rio Chama;

(iv) in the Cruces Basin wilderness: Beaver creek, Cruces creek, Diablo creek, Escondido creek, Lobo creek, Osha creek;

(v) in the Dome wilderness: Capulin creek, Medio creek, Sanchez canyon/creek;

(vi) in the Latir Peak wilderness: Bull creek, Bull Creek lake, Heart lake, Lagunitas Fork, Lake Fork creek, Rito del Medio, Rito Primero, West Latir creek;

(vii) in the Pecos wilderness: Agua Sarca, Hidden lake, Horseshoe lake (Alamitos), Jose Vigil lake, Nambe lake, Nat lake IV, No Fish lake, North Fork Rio Quemado, Rinconada, Rio Capulin, Rio de las Trampas (Trampas creek), Rio de Truchas, Rio Frijoles, Rio Medio, Rio Molino, Rio Nambe, Rio San Leonardo, Rito con Agua, Rito Gallina, Rito Jaroso, Rito Quemado, San Leonardo lake, Santa Fe lake, Santa Fe river, Serpent lake, South Fork Rio Quemado, Trampas lake (East), Trampas lake (West);

(viii) in the San Pedro Parks wilderness: Agua Sarca, Cañon Madera, Cave creek, Cecilia Canyon creek, Clear creek (North SPP), Clear creek (South SPP), Corralitos creek, Dove creek, Jose Miguel creek, La Jara creek, Oso creek, Rio Capulin, Rio de las Vacas, Rio Gallina, Rio Puerco de Chama, Rito Anastacio East, Rito Anastacio West, Rito de las Palomas, Rito de las Perchas, Rito de los Pinos, Rito de los Utes, Rito Leche, Rito Redondo, Rito Resumidero, San Gregorio lake;

(ix) in the Wheeler Peak wilderness: Black Copper canyon, East Fork Red river, Elk lake, Horseshoe lake, Lost lake, Sawmill creek, South Fork lake, South Fork Rio Hondo, Williams lake.

(b) The following waters are designated in the Pecos River basin:

(i) in the Pecos wilderness: Albright creek, Bear creek, Beatty creek, Beaver creek, Carpenter creek, Cascade canyon, Cave creek, El Porvenir creek, Hollinger creek, Holy Ghost creek, Horsethief creek, Jack's creek, Jarosa canyon/creek, Johnson lake, Lake Katherine, Lost Bear lake, Noisy brook, Panchuela creek, Pecos Baldy lake, Pecos river, Rio Mora, Rio Valdez, Rito Azul, Rito de los Chimayosos, Rito de los Esteros, Rito del Oso, Rito del Padre, Rito las Trampas, Rito Maestas, Rito Oscuro, Rito Perro, Rito Sebadilloses, South Fork Bear creek, South Fork Rito Azul, Spirit lake, Stewart lake, Truchas lake (North), Truchas lake (South), Winsor creek;

(ii) in the White Mountain wilderness: Argentina creek, Aspen creek, Bonito creek, Little Bonito creek, Mills canyon/creek, Rodamaker creek, South Fork Rio Bonito, Turkey canyon/creek.

(c) The following waters are designated in the Gila River basin:

(i) in the Aldo Leopold wilderness: Aspen canyon, Black Canyon creek, Bonner canyon, Burnt canyon, Diamond creek, Falls canyon, Fisherman canyon, Running Water canyon, South Diamond creek;

(ii) in the Gila wilderness: Apache creek, Black Canyon creek, Brush canyon, Canyon creek, Chicken Coop canyon, Clear creek, Cooper canyon, Cow creek, Cub creek, Diamond creek, East Fork Gila river, Gila river, Gilita creek, Indian creek, Iron creek, Langstroth canyon, Lilley canyon, Little creek, Little Turkey creek, Lookout canyon, McKenna creek, Middle Fork Gila river, Miller Spring canyon, Mogollon creek, Panther canyon, Prior creek, Rain creek, Raw Meat creek, Rocky canyon, Sacaton creek, Sapillo creek, Sheep Corral canyon, Skeleton canyon, Squaw creek, Sycamore canyon, Trail canyon, Trail creek, Trout creek, Turkey creek, Turkey Feather creek, Turnbo canyon, West Fork Gila river, West Fork Mogollon creek, White creek, Willow creek, Woodrow canyon.

(d) The following waters are designated in the Canadian River basin: in the Pecos wilderness Daily creek, Johns canyon, Middle Fork Lake of Rio de la Casa,

Middle Fork Rio de la Casa, North Fork Lake of Rio de la Casa, Rito de Gascon, Rito San Jose, Sapello river, South Fork Rio de la Casa, Sparks creek (Manuelitas creek).

(e) The following waters are designated in the San Francisco River basin:

(i) in the Blue Range wilderness: Pueblo creek;

(ii) in the Gila wilderness: Big Dry creek, Lipsey canyon, Little Dry creek, Little Whitewater creek, South Fork Whitewater creek, Spider creek, Spruce creek, Whitewater creek.

(f) The following waters are designated in the Mimbres Closed basin: in the Aldo Leopold wilderness Corral canyon, Mimbres river, North Fork Mimbres river, South Fork Mimbres river.

(g) The following waters are designated in the Tularosa Closed basin: in the White Mountain wilderness Indian creek, Nogal Arroyo, Three Rivers.

(h) The wetlands designated are identified on the *Maps and List of Wetlands Within United States Forest Service Wilderness Areas Designated as Outstanding National Resource Waters* published at the New Mexico state library and available on the department's website.

(4) The following waters are designated in the headwaters Pecos river watershed:

(a) The Pecos river from Dalton Canyon creek to the Pecos wilderness boundary;

(b) In the Dry Gulch-Pecos river subwatershed, Dalton Canyon creek from the Pecos river upstream to the headwaters, Wild Horse creek from Dalton Canyon creek upstream to the headwaters, Macho Canyon creek from the Pecos river upstream to the headwaters and Sawyer creek from the Pecos river upstream to the headwaters;

(c) In the Indian creek-Pecos river subwatershed, Indian creek from the Pecos river upstream to the headwaters, Holy Ghost creek from the Pecos river upstream to the Pecos wilderness boundary, Doctor creek from Holy Ghost creek upstream to the headwaters, Davis creek from the Pecos river upstream to the headwaters and Willow creek from the Pecos river upstream to the headwaters;

(d) In the Rio Mora subwatershed, Rio Mora from the Pecos river upstream to the Pecos wilderness boundary and Bear creek from the Rio Mora upstream to the Pecos wilderness boundary;

(e) In the Rio Mora-Pecos river subwatershed, Carpenter creek from the Pecos river upstream to the Pecos wilderness boundary, Winsor creek from the Pecos

river upstream to the Pecos wilderness boundary and Jack's creek from the Pecos river upstream to the Pecos wilderness boundary; and,

(f) In the Panchuela creek subwatershed, Panchuela creek from the Pecos river upstream to the Pecos wilderness boundary;

(g) Unnamed tributaries to waters in Subparagraphs (a) through (f), Paragraph (4) of this Subsection (D) as identified in the *Maps and Lists for Unnamed Tributaries to Perennial Waters and Wetlands in the Headwaters Pecos River Watershed*, published at the New Mexico state library and available on the department's website.

(h) Unnamed wetlands adjacent to waters in Subparagraphs (a) through (f), Paragraph (4) of this Subsection (D) as identified in the *Maps and Lists for Unnamed Tributaries to Perennial Waters and Wetlands in the Headwaters Pecos River Watershed*, published at the New Mexico state library and available on the department's website.

(5) the Rio Grande from directly above the Rio Pueblo de Taos to the New Mexico-Colorado state border.

(6) the Rio Hondo from the Carson National Forest boundary to its headwaters; and Lake Fork creek from the Rio Hondo to its headwaters.

(7) the East Fork Jemez river from San Antonio creek to its headwaters; San Antonio creek from the East Fork Jemez river to its headwaters; and Redondo creek from Sulphur creek to its headwaters.

[20.6.4.9 NMAC - Rn, Subsections B, C and D of 20.6.4.8 NMAC, 5/23/2005; A, 5/23/2005; A, 7/17/2005; A, 2/16/2006; A, 12/1/2010; A, 1/14/2011; A, 4/23/2022; A, 09/24/2022]

#### **20.6.4.10 REVIEW OF STANDARDS; NEED FOR ADDITIONAL STUDIES:**

**A.** Section 303(c)(1) of the federal Clean Water Act requires that the state hold public hearings at least once every three years for the purpose of reviewing water quality standards and proposing, as appropriate, necessary revisions to water quality standards.

**B.** In accordance with 40 CFR 131.10(i), when an existing use, as defined under 20.6.4.7 NMAC, is higher quality water than prescribed by the designated use and supporting evidence demonstrates the presence of that use, the designated use shall be amended accordingly to have criteria no less stringent than the existing use.

**C.** It is recognized that, in some cases, numeric criteria for a particular designated use may not adequately reflect the local conditions or the aquatic communities adapted

to those localized conditions. In these cases, a water quality criterion may be modified to reflect the natural condition of a specific waterbody. The modification of the criterion does not change the designated use; the modification only changes the criterion for that specific waterbody. When justified by sufficient data and information, a numeric water quality criterion may be adopted or modified in accordance with Subsection F of 20.6.4.10 and Subsection G of 20.6.4.10 NMAC, to protect the attainable uses of the waterbody.

**D.** The removal or amendment of a designated use to a designated use with less stringent criteria can only be done through a use attainability analysis in accordance with 20.6.4.15 NMAC.

**E.** It is also recognized that contributions of water contaminants by diffuse nonpoint sources of water pollution may make attainment of certain criteria difficult. Revision of these criteria may be necessary as new information is obtained on nonpoint sources and other problems unique to semi-arid regions.

**F.** Site-specific criteria.

(1) The commission may adopt site-specific numeric criteria applicable to all or part of a surface water of the state based on relevant site-specific conditions such as:

(a) actual species at a site are more or less sensitive than those used in the national criteria data set;

(b) physical or chemical characteristics at a site such as pH or hardness alter the biological availability and/or toxicity of the chemical;

(c) physical, biological or chemical factors alter the bioaccumulation potential of a chemical;

(d) the concentration resulting from natural background exceeds numeric criteria for aquatic life, wildlife habitat or other uses if consistent with Subsection G of 20.6.4.10 NMAC; or

(e) other factors or combination of factors that upon review of the commission may warrant modification of the default criteria, subject to EPA review and approval.

(2) Site-specific criteria must fully protect the designated use to which they apply. In the case of human health-organism only criteria, site-specific criteria must fully protect human health when organisms are consumed from waters containing pollutants.

(3) Any person may petition the commission to adopt site-specific criteria. A petition for the adoption of site-specific criteria shall:

(a) identify the specific waters to which the site-specific criteria would apply;

(b) explain the rationale for proposing the site-specific criteria;

(c) describe the methods used to notify and solicit input from potential stakeholders and from the general public in the affected area, and present and respond to the public input received;

(d) present and justify the derivation of the proposed criteria.

(4) A derivation of site-specific criteria shall rely on a scientifically defensible method, such as one of the following:

(a) the recalculation procedure, the water-effect ratio for metals procedure or the resident species procedure as described in the water quality standards handbook (EPA-823-B-94-005a, 2nd edition, August 1994);

(b) the streamlined water-effect ratio procedure for discharges of copper (EPA-822-R-01-005, March 2001);

(c) the biotic ligand model as described in aquatic life ambient freshwater quality criteria - copper (EPA-822-R-07-001, February 2007);

(d) the methodology for deriving ambient water quality criteria for the protection of human health (EPA-822-B-00-004, October 2000) and associated technical support documents; or

(e) a determination of the natural background of the water body as described in Subsection G of 20.6.4.10 NMAC.

**G.** Site-specific criteria based on natural background. The commission may adopt site-specific criteria equal to the concentration resulting from natural background where that concentration protects the designated use. The concentration resulting from natural background supports the level of aquatic life and wildlife habitat expected to occur naturally at the site absent any interference by humans. Domestic water supply, primary or secondary contact, or human health-organism only criteria shall not be modified based on natural background. A determination of natural background shall:

(1) consider natural spatial and seasonal to interannual variability as appropriate;

(2) document the presence of natural sources of the pollutant;

(3) document the absence of human sources of the pollutant or quantify the human contribution; and

(4) rely on analytical, statistical or modeling methodologies to quantify the natural background.

## H. Temporary standards.

(1) Any person may petition the commission to adopt a temporary standard applicable to all or part of a surface water of the state as provided for in this section and applicable sections in 40 CFR Part 131, Water Quality Standards; specifically, Section 131.14. The commission may adopt a proposed temporary standard if the petitioner demonstrates that:

(a) attainment of the associated designated use may not be feasible in the short term due to one or more of the factors listed in 40 CFR 131.10(g), or due to the implementation of actions necessary to facilitate restoration such as through dam removal or other significant wetland or water body reconfiguration activities as demonstrated by the petition and supporting work plan requirements in Paragraphs (4) and (5) of Subsection H of 20.6.4.10 NMAC;

(b) the proposed temporary standard represents the highest degree of protection feasible in the short term, limits the degradation of water quality to the minimum necessary to achieve the original standard by the expiration date of the temporary standard, and adoption will not cause the further impairment or loss of an existing use;

(c) for point sources, existing or proposed discharge control technologies will comply with applicable technology-based limitations and feasible technological controls and other management alternatives, such as a pollution prevention program; and

(d) for restoration activities, nonpoint source or other control technologies shall limit downstream impacts, and if applicable, existing or proposed discharge control technologies shall be in place consistent with Subparagraph (c) of Paragraph (1) of Subsection H of 20.6.4.10 NMAC.

(2) A temporary standard shall apply to specific designated use(s), pollutant(s), or permittee(s), and to specific water body segment(s). The adoption of a temporary standard does not exempt dischargers from complying with all other applicable water quality standards or control technologies.

(3) Designated use attainment as reported in the federal Clean Water Act, Section 305(b)/303(d) Integrated Report shall be based on the original standard and not on a temporary standard.

(4) A petition for a temporary standard shall:

(a) identify the currently applicable standard(s), the proposed temporary standard for the specific pollutant(s), the permittee(s), and the specific surface water body segment(s) of the state to which the temporary standard would apply;

(b) include the basis for any factor(s) specific to the applicability of the temporary standard (for example critical flow under Subsection B of 20.6.4.11 NMAC);

(c) demonstrate that the proposed temporary standard meets the requirements in this subsection;

(d) present a work plan with timetable of proposed actions for achieving compliance with the original standard in accordance with Paragraph (5) of Subsection H of 20.6.4.10 NMAC;

(e) include any other information necessary to support the petition.

(5) As a condition of a petition for a temporary standard, in addition to meeting the requirements in this Subsection, the petitioner shall prepare a work plan in accordance with Paragraph (4) of Subsection H of 20.6.4.10 NMAC and submit the work plan to the department for review and comment. The work plan shall identify the factor(s) listed in 40 CFR 131.10(g) or Subparagraph (a) of Paragraph (1) of Subsection H of 20.6.4.10 NMAC affecting attainment of the standard that will be analyzed and the timeline for proposed actions to be taken to achieve the uses attainable over the term of the temporary standard, including baseline water quality, and any investigations, projects, facility modifications, monitoring, or other measures necessary to achieve compliance with the original standard. The work plan shall include provisions for review of progress in accordance with Paragraph (8) of Subsection H of 20.6.4.10 NMAC, public notice and consultation with appropriate state, tribal, local and federal agencies.

(6) The commission may condition the approval of a temporary standard by requiring additional monitoring, relevant analyses, the completion of specified projects, submittal of information, or any other actions.

(7) Temporary standards may be implemented only after a public hearing before the commission, commission approval and adoption pursuant to Subsection H of 20.6.4.10 NMAC for all state purposes, and the federal Clean Water Act Section 303 (c) approval for any federal action.

(8) All temporary standards are subject to a required review during each succeeding review of water quality standards conducted in accordance with Subsection A of 20.6.4.10 NMAC. The petitioner shall provide a written report to the commission documenting the progress of proposed actions, pursuant to a reporting schedule stipulated in the approved temporary standard. The purpose of the review is to determine progress consistent with the original conditions of the petition for the duration of the temporary standard. If the petitioner cannot demonstrate that sufficient progress has been made the commission may revoke approval of the temporary standard or provide additional conditions to the approval of the temporary standard.

(9) The commission may consider a petition to extend a temporary standard. The effective period of a temporary standard shall be extended only if demonstrated to

the commission that the factors precluding attainment of the underlying standard still apply, that the petitioner is meeting the conditions required for approval of the temporary standard, and that reasonable progress towards meeting the underlying standard is being achieved.

(10) A temporary standard shall expire no later than the date specified in the approval of the temporary standard. Upon expiration of a temporary standard, the original standard becomes applicable.

(11) Temporary standards shall be identified in 20.6.4.97-899 NMAC as appropriate for the surface water affected.

(12) "Temporary standard" means a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the temporary standard.

[20.6.4.10 NMAC - Rp 20 NMAC 6.1.1102, 10/12/2000; Rn, 20.6.4.9 NMAC, 5/23/2005; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 4/23/2022]

#### **20.6.4.11 APPLICABILITY OF WATER QUALITY STANDARDS:**

##### **A. [RESERVED]**

**B. Critical low flow:** The critical low flow of a stream at a particular site shall be used in developing point source discharge permit requirements to meet numeric criteria set in 20.6.4.97 through 20.6.4.900 NMAC and Subsection F of 20.6.4.13 NMAC.

(1) For human health-organism only criteria, the critical low flow is the harmonic mean flow. For ephemeral waters the calculation shall be based upon the nonzero flow intervals and modified by including a factor to adjust for the proportion of intervals with zero flow. The equations are as follows:

$$\text{Harmonic Mean} = \frac{n}{\sum 1/Q}$$

where  $n$  = number of flow values  
and  $Q$  = flow value

Modified Harmonic Mean =

where  $Q_i$  = nonzero flow  
 $Nt$  = total number of flow values  
and  $N_0$  = number of zero flow values

(2) For all other narrative and numeric criteria, the critical low flow is the minimum average four consecutive day flow that occurs with a frequency of once in three years (4Q3). The critical low flow may be determined on an annual, a seasonal or a monthly basis, as appropriate, after due consideration of site-specific conditions.

**C. Guaranteed minimum flow:** The commission may allow the use of a contractually guaranteed minimum streamflow in lieu of a critical low flow determined under Subsection B of this section on a case-by-case basis and upon consultation with the interstate stream commission. Should drought, litigation or any other reason interrupt or interfere with minimum flows under a guaranteed minimum flow contract for a period of at least 30 consecutive days, such permission, at the sole discretion of the commission, may then be revoked. Any minimum flow specified under such revoked permission shall be superseded by a critical low flow determined under Subsection B of this section. A public notice of the request for a guaranteed minimum flow shall be published in a newspaper of general circulation by the department at least 30 days prior to scheduled action by the commission. These water quality standards do not grant to the commission or any other entity the power to create, take away or modify property rights in water.

**D. Mixing zones:** A limited mixing zone, contiguous to a point source wastewater discharge, may be allowed in any stream receiving such a discharge. Mixing zones serve as regions of initial dilution that allow the application of a dilution factor in calculations of effluent limitations. Effluent limitations shall be developed that will protect the most sensitive existing, designated or attainable use of the receiving water.

**E. Mixing zone limitations:** Wastewater mixing zones, in which the numeric criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC or 20.6.4.900 NMAC may be exceeded, shall be subject to the following limitations:

(1) Mixing zones are not allowed for discharges to lakes, reservoirs, or playas; these effluents shall meet all applicable criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC and 20.6.4.900 NMAC at the point of discharge.

(2) The acute aquatic life criteria, as set out in Subsection I, Subsection J, and Subsection K of 20.6.4.900 NMAC, shall be attained at the point of discharge for any discharge to a surface water of the state with a designated aquatic life use.

(3) The general criteria set out in Subsections A, B, C, D, E, G, H and J of 20.6.4.13 NMAC, and the provision set out in Subsection D of 20.6.4.14 NMAC are applicable within mixing zones.

(4) The areal extent and concentration isopleths of a particular mixing zone will depend on site-specific conditions including, but not limited to, wastewater flow, receiving water critical low flow, outfall design, channel characteristics and climatic conditions and, if needed, shall be determined on a case-by-case basis. When the physical boundaries or other characteristics of a particular mixing zone must be known, the methods presented in Section 4.4.5, "Ambient-induced mixing," in "Technical support document for water quality-based toxics control" (March 1991, EPA/505/2-90-001) shall be used.

(5) All applicable water quality criteria set under Subsection F of 20.6.4.13 NMAC, 20.6.4.97 through 20.6.4.899 NMAC and 20.6.4.900 NMAC shall be attained at the boundaries of mixing zones. A continuous zone of passage through or around the mixing zone shall be maintained in which the water quality meets all applicable criteria and allows the migration of aquatic life presently common in surface waters of the state with no effect on their populations.

**F. Multiple uses:** When a surface water of the state has more than a single designated use, the applicable numeric criteria shall be the most stringent of those established for such water.

**G. Human health-organism only criteria** in Subsection J of 20.6.4.900 NMAC apply to those waters with a designated, existing or attainable aquatic life use. When limited aquatic life is a designated use, the human health-organism only criteria apply only if adopted on a segment-specific basis. The human health-organism only criteria for persistent toxic pollutants, as identified in Subsection J of 20.6.4.900 NMAC, also apply to all tributaries of waters with a designated, existing or attainable aquatic life use.

**H. Unclassified waters of the state:** An unclassified surface water of the state is presumed to support the uses specified in Section 101(a)(2) of the federal Clean Water Act. As such, it is subject to 20.6.4.98 NMAC if nonperennial or subject to 20.6.4.99 NMAC if perennial. The commission may include an ephemeral unclassified surface water of the state under 20.6.4.97 NMAC only if a use attainability analysis demonstrates pursuant to 20.6.4.15 NMAC that attainment of Section 101(a)(2) uses is not feasible.

**I. Exceptions:** Numeric criteria for temperature, dissolved solids, dissolved oxygen, sediment or turbidity adopted under the Water Quality Act do not apply when changes in temperature, dissolved solids, dissolved oxygen, sediment or turbidity in a surface water of the state are attributable to:

(1) natural causes (discharges from municipal separate storm sewers are not covered by this exception.); or

(2) the reasonable operation of irrigation and flood control facilities that are not subject to federal or state water pollution control permitting; major reconstruction of storage dams or diversion dams except for emergency actions necessary to protect health and safety of the public are not covered by this exception.

[20.6.4.11 NMAC - Rp 20 NMAC 6.1.1103, 10/12/2000; A, 10/11/2002; Rn, 20.6.4.10 NMAC, 5/23/2005; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

#### **20.6.4.12 COMPLIANCE WITH WATER QUALITY STANDARDS:**

The following provisions apply to determining compliance for enforcement purposes; they do not apply for purposes of determining attainment of uses. The department has

developed assessment protocols for the purpose of determining attainment of uses that are available for review from the department's surface water quality bureau.

**A.** Compliance with acute water quality criteria shall be determined from the analytical results of a single grab sample. Acute criteria shall not be exceeded.

**B.** Compliance with chronic water quality criteria shall be determined from the arithmetic mean of the analytical results of samples collected using applicable protocols. Chronic criteria shall not be exceeded more than once every three years.

**C.** Compliance with water quality standards for total ammonia shall be determined by performing the biomonitoring procedures set out in Subsections D and E of 20.6.4.14 NMAC, or by attainment of applicable ammonia criteria set out in Subsections K, L and M of 20.6.4.900 NMAC.

**D.** Compliance with the human health-organism only criteria shall be determined from the analytical results of representative grab samples, as defined in the water quality management plan. Human health-organism only criteria shall not be exceeded.

**E.** The commission may establish a numeric water quality criterion at a concentration that is below the minimum quantification level. In such cases, the water quality standard is enforceable at the minimum quantification level.

**F.** For compliance with hardness-dependent numeric criteria, hardness (as mg CaCO<sub>3</sub>/L) shall be determined from a sample taken at the same time that the sample for the contaminant is taken.

**G.** Compliance schedules: The commission may allow the inclusion of a schedule of compliance in a NPDES permit issued to an existing facility on a case-by-case basis. Such schedule of compliance will be for the purpose of providing a permittee with adequate time to make treatment facility modifications necessary to comply with water quality based permit limitations determined to be necessary to implement new or revised water quality standards or wasteload allocation. Compliance schedules may be included in NPDES permits at the time of permit renewal or modification and shall be written to require compliance at the earliest practicable time. Compliance schedules shall also specify milestone dates so as to measure progress towards final project completion (e.g., design completion, construction start, construction completion, date of compliance).

**H.** It is a policy of the commission to allow a temporary standard approved and adopted pursuant to Subsection H of 20.6.4.10 NMAC to be included in the applicable federal Clean Water Act permit as enforceable limits and conditions. The temporary standard and any schedule of actions may be included at the earliest practicable time, and shall specify milestone dates so as to measure progress towards meeting the original standard.

[20.6.4.12 NMAC - Rp 20 NMAC 6.1.1104, 10/12/2000; A, 10/11/2002; Rn, 20.6.4.11 NMAC, 5/23/2005; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 4/23/2022]

### **20.6.4.13 GENERAL CRITERIA:**

General criteria are established to sustain and protect existing or attainable uses of surface waters of the state. These general criteria apply to all surface waters of the state at all times, unless a specified criterion is provided elsewhere in this part. Surface waters of the state shall be free of any water contaminant in such quantity and of such duration as may with reasonable probability injure human health, animal or plant life or property, or unreasonably interfere with the public welfare or the use of property.

#### **A. Bottom deposits and suspended or settleable solids:**

(1) Surface waters of the state shall be free of water contaminants including fine sediment particles (less than two millimeters in diameter), precipitates or organic or inorganic solids from other than natural causes that have settled to form layers on or fill the interstices of the natural or dominant substrate in quantities that damage or impair the normal growth, function or reproduction of aquatic life or significantly alter the physical or chemical properties of the bottom.

(2) Suspended or settleable solids from other than natural causes shall not be present in surface waters of the state in quantities that damage or impair the normal growth, function or reproduction of aquatic life or adversely affect other designated uses.

**B. Floating solids, oil and grease:** Surface waters of the state shall be free of oils, scum, grease and other floating materials resulting from other than natural causes that would cause the formation of a visible sheen or visible deposits on the bottom or shoreline, or would damage or impair the normal growth, function or reproduction of human, animal, plant or aquatic life.

**C. Color:** Color-producing materials resulting from other than natural causes shall not create an aesthetically undesirable condition nor shall color impair the use of the water by desirable aquatic life presently common in surface waters of the state.

#### **D. Organoleptic quality:**

(1) **Flavor of fish:** Water contaminants from other than natural causes shall be limited to concentrations that will not impart unpalatable flavor to fish.

(2) **Odor and taste of water:** Water contaminants from other than natural causes shall be limited to concentrations that will not result in offensive odor or taste arising in a surface water of the state or otherwise interfere with the reasonable use of the water.

E. Plant nutrients: Plant nutrients from other than natural causes shall not be present in concentrations that will produce undesirable aquatic life or result in a dominance of nuisance species in surface waters of the state.

F. Toxic pollutants:

(1) Except as provided in 20.6.4.16 NMAC, surface waters of the state shall be free of toxic pollutants from other than natural causes in amounts, duration, concentrations, or combinations that affect the propagation of fish or that are toxic to humans, livestock or other animals, fish or other aquatic organisms, wildlife using aquatic environments for habitation or aquatic organisms for food, or that will or can reasonably be expected to bioaccumulate in tissues of fish, shellfish and other aquatic organisms to levels that will impair the health of aquatic organisms or wildlife or result in unacceptable tastes, odors or health risks to human consumers of aquatic organisms.

(2) Pursuant to this section, the human health-organism only criteria shall be as set out in 20.6.4.900 NMAC. When a human health-organism only criterion is not listed in 20.6.4.900 NMAC, the following provisions shall be applied in accordance with 20.6.4.11, 20.6.4.12 and 20.6.4.14 NMAC.

(a) The human health-organism only criterion shall be the recommended human health criterion for "consumption of organisms only" published by the U.S. environmental protection agency pursuant to Section 304(a) of the federal Clean Water Act. In determining such criterion for a cancer-causing toxic pollutant, a cancer risk of  $10^{-5}$  (one cancer per 100,000 exposed persons) shall be used.

(b) When a numeric criterion for the protection of human health for the consumption of organism only has not been published by the U.S. environmental protection agency, a quantifiable criterion may be derived from data available in the U.S. environmental protection agency's Integrated Risk Information System (IRIS) using the appropriate formula specified in *Methodology for Deriving Ambient Water Quality Criteria for The Protection Of Human Health (2000)*, EPA-822-B-00-004.

(3) Pursuant to this section, the chronic aquatic life criteria shall be as set out in 20.6.4.900 NMAC. When a chronic aquatic life criterion is not listed in 20.6.4.900 NMAC, the following provisions shall be applied in sequential order in accordance with 20.6.4.11, 20.6.4.12 and 20.6.4.14 NMAC.

(a) The chronic aquatic life criterion shall be the "freshwater criterion continuous concentration" published by the U.S. environmental protection agency pursuant to Section 304(a) of the federal Clean Water Act;

(b) If the U.S. environmental protection agency has not published a chronic aquatic life criterion, a geometric mean LC-50 value shall be calculated for the particular species, genus or group that is representative of the form of life to be preserved, using the results of toxicological studies published in scientific journals.

(i) The chronic aquatic life criterion for a toxic pollutant that does not bioaccumulate shall be ten percent of the calculated geometric mean LC-50 value; and

(ii) The chronic aquatic life criterion for a toxic pollutant that does bioaccumulate shall be: the calculated geometric mean LC-50 adjusted by a bioaccumulation factor for the particular species, genus or group representative of the form of life to be preserved, but when such bioaccumulation factor has not been published, the criterion shall be one percent of the calculated geometric mean LC-50 value.

(4) Pursuant to this section, the acute aquatic life criteria shall be as set out in 20.6.4.900 NMAC. When an acute aquatic life criterion is not listed in 20.6.4.900 NMAC, the acute aquatic life criterion shall be the "freshwater criterion maximum concentration" published by the U.S. environmental protection agency pursuant to Section 304(a) of the federal Clean Water Act.

(5) Within 90 days of the issuance of a final NPDES permit containing a numeric criterion selected or calculated pursuant to Paragraph (2), Paragraph (3) or Paragraph (4) of Subsection F of this section, the department shall petition the commission to adopt such criterion into these standards.

**G. Radioactivity:** The radioactivity of surface waters of the state shall be maintained at the lowest practical level and shall in no case exceed the criteria set forth in the New Mexico Radiation Protection Regulations, 20.3.1 and 20.3.4 NMAC.

**H. Pathogens:** Surface waters of the state shall be free of pathogens from other than natural causes in sufficient quantity to impair public health or the designated, existing or attainable uses of a surface water of the state.

**I. Temperature:** Maximum temperatures for surface waters of the state have been specified in 20.6.4.97 through 20.6.4.900 NMAC. However, the introduction of heat by other than natural causes shall not increase the temperature, as measured from above the point of introduction, by more than 2.7°C (5°F) in a stream, or more than 1.7°C (3°F) in a lake or reservoir. In no case will the introduction of heat be permitted when the maximum temperature specified for the reach would thereby be exceeded. These temperature criteria shall not apply to impoundments constructed offstream for the purpose of heat disposal. High water temperatures caused by unusually high ambient air temperatures are not violations of these criteria.

**J. Turbidity:** Turbidity attributable to other than natural causes shall not reduce light transmission to the point that the normal growth, function or reproduction of aquatic life is impaired or that will cause substantial visible contrast with the natural appearance of the water. Activities or discharges shall not cause turbidity to increase more than 10 NTU over background turbidity when the background turbidity, measured at a point immediately upstream of the activity, is 50 NTU or less, nor to increase more than twenty percent when the background turbidity is more than 50 NTU. However, limited-

duration turbidity increases caused by dredging, construction or other similar activities may be allowed provided all practicable turbidity control techniques have been applied and all appropriate permits, certifications and approvals have been obtained.

**K.** Total dissolved solids (TDS): TDS attributable to other than natural causes shall not damage or impair the normal growth, function or reproduction of animal, plant or aquatic life. TDS shall be measured by either the "calculation method" (sum of constituents) or the filterable residue method. Approved test procedures for these determinations are set forth in 20.6.4.14 NMAC.

**L.** Dissolved gases: Surface waters of the state shall be free of nitrogen and other dissolved gases at levels above one hundred ten percent saturation when this supersaturation is attributable to municipal, industrial or other discharges.

**M.** Biological integrity: Surface waters of the state shall support and maintain a balanced and integrated community of aquatic organisms with species composition, diversity and functional organization comparable to those of natural or minimally impacted water bodies of a similar type and region.

[20.6.4.13 NMAC - Rp 20 NMAC 6.1.1105, 10/12/2000; A, 10/11/2002; Rn, 20.6.4.12 NMAC, 5/23/2005; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

#### **20.6.4.14 SAMPLING AND ANALYSIS:**

**A.** Sampling and analytical techniques shall conform with methods described in the following references unless otherwise specified by the commission pursuant to a petition to amend these standards:

(1) *"Guidelines Establishing Test Procedures For The Analysis Of Pollutants Under The Clean Water Act,"* 40 CFR Part 136 or any test procedure approved or accepted by EPA using procedures provided in 40 CFR Parts 136.3(d), 136.4, and 136.5;

(2) *Standard Methods For The Examination Of Water And Wastewater*, latest edition, American public health association;

(3) *Methods For Chemical Analysis Of Water And Waste*, and other methods published by EPA office of research and development or office of water;

(4) *Techniques Of Water Resource Investigations Of The U.S. Geological Survey*;

(5) *Annual Book Of ASTM Standards*: volumes 11.01 and 11.02, water (I) and (II), latest edition, ASTM international;

(6) *Federal Register*, latest methods published for monitoring pursuant to Resource Conservation and Recovery Act regulations;

(7) *National Handbook Of Recommended Methods For Water-Data Acquisition*, latest edition, prepared cooperatively by agencies of the United States government under the sponsorship of the U.S. geological survey; or

(8) *Federal Register*, latest methods published for monitoring pursuant to the Safe Drinking Water Act regulations.

**B. Bacteriological Surveys:** The monthly geometric mean shall be used in assessing attainment of criteria when a minimum of five samples is collected in a 30-day period.

**C. Sampling Procedures:**

(1) Streams: Stream monitoring stations below discharges shall be located a sufficient distance downstream to ensure adequate vertical and lateral mixing.

(2) Lakes: Sampling stations in lakes shall be located at least 250 feet from a discharge.

(3) Lakes: Except for the restriction specified in Paragraph (2) of this subsection, lake sampling stations shall be located at any site where the attainment of a water quality criterion is to be assessed. Water quality measurements taken at intervals in the entire water column at a sampling station shall be averaged for the epilimnion, or in the absence of an epilimnion, for the upper one-third of the water column of the lake to determine attainment of criteria, except that attainment of criteria for toxic pollutants shall be assessed during periods of complete vertical mixing, e.g., during spring or fall turnover, or by taking depth-integrated composite samples of the water column.

**D.** Acute toxicity of effluent to aquatic life shall be determined using the procedures specified in U.S. environmental protection agency "*Methods for Measuring The Acute Toxicity of Effluents and Receiving Waters To Freshwater and Marine Organisms*" (5th Ed., 2002, EPA 821-R-02-012), or latest edition thereof if adopted by EPA at 40 CFR Part 136, which is incorporated herein by reference. Acute toxicities of substances shall be determined using at least two species tested in whole effluent and a series of effluent dilutions. Acute toxicity due to discharges shall not occur within the wastewater mixing zone in any surface water of the state with an existing or designated aquatic life use.

**E.** Chronic toxicity of effluent or ambient surface waters of the state to aquatic life shall be determined using the procedures specified in U.S. environmental protection agency "*Short-Term Methods For Estimating The Chronic Toxicity Of Effluents And Receiving Waters To Freshwater Organisms*" (4th Ed., 2002, EPA 821-R-02-013), or latest edition thereof if adopted by EPA at 40 CFR Part 136, which is incorporated herein by reference. Chronic toxicities of substances shall be determined using at least

two species tested in ambient surface water or whole effluent and a series of effluent dilutions. Chronic toxicity due to discharges shall not occur at the critical low flow, or any flow greater than the critical low flow, in any surface water of the state with an existing or designated aquatic life use more than once every three years.

**F. Emerging Contaminants Monitoring:** The department may require monitoring, analysis and reporting of emerging contaminants as a condition of a federal permit under Section 401 of the federal Clean Water Act.

[20.6.4.14 NMAC - Rp 20 NMAC 6.1.1106, 10/12/2000; Rn, 20.6.4.13 NMAC, 5/23/2005 & A, 5/23/2005; A, 12/1/2010; A 4/23/2022]

#### **20.6.4.15 USE ATTAINABILITY ANALYSIS:**

**A. Regulatory requirements for a use attainability analysis.** Whenever a use attainability analysis is conducted, it shall be subject to the requirements and limitations set forth in 40 CFR Part 131, Water Quality Standards; specifically, Subsections 131.3(g), 131.10(g), 131.10(h) and 131.10(j) shall be applicable. In accordance with 40 CFR 131.10(i), and 20.6.4.10 NMAC, the amendment of a designated use, based on an existing use with more stringent criteria, does not require a use attainability analysis.

(1) The commission may remove a designated use, that is not an existing use, specified in Section 101(a)(2) of the federal Clean Water Act or adopt subcategories of a use in Section 101(a)(2) of the federal Clean Water Act requiring less stringent criteria only if a use attainability analysis demonstrates that attaining the use is not feasible because of a factor listed in 40 CFR 131.10(g). Uses in Section 101(a)(2) of the federal Clean Water Act, which refer to the protection and propagation of fish, shellfish and wildlife and recreation in and on the water, are also specified in Subsection B of 20.6.4.6 NMAC.

(2) A designated use cannot be removed if it is an existing use unless a use requiring more stringent criteria is designated.

**B. Methods for developing a use attainability analysis.** A use attainability analysis shall assess the physical, chemical, biological, economic or other factors affecting the attainment of a use. The analysis shall rely on scientifically defensible methods such as the methods described in the following documents:

(1) *Technical Support Manual: Waterbody Surveys And Assessments For Conducting Use Attainability Analyses*, volume I (November 1983) and volume III (November 1984) or latest editions, United States environmental protection agency, office of water, regulations and standards, Washington, D.C., for the evaluation of aquatic life or wildlife uses;

(2) the department's *Hydrology Protocol*, latest edition, approved by the commission, for identifying ephemeral, intermittent, and perennial waters; or

(3) *Interim Economic Guidance For Water Quality Standards - Workbook*, March 1995, United States environmental protection agency, office of water, Washington, D.C. for evaluating economic impacts.

**C. Determining the highest attainable use.** If the use attainability analysis determines that the designated use is not attainable based on one of the factors in 40 CFR 131.10(g), the use attainability analysis shall demonstrate the support for removing the designated use and then determine the highest attainable use, as defined in 40 CFR 131.3(m), for the protection and propagation of fish, shellfish and wildlife and recreation in and on the water based on methods described in Subsection B of this section.

**D. Process to amend a designated use through a use attainability analysis.**

(1) The process for developing a use attainability analysis and petitioning the commission for removing a designated use and establishing the highest attainable use shall be done in accordance with the State's current *Water Quality Management Plan/Continuing Planning Process*.

(2) If the findings of a use attainability analysis, conducted by the department, in accordance with the department's Hydrology Protocol (latest edition) demonstrates that federal Clean Water Act Section 101(a)(2) uses, that are not existing uses, are not feasible in an ephemeral water body due to the factor in 40 CFR 131.10(g)(2), the department may consider proceeding with the expedited use attainability analysis process in accordance with the State's current Water Quality Management Plan/Continuing Planning Process. The following elements must be met for the expedited use attainability analysis process to be authorized and implemented:

- (a) The department is the primary investigator of the use attainability analysis;
- (b) The use attainability analysis determined, through the application of the *Hydrology Protocol*, that the water being investigated is ephemeral and has no effluent discharges of sufficient volume that could compensate for the low-flow;
- (c) The use attainability analysis determined that the criteria associated with the existing uses of the water being investigated are not more stringent than those in 20.6.4.97 NMAC;
- (d) The designated uses in 20.6.4.97 NMAC have been determined to be the highest attainable uses for the water being analyzed;
- (e) The department posted the use attainability analysis on its water quality standards website and notified its interested parties list of a 30-day public comment period;
- (f) The department reviewed and responded to any comments received during the 30-day public comment period; and

(g) The department submitted the use attainability analysis and response to comments to region 6 EPA for technical approval.

If EPA approves the revision under section 303(c) of the Clean Water Act, the water shall be subject to 20.6.4.97 NMAC for federal Clean Water Act purposes. The use attainability analysis, the technical support document, and the applicability of 20.6.4.97 NMAC to the water shall be posted on the department's water quality standards website. The department shall periodically petition the commission to list ephemeral waters under Subsection C of 20.6.4.97 NMAC and to incorporate changes to classified segments as appropriate.

**E. Use attainability analysis conducted by an entity other than the department.** Any person may submit notice to the department stating their intent to conduct a use attainability analysis.

(1) The proponent shall provide such notice along with a work plan supporting the development of a use attainability analysis to the department and region 6 EPA for review and comment.

(2) Upon approval of the work plan by the department, the proponent shall conduct the use attainability analysis in accordance with the applicable portions of Subsections A through D of this Section and implement public noticing in accordance with the approved work plan.

(3) Work plan elements. The work plan shall identify, at a minimum:

(a) the waterbody of concern and the reasoning for conducting a use attainability analysis;

(b) the source and validity of data to be used to demonstrate whether the current designated use is not attainable;

(c) the factors in 40 CFR 131.10(g) affecting the attainment of that use;

(d) a description of the data being proposed to be used to demonstrate the highest attainable use;

(e) the provisions for consultation with appropriate state and federal agencies;

(f) a description of how stakeholders and potentially affected tribes will be identified and engaged;

(g) a description of the public notice mechanisms to be employed; and

(h) the expected timelines outlining the administrative actions to be taken for a rulemaking petition, pending the outcome of the use attainability analysis.

(4) Upon completion of the use attainability analysis, the proponent shall submit the data, findings and conclusions to the department, and provide public notice of the use attainability analysis in accordance with the approved work plan.

(5) Pending the conclusions of the use attainability analysis and as described in the approved work plan, the department or the proponent may petition the commission to modify the designated use. The cost of such use attainability analysis shall be the responsibility of the proponent. Subsequent costs associated with the administrative rulemaking process shall be the responsibility of the petitioner.

[20.6.4.15 NMAC - Rp 20 NMAC 6.1.1107, 10/12/2000; Rn, 20.6.4.14 NMAC, 5/23/2005; A, 5/23/2005; A, 7/17/2005; A, 12/1/2010; A, 4/23/2022]

#### **20.6.4.16 PLANNED USE OF A PISCICIDE:**

The use of a piscicide registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. Section 136 *et seq.*, and under the New Mexico Pesticide Control Act (NMPCA), Section 76-4-1 *et seq.* NMSA 1978 (1973) in a surface water of the state, shall not be a violation of Subsection F of 20.6.4.13 NMAC when such use is covered by a federal national pollutant discharge elimination system (NPDES) permit or has been approved by the commission under procedures provided in this section. The use of a piscicide which is covered by a NPDES permit shall require no further review by the commission and the person whose application is covered by the NPDES permit shall meet the additional notification and monitoring requirements outlined in Subsection G of 20.6.4.16 NMAC. The commission may approve the reasonable use of a piscicide under this section if the proposed use is not covered by a NPDES permit to further a Clean Water Act objective to restore and maintain the physical or biological integrity of surface waters of the state, including restoration of native species.

**A.** Any person seeking commission approval of the use of a piscicide not covered by a NPDES permit shall file a written petition concurrently with the commission and the surface water bureau of the department. The petition shall contain, at a minimum, the following information:

- (1) petitioner's name and address;
- (2) identity of the piscicide and the period of time (not to exceed five years) or number of applications for which approval is requested;
- (3) documentation of registration under FIFRA and NMPCA and certification that the petitioner intends to use the piscicide according to the label directions, for its intended function;
- (4) target and potential non-target species in the treated waters and adjacent riparian area, including threatened or endangered species;

(5) potential environmental consequences to the treated waters and the adjacent riparian area, and protocols for limiting such impacts;

(6) surface water of the state proposed for treatment;

(7) results of pre-treatment survey;

(8) evaluation of available alternatives and justification for selecting piscicide use;

(9) documentation of notice requesting public comment on the proposed use within a 30-day period, including information as described in Paragraphs (1), (2) and (6) of Subsection A of 20.6.4.16 NMAC, provided to:

(a) local political subdivisions;

(b) local water planning entities;

(c) local conservancy and irrigation districts; and

(d) local media outlets, except that the petitioner shall only be required to publish notice in a newspaper of circulation in the locality affected by the proposed use.

(10) copies of public comments received in response to the publication of notice and the petitioner's responses to public comments received;

(11) post-treatment assessment monitoring protocol; and

(12) any other information required by the commission.

**B.** Within 30 days of receipt of the petition, the department shall review the petition and file a recommendation with the commission to grant, grant with conditions or deny the petition. The recommendation shall include reasons, and a copy shall be sent to the petitioner by certified mail.

**C.** The commission shall review the petition, the public comments received under Paragraphs (9) and (10) of Subsection A of 20.6.4.16 NMAC, the petitioner's responses to public comments and the department's technical recommendations for the petition. A public hearing shall be held if the commission determines there is substantial public interest. The commission shall notify the petitioner and those commenting on the petition of the decision whether to hold a hearing and the reasons therefore in writing.

**D.** If the commission determines there is substantial public interest a public hearing shall be held within 90 days of receipt of the department's recommendation in the locality affected by the proposed use in accordance with 20.1.3 NMAC, Adjudicatory Procedures - Water Quality Control Commission. Notice of the hearing shall be given in

writing by the petitioner to individuals listed under Subsection A of 20.6.4.16 NMAC as well as to individuals who provided public comment under that subsection at least 30 days prior to the hearing.

**E.** In a hearing provided for in this section or, if no hearing is held, in a commission meeting, the registration of a piscicide under FIFRA and NMPCA shall provide a rebuttable presumption that the determinations of the EPA Administrator in registering the piscicide, as outlined in 7 U.S.C. Section 136a(c)(5), are valid. For purposes of this Section the rebuttable presumptions regarding the piscicide include:

- (1) Its composition is such as to warrant the proposed claims for it;
- (2) Its labeling and other material submitted for registration comply with the requirements of FIFRA and NMPCA;
- (3) It will perform its intended function without unreasonable adverse effects on the environment; and
- (4) When used in accordance with all FIFRA label requirements it will not generally cause unreasonable adverse effects on the environment.
- (5) "Unreasonable adverse effects on the environment" has the meaning provided in FIFRA, 7 U.S.C. Section 136(bb): "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide."

**F.** After a public hearing, or commission meeting if no hearing is held, the commission may grant the petition in whole or in part, may grant the petition subject to conditions, or may deny the petition. In granting any petition in whole or part or subject to conditions, the commission shall require the petitioner to implement post-treatment assessment monitoring and provide notice to the public in the immediate and near downstream vicinity of the application prior to and during the application.

**G.** Any person whose application is covered by a NPDES permit shall provide written notice to local entities as described in Subsection A of 20.6.4.16 NMAC and implement post-treatment assessment monitoring within the application area as described in Subsection F of 20.6.4.16 NMAC.

[20.6.4.16 NMAC - Rn, Paragraph (6) of Subsection F of 20.6.4.12 NMAC, 5/23/2005; A, 5/23/2005; A, 3/2/2017]

#### **20.6.4.17-20.6.4.49 [RESERVED]**

#### **20.6.4.50 BASINWIDE PROVISIONS:**

Special provisions arising from interstate compacts, international treaties or court decrees or that otherwise apply to a basin are contained in 20.6.4.51 through 20.6.4.59 NMAC.

[20.6.4.50 NMAC - N, 5/23/2005]

**20.6.4.51 [RESERVED]**

**20.6.4.52 PECOS RIVER BASIN:**

In order to protect existing and designated uses, it is a goal of the state of New Mexico to prevent increases in TDS in the Pecos river above the following benchmark values, which are expressed as flow-weighted, annual average concentrations, at three USGS gaging stations: at Santa Rosa 500 mg/L; near Artesia 2,700 mg/L; and near Malaga 3,600 mg/L. The benchmark values serve to guide state action. They are adopted pursuant to the New Mexico Water Quality Act, not the Clean Water Act.

[20.6.4.52 NMAC - N, 12/1/2010]

**20.6.4.53 [RESERVED]**

**20.6.4.54 COLORADO RIVER BASIN:**

**For the tributaries of the Colorado river system, the state of New Mexico will cooperate with the Colorado river basin states and the federal government to support and implement the salinity policy and program outlined in the most current "review, water quality standards for salinity, colorado river system" or equivalent report by the Colorado river salinity control forum.**

**A.** Numeric criteria expressed as the flow-weighted annual average concentration for salinity are established at three points in the Colorado river basin as follows: below Hoover dam, 723 mg/L; below Parker dam, 747 mg/L; and at Imperial dam, 879 mg/L.

**B.** As a part of the program, objectives for New Mexico shall include the elimination of discharges of water containing solids in solution as a result of the use of water to control or convey fly ash from coal-fired electric generators, wherever practicable.

[20.6.4.54 NMAC - Rn, Paragraphs (1) through (3) of Subsection K of 20.6.4.12 NMAC, 5/23/2005; A, 5/23/2005]

**20.6.4.55-20.6.4.96 [RESERVED]**

**20.6.4.97 EPHEMERAL WATERS:**

**Ephemeral surface waters of the state as identified below and additional ephemeral waters as identified on the department's water quality standards**

**website pursuant to Paragraph (2) of Subsection D of 20.6.4.15 NMAC are subject to the designated uses and criteria as specified in this section. Ephemeral waters classified in 20.6.4.101-899 NMAC are subject to the designated uses and criteria as specified in those sections.**

**A. Designated uses:** livestock watering, wildlife habitat, limited aquatic life and secondary contact.

**B. Criteria:** the use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses.

**C. Waters:**

(1) the following waters are designated in the Rio Grande basin:

(a) Cunningham gulch from Santa Fe county road 55 upstream 1.4 miles to a point upstream of the Lac minerals mine, identified as Ortiz mine on U.S. geological survey topographic maps;

(b) an unnamed tributary from Arroyo Hondo upstream 0.4 miles to the Village of Oshara water reclamation facility outfall;

(c) an unnamed tributary from San Pedro creek upstream 0.8 miles to the PAA-KO community sewer outfall;

(d) Inditos draw from the crossing of an unnamed road along a power line one-quarter mile west of McKinley county road 19 upstream to New Mexico highway 509;

(e) an unnamed tributary from the diversion channel connecting Blue canyon and Socorro canyon upstream 0.6 miles to the New Mexico firefighters academy treatment facility outfall;

(f) an unnamed tributary from the Albuquerque metropolitan arroyo flood control authority (AMAFCA) Rio Grande south channel upstream of the crossing of New Mexico highway 47 upstream to I-25;

(g) the south fork of Cañon del Piojo from Cañon del Piojo upstream 1.2 miles to an unnamed tributary;

(h) an unnamed tributary from the south fork of Cañon del Piojo upstream 1 mile to the Resurrection mine outfall;

(i) Arroyo del Puerto from San Mateo creek upstream 6.8 miles to the Ambrosia Lake mine entrance road;

(j) an unnamed tributary from San Mateo creek upstream 1.5 miles to the Roca Honda mine facility outfall;

(k) San Isidro arroyo, including unnamed tributaries to San Isidro arroyo, from Arroyo Chico upstream to its headwaters;

(l) Arroyo Tinaja, including unnamed tributaries to Arroyo Tinaja, from San Isidro arroyo upstream to 2 miles northeast of the Cibola national forest boundary;

(m) Mulatto canyon from Arroyo Tinaja upstream to 1 mile northeast of the Cibola national forest boundary; and

(n) Doctor arroyo, including unnamed tributaries to Doctor arroyo, from San Isidro arroyo upstream to its headwaters, and excluding Doctor Spring and Doctor arroyo from the spring to its confluence with the unnamed tributary approximately one-half mile downstream of the spring.

(2) the following waters are designated in the Pecos river basin:

(a) an unnamed tributary from Hart canyon upstream 1 mile to South Union road;

(b) Aqua Chiquita from Rio Peñasco upstream to McEwan canyon; and

(c) Grindstone canyon upstream of Grindstone reservoir.

(3) the following waters are designated in the Canadian river basin:

(a) Bracket canyon upstream of the Vermejo river;

(b) an unnamed tributary from Bracket canyon upstream 2 miles to the Ancho mine; and

(c) Gachupin canyon from the Vermejo river upstream 2.9 miles to an unnamed west tributary near the Ancho mine outfall.

(4) in the San Juan river basin an unnamed tributary of Kim-me-ni-oli wash upstream of the mine outfall.

(5) the following waters are designated in the Little Colorado river basin:

(a) Defiance draw from County Road 1 to upstream of West Defiance Road; and

(b) an unnamed tributary of Defiance draw from McKinley county road 1 upstream to New Mexico highway 264.

(6) the following waters are designated in the closed basins:

(a) in the Tularosa river closed basin San Andres canyon downstream of South San Andres canyon; and

(b) in the Mimbres river closed basin San Vicente arroyo from the Mimbres river upstream to Maudes canyon.

[20.6.4.97 NMAC - N, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 12/17/2019; A, 4/23/2022]

#### **20.6.4.98 INTERMITTENT WATERS:**

**All non-perennial surface waters of the state, except those ephemeral waters included under section 20.6.4.97 NMAC or classified in 20.6.4.101-899 NMAC.**

**A. Designated uses:** livestock watering, wildlife habitat, marginal warmwater aquatic life and primary contact.

**B. Criteria:** the use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following site-specific criteria apply: the monthly geometric mean of E. coli bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.98 NMAC - N, 5/23/2005; A, 12/1/2010; A, 3/2/2017]

#### **20.6.4.99 PERENNIAL WATERS:**

**All perennial surface waters of the state except those classified in 20.6.4.101-899 NMAC.**

**A. Designated uses:** Warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** The use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following site-specific criteria apply: the monthly geometric mean of E. coli bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.99 NMAC - N, 5/23/2005; A, 12/1/2010; A, 3/2/2017]

#### **20.6.4.100 [RESERVED]**

#### **20.6.4.101 RIO GRANDE BASIN:**

**The main stem of the Rio Grande from the international boundary with Mexico upstream to one mile downstream of Percha dam.**

**A. Designated uses:** irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:**

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criterion applies: temperature 34°C (93.2°F) or less.

(2) At mean monthly flows above 350 cfs, the monthly average concentration for: TDS 2,000 mg/L or less, sulfate 500 mg/L or less and chloride 400 mg/L or less.

**C. Remarks:** sustained flow in the Rio Grande below Caballo reservoir is dependent on release from Caballo reservoir during the irrigation season; at other times of the year, there may be little or no flow.

[20.6.4.101 NMAC - Rp 20 NMAC 6.1.2101, 10/12/2010; A, 12/15/2001; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017]

**20.6.4.102 RIO GRANDE BASIN:**

**The main stem of the Rio Grande from one mile downstream of Percha dam upstream to Caballo dam.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

**C. Remarks:** sustained flow in the Rio Grande downstream of Caballo reservoir is dependent on release from Caballo reservoir during the irrigation season; at other times of the year, there may be little or no flow.

[20.6.4.102 NMAC - Rp 20 NMAC 6.1.2102, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017]

**20.6.4.103 RIO GRANDE BASIN:**

**Perennial reaches of tributaries to the Rio Grande in Sierra and Socorro counties not specifically identified under other sections of 20.6.4 NMAC, excluding waters on tribal lands.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, marginal coldwater aquatic life, secondary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.103 NMAC - Rp 20 NMAC 6.1.2103, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

**[NOTE:** This segment was divided effective 4/23/2022. The standards for the main stem of the Rio Grande from the headwaters of Caballo reservoir upstream to Elephant Butte dam, perennial reaches of Palomas creek, perennial reaches of Rio Salado, perennial reaches of Percha creek, perennial reaches of Alamosa creek, Las Animas creek, and perennial reaches of Abo arroyo are under 20.6.4.112 NMAC.]

**20.6.4.104 RIO GRANDE BASIN:**

**Caballo and Elephant Butte reservoir.**

**A. Designated uses:** irrigation storage, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.104 NMAC - Rp 20 NMAC 6.1.2104, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

**20.6.4.105 RIO GRANDE BASIN:**

**The main stem of the Rio Grande from the headwaters of Elephant Butte reservoir upstream to Alameda bridge (Corrales bridge), excluding waters on Isleta pueblo.**

**A. Designated uses:** irrigation, marginal warmwater aquatic life, livestock watering, public water supply, wildlife habitat and primary contact.

**B. Criteria:**

**(1)** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At mean monthly flows above 100 cfs, the monthly average concentration for: TDS 1,500 mg/L or less, sulfate 500 mg/L or less and chloride 250 mg/L or less.

[20.6.4.105 NMAC - Rp 20 NMAC 6.1.2105, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.106 RIO GRANDE BASIN:**

**The main stem of the Rio Grande from Alameda bridge (Corrales bridge) upstream to the Angostura diversion works, excluding waters on Santa Ana pueblo, and intermittent water in the Jemez river below the Jemez pueblo boundary, excluding waters on Santa Ana and Zia pueblos, that enters the main stem of the Rio Grande. Portions of the Rio Grande in this segment are under the joint jurisdiction of the state and Sandia pueblo.**

**A. Designated uses:** irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact; and public water supply on the Rio Grande.

#### **B. Criteria:**

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At mean monthly flows above 100 cfs, the monthly average concentration for: TDS 1,500 mg/L or less, sulfate 500 mg/L or less and chloride 250 mg/L or less.

[20.6.4.106 NMAC - Rp 20 NMAC 6.1.2105.1, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.107 RIO GRANDE BASIN:**

**The Jemez river from the Jemez pueblo boundary upstream to Soda dam near the town of Jemez Springs and perennial reaches of Vallecito creek.**

**A. Designated uses:** coldwater aquatic life, primary contact, irrigation, livestock watering and wildlife habitat; and public water supply on Vallecito creek.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 25°C (77°F).

[20.6.4.107 NMAC - Rp 20 NMAC 6.1.2105.5, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.108 RIO GRANDE BASIN:**

**Perennial reaches of the Jemez river upstream of Soda dam near the town of Jemez Springs and perennial reaches of tributaries to the Jemez river except those not specifically identified under other sections of 20.6.4 NMAC , and**

**perennial reaches of the Guadalupe river and perennial reaches of tributaries to the Guadalupe river, and Calaveras canyon.**

**A. Designated uses:** domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 400  $\mu\text{S}/\text{cm}$  or less (800  $\mu\text{S}/\text{cm}$  or less on Sulphur creek); the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less; and pH within the range of 2.0 to 8.8 on Sulphur creek.

[20.6.4.108 NMAC - Rp 20 NMAC 6.1.2106, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012; A, 4/23/2022]

[**NOTE:** The segment covered by this section was divided effective 5/23/2005. The standards for the additional segment are under 20.6.4.124 NMAC. The standards for San Gregorio lake are in 20.6.4.134 NMAC, effective 7/10/2012]

**20.6.4.109 RIO GRANDE BASIN:**

**Perennial reaches of Bluewater creek excluding Bluewater lake and waters on tribal lands, Rio Moquino upstream of Laguna pueblo, Seboyeta creek, Rio Pagate upstream of Laguna pueblo, the Rio Puerco upstream of the northern boundary of Cuba, and all other perennial reaches of tributaries to the Rio Puerco, including the Rio San Jose in Cibola county from the USGS gaging station at Correo upstream to Horace springs excluding waters on tribal lands.**

**A. Designated uses:** coldwater aquatic life, domestic water supply, fish culture, irrigation, livestock watering, wildlife habitat and primary contact; and public water supply on La Jara creek.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: phosphorus (unfiltered sample) 0.1 mg/L or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.109 NMAC - Rp 20 NMAC 6.1.2107, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012]

[**NOTE:** The standards for Bluewater lake are in 20.6.4.135 NMAC, effective 7/10/2012]

**20.6.4.110 RIO GRANDE BASIN:**

**The main stem of the Rio Grande from Angostura diversion works upstream to Cochiti dam, excluding the reaches on San Felipe, Kewa and Cochiti pueblos.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, primary contact, coldwater aquatic life and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: pH within the range of 6.6 to 9.0 and temperature 25°C (77°F) or less.

[20.6.4.110 NMAC - Rp 20 NMAC 6.1.2108, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017]

#### **20.6.4.111 RIO GRANDE BASIN:**

**Perennial reaches of Las Huertas creek from the San Felipe pueblo boundary to the headwaters.**

**A. Designated uses:** high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 25°C (77°F) or less.

[20.6.4.111 NMAC - Rp 20 NMAC 6.1.2108.5, 10/12/2000; A, 7/25/2001; A, 5/23/2005; A-12/1/2010]

[**NOTE:** The segment covered by this section was divided effective 5/23/2005. The standards for the additional segment are under 20.6.4.125 NMAC.]

#### **20.6.4.112 RIO GRANDE BASIN:**

**The main stem of the Rio Grande from the headwaters of Caballo reservoir upstream to Elephant Butte dam, perennial reaches of Palomas creek, perennial reaches of Rio Salado, perennial reaches of Percha creek, perennial reaches of Alamosa creek, Las Animas creek, and perennial reaches of Abo arroyo.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, marginal coldwater aquatic life, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

**C. Remarks:** flow in this reach of the Rio Grande main stem is dependent upon release from Elephant Butte dam.

[20.6.4.112 NMAC - Rp 20 NMAC 6.1.2109, 10/12/2000; A, 5/23/2005; Repealed, 12/1/2010; A, 4/23/2022]

**20.6.4.113 RIO GRANDE BASIN:**

**The Santa Fe river and perennial reaches of its tributaries from the Cochiti pueblo boundary upstream to the outfall of the Santa Fe wastewater treatment facility.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, primary contact and coolwater aquatic life.

**B. Criteria:** The use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 30°C (86°F) or less.

[20.6.4.113 NMAC - Rp 20 NMAC 6.1.2110, 10/12/2000; A, 10/11/2002; A, 5/23/2005; A, 12/1/2010; A, 2/14/2013]

**20.6.4.114 RIO GRANDE BASIN:**

**The main stem of the Rio Grande from the Cochiti pueblo boundary upstream to Rio Pueblo de Taos excluding waters on San Ildefonso, Santa Clara and Ohkay Owingeh pueblos, Embudo creek from its mouth on the Rio Grande upstream to the Picuris Pueblo boundary, the Santa Cruz river from the Santa Clara pueblo boundary upstream to the Santa Cruz dam, the Rio Tesuque except waters on the Tesuque and Pojoaque pueblos, and the Pojoaque river from the San Ildefonso pueblo boundary upstream to the Pojoaque pueblo boundary. Some Rio Grande waters in this segment are under the joint jurisdiction of the state and San Ildefonso pueblo.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, marginal coldwater aquatic life, primary contact and warmwater aquatic life; and public water supply on the main stem Rio Grande.

**B. Criteria:**

**(1)** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: 6T3 temperature 22°C (71.6°F) and maximum temperature 25°C (78.8°F). In addition, the following criteria based on a 12-month rolling average are applicable to the public water supply use for monitoring and public disclosure purposes only:

<b>Radionuclide</b>	<b>pCi/L</b>
Americium-241	1.9
Cesium-137	6.4
Plutonium-238	1.5
Plutonium-239/240	1.5
Strontium-90	3.5
Tritium	4,000

**(2)** At mean monthly flows above 100 cfs, the monthly average concentration for: TDS 500 mg/L or less, sulfate 150 mg/L or less and chloride 25 mg/L or less.

[20.6.4.114 NMAC - Rp 20 NMAC 6.1.2111, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.115 RIO GRANDE BASIN:**

**The perennial reaches of Rio Vallecitos, perennial reaches of tributaries to Rio Vallecitos except Hopewell lake, and perennial reaches of Rio del Oso and perennial reaches of El Rito creek above the town of El Rito.**

**A. Designated uses:** domestic water supply, irrigation, high quality coldwater aquatic life, livestock watering, wildlife habitat and primary contact; public water supply on the Rio Vallecitos and El Rito creek.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300  $\mu$ S/cm or less; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.115 NMAC - Rp 20 NMAC 6.1.2112, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012; A, 4/23/2022]

**[NOTE: The standards for Hopewell lake are in 20.6.4.134 NMAC, effective 7/10/2012]**

#### **20.6.4.116 RIO GRANDE BASIN:**

**The Rio Chama from its mouth on the Rio Grande upstream to Abiquiu reservoir, perennial reaches of the Rio Tusas, perennial reaches of the Rio Ojo Caliente, perennial reaches of Abiquiu creek and perennial reaches of El Rito creek downstream of the town of El Rito.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, coldwater aquatic life, warmwater aquatic life and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 31°C (87.8°F) or less.

[20.6.4.116 NMAC - Rp 20 NMAC 6.1.2113, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 4/23/2022]

#### **20.6.4.117 RIO GRANDE BASIN:**

**Abiquiu reservoir.**

**A. Designated uses:** irrigation storage, livestock watering, wildlife habitat, primary contact, coldwater aquatic life and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 25°C (77°F) or less.

[20.6.4.117 NMAC - Rp 20 NMAC 6.1.2114, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.118 RIO GRANDE BASIN:**

**The Rio Chama from the headwaters of Abiquiu reservoir upstream to El Vado reservoir and perennial reaches of the Rio Gallina and Rio Puerco de Chama north of state highway 96. Some Rio Chama waters in this segment are under the joint jurisdiction of the state and the Jicarilla Apache tribe.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, coldwater aquatic life, warmwater aquatic life and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 26°C (78.8°F) or less.

[20.6.4.118 NMAC - Rp 20 NMAC 6.1.2115, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.119 RIO GRANDE BASIN:**

**All perennial reaches of tributaries to the Rio Chama above Abiquiu dam, except Canjilon lakes a, c, e and f and the Rio Gallina and Rio Puerco de Chama north of state highway 96 and excluding waters on Jicarilla Apache reservation, and the main stem of the Rio Chama from the headwaters of El Vado reservoir upstream to the New Mexico-Colorado line. Some Cañones creek and Rio Chama waters in this segment are under the joint jurisdiction of the state and the Jicarilla Apache tribe.**

**A. Designated uses:** domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact; and public water supply on the Rio Brazos and Rio Chama.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 500 µS/cm or less (1,000 µS or less for Coyote creek); the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.119 NMAC - Rp 20 NMAC 6.1.2116, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012]

[**NOTE:** The standards for Canjilon lakes a, c, e and f are in 20.6.4.134 NMAC, effective 7/10/2012]

#### **20.6.4.120 RIO GRANDE BASIN:**

##### **El Vado and Heron reservoirs.**

**A. Designated uses:** irrigation storage, livestock watering, wildlife habitat, public water supply, primary contact and coldwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.120 NMAC - Rp 20 NMAC 6.1.2117, 10/12/2000; A. 5/23/2005; A, 12/1/2010]

#### **20.6.4.121 RIO GRANDE BASIN:**

**Perennial tributaries to the Rio Grande in Bandelier national monument and their headwaters in Sandoval county and all perennial reaches of tributaries to the Rio Grande in Santa Fe county unless included in other segments and excluding waters on tribal lands.**

**A. Designated uses:** domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact; and public water supply on Little Tesuque creek, the Rio en Medio, and the Santa Fe river.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300  $\mu$ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.121 NMAC - Rp 20 NMAC 6.1.2118, 10/12/2000; A. 5/23/2005; A, 12/1/2010; A, 2/14/2013]

[**NOTE:** The segment covered by this section was divided effective 5/23/2005. The standards for the additional segments are under 20.6.4.126, 20.6.4.127 and 20.6.4.128 NMAC.]

#### **20.6.4.122 RIO GRANDE BASIN:**

**The main stem of the Rio Grande from Rio Pueblo de Taos upstream to the New Mexico-Colorado line, the Red river from its mouth on the Rio Grande upstream to the mouth of Placer creek, and the Rio Pueblo de Taos from its mouth on the Rio Grande upstream to the mouth of the Rio Grande del Rancho. Some Rio Grande and Rio Pueblo de Taos waters in this segment are under the joint jurisdiction of the state and Taos pueblo.**

**A. Designated uses:** coldwater aquatic life, fish culture, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.122 NMAC - Rp 20 NMAC 6.1.2119, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.123 RIO GRANDE BASIN:**

**Perennial reaches of the Red river upstream of the mouth of Placer creek, all perennial reaches of tributaries to the Red river, and all other perennial reaches of tributaries to the Rio Grande in Taos and Rio Arriba counties unless included in other segments and excluding waters on Santa Clara, Ohkay Owingeh, Picuris and Taos pueblos.**

**A. Designated uses:** domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact; and public water supply on the Rio Pueblo and Rio Fernando de Taos.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 400  $\mu$ S/cm or less (500  $\mu$ S/cm or less for the Rio Fernando de Taos); the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less; and phosphorus (unfiltered sample) less than 0.1 mg/L for the Red river.

[20.6.4.123 NMAC - Rp 20 NMAC 6.1.2120, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

**[NOTE:** The segment covered by this section was divided effective 5/23/2005. The standards for the additional segment are under 20.6.4.129 NMAC.]

#### **20.6.4.124 RIO GRANDE BASIN:**

**Perennial reaches of Sulphur creek from its confluence with Redondo creek upstream to its headwaters.**

**A. Designated uses:** limited aquatic life, wildlife habitat, livestock watering and secondary contact.

**B. Criteria:** the use-specific criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: pH within the range of 2.0 to 9.0, maximum temperature 30°C (86°F), and the chronic aquatic life criteria of Subsections I and J of 20.6.4.900 NMAC.

[20.6.4.124 NMAC - N, 5/23/2005; A, 12/1/2010; A, 3/2/2017]

#### **20.6.4.125 RIO GRANDE BASIN:**

**Perennial reaches of San Pedro creek from the San Felipe pueblo boundary to the headwaters.**

**A. Designated uses:** coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 25°C (77°F) or less.

[20.6.4.125 NMAC - N, 5/23/2005; A, 12/1/2010]

#### **20.6.4.126 RIO GRANDE BASIN:**

**Perennial waters within lands managed by the U.S. department of energy (DOE) within Los Alamos National Laboratory (LANL), including but not limited to: Cañon de Valle from LANL stream gage E256 upstream to Burning Ground spring, Sandia canyon from Sigma canyon upstream to LANL NPDES outfall 001, Pajarito canyon from 0.5 miles below Arroyo de La Delfe upstream to Homestead spring, Arroyo de la Delfe from Pajarito canyon to Kieling spring, Starmers gulch and Starmers spring and Water canyon from Area-A canyon upstream to State Route 501.**

**A. Designated uses:** coldwater aquatic life, livestock watering, wildlife habitat and secondary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.126 NMAC - N, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

#### **20.6.4.127 RIO GRANDE BASIN:**

**Perennial portions of Los Alamos canyon upstream from Los Alamos reservoir and Los Alamos reservoir.**

**A. Designated uses:** coldwater aquatic life, livestock watering, wildlife habitat, irrigation and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.127 NMAC - N, 5/23/2005; A, 12/1/2010]

**20.6.4.128 RIO GRANDE BASIN:**

**Ephemeral and intermittent waters within lands managed by U.S. department of energy (DOE) within LANL, including but not limited to: Mortandad canyon, Cañada del Buey, Ancho canyon, Chaquehui canyon, Indio canyon, Fence canyon, Potrillo canyon, and portions of Cañon de Valle, Los Alamos canyon, Sandia canyon, Pajarito canyon and Water canyon not identified in 20.6.4.126 NMAC or 20.6.4.140 NMAC. (Surface waters within lands scheduled for transfer from DOE to tribal, state or local authorities are specifically excluded.)**

**A. Designated uses:** livestock watering, wildlife habitat, limited aquatic life and secondary contact.

**B. Criteria:** the use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the acute total ammonia criteria set forth in Subsection L of 20.6.4.900 NMAC (Oncorhynchus spp. absent).

[20.6.4.128 NMAC - N, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

**[NOTE: This section was divided effective 4/23/2022. The standards for some intermittent waters within LANL are in 20.6.4.140 NMAC.]**

**20.6.4.129 RIO GRANDE BASIN:**

**Perennial reaches of the Rio Hondo.**

**A. Designated uses:** domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 400  $\mu\text{S}/\text{cm}$  or less and phosphorus (unfiltered sample) less than 0.1 mg/L.

[20.6.4.129 NMAC - N, 5/23/2005; A, 12/1/2010]

**20.6.4.130 RIO GRANDE BASIN:**

**The Rio Puerco from the Rio Grande upstream to Arroyo Chijuilla, excluding the reaches on Isleta, Laguna and Cañoncito Navajo pueblos. Some waters in this segment are under the joint jurisdiction of the state and Isleta, Laguna or Cañoncito Navajo pueblos.**

**A. Designated uses:** irrigation, warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:**

**(1)** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

**(2)** At mean monthly flows above 100 cfs, the monthly average concentration for: TDS 1,500 mg/L or less, sulfate 500 mg/L or less and chloride 250 mg/L or less.

[20.6.4.130 NMAC - N, 12/1/2010]

**20.6.4.131 RIO GRANDE BASIN:**

**The Rio Puerco from the confluence of Arroyo Chijuilla upstream to the northern boundary of Cuba.**

**A. Designated uses:** warmwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.131 NMAC - N, 12/1/2010]

**20.6.4.132 RIO GRANDE BASIN:**

**Rio Grande (Klauer) spring.**

**A. Designated uses:** domestic water supply, wildlife habitat, livestock watering, coldwater aquatic life use and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.132 NMAC - N, 12/1/2010]

#### **20.6.4.133 RIO GRANDE BASIN:**

**Bull Creek lake, Cow lake, Elk lake, Goose lake, Heart lake, Hidden lake (Lake Hazel), Horseshoe lake, Horseshoe (Alamitos) lake, Jose Vigil lake, Lost lake, Middle Fork lake, Nambe lake, Nat II lake, Nat IV lake, No Fish lake, Pioneer lake, San Leonardo lake, Santa Fe lake, Serpent lake, South Fork lake, Trampas lakes (east and west) and Williams lake.**

**A. Designated uses:** high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300  $\mu\text{S}/\text{cm}$  or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.133 NMAC - N, 7/10/2012]

#### **20.6.4.134 RIO GRANDE BASIN:**

**Cabresto lake, Canjilon lakes a, c, e and f, Fawn lakes (east and west), Hopewell lake and San Gregorio lake.**

**A. Designated uses:** high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300  $\mu\text{S}/\text{cm}$  or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.134 NMAC - N, 7/10/2012]

#### **20.6.4.135 RIO GRANDE BASIN:**

**Bluewater lake.**

**A. Designated uses:** coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: phosphorus (unfiltered sample) 0.1 mg/L or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.135 NMAC - N, 7/10/2012]

**20.6.4.136 RIO GRANDE BASIN:**

**The Santa Fe river from the outfall of the Santa Fe wastewater treatment facility to Guadalupe street.**

**A. Designated uses:** limited aquatic life, wildlife habitat, primary contact, livestock watering, and irrigation.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.136 NMAC - N, 2/14/2013]

**20.6.4.137 RIO GRANDE BASIN:**

**The Santa Fe river from Guadalupe street to Nichols reservoir.**

**A. Designated uses:** coolwater aquatic life, wildlife habitat, primary contact, livestock watering, and irrigation.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.137 NMAC - N, 2/14/2013]

**20.6.4.138 RIO GRANDE BASIN:**

**Nichols and McClure reservoirs.**

**A. Designated uses:** high quality coldwater aquatic life, wildlife habitat, primary contact, public water supply and irrigation.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300  $\mu\text{S}/\text{cm}$  or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.138 NMAC - N, 2/14/2013]

**20.6.4.139 RIO GRANDE BASIN:**

**Perennial reaches of Galisteo creek and perennial reaches of its tributaries from Kewa pueblo upstream to 2.2 miles upstream of Lamy.**

**A. Designated uses:** coolwater aquatic life, primary contact, irrigation, livestock watering, domestic water supply and wildlife habitat; and public water supply on Cerrillos reservoir.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.139 NMAC - N, 2/14/2013]

#### **20.6.4.140 RIO GRANDE BASIN:**

**Effluent canyon from Mortandad canyon to its headwaters, intermittent portions of S-Site canyon from monitoring well MSC 16-06293 to Martin spring, and intermittent portions of Twomile canyon from its confluence with Pajarito canyon to Upper Twomile canyon. (Surface waters within lands scheduled for transfer from DOE to tribal, state or local authorities are specifically excluded.)**

**A. Designated uses:** livestock watering, wildlife habitat, marginal warmwater aquatic life and secondary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.140 NMAC - N, 4/23/2022]

#### **20.6.4.141-20.6.4.200 [RESERVED]**

#### **20.6.4.201 PECOS RIVER BASIN:**

**The main stem of the Pecos river from the New Mexico-Texas line upstream to the mouth of the Black river (near Loving).**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

#### **B. Criteria:**

**(1)** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: dissolved boron for irrigation use 2,000 µg/L or less.

**(2)** At all flows above 50 cfs: TDS 20,000 mg/L or less, sulfate 3,000 mg/L or less and chloride 10,000 mg/L or less.

[20.6.4.201 NMAC - Rp 20 NMAC 6.1.2201, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.202 PECOS RIVER BASIN:**

**The main stem of the Pecos river from the mouth of the Black river upstream to lower Tansil dam, including perennial reaches of the Black river, the Delaware river and Blue spring.**

**A. Designated uses:** industrial water supply, irrigation, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

#### **B. Criteria:**

**(1)** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 34°C (93.2°F) or less.

**(2)** At all flows above 50 cfs: TDS 8,500 mg/L or less, sulfate 2,500 mg/L or less and chloride 3,500 mg/L or less.

**C. Remarks:** diversion for irrigation frequently limits summer flow in this reach of the main stem Pecos river to that contributed by springs along the watercourse.

[20.6.4.202 NMAC - Rp 20 NMAC 6.1.2202, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

**[NOTE:** The segment covered by this section was divided effective 5/23/2005. The standards for Lower Tansil Lake and Lake Carlsbad are under 20.6.4.218 NMAC.]

#### **20.6.4.203 PECOS RIVER BASIN:**

**The main stem of the Pecos river from the headwaters of Lake Carlsbad upstream to Avalon dam.**

**A. Designated uses:** industrial water supply, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: temperature 34°C (93.2°F) or less; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.203 NMAC - Rp 20 NMAC 6.1.2203, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

**[NOTE:** The segment covered by this section was divided effective 5/23/2005. The standards for Lower Tansil Lake and Lake Carlsbad are under 20.6.4.218 and for Avalon Reservoir are under 20.6.4.219 NMAC.]

#### **20.6.4.204 PECOS RIVER BASIN:**

**The main stem of the Pecos river from the headwaters of Avalon reservoir upstream to Brantley dam.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.204 NMAC - Rp 20 NMAC 6.1.2204, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

[**NOTE:** The segment covered by this section was divided effective 5/23/2005. The standards for Avalon Reservoir are under 20.6.4.219 NMAC.]

#### **20.6.4.205 PECOS RIVER BASIN: BRANTLEY RESERVOIR.**

**A. Designated uses:** irrigation storage, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.205 NMAC - Rp 20 NMAC 6.1.2205, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.206 PECOS RIVER BASIN:**

**Perennial reaches of the Rio Felix and perennial reaches of tributaries to the Rio Hondo downstream of Bonney canyon, excluding North Spring river.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, secondary contact and warmwater aquatic life.

**B. Criteria:**

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At all flows above 50 cfs: TDS 14,000 mg/L or less, sulfate 3,000 mg/L or less and chloride 6,000 mg/L or less.

[20.6.4.206 NMAC - Rp 20 NMAC 6.1.2206, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 4/23/2022]

[**NOTE:** This segment was divided effective 4/23/2022. The standards for the main stem of the Pecos river from the headwaters of Brantley reservoir upstream to Salt creek (near Acme), perennial reaches of the Rio Peñasco downstream from state highway 24 near Dunken, and perennial reaches of the Rio Hondo are under 20.6.4.231 NMAC.]

#### **20.6.4.207 PECOS RIVER BASIN:**

**The main stem of the Pecos river from Salt creek (near Acme) upstream to Sumner dam.**

**A. Designated uses:** irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

#### **B. Criteria:**

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At all flows above 50 cfs: TDS 8,000 mg/L or less, sulfate 2,500 mg/L or less and chloride 4,000 mg/L or less.

[20.6.4.207 NMAC - Rp 20 NMAC 6.1.2207, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

#### **20.6.4.208 PECOS RIVER BASIN:**

**Perennial reaches of the Rio Peñasco above state highway 24 near Dunken, perennial reaches of tributaries to the Rio Peñasco above state highway 24 near Dunken, perennial reaches of Cox canyon, perennial reaches of the Rio Bonito downstream from state highway 48 (near Angus), the Rio Ruidoso downstream of the U.S. highway 70 bridge near Seeping Springs lakes, perennial reaches of the Rio Hondo upstream from Bonney canyon and perennial reaches of Agua Chiquita.**

**A. Designated uses:** fish culture, irrigation, livestock watering, wildlife habitat, coldwater aquatic life and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: temperature 30°C (86°F) or less, and phosphorus (unfiltered sample) less than 0.1 mg/L.

[20.6.4.208 NMAC - Rp 20 NMAC 6.1.2208, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

#### **20.6.4.209 PECOS RIVER BASIN:**

**Perennial reaches of Eagle creek upstream of Alto dam to the Mescalero Apache boundary, perennial reaches of the Rio Bonito upstream of state highway 48 (near Angus) excluding Bonito lake, perennial reaches of tributaries to the Rio Bonito upstream of state highway 48 (near Angus), perennial reaches of the Rio Ruidoso upstream of the U.S. highway 70 bridge near Seeping Springs lakes above and below the Mescalero Apache boundary and perennial reaches of tributaries to the Rio Ruidoso upstream of the U.S. highway 70 bridge near Seeping Springs lakes above and below the Mescalero Apache boundary.**

**A. Designated uses:** domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat, public water supply and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 600  $\mu\text{S}/\text{cm}$  or less in Eagle creek, 1,100  $\mu\text{S}/\text{cm}$  or less in Bonito creek and 1,500  $\mu\text{S}/\text{cm}$  or less in the Rio Ruidoso; phosphorus (unfiltered sample) less than 0.1 mg/L; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.209 NMAC - Rp 20 NMAC 6.1.2209, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012; A, 4/23/2022]

**[NOTE: The standards for Bonito lake are in 20.6.4.223 NMAC, effective 7/10/2012]**

#### **20.6.4.210 PECOS RIVER BASIN:**

**Sumner reservoir.**

**A. Designated uses:** irrigation storage, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.210 NMAC - Rp 20 NMAC 6.1.2210, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.211 PECOS RIVER BASIN:**

**The main stem of the Pecos river from the headwaters of Sumner reservoir upstream to Tecolote creek excluding Santa Rosa reservoir.**

**A. Designated uses:** fish culture, irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:**

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At all flows above 50 cfs: TDS 3,000 mg/L or less, sulfate 2,000 mg/L or less and chloride 400 mg/L or less.

[20.6.4.211 NMAC - Rp 20 NMAC 6.1.2211, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012]

[NOTE: The standards for Santa Rosa reservoir are in 20.6.4.225 NMAC, effective 7/10/2012]

**20.6.4.212 PECOS RIVER BASIN:**

**Perennial tributaries to the main stem of the Pecos river from the headwaters of Sumner reservoir upstream to Santa Rosa dam.**

**A. Designated uses:** irrigation, coldwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 25°C (77°F) or less.

[20.6.4.212 NMAC - Rp 20 NMAC 6.1.2211.1, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

**20.6.4.213 PECOS RIVER BASIN:**

**McAllister lake.**

**A. Designated uses:** coldwater aquatic life, secondary contact, livestock watering and wildlife habitat.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 25°C (77°F) or less.

[20.6.4.213 NMAC - Rp 20 NMAC 6.1.2211.3, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

**20.6.4.214 PECOS RIVER BASIN:**

## **Storrie lake.**

**A. Designated uses:** coldwater aquatic life, warmwater aquatic life, primary contact, livestock watering, wildlife habitat, public water supply and irrigation storage.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.214 NMAC - Rp 20 NMAC 6.1.2211.5, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

## **20.6.4.215 PECOS RIVER BASIN:**

**Perennial reaches of the Gallinas river upstream of the diversion for the Las Vegas municipal reservoir, perennial reaches of tributaries to the Gallinas river upstream of the diversion for the Las Vegas municipal reservoir, perennial reaches of Tecolote creek upstream of Blue creek and all perennial reaches of tributaries to Tecolote creek upstream of Blue creek.**

**A. Designated uses:** domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat, industrial water supply and primary contact; and public water supply on the Gallinas river.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300  $\mu\text{S}/\text{cm}$  or less (450  $\mu\text{S}/\text{cm}$  or less in Wright Canyon creek); the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.215 NMAC - Rp 20 NMAC 6.1.2212, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 2/13/2018; A, 4/23/2022]

**[NOTE:** This segment was divided effective 2/13/2018. The standards for Tecolote creek from I-25 to Blue creek are under 20.6.4.230 NMAC.]

## **20.6.4.216 PECOS RIVER BASIN:**

**The main stem of the Pecos river from Tecolote creek upstream to Cañon de Manzanita.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, marginal coldwater aquatic life and primary contact.

**B. Criteria:**

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 30°C (86°F) or less.

(2) At all flows above 10 cfs: TDS 250 mg/L or less, sulfate 25 mg/L or less and chloride 5 mg/L or less.

[20.6.4.216 NMAC - Rp 20 NMAC 6.1.2213, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.217 PECOS RIVER BASIN:**

**Perennial reaches of Cow creek and all perennial reaches of its tributaries and the main stem of the Pecos river from Cañon de Manzanita upstream to its headwaters, including perennial reaches of all tributaries thereto except lakes identified in 20.6.4.222 NMAC.**

**A. Designated uses:** domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact; and public water supply on the main stem of the Pecos river.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300  $\mu$ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.217 NMAC - Rp 20 NMAC 6.1.2214, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012]

[**NOTE:** The segment covered by this section was divided effective 5/23/2005. The standards for the additional segments are under 20.6.4.220 and 20.6.4.221 NMAC.]

#### **20.6.4.218 PECOS RIVER BASIN:**

**Lower Tansil lake and Lake Carlsbad.**

**A. Designated uses:** industrial water supply, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 34°C (93.2°F) or less.

[20.6.4.218 NMAC - N, 5/23/2005; A, 12/1/2010]

#### **20.6.4.219 PECOS RIVER BASIN:**

## **Avalon reservoir.**

**A. Designated uses:** irrigation storage, livestock watering, wildlife habitat, secondary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.219 NMAC - N, 5/23/2005; A, 12/1/2010]

## **20.6.4.220 PECOS RIVER BASIN:**

**Perennial reaches of the Gallinas river and perennial reaches of tributaries to the Gallinas river from its mouth upstream to the diversion for the Las Vegas municipal reservoir, except Pecos Arroyo.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, marginal coldwater aquatic life and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 30°C (86°F) or less.

[20.6.4.220 NMAC - N, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

## **20.6.4.221 PECOS RIVER BASIN:**

### **Pecos Arroyo.**

**A. Designated uses:** livestock watering, wildlife habitat, warmwater aquatic life and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 206 cfu/100 mL, single sample 940 cfu/100 mL.

[20.6.4.221 NMAC - N, 5/23/2005; A, 12/1/2010]

## **20.6.4.222 PECOS RIVER BASIN:**

**Johnson lake, Katherine lake, Lost Bear lake, Pecos Baldy lake, Spirit lake, Stewart lake and Truchas lakes (north and south).**

**A. Designated uses:** high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300  $\mu\text{S}/\text{cm}$  or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.222 NMAC - N, 7/10/2012]

#### **20.6.4.223 PECOS RIVER BASIN:**

##### **Bonito lake.**

**A. Designated uses:** high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering, wildlife habitat and public water supply.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: specific conductance 1100  $\mu\text{S}/\text{cm}$  or less; phosphorus (unfiltered sample) less than 0.1 mg/L; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.223 NMAC - N, 7/10/2012]

#### **20.6.4.224 PECOS RIVER BASIN:**

##### **Monastery lake.**

**A. Designated uses:** coolwater aquatic life, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.224 NMAC - N, 7/10/2012]

#### **20.6.4.225 PECOS RIVER BASIN:**

##### **Santa Rosa reservoir.**

**A. Designated uses:** coolwater aquatic life, irrigation, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.225 NMAC - N, 7/10/2012]

**20.6.4.226 PECOS RIVER BASIN:**

**Perch lake.**

**A. Designated uses:** coolwater aquatic life, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.226 NMAC - N, 7/10/2012]

**20.6.4.227 PECOS RIVER BASIN:**

**Lea lake.**

**A. Designated uses:** warmwater aquatic life, primary contact and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.227 NMAC - N, 7/10/2012]

**20.6.4.228 PECOS RIVER BASIN:**

**Cottonwood lake and Devil's Inkwell.**

**A. Designated uses:** coolwater aquatic life, primary contact and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.228 NMAC - N, 7/10/2012]

**20.6.4.229 PECOS RIVER BASIN:**

**Mirror lake.**

**A. Designated uses:** warmwater aquatic life, primary contact and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.229 NMAC - N, 7/10/2012]

#### **20.6.4.230 PECOS RIVER BASIN:**

**Perennial reaches of Tecolote creek from I-25 to Blue creek.**

**A. Designated uses:** domestic water supply, coolwater aquatic life, irrigation, livestock watering, wildlife habitat, and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.230 NMAC - N, 2/13/2018]

#### **20.6.4.231 PECOS RIVER BASIN:**

**The main stem of the Pecos river from the headwaters of Brantley reservoir upstream to Salt creek (near Acme), perennial reaches of the Rio Peñasco downstream from state highway 24 near Dunken, perennial reaches of North Spring river and perennial reaches of the Rio Hondo downstream of Bonney canyon.**

**A. Designated uses:** irrigation, livestock watering, wildlife habitat, primary contact and warmwater aquatic life.

#### **B. Criteria:**

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) At all flows above 50 cfs: TDS 14,000 mg/L or less, sulfate 3,000 mg/L or less and chloride 6,000 mg/L or less.

[20.6.4.231 NMAC - N, 4/23/2022]

**20.6.4.232-20.6.4.300 [RESERVED]**

#### **20.6.4.301 CANADIAN RIVER BASIN:**

**The main stem of the Canadian river from the New Mexico-Texas line upstream to Ute dam, and any flow that enters the main stem from Revuelto creek.**

**A. Designated uses:** irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

#### **B. Criteria:**

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) TDS 6,500 mg/L or less at flows above 25 cfs.

[20.6.4.301 NMAC - Rp 20 NMAC 6.1.2301, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.302 CANADIAN RIVER BASIN:**

**Ute reservoir.**

**A. Designated uses:** livestock watering, wildlife habitat, public water supply, industrial water supply, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.302 NMAC - Rp 20 NMAC 6.1.2302, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.303 CANADIAN RIVER BASIN:**

**The main stem of the Canadian river from the headwaters of Ute reservoir upstream to Conchas dam, the perennial reaches of Pajarito and Ute creeks and their perennial tributaries.**

**A. Designated uses:** irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.303 NMAC - Rp 20 NMAC 6.1.2303, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.304 CANADIAN RIVER BASIN:**

## **Conchas reservoir.**

**A. Designated uses:** irrigation storage, livestock watering, wildlife habitat, public water supply, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.304 NMAC - Rp 20 NMAC 6.1.2304, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

### **20.6.4.305 CANADIAN RIVER BASIN:**

**The main stem of the Canadian river from the headwaters of Conchas reservoir upstream to the New Mexico-Colorado line, perennial reaches of the Conchas river, the Mora river downstream from the USGS gaging station near Shoemaker, the Vermejo river downstream from Rail canyon and perennial reaches of Raton, Chicorica (except Lake Maloya and Lake Alice) and Uña de Gato creeks.**

**A. Designated uses:** irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:**

**(1)** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

**(2)** TDS 3,500 mg/L or less at flows above 10 cfs.

[20.6.4.305 NMAC - Rp 20 NMAC 6.1.2305, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017]

[**NOTE:** This segment was divided effective 12/1/2010. The standards for Lake Alice and Lake Maloya are under 20.6.4.311 and 20.6.4.312 NMAC, respectively.]

### **20.6.4.306 CANADIAN RIVER BASIN:**

**The Cimarron river downstream from state highway 21 in Cimarron to the Canadian river and all perennial reaches of tributaries to the Cimarron river downstream from state highway 21 in Cimarron.**

**A. Designated uses:** irrigation, warmwater aquatic life, livestock watering, wildlife habitat and primary contact; and public water supply on Cimarroncito creek.

**B. Criteria:**

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

(2) TDS 3,500 mg/L or less at flows above 10 cfs.

[20.6.4.306 NMAC - Rp 20 NMAC 6.1.2305.1, 10/12/2000; A, 7/19/2001; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.307 CANADIAN RIVER BASIN:**

**Perennial reaches of the Mora river from the USGS gaging station near Shoemaker upstream to the state highway 434 bridge in Mora, all perennial reaches of tributaries to the Mora river downstream from the USGS gaging station at La Cueva in San Miguel and Mora counties except lakes identified in 20.6.4.313 NMAC, perennial reaches of Ocate creek downstream of Ocate, perennial reaches of tributaries to Ocate creek downstream of Ocate, and perennial reaches of Rayado creek downstream of Miami lake diversion in Colfax county.**

**A. Designated uses:** marginal coldwater aquatic life, warmwater aquatic life, primary contact, irrigation, livestock watering and wildlife habitat.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.307 NMAC - Rp 20 NMAC 6.1.2305.3, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012; A, 4/23/2022]

#### **20.6.4.308 CANADIAN RIVER BASIN:**

**Charette lakes.**

**A. Designated uses:** coldwater aquatic life, warmwater aquatic life, secondary contact, livestock watering and wildlife habitat.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.308 NMAC - Rp 20 NMAC 6.1.2305.5, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.309 CANADIAN RIVER BASIN:**

**The Mora river and perennial reaches of its tributaries upstream from the state highway 434 bridge in Mora except lakes identified in 20.6.4.313 NMAC, all perennial reaches of tributaries to the Mora river upstream from the USGS gaging station at La Cueva, perennial reaches of Coyote creek, perennial reaches of tributaries to Coyote creek, the Cimarron river above state highway 21 in**

**Cimarron, perennial reaches of tributaries to the Cimarron river above state highway 21 in Cimarron except Eagle Nest lake, all perennial reaches of tributaries to the Cimarron river north and northwest of highway 64 except north and south Shuree ponds, perennial reaches of Rayado creek above Miami lake diversion, perennial reaches of tributaries to Rayado creek above Miami lake diversion, Ocate creek and perennial reaches of its tributaries upstream of Ocate, perennial reaches of the Vermejo river upstream from Rail canyon and all other perennial reaches of tributaries to the Canadian river northwest and north of U.S. highway 64 in Colfax county unless included in other segments.**

**A. Designated uses:** domestic water supply, irrigation, high quality coldwater aquatic life, livestock watering, wildlife habitat, and primary contact; and public water supply on the Cimarron river upstream from Cimarron, on perennial reaches of Rayado creek and on perennial reaches of tributaries to Rayado creek.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 500  $\mu\text{S}/\text{cm}$  or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.309 NMAC - Rp 20 NMAC 6.1.2306, 10/12/2000; A, 7/19/2001; A, 5/23/2005; A, 12/1/2010; A, 7/10/2012; A, 4/23/2022]

**[NOTE:** The segment covered by this section was divided effective 5/23/2005. The standards for the additional segment are under 20.6.4.310 NMAC. The standards for Shuree ponds are in 20.6.4.314 NMAC and the standards for Eagle Nest lake are in 20.6.4.315 NMAC, effective 7/10/2012]

#### **20.6.4.310 CANADIAN RIVER BASIN:**

##### **Perennial reaches of Corruppa creek.**

**A. Designated uses:** livestock watering, wildlife habitat, irrigation, primary contact and coldwater aquatic life.

##### **B. Criteria:**

**(1)** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: temperature 25°C (77°F) or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

**(2)** TDS 1,200 mg/L or less, sulfate 600 mg/L or less, chloride 40 mg/L or less.

[20.6.4.310 NMAC - N, 5/23/2005; A, 12/1/2010]

#### **20.6.4.311 CANADIAN RIVER BASIN:**

##### **Lake Alice.**

**A. Designated uses:** marginal coldwater aquatic life, irrigation, livestock watering, wildlife habitat, primary contact and public water supply.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.311 NMAC - N, 12/1/2010; A, 4/23/2022]

#### **20.6.4.312 CANADIAN RIVER BASIN:**

##### **Lake Maloya.**

**A. Designated uses:** coldwater aquatic life, irrigation, livestock watering, wildlife habitat, primary contact and public water supply.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.312 NMAC - N, 12/1/2010; A, 4/23/2022]

#### **20.6.4.313 CANADIAN RIVER BASIN:**

##### **Encantada lake, Maestas lake, Middle Fork lake of Rio de la Casa, North Fork lake of Rio de la Casa and Pacheco lake.**

**A. Designated uses:** high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300  $\mu$ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.313 NMAC - N, 7/10/2012]

#### **20.6.4.314 CANADIAN RIVER BASIN:**

##### **Shuree ponds (north and south).**

**A. Designated uses:** high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: specific conductance 500  $\mu$ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.314 NMAC - N, 7/10/2012]

#### **20.6.4.315 CANADIAN RIVER BASIN:**

##### **Eagle Nest lake.**

**A. Designated uses:** high quality coldwater aquatic life, irrigation, domestic water supply, primary contact, livestock watering, wildlife habitat and public water supply.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses except that the following segment-specific criteria apply: specific conductance 500  $\mu$ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.315 NMAC - N, 7/10/2012]

#### **20.6.4.316 CANADIAN RIVER BASIN:**

##### **Clayton lake.**

**A. Designated uses:** coolwater aquatic life, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.316 NMAC - N, 7/10/2012]

#### **20.6.4.317 CANADIAN RIVER BASIN:**

##### **Springer lake.**

**A. Designated uses:** coolwater aquatic life, irrigation, primary contact, livestock watering, wildlife habitat, and public water supply.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.317 NMAC - N, 07-10-2012; A, 3/2/2017]

## 20.6.4.318 CANADIAN RIVER BASIN:

### Doggett creek.

**A. Designated uses:** Warm water aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** The use-specific criteria in 20.6.4.900 NMAC are applicable to the designated uses, except that the following site-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

### C. Discharger-specific temporary standard:

- (1) Discharger: City of Raton wastewater treatment plant
- (2) NPDES permit number: NM0020273, Outfall 001
- (3) Receiving waterbody: Doggett creek, 20.6.4.318 NMAC
- (4) Discharge latitude/longitude: 36° 52' 13.91" N / 104° 25' 39.18" W
- (5) Pollutant(s): nutrients; total nitrogen and total phosphorus
- (6) Factor of issuance: substantial and widespread economic and social impacts (40 CFR 131.10(g)(6))
- (7) Highest attainable condition: interim effluent condition of 8.0 mg/L total nitrogen and 1.6 mg/L total phosphorus as 30-day averages. The highest attainable condition shall be either the highest attainable condition identified at the time of the adoption, or any higher attainable condition later identified during any reevaluation, whichever is more stringent (40 CFR 131.14(b)(1)(iii)).
- (8) Effective date of temporary standard: This temporary standard becomes effective for Clean Water Act purposes on the date of EPA approval.
- (9) Expiration date of temporary standard: no later than 20 years from the effective date.
- (10) Reevaluation period: at each succeeding review of water quality standards and at least once every five years from the effective date of the temporary standard (Paragraph (8) of Subsection H of 20.6.4.10[F (8)] NMAC, 40 CFR 131.14(b)(1)(v)). If the discharger cannot demonstrate that sufficient progress has been made the commission may revoke approval of the temporary standard or provide additional conditions to the approval of the temporary standard. If the reevaluation is not completed at the frequency specified or the Department does not submit the

reevaluation to EPA within 30 days of completion, the underlying designated use and criterion will be the applicable water quality standard for Clean Water Act purposes until the Department completes and submits the reevaluation to EPA. Public input on the reevaluation will be invited during NPDES permit renewals or triennial reviews, as applicable, in accordance with the State's most current approved water quality management plan and continuing planning process.

(11) Timeline for proposed actions. Tasks and target completion dates are listed in the most recent, WQCC-approved version of the New Mexico Environment Department, Surface Water Quality Bureau's "Nutrient Temporary Standards for City of Raton Wastewater Treatment Plant, NPDES No. NM0020273 to Doggett Creek."

[20.6.4.318 NMAC - N, 05/22/2020; A, 4/23/2022]

#### **20.6.4.319-20.6.4.400 [RESERVED]**

#### **20.6.4.401 SAN JUAN RIVER BASIN:**

**The main stem of the San Juan river from the Navajo Nation boundary at the Hogback upstream to its confluence with the Animas river. Some waters in this segment are under the joint jurisdiction of the state and the Navajo Nation.**

**A. Designated uses:** public water supply, industrial water supply, irrigation, livestock watering, wildlife habitat, primary contact, marginal coldwater aquatic life and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 32.2°C (90°F) or less.

[20.6.4.401 NMAC - Rp 20 NMAC 6.1.2401, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

**[NOTE:** The segment covered by this section was divided effective 5/23/2005. The standards for the additional segment are under 20.6.4.408 NMAC.]

#### **20.6.4.402 SAN JUAN RIVER BASIN:**

**La Plata river from its confluence with the San Juan river upstream to the New Mexico-Colorado line.**

**A. Designated uses:** irrigation, marginal warmwater aquatic life, marginal coldwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 32.2°C (90°F) or less.

[20.6.4.402 NMAC - Rp 20 NMAC 6.1.2402, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.403 SAN JUAN RIVER BASIN:**

**The Animas river from its confluence with the San Juan river upstream to Estes arroyo.**

**A. Designated uses:** Public water supply, industrial water supply, irrigation, livestock watering, wildlife habitat, coolwater aquatic life, and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 29°C (84.2°F) or less.

[20.6.4.403 NMAC - Rp 20 NMAC 6.1.2403, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017]

#### **20.6.4.404 SAN JUAN RIVER BASIN:**

**The Animas river from Estes arroyo upstream to the Southern Ute Indian tribal boundary.**

**A. Designated uses:** Coolwater aquatic life, irrigation, livestock watering, wildlife habitat, public water supply, industrial water supply and primary contact.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: phosphorus (unfiltered sample) 0.1 mg/L or less.

[20.6.4.404 NMAC - Rp 20 NMAC 6.1.2404, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017]

#### **20.6.4.405 SAN JUAN RIVER BASIN:**

**The main stem of the San Juan river from Cañon Largo upstream to the Navajo dam.**

**A. Designated uses:** high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat, public water supply, industrial water supply and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 400  $\mu$ S/cm or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.405 NMAC - Rp 20 NMAC 6.1.2405, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

#### **20.6.4.406 SAN JUAN RIVER BASIN:**

##### **Navajo reservoir in New Mexico.**

**A. Designated uses:** coldwater aquatic life, warmwater aquatic life, irrigation storage, livestock watering, wildlife habitat, public water supply, industrial water supply and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: phosphorus (unfiltered sample) 0.1 mg/L or less; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.406 NMAC - Rp 20 NMAC 6.1.2406, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.407 SAN JUAN RIVER BASIN:**

##### **Perennial reaches of the Navajo river from the Jicarilla Apache reservation boundary to the Colorado border and perennial reaches of Los Pinos river in New Mexico.**

**A. Designated uses:** coldwater aquatic life, irrigation, livestock watering, public water supply, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: phosphorus (unfiltered sample) 0.1 mg/L or less; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.407 NMAC - Rp 20 NMAC 6.1.2407, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.408 SAN JUAN RIVER BASIN:**

##### **The main stem of the San Juan river from its confluence with the Animas river upstream to its confluence with Cañon Largo.**

**A. Designated uses:** public water supply, industrial water supply, irrigation, livestock watering, wildlife habitat, primary contact, marginal coldwater aquatic life and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 32.2°C (90°F) or less.

[20.6.4.408 NMAC - N, 5/23/2005; A, 12/1/2010; A, 4/23/2022]

**20.6.4.409 SAN JUAN RIVER BASIN:**

**Lake Farmington.**

**A. Designated uses:** public water supply, wildlife habitat, livestock watering, primary contact, coldwater aquatic life and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 25°C (77°F) or less.

[20.6.4.409 NMAC - N, 12/1/2010]

**20.6.4.410 SAN JUAN RIVER BASIN:**

**Jackson lake.**

**A. Designated uses:** coolwater aquatic life, irrigation, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 206 cfu/100 mL or less, single sample 940 cfu/100 mL or less.

[20.6.4.410 NMAC - N, 7/10/2012]

**20.6.4.411-20.6.4.450 [RESERVED]**

**20.6.4.451 LITTLE COLORADO RIVER BASIN:**

**The Rio Nutria upstream of the Zuni pueblo boundary, Tampico draw, Agua Remora, Tampico springs.**

**A. Designated uses:** coolwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.451 NMAC - N, 12/1/2010]

**20.6.4.452 LITTLE COLORADO RIVER BASIN:**

## **Ramah lake.**

**A. Designated uses:** coldwater aquatic life, warmwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 25°C (77°F) or less.

[20.6.4.452 NMAC - N, 12/1/2010]

## **20.6.4.453 LITTLE COLORADO RIVER BASIN:**

### **Quemado lake.**

**A. Designated uses:** coolwater aquatic life, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.453 NMAC - N, 7/10/2012]

## **20.6.4.454-20.6.4.500 [RESERVED]**

## **20.6.4.501 GILA RIVER BASIN:**

**The main stem of the Gila river from the New Mexico-Arizona line upstream to Redrock canyon and perennial reaches of streams in Hidalgo county.**

**A. Designated uses:** irrigation, marginal warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.501 NMAC - Rp 20 NMAC 6.1.2501, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

## **20.6.4.502 GILA RIVER BASIN:**

**The main stem of the Gila river from Redrock canyon upstream to the confluence of the West Fork Gila river and East Fork Gila river and perennial reaches of tributaries to the Gila river downstream of Mogollon creek.**

**A. Designated uses:** industrial water supply, irrigation, livestock watering, wildlife habitat, marginal coldwater aquatic life, primary contact and warmwater aquatic life.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: 28°C (82.4°F) or less.

[20.6.4.502 NMAC - Rp 20 NMAC 6.1.2502, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017]

#### **20.6.4.503 GILA RIVER BASIN:**

**All perennial tributaries to the Gila river upstream of and including Mogollon creek.**

**A. Designated uses:** domestic water supply, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance of 400 µS/cm or less for all perennial tributaries except West Fork Gila and tributaries thereto, specific conductance of 300 µS/cm or less; 32.2°C (90°F) or less in the east fork of the Gila river and Sapillo creek downstream of Lake Roberts; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.503 NMAC - Rp 20 NMAC 6.1.2503, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017]

#### **20.6.4.504 GILA RIVER BASIN:**

**Wall lake, Lake Roberts and Snow lake.**

**A. Designated uses:** coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: specific conductance 300 µS/cm or less.

[20.6.4.504 NMAC - Rp 20 NMAC 6.1.2504, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

[**NOTE:** The segment covered by this section was divided effective 5/23/2005. The standards for the additional segment are under 20.6.4.806 NMAC.]

#### **20.6.4.505 GILA RIVER BASIN:**

**Bill Evans lake.**

**A. Designated uses:** coolwater aquatic life, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.505 NMAC - N, 7/10/2012]

#### **20.6.4.506-20.6.4.600 [RESERVED]**

#### **20.6.4.601 SAN FRANCISCO RIVER BASIN:**

**The main stem of the San Francisco river from the New Mexico-Arizona line upstream to state highway 12 at Reserve and perennial reaches of Mule creek.**

**A. Designated uses:** irrigation, marginal warmwater and marginal coldwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.601 NMAC - Rp 20 NMAC 6.1.2601, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.602 SAN FRANCISCO RIVER BASIN:**

**The main stem of the San Francisco river from state highway 12 at Reserve upstream to the New Mexico-Arizona line.**

**A. Designated uses:** coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: temperature 25°C (77°F) or less.

[20.6.4.602 NMAC - Rp 20 NMAC 6.1.2602, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.603 SAN FRANCISCO RIVER BASIN:**

**All perennial reaches of tributaries to the San Francisco river above the confluence of Whitewater creek and including Whitewater creek.**

**A. Designated uses:** domestic water supply, fish culture, high quality coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 400  $\mu$ S/cm or less; the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less; and temperature 25°C (77°F) or less in Tularosa creek.

[20.6.4.603 NMAC - Rp 20 NMAC 6.1.2603, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.604-20.6.4.700 [RESERVED]**

#### **20.6.4.701 DRY CIMARRON RIVER:**

**Perennial portions of the Dry Cimarron river above Oak creek and perennial reaches of Oak creek.**

**A. Designated uses:** coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

#### **B. Criteria:**

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: temperature 25°C (77°F) or less, the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

(2) TDS 1,200 mg/L or less, sulfate 600 mg/L or less and chloride 40 mg/L or less.

[20.6.4.701 NMAC - Rp 20 NMAC 6.1.2701, 10/12/2000; A, 5/23/2005 A, 12/1/2010]

[**NOTE:** The segment covered by this section was divided effective 5/23/2005. The standards for the additional segment are under 20.6.4.702 NMAC.]

#### **20.6.4.702 DRY CIMARRON RIVER:**

**Perennial portions of the Dry Cimarron river below Oak creek, and perennial portions of Long canyon and Carrizozo creeks.**

**A. Designated uses:** coolwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

#### **B. Criteria:**

(1) The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria

apply: the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

(2) TDS 1,200 mg/L or less, sulfate 600 mg/L or less and chloride 40 mg/L or less.

[20.6.4.702 NMAC - N, 5/23/2005; A, 12/1/2010; A, 7/10/2012]

#### **20.6.4.703-20.6.4.800 [RESERVED]**

#### **20.6.4.801 CLOSED BASINS:**

**Rio Tularosa upstream of the old U.S. highway 70 bridge crossing east of Tularosa and all perennial tributaries to the Tularosa basin except Three Rivers and Dog Canyon creek, and excluding waters on the Mescalero tribal lands.**

**A. Designated uses:** coldwater aquatic life, irrigation, livestock watering, wildlife habitat, public water supply and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.801 NMAC - Rp 20 NMAC 6.1.2801, 10/12/2000; A, 5/23/2005; A, 12/1/2010; A, 2/13/2018]

[**NOTE:** This segment was divided effective 2/13/2018. The standards for Dog Canyon creek are under 20.6.4.810 NMAC.]

#### **20.6.4.802 CLOSED BASINS:**

**Perennial reaches of Three Rivers.**

**A. Designated uses:** irrigation, domestic water supply, high quality coldwater aquatic life, primary contact, livestock watering and wildlife habitat.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 500  $\mu\text{S}/\text{cm}$  or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.802 NMAC - Rp 20 NMAC 6.1.2802, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.803 CLOSED BASINS:**

**Perennial reaches of the Mimbres river downstream of the confluence with Allie canyon and all perennial reaches of tributaries thereto.**

**A. Designated uses:** Coolwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less and temperature of 30°C (86°F) or less.

[20.6.4.803 NMAC - Rp 20 NMAC 6.1.2803, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017]

**20.6.4.804 CLOSED BASINS:**

**Perennial reaches of the Mimbres river upstream of the confluence with Allie canyon to Cooney canyon, and all perennial reaches of East Fork Mimbres (McKnight canyon) downstream of the fish barrier, and all perennial reaches thereto.**

**A. Designated uses:** Irrigation, domestic water supply, coldwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.804 NMAC - Rp 20 NMAC 6.1.2804, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 02-28-2018; A, 3/2/2017]

[**NOTE:** The segment covered by this section was divided effective 3/2/2017. The standards for the additional segment are covered under 20.6.4.807 NMAC.]

**20.6.4.805 CLOSED BASINS:**

**Perennial reaches of the Sacramento river (Sacramento-Salt Flat closed basin) and all perennial tributaries thereto.**

**A. Designated uses:** domestic water supply, livestock watering, wildlife habitat, marginal coldwater aquatic life and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses.

[20.6.4.805 NMAC - Rp 20 NMAC 6.1.2805, 10/12/2000; A, 5/23/2005; A, 12/1/2010]

#### **20.6.4.806 CLOSED BASINS:**

##### **Bear canyon reservoir.**

**A. Designated uses:** coldwater aquatic life, irrigation, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criterion applies: specific conductance 300  $\mu\text{S}/\text{cm}$  or less.

[20.6.4.806 NMAC - N, 5/23/2005; A, 12/1/2010]

#### **20.6.4.807 CLOSED BASINS:**

##### **Perennial reaches of the Mimbres river upstream of Cooney canyon and all perennial reaches thereto, including perennial reaches of East Fork Mimbres river (McKnight canyon) upstream of the fish barrier.**

**A. Designated uses:** Irrigation, domestic water supply, high quality coldwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: specific conductance 300  $\mu\text{S}/\text{cm}$  or less; the monthly geometric mean of *E. coli* bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.807 NMAC - N, 3/2/2017]

#### **20.6.4.808 CLOSED BASINS:**

##### **Perennial and intermittent watercourses within Smelter Tailing Soils Investigation Unit lands at the Chino mines company, excluding those ephemeral waters listed in 20.6.4.809 NMAC and including, but not limited to, the mainstem of Lampbright draw, beginning at the confluence of Lampbright Draw with Rustler canyon, all tributaries that originate west of Lampbright draw to the intersection of Lampbright draw with U.S. 180, and all tributaries of Whitewater creek that originate east of Whitewater creek from the confluence of Whitewater creek with Bayard canyon downstream to the intersection of Whitewater creek with U.S. 180.**

**A. Designated uses:** Warmwater aquatic life, livestock watering, wildlife habitat and primary contact.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the acute and chronic aquatic life criteria for copper set forth in Subsection I of 20.6.4.900 NMAC shall be determined by multiplying that criteria by the water effect ratio ("WER") adjustment expressed by the following equation:

$$\text{WER} = [10^{0.588 + (0.703 \times \log \text{DOC}) + (0.395 \times \log \text{Alkalinity})}] \times (100 - \text{Hardness})^{0.94221931}$$

For purposes of this section, dissolved organic carbon (DOC) is expressed in units of milligrams carbon per liter or mg C/L; alkalinity is expressed in units of mg/L as CaCO<sub>3</sub>, and hardness is expressed in units of mg/L as CaCO<sub>3</sub>. In waters that contain alkalinity concentrations greater than 250 mg/L, a value of 250 mg/L shall be used in the equation. In waters that contain DOC concentrations greater than 16 mg C/L, a value of 16 mg C/L shall be used in the equation. In waters that contain hardness concentrations greater than 400 mg/L, a value of 400 mg/L shall be used in the equation. The alkalinity, hardness and DOC concentrations used to calculate the WER value are those measured in the subject water sample.

[20.6.4.808 NMAC - N, 3/2/2017]

#### **20.6.4.809 CLOSED BASINS:**

**Ephemeral watercourses within smelter tailing soils investigation unit lands at the Chino mines company, limited to Chino mines property subwatershed drainage A and tributaries thereof, Chino mines property subwatershed drainage B and tributaries thereof (excluding the northwest tributary containing Ash spring and the Chiricahua leopard frog critical habitat transect); Chino mines property subwatershed drainage C and tributaries thereof (excluding reaches containing Bolton spring, the Chiricahua leopard frog critical habitat transect and all reaches in subwatershed C that are upstream of the Chiricahua leopard frog critical habitat); subwatershed drainage D and tributaries thereof (drainages D-1, D-2 and D-3, excluding the southeast tributary in drainage D1 that contains Brown spring) and subwatershed drainage E and all tributaries thereof (drainages E-1, E-2 and E-3).**

**A. Designated uses:** Limited aquatic life, livestock watering, wildlife habitat and secondary contact.

**B. Criteria:** The use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the acute aquatic life criteria for copper set forth in Subsection I of 20.6.4.900 NMAC shall be determined by multiplying that criteria by the water effect ratio ("WER") adjustment expressed by the following equation:

$$\text{WER} = [10^{0.588 + (0.703 \times \log \text{DOC}) + (0.395 \times \log \text{Alkalinity})}] \times (100 - \text{Hardness})^{0.94221931}$$

For purposes of this section, dissolved organic carbon (DOC) is expressed in units of milligrams carbon per liter or mg C/L; alkalinity is expressed in units of mg/L as CaCO<sub>3</sub>, and hardness is expressed in units of mg/L as CaCO<sub>3</sub>. In waters that contain alkalinity concentrations greater than 250 mg/L, a value of 250 mg/L shall be used in the equation. In waters that contain DOC concentrations greater than 16 mg C/L, a value of 16 mg C/L shall be used in the equation. In waters that contain hardness concentrations greater than 400 mg/L, a value of 400 mg/L shall be used in the equation. The alkalinity, hardness and DOC concentrations used to calculate the WER value are those measured in the subject water sample.

[20.6.4.809 NMAC - N, 3/2/2017]

#### **20.6.4.810 CLOSED BASINS:**

##### **Perennial reaches of Dog Canyon creek.**

**A. Designated uses:** coolwater aquatic life, irrigation, livestock watering, wildlife habitat, public water supply, and primary contact.

**B. Criteria:** the use-specific numeric criteria set forth in 20.6.4.900 NMAC are applicable to the designated uses, except that the following segment-specific criteria apply: the monthly geometric mean of E. coli bacteria 126 cfu/100 mL or less, single sample 235 cfu/100 mL or less.

[20.6.4.810 NMAC - N, 2/13/2018]

#### **20.6.4.811-20.6.4.899 [RESERVED]**

#### **20.6.4.900 CRITERIA APPLICABLE TO EXISTING, DESIGNATED OR ATTAINABLE USES UNLESS OTHERWISE SPECIFIED IN 20.6.4.97 THROUGH 20.6.4.899 NMAC:**

**A. Fish culture and water supply:** Fish culture, public water supply and industrial water supply are designated uses in particular classified waters of the state where these uses are actually being realized. However, no numeric criteria apply uniquely to these uses. Water quality adequate for these uses is ensured by the general criteria and numeric criteria for bacterial quality, pH and temperature.

**B. Domestic water supply:** Surface waters of the state designated for use as domestic water supplies shall not contain substances in concentrations that create a lifetime cancer risk of more than one cancer per 100,000 exposed persons. Those criteria listed under domestic water supply in Subsection J of this section apply to this use.

**C. Irrigation and irrigation storage:** the following numeric criteria and those criteria listed under irrigation in Subsection J of this section apply to this use:

- (1) dissolved selenium 0.13 mg/L
- (2) dissolved selenium in presence of >500 mg/L SO<sub>4</sub> 0.25 mg/L.

**D. Primary contact:** The monthly geometric mean of E. coli bacteria of 126 cfu/100 mL or MPN/100 ml, a single sample of E. coli bacteria of 410 cfu/100 mL or MPN/100 mL, a single sample of total microcystins of 8 µg/L with no more than three exceedances within a 12-month period and a single sample of cylindrospermopsin of 15 µg/L with no more than three exceedances within a 12-month period, and pH within the range of 6.6 to 9.0 apply to this use. The results for E. coli may be reported as either colony forming units (CFU) or the most probable number (MPN) depending on the analytical method used.

**E. Secondary contact:** The monthly geometric mean of E. coli bacteria of 548 cfu/100 mL or MPN/100 mL and single sample of 2507 cfu/100 mL or MPN/100 mL apply to this use. The results for E. coli may be reported as either colony forming units (CFU) or the most probable number (MPN), depending on the analytical method used.

**F. Livestock watering:** the criteria listed in Subsection J of this section for livestock watering apply to this use.

**G. Wildlife habitat:** Wildlife habitat shall be free from any substances at concentrations that are toxic to or will adversely affect plants and animals that use these environments for feeding, drinking, habitat or propagation; can bioaccumulate; or might impair the community of animals in a watershed or the ecological integrity of surface waters of the state. The numeric criteria listed in Subsection J for wildlife habitat apply to this use.

**H. Aquatic life:** Surface waters of the state with a designated, existing or attainable use of aquatic life shall be free from any substances at concentrations that can impair the community of plants and animals in or the ecological integrity of surface waters of the state. Except as provided in Paragraph (7) of this subsection, the acute and chronic aquatic life criteria set out in Subsections I, J, K and L of this section and the human health-organism only criteria set out in Subsection J of this section are applicable to all aquatic life use subcategories. In addition, the specific criteria for aquatic life subcategories in the following paragraphs apply to waters classified under the respective designations.

- (1) High quality coldwater: dissolved oxygen 6.0 mg/L or more, 4T3 temperature 20°C (68°F), maximum temperature 23°C (73°F), pH within the range of 6.6 to 8.8 and specific conductance a segment-specific limit between 300 µS/cm and 1,500 µS/cm depending on the natural background in the particular surface water of the state (the intent of this criterion is to prevent excessive increases in dissolved solids

which would result in changes in community structure). Where a single segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature and no 4T3 temperature applies.

(2) Coldwater: dissolved oxygen 6.0 mg/L or more, 6T3 temperature 20°C (68°F), maximum temperature 24°C (75°F) and pH within the range of 6.6 to 8.8. Where a single segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature and no 6T3 temperature applies.

(3) Marginal coldwater: dissolved oxygen 6 mg/L or more, 6T3 temperature 25°C (77°F), maximum temperature 29°C (84°F) and pH within the range from 6.6 to 9.0. Where a single segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature and no 6T3 temperature applies.

(4) Coolwater: dissolved oxygen 5.0 mg/L or more, maximum temperature 29°C (84°F) and pH within the range of 6.6 to 9.0.

(5) Warmwater: dissolved oxygen 5 mg/L or more, maximum temperature 32.2°C (90°F) and pH within the range of 6.6 to 9.0. Where a segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature.

(6) Marginal warmwater: dissolved oxygen 5 mg/L or more, pH within the range of 6.6 to 9.0 and temperatures that may routinely exceed 32.2°C (90°F). Where a segment-specific temperature criterion is indicated in 20.6.4.101-899 NMAC, it is the maximum temperature.

(7) Limited aquatic life: The acute aquatic life criteria of Subsections I and J of this section apply to this subcategory. Chronic aquatic life criteria do not apply unless adopted on a segment-specific basis. Human health-organism only criteria apply only for persistent toxic pollutants unless adopted on a segment-specific basis.

I. Hardness-dependent acute and chronic aquatic life criteria for metals are calculated using the following equations. The criteria are expressed as a function of hardness (as mg CaCO<sub>3</sub>/L). With the exception of aluminum, the equations are valid only for hardness concentrations of 0-400 mg/L. For hardness concentrations above 400 mg/L, the criteria for 400 mg/L apply. For aluminum the equations are valid only for hardness concentrations of 0-220 mg/L. For hardness concentrations above 220 mg/L, the aluminum criteria for 220 mg/L apply. Calculated criteria must adhere to the treatment of significant figures and rounding identified in *Standard Methods For The Examination Of Water And Wastewater*, latest edition, American public health association.

(1) Acute aquatic life criteria for metals: The equation to calculate acute criteria in µg/L is  $\exp(mA + bA)(CF)$ . Except for aluminum, the criteria are based on analysis of dissolved metal. For aluminum, the criteria are based on analysis of total

recoverable aluminum in a sample that has a pH between 6.5 and 9.0 and is filtered to minimize mineral phases as specified by the department. The equation parameters are as follows:

<b>C</b>	<b>m<sub>A</sub></b>	<b>b<sub>A</sub></b>	<b>Conversion factor (CF)</b>
Aluminum (Al)	1.3695	1.8308	
Cadmium (Cd)	0.9789	-3.866	1.136672-
Chromium (Cr) III	0.8190	3.7256	0.316
Copper (Cu)	0.9422	-1.700	0.960
Lead (Pb)	1.273	-1.460	1.46203-
Manganese (Mn)	0.3331	6.4676	
Nickel (Ni)	0.8460	2.255	0.998
Silver (Ag)	1.72	-6.59	0.85
Zinc (Zn)	0.9094	0.9095	0.978

(2) Chronic aquatic life criteria for metals: The equation to calculate chronic criteria in  $\mu\text{g/L}$  is  $\exp(mC + bC)(CF)$ . Except for aluminum, the criteria are based on analysis of dissolved metal. For aluminum, the criteria are based on analysis of total recoverable aluminum in a sample that has a pH between 6.5 and 9.0 and is filtered to minimize mineral phases as specified by the department. The equation parameters are as follows:

<b>Metal</b>	<b>m<sub>c</sub></b>	<b>b<sub>c</sub></b>	<b>Conversion factor (CF)</b>
Aluminum (Al)	1.3695	0.9161	
Cadmium (Cd)	0.7977	-3.909	1.101672-
Chromium (Cr) III	0.8190	0.6848	0.860
Copper (Cu)	0.8545	-1.702	0.960
Lead (Pb)	1.273	-4.705	1.46203-
Manganese (Mn)	0.3331	5.8743	
Nickel (Ni)	0.8460	0.0584	0.997
Zinc (Zn)	0.9094	0.6235	0.986

(3) Selected values of calculated acute and chronic criteria ( $\mu\text{g/L}$ ).

<b>Hardness as CaCO<sub>3</sub>, dissolved (mg/L)</b>		<b>Al</b>	<b>Cd</b>	<b>Cr III</b>	<b>Cu</b>	<b>Pb</b>	<b>Mn</b>	<b>Ni</b>	<b>Ag</b>	<b>Zn</b>
		25.0	Acute	512	0.490	183	3.64	13.9	1,880	145
	Chronic	205	0.253	23.8	2.74	0.541	1,040	16.1		34.4
30.0	Acute	658	0.581	212	4.32	17.0	2,000	169	0.40	53.5
	Chronic	263	0.290	27.6	3.20	0.664	1,100	18.8		40.5
40.0	Acute	975	0.761	269	5.67	23.5	2,200	216	0.66	69.5

Hardness as CaCO <sub>3</sub> , dissolved (mg/L)		Al	Cd	Cr III	Cu	Pb	Mn	Ni	Ag	Zn
	Chronic	391	0.360	35.0	4.09	0.916	1,220	24.0		52.7
50.0	Acute	1,320	0.938	323	6.99	30.1	2,370	260	0.98	85.2
	Chronic	530	0.426	42.0	4.95	1.17	1,310	28.9		64.5
60.0	Acute	1,700	1.11	375	8.30	36.9	2,520	304	1.3	100
	Chronic	681	0.489	48.8	5.79	1.44	1,390	33.8		76.2
70.0	Acute	2,100	1.28	425	9.60	43.7	2,650	346	1.7	116
	Chronic	841	0.549	55.3	6.60	1.70	1,460	38.5		87.6
80.0	Acute	2,520	1.46	474	10.9	50.6	2,770	388	2.2	131
	Chronic	1,010	0.607	61.7	7.40	1.97	1,530	43.0		98.9
90.0	Acute	2,960	1.62	523	12.2	57.6	2,880	428	2.7	145
	Chronic	1,190	0.664	68.0	8.18	2.24	1,590	47.6		110
100	Acute	3,420	1.79	570	13.4	64.6	2,980	468	3.2	160
	Chronic	1,370	0.718	74.1	8.96	2.52	1,650	52.0		121
200	Acute	8,840	3.43	1,000	25.8	136	3,760	842	10	300
	Chronic	3,540	1.21	131	16.2	5.30	2,080	93.5		228
220	Acute	10,100	3.74	1,090	28.2	151	3,880	912	12	328
	Chronic	4,030	1.30	141	17.6	5.87	2,140	101		248
300	Acute		5.00	1,400	37.8	208	4,300	1,190	21	434
	Chronic		1.64	182	22.9	8.13	2,380	132		329
400 and above	Acute		6.54	1,770	49.6	281	4,740	1,510	35	564
	Chronic		2.03	231	29.3	10.9	2,620	168		428

**J. Use-specific numeric criteria.**

(1) Table of numeric criteria: The following table sets forth the numeric criteria applicable to existing, designated and attainable uses. For metals, criteria represent the total sample fraction unless otherwise specified in the table. Additional criteria that are not compatible with this table are found in Subsections A through I, K and L of this section.

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Aluminum, dissolved	7429-90-5		5,000			750 i	87 i		
Aluminum, total recoverable	7429-90-5					a	a		
Antimony, dissolved	7440-36-0	6						640	P
Arsenic, dissolved	7440-38-2	10	100	200		340	150	9.0	C,P

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Asbestos	1332-21-4	7,000,000 fibers/L							
Barium, dissolved	7440-39-3	2,000							
Beryllium, dissolved	7440-41-7	4							
Boron, dissolved	7440-42-8		750	5,000					
Cadmium, dissolved	7440-43-9	5	10	50		a	a		
Chloride	1688-70-06					860,000	230,000		
Chlorine residual	7782-50-5				11	19	11		
Chromium III, dissolved	16065-83-1					a	a		
Chromium VI, dissolved	18540-29-9					16	11		
Chromium, dissolved	7440-47-3	100	100	1,000					
Cobalt, dissolved	7440-48-4		50	1,000					
Copper, dissolved	7440-50-8	1300	200	500		a	a		
Cyanide, total recoverable	57-12-5	200			5.2	22.0	5.2	400	
Iron	7439-89-6						1,000		
Lead, dissolved	7439-92-1	15	5,000	100		a	a		
Manganese, dissolved	7439-96-5					a	a		
Mercury	7439-97-6	2		10	0.77				
Mercury, dissolved	7439-97-6					1.4	0.77		
Methylmercury	22967-92-6							0.3 mg/kg in fish tissue	P
Molybdenum, dissolved	7439-98-7		1,000						
Molybdenum, total recoverable	7439-98-7					7,920	1,895		
Nickel, dissolved	7440-02-0	700				a	a	4,600	P
Nitrate as N		10 mg/L							
Nitrite + Nitrate				132 mg/L					
Selenium, dissolved	7782-49-2	50	b	50				4,200	P
Selenium, total recoverable	7782-49-2				5.0	20.0	5.0		

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Silver, dissolved	7440-22-4					a			
Thallium, dissolved	7440-28-0	2						0.47	P
Uranium, dissolved	7440-61-1	30							
Vanadium, dissolved	7440-62-2		100	100					
Zinc, dissolved	7440-66-6	10,500	2,000	25,000		a	a	26,000	P
Adjusted gross alpha		15 pCi/L		15 pCi/L					
Radium 226 + Radium 228		5 pCi/L		30.0 pCi/L					
Strontium 90		8 pCi/L							
Tritium		20,000 pCi/L		20,000 pCi/L					
Acenaphthene	83-32-9	2,100						90	
Acrolein	107-02-8	18				3.0	3.0	400	
Acrylonitrile	107-13-1	0.65						70	C
Aldrin	309-00-2	0.021				3.0		0.0000077	C,P
Anthracene	120-12-7	10,500						400	
Benzene	71-43-2	5						160	C
Benzdine	92-87-5	0.0015						0.11	C
Benzo(a)anthracene	56-55-3	0.048						0.013	C
Benzo(a)pyrene	50-32-8	0.2						0.0013	C,P
Benzo(b)fluoranthene	205-99-2	0.048						0.013	C
Benzo(k)fluoranthene	207-08-9	0.048						0.13	C
alpha-BHC	319-84-6	0.056						0.0039	C
beta-BHC	319-85-7	0.091						0.14	C
gamma-BHC (Lindane)	58-89-9	0.20				0.95		4.4	
Bis(2-chloroethyl) ether	111-44-4	0.30						22	C
Bis(2-chloro-1-methylethyl) ether	108-60-1	1,400						4,000	
Bis(2-ethylhexyl) phthalate	117-81-7	6						3.7	C
Bis(chloromethyl) ether	542-88-1							0.17	C
Bromoform	75-25-2	44						1,200	C
Butylbenzyl phthalate	85-68-7	7,000						1	C
Carbaryl	63-25-2					2.1	2.1		

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Carbon tetrachloride	56-23-5	5						50	C
Chlordane	57-74-9	2				2.4	0.0043	0.0032	C,P
Chlorobenzene	108-90-7	100						800	
Chlorodibromomethane	124-48-1	4.2						210	C
Chloroform	67-66-3	57						2,000	
Chlorpyrifos	2921-88-2					0.083	0.041		
2-Chloronaphthalene	91-58-7	2,800						1,000	
2-Chlorophenol	95-57-8	175						800	
Chrysene	218-01-9	0.048						1.3	C
Demeton	8065-48-3						0.1		
Diazinon	333-41-5					0.17	0.17		
2,4-Dichlorophenoxyacetic acid	94-75-7							12,000	
Dichlorodipenyldichloroethane (DDD)	72-54-8							0.0012	C
Dichlorodipenyldichloroethylene (DDE)	72-55-9							0.00018	C
Dichlorodipenyltrichloroethane (DDT)	50-29-3							0.0003	C,P
4,4'-DDT and derivatives		1.0			0.001	1.1	0.001		
Dibenzo(a,h)anthracene	53-70-3	0.048						0.0013	C
Dibutyl phthalate	84-74-2	3,500						30	
1,2-Dichlorobenzene	95-50-1	600						3,000	
1,3-Dichlorobenzene	541-73-1	469						10	
1,4-Dichlorobenzene	106-46-7	75						900	
3,3'-Dichlorobenzidine	91-94-1	0.78						1.5	C
Dichlorobromomethane	75-27-4	5.6						270	C
1,2-Dichloroethane	107-06-2	5						6,500	C
1,1-Dichloroethylene	75-35-4	7						20,000	
2,4-Dichlorophenol	120-83-2	105						60	
1,2-Dichloropropane	78-87-5	5.0						310	C
1,3-Dichloropropene	542-75-6	3.5						120	C
Dieldrin	60-57-1	0.022				0.24	0.056	0.000012	C,P
Diethyl phthalate	84-66-2	28,000						600	
Dimethyl phthalate	131-11-3	350,000						2,000	
2,4-Dimethylphenol	105-67-9	700						3,000	

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Dinitrophenols	25550-58-7							1,000	
2,4-Dinitrophenol	51-28-5	70						300	
2,4-Dinitrotoluene	121-14-2	1.1						17	C
Dioxin	1746-01-6	3.0E-05						5.1E-08	C,P
1,2-Diphenylhydrazine	122-66-7	0.44						2.0	C
alpha-Endosulfan	959-98-8	62				0.22	0.056	30	
beta-Endosulfan	33213-65-9	62				0.22	0.056	40	
Endosulfan sulfate	1031-07-8	62						40	
Endrin	72-20-8	2				0.086	0.036	0.03	
Endrin aldehyde	7421-93-4	10.5						1	
Ethylbenzene	100-41-4	700						130	
Fluoranthene	206-44-0	1,400						20	
Fluorene	86-73-7	1,400						70	
Guthion	86-50-0						0.01		
Heptachlor	76-44-8	0.40				0.52	0.0038	0.000059	C
Heptachlor epoxide	1024-57-3	0.20				0.52	0.0038	0.00032	C
Hexachlorobenzene	118-74-1	1						0.00079	C,P
Hexachlorobutadiene	87-68-3	4.5						0.1	C
Hexachlorocyclohexane (HCH)-Technical	608-73-1							0.1	C
Hexachlorocyclopentadiene	77-47-4	50						4	
Hexachloroethane	67-72-1	25						1	C
Ideno(1,2,3-cd)pyrene	193-39-5	0.048						0.013	C
Isophorone	78-59-1	368						18,000	C
Malathion	121-75-5						0.1		
Methoxychlor	72-43-5						0.03	0.02	
Methyl bromide	74-83-9	49						10,000	
3-Methyl-4-chlorophenol	59-50-7							2,000	
2-Methyl-4,6-dinitrophenol	534-52-1	14						30	
Methylene chloride	75-09-2	5						10,000	C
Mirex	2385-85-5						0.001		
Nitrobenzene	98-95-3	18						600	
Nitrosamines	Various							12.4	C

Pollutant	CAS Number	DWS	Irr/Irr storage	LW	WH	Aquatic Life			Type
						Acute	Chronic	HH-OO	
Nitrosodibutylamine	924-16-3							2.2	C
Nitrosodiethylamine	55-18-5							12.4	C
N-Nitrosodimethylamine	62-75-9	0.0069						30	C
N-Nitrosodi-n-propylamine	621-64-7	0.050						5.1	C
N-Nitrosodiphenylamine	86-30-6	71						60	C
N-Nitrosopyrrolidine	930-55-2							340	C
Nonylphenol	84852-15-3					28	6.6		
Parathion	56-38-2					0.065	0.013		
Pentachlorobenzene	608-93-5							0.1	
Pentachlorophenol	87-86-5	1.0				19	15	0.4	C
Phenol	108-95-2	10,500						300,000	
Polychlorinated Biphenyls (PCBs)	1336-36-3	0.50			0.014	2	0.014	0.00064	C,P
Pyrene	129-00-0	1,050						30	
1,2,4,5-Tetrachlorobenzene	95-94-3							0.03	
1,1,2,2-Tetrachloroethane	79-34-5	1.8						30	C
Tetrachloroethylene	127-18-4	5						290	C,P
Toluene	108-88-3	1,000						520	
Toxaphene	8001-35-2	3				0.73	0.0002	0.0071	C
1,2-Trans-dichloroethylene	156-60-5	100						4,000	
Tributyltin (TBT)	Various					0.46	0.072		
1,2,4-Trichlorobenzene	120-82-1	70						0.76	C
1,1,1-Trichloroethane	71-55-6	200						200,000	
1,1,2-Trichloroethane	79-00-5	5						89	C
Trichloroethylene	79-01-6	5						70	C
2,4,5-Trichlorophenol	95-95-4							600	
2,4,6-Trichlorophenol	88-06-2	32						28	C
2-(2,4,5-Trichlorophenoxy)propionic acid (Silvex)	93-72-1							400	
Vinyl chloride	75-01-4	2						16	C

(2) Notes applicable to the table of numeric criteria in Paragraph (1) of this subsection.

(a) Where the letter "a" is indicated in a cell, the criterion is hardness-based and can be referenced in Subsection I of 20.6.4.900 NMAC.

(b) Where the letter "b" is indicated in a cell, the criterion can be referenced in Subsection C of 20.6.4.900 NMAC.

(c) Criteria are in µg/L unless otherwise indicated.

(d) Abbreviations are as follows: CAS - chemical abstracts service (see definition for "CAS number" in 20.6.4.7 NMAC); DWS - domestic water supply; Irr/Irr storage- irrigation and irrigation storage; LW - livestock watering; WH - wildlife habitat; HH-OO - human health-organism only; C - criteria based on cancer-causing endpoint; P - persistent toxic pollutant.

(e) The criteria are based on analysis of an unfiltered sample unless otherwise indicated. The acute and chronic aquatic life criteria for aluminum are based on analysis of total recoverable aluminum in a sample that is filtered to minimize mineral phases as specified by the department.

(f) The criteria listed under human health-organism only (HH-OO) are intended to protect human health when aquatic organisms are consumed from waters containing pollutants. These criteria do not protect the aquatic life itself; rather, they protect the health of humans who ingest fish or other aquatic organisms.

(g) The dioxin criteria apply to the sum of the dioxin toxicity equivalents expressed as 2,3,7,8-TCDD dioxin.

(h) The criteria for polychlorinated biphenyls (PCBs) apply to the sum of all congeners, to the sum of all homologs or to the sum of all aroclors.

(i) The acute and chronic aquatic life criteria for dissolved aluminum only apply when the concurrent pH is less than 6.5 or greater than 9.0 S.U. If the concurrent pH is between 6.5 and 9.0 S.U. then the hardness-dependent total recoverable aluminum criteria in Paragraphs (1) and (2) of Subsection I of 20.6.4.900 NMAC apply.

**K.** The criteria for total ammonia consider sensitive freshwater mussel species in the family Unionidae, freshwater non-pulmonate snails, and *Oncorhynchus* spp. (a genus of fish in the family Salmonidae), hence further protecting the aquatic community. The total ammonia criteria magnitude is measured as Total Ammonia Nitrogen (TAN) mg/L. TAN is the sum of and TAN mg/L magnitude is derived as a function of pH and temperature (EPA 2013).

**L.** The acute aquatic life criteria for TAN (mg/L) was derived by the EPA (2013) as the one-hour average concentration of TAN mg/L that shall not be exceeded more than once every three years on average. The EPA acute criterion magnitude was derived using the following equation:

Acute TAN Criterion Magnitude for 1-hour average=  
MIN

*T* (temperature C ) and *pH* are defined as the paired values associated with the TAN sample.

		Temperature (°C)																			
pH	0-10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
	6.5	51	48	44	41	37	34	32	29	27	25	23	21	19	18	16	15	14	13	12	11
6.6	49	46	42	39	36	33	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	46	44	40	37	34	31	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	44	41	38	35	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	41	38	35	32	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7.0	38	35	33	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9	7.3
7.1	34	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	31	29	27	25	23	21	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	27	26	24	22	20	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	24	22	21	19	18	16	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	21	19	18	17	15	14	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	18	17	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9
7.8	13	12	11	10	9.3	8.5	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	11	9.9	9.1	8.4	7.7	7.1	6.6	3	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8.0	8.8	8.2	7.6	7	6.4	5.9	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	7.2	6.8	6.3	5.8	5.3	4.9	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	6	5.6	5.2	4.8	4.4	4	3.7	3.4	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	4.9	4.6	4.3	3.9	3.6	3.3	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	0.96
8.4	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79
8.5	3.3	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.9	0.83	0.77	0.71	0.65
8.6	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1	0.96	0.88	0.81	0.75	0.69	0.63	0.58	0.54
8.7	2.3	2.2	2	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1	0.94	0.87	0.8	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.4	0.37	0.34	0.32
9.0	1.4	1.3	1.2	1.1	1	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

(1) Temperature and pH-dependent values of the acute TAN criterion magnitude -when *Oncorhynchus* spp. absent.

(2) Temperature and pH-dependent values for the acute TAN criterion magnitude- when *Oncorhynchus* spp. are present.

	Temperature (°C)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	33	33	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	31	31	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	30	30	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9
6.8	28	28	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	26	26	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7.0	24	24	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	8	7.3
7.1	22	22	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	20	20	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6
7.3	18	18	17	16	14	13	12	11	10	9.5	8.7	8	7.4	6.8	6.3	5.8	5.3
7.4	15	15	15	14	13	12	11	9.8	9	8.3	7.7	7	6.5	6	5.5	5.1	4.7
7.5	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4
7.6	11	11	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	9.6	9.6	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	3
7.8	8.1	8.1	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4	3.7	3.4	3.2	2.9	2.7	2.5
7.9	6.8	6.8	6.6	6	5.6	5.1	4.7	4.3	4	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8.0	5.6	5.6	5.4	5	4.6	4.2	3.9	3.6	3.3	3	2.8	2.6	2.4	2.2	2	1.9	1.7
8.1	4.6	4.6	4.5	4.1	3.8	3.5	3.2	3	2.7	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4
8.2	3.8	3.8	3.7	3.5	3.1	2.9	2.7	2.4	2.2	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	3.1	3.1	3.1	2.8	2.6	2.4	2.2	2	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1	1
8.4	2.6	2.6	2.5	2.3	2.1	2	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1	0.9	0.9	0.8
8.5	2.1	2.1	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	1	0.9	0.8	0.8	0.7	0.7



8.3	1.1	1.1	1	0.9	0.9	0.8	0.8	0.7	0.7	0.6	0.6	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3
8.4	1	0.9	0.8	0.8	0.7	0.7	0.7	0.6	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.3	0.2	0.2
8.5	0.8	0.8	0.7	0.7	0.6	0.6	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2
8.6	0.7	0.6	0.6	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2
8.7	0.6	0.5	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1
8.8	0.5	0.5	0.4	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.1
8.9	0.4	0.4	0.4	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1
9.0	0.4	0.3	0.3	0.3	0.3	0.3	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1

[20.6.4.900 NMAC - Rp 20 NMAC 6.1.3100, 10/12/2010; A, 10/11/2002; A, 5/23/2005; A, 7/17/2005; A, 12/1/2010; A, 3/2/2017; A, 4/23/2022]

**20.6.4.901 PUBLICATION REFERENCES:**

These documents are intended as guidance and are available for public review during regular business hours at the offices of the surface water quality bureau. Copies of these documents have also been filed with the New Mexico state records center in order to provide greater access to this information.

A. American public health association. 1992. *Standard Methods for The Examination of Water and Wastewater*, 18th Edition. Washington, D.C. 1048 p.

B. American public health association. 1995. *Standard Methods for The Examination of Water and Wastewater*, 19th Edition. Washington, D.C. 1090 p.

C. American public health association. 1998. *Standard Methods for The Examination of Water and Wastewater*, 20th Edition. Washington, D.C. 1112 p.

D. American public health association. 2018. *Standard Methods for The Examination of Water and Wastewater*, 23rd Edition. Washington, D.C. 1796 p.

E. United States geological survey. 1989. *Methods For Determination of Inorganic Substances In Water And Fluvial Sediments, Techniques of Water-Resource Investigations of The United States Geological Survey*. Washington, D.C. 545 p.

F. United States geological survey. 1987. *Methods For The Determination Of Organic Substances In Water And Fluvial Sediments, Techniques Of Water-Resource Investigations Of The United States Geological Survey*. Washington, D.C. 80 p.

G. United States environmental protection agency. 1983. *Methods For Chemical Analysis Of Water And Wastes*. Office of research and development, Washington, DC. (EPA/600/4-79/020). 491 p.

H. New Mexico water quality control commission. 2020. *State Of New Mexico Water Quality Management Plan and Continuing Planning Process*. Santa Fe, New Mexico. 277 p.

I. Colorado river basin salinity control forum. 2020. *2020 Review, Water Quality Standards For Salinity, Colorado River System*. Phoenix, Arizona. 97 p.

J. United States environmental protection agency. 2002. *Methods For Measuring The Acute Toxicity Of Effluents And Receiving Waters To Freshwater And Marine Organisms*. Office of research and development, Washington, D.C. (5th Ed., EPA 821-R-02-012). 293 p.

K. United States environmental protection agency. 2002. *Short-Term Methods For Estimating The Chronic Toxicity Of Effluents And Receiving Waters To Freshwater Organisms*. Environmental monitoring systems laboratory, Cincinnati, Ohio. (4th Ed., EPA 821-R-02-013). 335 p.

L. United States environmental protection agency. 1991. Ambient-induced mixing, in *Technical Support Document For Water Quality-Based Toxics Control*. Office of water, Washington, D.C. (EPA/505/2-90-001). 335 p.

M. United States environmental protection agency. 1983. *Technical Support Manual: Waterbody Surveys And Assessments For Conducting Use Attainability Analyses, Volume I*: Office of water, regulations and standards, Washington, D.C. 232 p.

N. United States environmental protection agency. 1984. *Technical Support Manual: Waterbody Surveys And Assessments For Conducting Use Attainability Analyses, Volume III: Lake Systems*. Office of water, regulations and standards, Washington, D.C. 208 p.

[20.6.4.901 NMAC - Rp 20 NMAC 6.1.4000, 10/12/2010; A, 5/23/2005; A, 12/1/2010; A, 3/2/2017; A, 4/23/2022]

## **PART 5: [RESERVED]**

## **PART 6: GROUND WATER PROTECTION - SUPPLEMENTAL PERMITTING REQUIREMENTS FOR DAIRY FACILITIES**

### **20.6.6.1 ISSUING AGENCY:**

Water Quality Control Commission.

[20.6.6.1 NMAC - N, 01/31/2011]

### **20.6.6.2 SCOPE:**

All persons subject to the Water Quality Act, NMSA 1978, Sections 74-6-1 et seq and specifically to dairy facilities and their operations.

[20.6.6.2 NMAC - N, 01/31/2011]

**20.6.6.3 STATUTORY AUTHORITY:**

Standards and regulations are adopted by the commission under the authority of the Water Quality Act, NMSA 1978, Sections 74-6-1 through 74-6-17.

[20.6.6.3 NMAC - N, 01/31/2011]

**20.6.6.4 DURATION:**

Permanent.

[20.6.6.4 NMAC - N, 01/31/2011]

**20.6.6.5 EFFECTIVE DATE:**

01/31/2011, unless a later date is cited at the end of a section.

[20.6.6.5 NMAC - N, 01/31/2011]

**20.6.6.6 OBJECTIVE:**

The purpose of 20.6.6 NMAC is to supplement the general permitting requirements of 20.6.2.3000 through 20.6.2.3114 NMAC to control discharges specific to dairy facilities and their operations.

[20.6.6.6 NMAC - N, 01/31/2011]

**20.6.6.7 DEFINITIONS:**

**A.** Terms defined in the Water Quality Act and 20.6.2.7 NMAC shall have the meanings as given in such.

**B.** As used in 20.6.6 NMAC, but not in other sections of 20.6.2 NMAC, a term defined in this part shall have the following meaning.

**(1)** "Adjacent" means lying near, but lacking actual contact along a boundary or at a point.

**(2)** "Applicant" means the person applying for a new, renewed or modified discharge permit.

**(3)** "Construction quality assurance" or "CQA" means a planned system of activities necessary to ensure that standards and procedures are adhered to and that construction and installation meet design criteria, plans and specifications. A CQA includes inspections, verifications, audits, evaluations of material and workmanship necessary to determine and document the quality of the constructed impoundment or structure, and corrective actions when necessary.

**(4)** "Construction quality control" or "CQC" means a planned system of operational techniques and activities used to preserve the quality of materials and ensure construction to specifications. Elements of a CQC include inspections, testing, data collection, data analysis and appropriate corrective actions.

**(5)** "Contiguous" means being in actual contact along a boundary or at a point.

**(6)** "CQA/CQC Report" means a report that summarizes all inspection, testing, data collection, data analysis and any corrective actions completed as part of CQA or CQC for a project.

**(7)** "Dairy facility" means the production area and the land application area, where the discharge and associated activities will or do take place.

**(8)** "Dairy rule" means 20.6.6 NMAC, as amended.

**(9)** "Date of postal notice" means the date when the United States postal service (USPS) first makes notice to the applicant or permittee of its possession of certified mail addressed to the applicant or permittee.

**(10)** "Discharge volume" means the measured daily volume of wastewater actually discharged within the production area. This definition does not include the volume of wastewater discharged to the land application area.

**(11)** "EPA" means the United States environmental protection agency.

**(12)** "Existing dairy facility" means a dairy facility that is currently discharging, or has previously discharged and has not been issued a notice from the department verifying that closure and post-closure monitoring activities have been completed.

**(13)** "Existing impoundment" means an impoundment that is currently receiving or has ever received wastewater or collected stormwater and that has not been closed pursuant to a discharge permit.

**(14)** "Expiration" means the date upon which the term of a discharge permit ends.

**(15)** "Field" means a unit of irrigated cropland within the land application area cultivated in the same manner to grow a specific crop for the uptake and removal of nutrients.

**(16)** "Flow meter" means a device used to measure the volume of water, wastewater or stormwater that passes a particular reference section in a unit of time.

**(17)** "Freeboard" means the vertical distance between the elevation at the lowest point of the top inside edge of the impoundment and the design high water elevation of the water level in the impoundment.

**(18)** "Impoundment" means any structure designed and used for storage or disposal by evaporation of wastewater, stormwater, or a combination of both wastewater and stormwater. A multiple-cell impoundment system having at least one shared berm or barrier whose smallest cells have a cumulative constructed capacity of 10 percent or less of the constructed capacity of the largest cell shall be considered a single impoundment for the purposes of the dairy rule. A wastewater or stormwater transfer sump or a solids settling separator is not an impoundment.

**(19)** "Land application area" means irrigated and cultivated fields collectively authorized by a discharge permit to receive wastewater or stormwater applications as a source of nutrients managed for crop production.

**(20)** "Land application data sheet" means a form used to report all nitrogen inputs applied to each field within the land application area, including the cropping status of the field at the time of application (i.e., fallow, corn, wheat, etc.).

**(21)** "Manure" means an agricultural waste composed of excreta of animals, and residual bedding materials, waste feed or other materials that have contacted excreta from such animals.

**(22)** "Maximum daily discharge volume" means the total daily volume of wastewater (expressed in gallons per day) authorized for discharge by a discharge permit. This definition does not include the volume of wastewater discharged to the land application area.

**(23)** "New dairy facility" means a dairy facility that has never before discharged wastewater.

**(24)** "Permittee" means a person who is issued or receives by transfer a discharge permit for a dairy facility or, in the absence of a discharge permit, a person who makes or controls a discharge at a dairy facility.

**(25)** "Production area" means that part of the animal feeding operation that includes the following: the animal confinement areas; the manure, residual solids and compost storage areas; the raw materials storage areas; and the wastewater and

stormwater containment areas. The animal confinement areas include but are not limited to open lots, housed lots, feedlots, confinement barns, stall barns, free stall barns, milkrooms, milk centers, cowyards, barnyards, hospital pens and barns, and animal walkways. The manure, residual solids and compost storage areas include, but are not limited to, storage sheds, stockpiles, static piles, and composting piles. The raw materials storage areas include, but are not limited, to feed silos, silage storage areas, feed storage barns, and liquid feed tanks. The wastewater and stormwater containment areas include, but are not limited to, settling separators, impoundments, sumps, runoff drainage channels, and areas within berms and diversions which prohibit uncontaminated stormwater from coming into contact with contaminants.

**(26)** "Spillway" means a structure used for controlled releases from an impoundment designed to receive stormwater, in a manner that protects the structural integrity of the impoundment.

**(27)** "Stormwater" means direct precipitation and runoff that comes into contact with water contaminants within the production area of a dairy facility.

**(28)** "Unauthorized discharge" means a release of wastewater, stormwater or other substances containing water contaminants not approved by a discharge permit.

**(29)** "Wastewater" means water, that has come into contact with water contaminants as a result of being directly or indirectly used in the operations of a dairy facility including, but not limited to, the following: washing, cleaning, or flushing barns or other roof-covered production areas; washing of animals; spray-cooling of animals (except in open lots); and cooling or cleaning of feed mills and equipment. Wastewater does not include overflow from the drinking water system or stormwater unless overflow or stormwater that is collected is comingled with wastewater, or it comes into contact with water contaminants as a result of being directly or indirectly used in dairy facility operations.

[20.6.6.7 NMAC - N, 01/31/2011; A, 06/16/2015]

#### **20.6.6.8 REQUIREMENTS FOR DISCHARGING FROM DAIRY FACILITIES:**

**A.** No person shall discharge from a dairy facility without a discharge permit. A person intending to discharge from a dairy facility shall submit an application for a discharge permit pursuant to 20.6.6.10 NMAC and remit fees pursuant to 20.6.6.9 NMAC.

**B.** Permittees, owners of record of a dairy facility and holders of an expired permit are responsible for complying with the dairy rule.

**C.** Unless otherwise noted in 20.6.6 NMAC, the requirements of 20.6.2.3101 through 20.6.2.3114 NMAC apply to a dairy facility.

**D.** Complying with the requirements of 20.6.6 NMAC does not relieve a dairy facility's owner, operator or permittee from complying with the requirements of other applicable local, state and federal regulations or laws.

[20.6.6.8 NMAC - N, 01/31/2011]

**20.6.6.9 FEES:**

In lieu of paying fees under the requirements of 20.6.2.3114 NMAC, an applicant or permittee shall pay fees to the department pursuant to this section.

**A.** An applicant for a discharge permit or a discharge permit renewal for a dairy facility shall remit with the application to the department a filing fee in the amount of one hundred dollars (\$100) and one-half of the applicable permit fee from table 1 of 20.6.2.3114 NMAC. The filing fee and the permit fee payment remitted with the application are not refundable and may not be applied toward future discharge permit applications. If the department issues a discharge permit, the permittee shall remit a permit fee payment equal to one-tenth of the applicable permit fee from table 1 of 20.6.2.3114 NMAC on the first occurrence of August 1 after the effective date of the discharge permit, and annually thereafter until the expiration or termination of the discharge permit.

**B.** An applicant for a discharge permit modification separate from a discharge permit renewal shall remit a filing fee of one hundred dollars (\$100) and a permit modification fee with the application. The permit modification fee shall be equal to one-half of the applicable permit fee from table 1 of 20.6.2.3114 NMAC. The filing fee and the permit modification fee payment remitted with the application are not refundable and may not be applied toward future discharge permit applications. Payment of the permit modification fee shall not relieve a permittee from remitting the permit fee payments required by Subsection A of this section. If the discharge permit modification is required by the secretary outside the context of an enforcement action, a permit modification fee is not required.

**C.** A permittee requesting temporary permission to discharge pursuant to Subsection B of 20.6.2.3106 NMAC shall pay the fee specified in 20.6.2.3114 NMAC.

[20.6.6.9 NMAC - N, 01/31/2011]

**20.6.6.10 GENERAL APPLICATION REQUIREMENTS FOR ALL DAIRY FACILITIES:**

This section specifies the general requirements for discharge permit applications for all types of dairy facilities.

**A.** In lieu of Subsection F of 20.6.2.3106 NMAC, a permittee shall submit an application for renewal of a discharge permit for a dairy facility to the department at

least one year before the discharge permit expiration date, unless closure of the facility is approved by the department before that date. At least 180 days before the due date for an application for renewal, a permittee may request a pre-application meeting with the department. The pre-application meeting shall be held in Santa Fe, unless otherwise agreed by the department. Requests shall be made in writing and submitted to the department by certified mail. If a permittee requests a pre-application meeting, the department shall contact the permittee to discuss and schedule a date for the pre-application meeting. The department shall respond to the permittee's request in writing by certified mail to confirm the pre-application meeting date. The pre-application meeting shall occur no less than 60 days before the application due date. If the permittee or his representative fails to participate in the scheduled pre-application meeting, the permittee forfeits the opportunity for a pre-application meeting.

**B.** For a dairy facility that has not been constructed or operated, a permittee shall submit to the department at least one year before the discharge permit expiration date an application for renewal pursuant to Subsection A of this section or a statement certifying that the dairy facility has not been and will not be constructed or operated and that no discharges have occurred or will occur. Upon the department's verification of the certification, the department shall terminate the discharge permit, if necessary, and retire the discharge permit number from use.

**C.** Instead of the information required by Subsection C of 20.6.2.3106 NMAC, an applicant:

(1) for a new discharge permit, shall provide the information and supporting technical documentation pursuant to this section and 20.6.6.11 NMAC;

(2) for a renewed or modified discharge permit, shall provide the information and supporting technical documentation pursuant to this section and 20.6.6.12 NMAC; or

(3) for a renewed discharge permit for closure, shall provide the information and supporting technical documentation pursuant to this section and 20.6.6.13 NMAC.

**D.** The department shall create a discharge permit application form for dairy facilities applying for a new discharge permit, for dairy facilities applying for a renewed, modified or renewed and modified discharge permit, and for dairy facilities applying for a discharge permit for closure to collect the information required by this section. The information requested on the form(s) shall be limited to the information required by this section. An applicant shall use the department's form to provide the information required by this section. An application shall consist of the appropriate form and required supporting documentation, regardless of previous submissions. The applicant shall attest to the truth of the information and supporting documentation in the application, and sign the form. The form shall be signed in the presence of a notary and notarized. The applicant shall provide to the department a hard copy (paper format) of the original signed and notarized completed application form and all supporting documentation. The

applicant shall also provide an electronic copy of the original signed and notarized application and all supporting documentation in portable document format (PDF) on a compact disc (CD) or digital versatile disc (DVD).

**E.** If an applicant filing an application for a new discharge permit does not certify that the dairy facility complies with the setback requirements of 20.6.6.16 NMAC, as required by Subsection D of 20.6.6.11 NMAC, the department shall reject the application. The department shall provide notice of the rejection to the applicant by certified mail.

**F.** Within 60 days of the department's receipt of proof of notice pursuant to Subsection D of 20.6.2.3108 NMAC, the department shall review the application for technical completeness. If proof of notice is not submitted to the department pursuant to Subsection D of 20.6.2.3108 NMAC, the department shall notify the applicant by certified mail of the violation and provide 15 days from the date of postal notice for the applicant to submit the proof pursuant to Subsection D of 20.6.2.3108 NMAC. If proof of notice is not submitted to the department following the issuance of a notice of violation, the department may deny the application.

**G.** For an application to be deemed technically complete, an application shall include the information required by Subsection C of this section. Submittals or supporting documentation that require the certification of persons specified in the dairy rule are deemed technically complete if the documentation is prepared in accordance with the dairy rule and is certified by persons specified in the dairy rule. If the department determines that an application is not technically complete, the department shall provide notice of technical deficiency to the applicant by certified mail within 60 days of receipt of the applicant's proof of notice. The applicant shall have 60 days from the date of postal notice of the technical deficiency correspondence to provide the information required by this section.

**(1)** If an application is technically complete, the department shall make available a proposed approval of a discharge permit (i.e., draft discharge permit) or denial of a discharge permit application, pursuant to Subsection H of 20.6.2.3108 NMAC.

**(2)** If an applicant filing an application for a new discharge permit does not provide all information required by this section to the department within 60 days of the date of postal notice of the technical deficiency correspondence, the department shall deny the application. The department shall provide notice of denial to the applicant by certified mail.

**(3)** If an applicant for a renewed or modified discharge permit does not provide all information required by this section to the department within 60 days of the date of postal notice of the technical deficiency correspondence, the department may deny the application or may propose a discharge permit for approval consistent with the

requirements of the dairy rule. If the department denies the application, the department shall provide notice of denial to the applicant by certified mail.

**H.** An applicant may propose alternate methods and innovative technologies such as new or advanced storage, treatment or disposal methods not directly addressed by this rule or different from those specified in 20.6.6.17, 20 and 21 NMAC. At its discretion, the department may approve an alternate method provided all of the following conditions are met:

**(1)** A pre-application meeting is held prior to application submittal. The meeting may be held at an appropriate demonstration site to show the suitability/applicability of the proposed method.

**(2)** A demonstration is made to the department's satisfaction that the proposed alternate method or technology, including its engineering design, equipment, process, operation and maintenance, will not result in an exceedance of the water quality standards of 20.6.2.3103 NMAC.

**(3)** Plans and specifications are submitted that meet the requirements of Subsections A and B of 20.6.6.17 NMAC.

**(4)** A plan to monitor ground water that may be affected by the alternate method or technology shall be submitted that is consistent with requirements of 20.6.6.23 NMAC.

**I.** The department may impose additional conditions on a discharge permit in accordance with Section 74-6-5 NMSA 1978. If the department proposes an additional condition in a discharge permit that is not included in the dairy rule, the department shall include a written explanation of the reason for the additional condition with the copy of the proposed approval sent to the applicant pursuant to Subsection H of 20.6.2.3108 NMAC. Written comments about the additional condition may be submitted to the department during the 30-day comment period provided by Subsection K of 20.6.2.3108 NMAC. A hearing may be requested about the additional condition as provided by 20.6.6.15 NMAC.

**J.** The secretary shall approve a discharge permit provided that it poses neither a hazard to public health nor undue risk to property, and:

**(1)** the requirements of the dairy rule are met;

**(2)** the provisions of 20.6.2.3109 NMAC are met, with the exception of Subsection C of 20.6.2.3109 NMAC; and

**(3)** denial of an application for a discharge permit is not required pursuant to Subsection E of 74-6-5 NMSA 1978.

[20.6.6.10 NMAC - N, 01/31/2011; A, 06/16/2015; A, 06/30/2015]

#### **20.6.6.11 APPLICATION REQUIREMENTS FOR NEW DISCHARGE PERMITS:**

**A.** An application for a new discharge permit shall include the information in this section.

**B. Contact information.** An application shall include:

(1) applicant's name, title and affiliation with the dairy facility, mailing address, and phone number;

(2) dairy facility manager's or operator's name, title and affiliation with the dairy facility, mailing address and phone number;

(3) application preparer's name, title and affiliation with the dairy facility, mailing address, phone number and signature; and

(4) mailing address and phone number of any consultants authorized to assist the dairy facility with compliance with the Water Quality Act and 20.6.2 and 20.6.6 NMAC.

**C. Ownership and real property agreements.**

(1) An application shall include the dairy facility owner's name, title, mailing address and phone number.

(a) If more than one person has an ownership interest in the dairy facility or a partnership exists, then the applicant shall list all persons having an ownership interest in the dairy facility, including their names, titles, mailing addresses and phone numbers.

(b) If any corporate entity, including but not limited to a corporation or a limited liability company, holds an ownership interest in the dairy facility, then the applicant shall also list the name(s), as filed with the New Mexico public regulation commission, of the corporate entity, and the corporate entity's registered agent's name and address.

(2) If the applicant is not the owner of record of the real property upon which the dairy facility is or will be situated, or upon which dairy operations and land application will occur, then the applicant shall submit a copy of any lease agreement or other agreement which authorizes the use of the real property for the duration of the term of the requested permit. Lease prices or other price terms may be redacted.

**D. Setbacks.** The applicant shall certify that the setback requirements of 20.6.6.16 NMAC are met. An application shall include a scaled map of the dairy facility layout

demonstrating that the proposed layout of the dairy facility meets the setback requirements of 20.6.6.16 NMAC.

**E. Dairy facility information and location.** An application shall include:

- (1) the dairy facility name, physical address and county; and
- (2) the township, range and section for the entire dairy facility, which includes the production area and fields within the land application area.

**F. Public notice preparation.** An application shall include the name of a newspaper of general circulation in the location of the dairy facility for the future display advertisement publication, the proposed public location(s) for posting of the 2-foot by 3-foot sign, and the proposed off-site public location for posting of the 8.5-inch by 11-inch flyer, as required by 20.6.2.3108 NMAC.

**G. Pre-discharge total dissolved solids concentration in ground water.** Pursuant to Paragraph (3) of Subsection C of 20.6.2.3106 NMAC, an application shall include the pre-discharge total dissolved solids concentration from analytical results of ground water obtained from the on-site test boring pursuant to Subsection X of 20.6.6.20 NMAC, if applicable, or from the nearest well within a one-mile radius of the dairy facility. A copy of the laboratory analysis stating the pre-discharge total dissolved solids concentration shall be submitted with the application.

**H. Determination of maximum daily discharge volume.** An application shall include the following information.

- (1) The proposed maximum daily discharge volume and a description of the methods and calculations used to determine that volume.
- (2) The identification of all sources of wastewater which may include, but are not limited to, hospital barns, maternity barns, bottle-washing operations and parlor/equipment washdown.
- (3) The animal washing method(s) employed and the estimated daily wastewater volume generated by the method(s).
- (4) Information regarding other wastewater discharges (i.e., domestic or industrial) at the dairy facility not generated by dairy operations. Permit identification numbers shall be submitted for those discharges that are already permitted.

**I. Wastewater quality.** An application shall include estimated concentrations of wastewater quality for total dissolved solids, chloride, total sulfur, nitrate as nitrogen, and total Kjeldahl nitrogen.

**J. Identification and physical description of the dairy facility.** An application shall include the following information.

(1) A scaled map of the entire dairy facility pursuant to Subsection U of 20.6.6.20 NMAC.

(2) The identification of each proposed impoundment, including information about its location, purpose (i.e., to store wastewater or stormwater, or dispose of it by evaporation), liner material and storage or evaporative disposal capacity.

(3) The identification of each field within the proposed land application area, including information about its location, acreage, proposed method of wastewater and stormwater application and proposed method of irrigation water application.

(4) The identification of proposed sumps and mix tanks, including information for each component regarding its location, purpose, construction material, dimensions and capacity.

(5) A description of the proposed method(s) employed to protect each area from stormwater runoff and run-on, and to minimize leachate.

**K. Flow metering.** An application shall describe a dairy facility's flow metering system pursuant to Subsections J, K, L, M, N and O of 20.6.6.20 NMAC and Subsections G and H of 20.6.6.21 NMAC, including:

(1) the identification of the method(s) (i.e., pumped versus gravity flow) of wastewater discharge, stormwater transfer, and wastewater and stormwater land application;

(2) the proposed flow measurement devices for each flow method; and

(3) the identification of flow meter locations.

**L. Depth-to-most-shallow ground water and ground water flow direction.** An application shall include the following information.

(1) The depth-to-most-shallow ground water pursuant to Subsection X of 20.6.6.20 NMAC.

(2) The ground water flow direction of the most-shallow ground water beneath the dairy facility based on the most recent regional water level data or published hydrogeologic information. Survey data from nearby monitoring wells and a ground water elevation contour map indicating the direction of ground water flow may be included. The sources of all information used to determine ground water flow direction shall be provided with the application.

**M. Monitoring wells.** An application shall include the proposed monitoring well locations pursuant to Subsections A and B of 20.6.6.23 NMAC.

**N. Surface soil survey and vadose zone geology.** An application shall include:

(1) the most recent regional soil survey map and associated descriptions identifying surface soil type(s); and

(2) if applicable, the lithologic log obtained from the on-site test boring pursuant to Subsection X of 20.6.6.20 NMAC to identify the geological profile of the vadose zone.

**O. Location map.** An application shall include a location map with topographic surface contours identifying all of the following features located within a one-mile radius of the dairy facility:

(1) watercourses, lakebeds, sinkholes, playa lakes and springs (springs used to provide water for human consumption shall be so denoted);

(2) wells supplying water for a public water system and private domestic water wells;

(3) irrigation supply wells; and

(4) ditch irrigations systems, acequias, irrigation canals and drains.

**P. Flood zone map.** An application shall include the most recent 100-year flood zone map developed by the federal emergency management administration, FEMA, documenting flood potential for the dairy facility, and a description of any engineered measures used for flood protection.

**Q. Engineering and surveying.** Pursuant to 20.6.6.17 NMAC an application shall include:

(1) plans and specifications for impoundments and associated liners;

(2) plans and specifications for a manure solids separator(s); and

(3) a grading and drainage report and plan.

**R. Land application area.** For a dairy facility with a land application area, an application shall include the following information.

(1) A nutrient management plan (NMP) pursuant to Subsections I and J of 20.6.6.21 NMAC.

(2) A written description of the wastewater sampling location(s) pursuant to Subsection C of 20.6.6.25 NMAC.

[20.6.6.11 NMAC - N, 01/31/2011; A, 12/31/2011]

#### **20.6.6.12 APPLICATION REQUIREMENTS FOR DISCHARGE PERMIT RENEWAL OR MODIFICATION:**

**A.** An application for a renewed or modified discharge permit shall include the information in this section.

**B. Contact information.** An application shall include the:

(1) applicant's name, title and affiliation with the dairy facility, mailing address, and phone number;

(2) dairy facility manager's or operator's name, title and affiliation with the dairy facility, mailing address and phone number;

(3) application preparer's name, title and affiliation with the dairy facility, mailing address, phone number and signature; and

(4) mailing address and phone number of any consultants authorized to assist the dairy facility with compliance with the Water Quality Act and 20.6.2 and 20.6.6 NMAC.

**C. Ownership and real property agreements.**

(1) An application shall include the dairy facility owner's name, title, mailing address and phone number.

(a) If more than one person has an ownership interest in the dairy facility or a partnership exists, then the applicant shall list all persons having an ownership interest in the dairy facility, including their names, titles, mailing addresses and phone numbers.

(b) If any corporate entity, including but not limited to a corporation or a limited liability company, holds an ownership interest in the dairy facility, then the applicant shall also list the name(s), as filed with the New Mexico public regulation commission, of the corporate entity and the corporate entity's registered agent's name and address.

(2) If the applicant is not the owner of record of the real property upon which the dairy facility is or will be situated, or upon which dairy operations and land application will occur, then the applicant shall submit a copy of any lease agreement or other agreement which authorizes the use of the real property for the duration of the term of the requested permit. Lease prices or other price terms may be redacted.

**D. Dairy facility information and location.** An application shall include:

- (1) the dairy facility name, physical address and county;
- (2) the discharge permit identification number as designated on the most recent discharge permit for the dairy facility;
- (3) the township, range and section for the entire dairy facility, which includes the production area and fields within the land application area; and
- (4) the date of initial discharge at the dairy facility.

**E. Public notice preparation.**

(1) An application for a modified or renewed and modified discharge permit shall include the name of a newspaper of general circulation in the location of the dairy facility for the future display advertisement publication, the proposed public location(s) for posting of the 2-foot by 3-foot sign, and the proposed off-site public location for posting of the 8.5-inch by 11-inch flyer, as required by Subsection B of 20.6.2.3108 NMAC.

(2) An application for a renewed discharge permit without modification shall include the name of a newspaper of general circulation in the location of the dairy facility for the future display advertisement publication as required by Subsection C of 20.6.2.3108 NMAC.

**F. Pre-discharge total dissolved solids concentration in ground water.**

Pursuant to Paragraph (3) of Subsection C of 20.6.2.3106 NMAC, an application shall include the pre-discharge total dissolved solids concentration in ground water, sample source (e.g., upgradient monitoring well, on-site supply well, nearest well within a one-mile radius of the dairy facility) and a copy of the laboratory analysis.

**G. Determination of maximum daily discharge volume.** An application shall include the following information.

(1) The proposed maximum daily discharge volume and a description of the methods and calculations used to determine that volume.

(2) The identification of all sources of wastewater which may include, but are not limited to, hospital barns, maternity barns, bottle-washing operations and parlor/equipment washdown.

(3) The animal washing method(s) employed and the estimated daily wastewater volume generated by the method(s).

(4) Information regarding other wastewater discharges (i.e., domestic or industrial) at the dairy facility not generated by dairy operations. Permit identification numbers shall be submitted for those discharges that are already permitted.

**H. Identification and physical description of dairy facility.** An application shall include the following information.

(1) A scaled map of the entire dairy facility pursuant to Subsection U of 20.6.6.20 NMAC.

(2) The identification of each proposed, existing and closed impoundment, including information for each impoundment regarding its location, purpose (i.e., to store wastewater or stormwater, or dispose of it by evaporation), date of original construction, past and existing liner material, date of current liner installation and storage or evaporative disposal capacity.

(3) The identification of each existing, proposed, and previously used field within the land application area, including information for each field about its location, date of initial application of wastewater or stormwater, acreage, status with regard to having received wastewater or stormwater (i.e. never, inactive, active), current method of backflow prevention employed, current method of wastewater and stormwater application and current method of irrigation water application.

(4) The identification of sumps and mix tanks, including information for each component regarding its location, purpose, date of original construction, construction material, dimensions and capacity.

(5) The settled solids thickness measurements for each existing wastewater and combination impoundment pursuant to Subsection D of 20.6.6.20 NMAC.

(6) A description of proposed and existing method(s) of solids separation pursuant to Paragraph (5) of Subsection C of 20.6.6.17 NMAC and Subsection F of 20.6.6.20 NMAC.

(7) A description of the method(s) employed to protect each manure, silage and compost storage area from stormwater runoff and run-on, and to minimize leachate.

**I. Flow metering.** An application shall describe a dairy facility's flow metering system pursuant to Subsections J, K, L, M, N and O of 20.6.6.20 NMAC and Subsections G and H of 20.6.6.21 NMAC including:

(1) the identification of the method(s) (i.e. pumped versus gravity flow) of wastewater discharge, stormwater transfer and wastewater and stormwater land application;

(2) a description of the existing and proposed flow measurement devices for each flow method; and

(3) the identification of flow meter locations.

**J. Depth-to-most-shallow ground water and ground water flow direction.**

(1) An application for renewal or modification shall provide the depth-to-most-shallow ground water and indicate ground water flow direction beneath the dairy facility on a ground water elevation contour map. The ground water elevation contour map shall be developed based upon the most recent ground water levels obtained with a water level measuring device and survey data from on-site monitoring wells obtained from a survey, pursuant to 20.6.6.23 NMAC.

(2) If a dairy facility does not have a monitoring well intersecting most-shallow ground water, an applicant shall provide the following information.

(a) The depth-to-most-shallow ground water pursuant to Subsection X of 20.6.6.20 NMAC.

(b) The ground water flow direction of the most-shallow ground water beneath the dairy facility based upon the most recent regional water level data or published hydrogeologic information. Survey data from nearby monitoring wells and a ground water elevation contour map indicating the direction of ground water flow may be included. The sources of all information used to determine ground water flow direction shall be provided with the application.

**K. Monitoring wells.** An application shall include:

(1) the construction logs for all existing, on-site monitoring wells, which indicate the date of installation and well driller; and

(2) the identification of monitoring well locations, proposed and existing, pursuant to Subsections A and B of 20.6.6.23 NMAC.

**L. Surface soil survey and vadose zone geology.** An application shall include:

(1) the most recent regional soil survey map and associated descriptions identifying surface soil type(s);

(2) the lithologic logs from all existing, on-site monitoring wells, if available; and

(3) if applicable, where a dairy facility does not have a monitoring well intersecting most-shallow ground water, the application shall include the lithologic log

obtained from the on-site test boring pursuant to Subsection X of 20.6.6.20 NMAC to identify the geological profile of the vadose zone.

**M. Location map.** An application shall include a location map with topographic surface contours identifying all of the following features located within a one-mile radius of the dairy facility:

- (1) watercourses, lakebeds, sinkholes, playa lakes and springs (springs used to provide water for human consumption shall be so denoted);
- (2) wells supplying water for a public water system and private domestic water wells;
- (3) irrigation supply wells; and
- (4) ditch irrigations systems, acequias, irrigation canals and drains.

**N. Flood zone map.** An application shall include the most recent 100-year flood zone map developed by the federal emergency management administration, FEMA, documenting flood potential for the dairy facility, and a description of any engineered measures used for flood protection.

**O. Engineering and surveying.** An application shall include the following information.

- (1) Plans and specifications for new or improved structures and associated liners proposed by the applicant pursuant to 20.6.6.17 NMAC.
- (2) Record drawings and final specifications for existing structures and associated liners. For existing impoundments where record drawings and final specifications do not exist, survey data and capacity calculations shall be submitted pursuant to Subsection C of 20.6.6.20 NMAC.

**P. Land application area.** For a dairy facility with a land application area, an application shall include the following information.

- (1) Documentation confirming the existence of infrastructure necessary to distribute and apply wastewater and stormwater to the land application area pursuant to Subsection E of 20.6.6.21 NMAC.
- (2) A nutrient management plan (NMP) pursuant to Subsections I and J of 20.6.6.21 NMAC.
- (3) A written description of the wastewater sampling location(s) pursuant to Subsection C of 20.6.6.25 NMAC.

[20.6.6.12 NMAC - N, 01/31/2011; A, 12/31/2011]

**20.6.6.13 APPLICATION REQUIREMENTS FOR A DISCHARGE PERMIT FOR CLOSURE:**

An application for a discharge permit for closure shall include the information required by Subsections B, C, D, E, F, J, K, L, M and N of 20.6.6.12 NMAC and Paragraphs (1), (2), (3) and (4) of Subsection H of 20.6.6.12 NMAC. For dairy facilities with or previously having a land application area, the application shall also include Paragraph (1) of Subsection P of 20.6.6.12 NMAC, specifically pertaining to the past method(s) of wastewater discharge and stormwater application to the land application area.

[20.6.6.13 NMAC - N, 01/31/2011; A, 12/31/2011]

**20.6.6.14 ADDITIONAL PUBLIC NOTICE REQUIREMENTS FOR APPLICATIONS FOR NEW DISCHARGE PERMITS:**

**A.** The requirements of this section shall apply to dairy facilities whose application for a new discharge permit is received by the department after the effective date of the dairy rule.

**B.** Instead of the requirement for public notice specified in Paragraph (2) of Subsection B of 20.6.2.3108 NMAC, the applicant shall provide written notice of the discharge and a copy of the map referenced in Subsection O of 20.6.6.11 NMAC by mail to owners of record of all properties within a one-mile distance from the boundary of the property where the discharge site is located. If there are no properties other than properties owned by the discharger within a one-mile distance of the boundary of the property where the dairy facility is located, the applicant shall provide notice to owners of record of the next nearest properties not owned by the discharger.

**C.** Proof of notice required by Subsection D of 20.6.2.3108 NMAC shall include an affidavit of mailing(s) and a list of property owner(s) notified pursuant to Subsection B of this section.

[20.6.6.14 NMAC - N, 01/31/2011]

**20.6.6.15 PROCEDURES FOR REQUESTING PUBLIC HEARINGS ON PERMITTING ACTIONS FOR DAIRY FACILITIES:**

**A.** Requests for a hearing from any person, including the applicant for a discharge permit, on the proposed approval of a discharge permit (i.e., a draft discharge permit) or denial of a discharge permit application shall be postmarked on or before the end of the comment period, and submitted to the department pursuant to Subsection K of 20.6.2.3108 NMAC. The secretary shall deny requests that do not meet the requirements of Subsection K of 20.6.2.3108 NMAC and this section. The secretary

shall provide notice of hearing denial by certified mail to the person(s) requesting a hearing.

**B.** The secretary shall deny a request for a hearing on the proposed approval of a discharge permit for a dairy facility (i.e., a draft discharge permit) disputing conditions contained in the dairy rule. Requests for a hearing on the proposed approval of a discharge permit for a dairy facility shall identify the specific additional discharge permit conditions being disputed or requested and the reasons such additional discharge permit conditions are being disputed or requested. Hearings held upon the secretary's approval shall be limited in scope to the disputed or requested additional discharge permit conditions identified in the request for hearing. The secretary shall deny requests for a hearing that fail to identify disputed or requested additional discharge permit conditions and the reasons why the additional discharge permit conditions are disputed or requested. The secretary shall provide notice of hearing denial by certified mail to the person(s) requesting a hearing.

[20.6.6.15 NMAC - N, 01/31/2011]

#### **20.6.6.16 SETBACK REQUIREMENTS FOR DAIRY FACILITIES APPLYING FOR NEW DISCHARGE PERMITS:**

**A.** The setback requirements of this section apply to a dairy facility whose application for a new discharge permit is received by the department after the effective date of the dairy rule.

**B.** The setback requirements shall be measured as horizontal map distances.

**C.** The required setback distances shall be met as certified by the applicant as of the receipt date of the application.

**D.** If the setback requirements apply to a dairy facility, a permittee shall not propose or construct structures that violate the setback as determined as of the receipt date of the application for a new discharge permit by the department.

#### **E. Production area setback requirements.**

**(1)** The production area, excluding feed storage silos, feed storage barns and liquid feed tanks, shall be located:

**(a)** greater than 200 feet from the 100-year flood zone of any watercourse, or from the ordinary high-water mark of any watercourse for which no 100-year flood zone has been established (this setback distance shall not apply to ditch irrigations systems, acequias, irrigation canals and drains);

**(b)** greater than 200 feet (measured from the ordinary high-water mark) from a lakebed, sinkhole or playa lake;

(c) greater than 200 feet from any spring identified on a U.S. geological survey (USGS) topographic map and not identified as a supply of water for human consumption;

(d) greater than 350 feet from a private domestic water well or spring that supplies water for human consumption; and

(e) greater than 1000 feet from any water well or spring that supplies water for a public water system as defined by 20.7.10 NMAC, unless a wellhead protection program established by the public water system requires a greater distance.

(2) The requirements of Subparagraph (d) of Paragraph (1) of this subsection shall not apply to wells or springs that supply water to the dairy facility for human consumption and are located on the dairy facility.

(3) Setback distances for impoundments shall be measured from the top inside edge of the impoundment; distances for all other features shall be measured from the outer extent of the feature.

#### **F. Land application area setback requirements.**

(1) Any field within a land application area shall be located:

(a) greater than 100 feet from the 100-year flood zone of any watercourse, or from the ordinary high-water mark of any watercourse for which no 100-year flood zone has been established (this setback distance shall not apply to ditch irrigations systems, acequias, irrigation canals and drains);

(b) greater than 100 feet (measured from the ordinary high-water mark) from any lakebed, sinkhole or playa lake;

(c) greater than 100 feet from a private domestic water well or spring that supplies water for human consumption; and

(d) greater than 200 feet from any water well or spring that supplies water for a public water system as defined by 20.7.10 NMAC, unless a wellhead protection program established by the public water system requires a greater distance.

(2) The requirements of Subparagraph (c) of Paragraph (1) of this subsection shall not apply to wells or springs that supply water for human consumption to the dairy facility and are located on the dairy facility.

(3) Setback distances for fields shall be measured from the outer edge of the field.

### **20.6.6.17 ENGINEERING AND SURVEYING REQUIREMENTS FOR ALL DAIRY FACILITIES:**

**A. Practice of engineering.** All plans and specifications, supporting design calculations, record drawings, final specifications, final capacity calculations, grading and drainage reports and plans, and other work products requiring the practice of engineering shall bear the seal and signature of a licensed New Mexico professional engineer pursuant to the New Mexico Engineering and Surveying Practice Act, NMSA 1978, Sections 61-23-1 through 61-23-32, and the rules promulgated under that authority.

**B. Practice of surveying.** All surveys of wastewater, stormwater, and combination wastewater/stormwater impoundments, monitoring well locations and casing elevations, and other work products requiring the practice of surveying shall bear the seal and signature of a licensed New Mexico professional surveyor pursuant to the New Mexico Engineering and Surveying Practice, NMSA 1978, Sections 61-23-1 through 61-23-32, and the rules promulgated under that authority.

#### **C. Engineering plans and specifications requirements.**

**(1) Impoundment plans and specifications.** An applicant or permittee proposing or required to construct a new impoundment or to improve an existing impoundment, including relining of an existing impoundment, shall submit detailed and complete construction plans and specifications and supporting design calculations developed pursuant to this section and 20.6.6.20 NMAC. The applicant or permittee proposing or required to construct an impoundment shall document compliance with the requirements of the dam safety bureau of the state engineer pursuant to Section 72-5-32 NMSA 1978, and rules promulgated under that authority, unless exempt by law from such requirements. The construction plans and specifications for an improvement(s) to an existing impoundment shall address the management of wastewater or stormwater during preparation and construction of the improvements.

**(a)** Construction plans and specifications proposed by the applicant or permittee shall be submitted to the department with the application for a new, renewed or modified discharge permit.

**(b)** Construction plans and specifications not proposed by the applicant or permittee but required to achieve compliance with the dairy rule shall be submitted to the department within 90 days of the effective date of the discharge permit.

**(2) Impoundment CQA/CQC.** Construction of a new impoundment or improvement to an existing impoundment shall be done in accordance with a construction quality assurance/construction quality control (CQA/CQC) plan. A CQA/CQC plan shall be included as part of the design plans and specifications. The CQA/CQC plan shall outline the observations and tests to be used to ensure that construction of the impoundment meets, at a minimum, all design criteria, plans and

specifications. All testing and evaluation reports shall be signed and sealed by a licensed New Mexico professional engineer experienced in lagoon construction and liner installation. The CQA/CQC plan shall include, at a minimum, the following elements.

(a) The identity of persons responsible for overseeing the CQA/CQC program. The person responsible for overseeing with the CQA/CQC plan shall be a licensed New Mexico professional engineer experienced in lagoon construction and liner installation.

(b) A discussion of how inspections will be performed.

(c) The location, availability, applicability and calibration of testing equipment and facilities, both field and laboratory.

(d) The procedures for observing and testing the liner material.

(e) The procedures for reviewing inspection test results and laboratory and field sampling test results.

(f) The actions to be taken to replace or repair liner material should deficiencies be identified.

(g) The procedures for seaming synthetic liners.

(h) The reporting procedures for all inspections and test data.

**(3) Impoundment improvement - wastewater/stormwater management.**

An applicant or permittee proposing or required to improve an existing impoundment, including relining of an existing impoundment, shall submit a plan for managing wastewater or stormwater during the improvement as part of the design plans and specifications. The plan for wastewater or stormwater management shall include the following minimum elements and be implemented upon department approval.

(a) A description of how on-going wastewater discharges or stormwater collection will be handled and disposed of during improvement to the impoundment.

(b) A description of how solids and wastewater or stormwater within the impoundment will be removed and disposed of prior to beginning improvement to the impoundment.

(c) A schedule for implementation through completion of the project.

(d) If the plan proposes temporary use of a location for the discharge of wastewater not authorized by the effective discharge permit, the applicant or permittee shall request temporary permission to discharge from the department.

**(4) Manure solids separation plans and specifications - new wastewater system.** An applicant or permittee proposing or required to construct a new manure solids separator as a component of a newly designed wastewater storage or disposal system shall submit construction plans and specifications and supporting design calculations that include the separator, pursuant to this section.

**(a)** Construction plans and specifications proposed by the applicant or permittee shall be submitted to the department with the application for a new, renewed or modified discharge permit.

**(b)** Construction plans and specifications not proposed by the applicant or permittee but required to achieve compliance with the dairy rule shall be submitted to the department within 90 days of the effective date of the discharge permit.

**(5) Manure solids separation plans and specifications - existing wastewater system.** An applicant or permittee proposing or required to construct a new manure solids separator as a component of an existing wastewater storage or disposal system shall submit a scaled design schematic and supporting documentation, including design calculations. The separator shall be designed to accommodate, at a minimum, the maximum daily discharge volume authorized by the discharge permit, and the volume of manure solids associated with the wastewater discharge. Components of the separator that collect, contain or store manure solids prior to removal or land application shall be designed with an impervious material(s) to minimize generation and infiltration of leachate. A scaled design schematic and supporting documentation for a proposed separator shall be submitted to the department with the application for a new, renewed or modified discharge permit.

**(6) Grading and drainage report and plan.** An applicant shall submit with the application for a new discharge permit, a grading and drainage report and a grading and drainage plan, including supplemental information associated with the plan. The submittal shall include, at a minimum, the following information.

- (a)** A scaled map showing:
- (i)** the dairy facility and the property boundaries of the dairy facility;
  - (ii)** all existing and proposed structures at the dairy facility, with the associated finished floor elevations;
  - (iii)** existing and proposed ground surface contours at two foot vertical intervals; and
  - (iv)** all existing and proposed stormwater management structures at the dairy facility including construction materials, size, type, slope, capacity and inlet and invert elevation of the structures, as applicable.

**(b)** A copy of the relevant federal emergency management administration, FEMA, flood insurance rate map (FIRM) or flood boundary and floodway map with the dairy facility clearly identified along with all flood zones.

**(c)** A description of existing drainage conditions at the dairy facility.

**(d)** A description of the proposed post-development drainage conditions.

**(e)** Supplemental information supporting the grading and drainage plan shall be submitted to the department with the plan and shall include, at a minimum, the following information:

**(i)** all hydrologic and hydraulic calculations for design storm events used;

**(ii)** hydraulic calculations demonstrating capacity or adequacy of existing and proposed stormwater impoundments;

**(iii)** hydraulic calculations demonstrating capacity of existing and proposed conveyance channels to contain and transport runoff to the stormwater impoundment(s); and

**(iv)** a description of computer software, documents, circulars, manuals, etc. used to develop the hydrologic and hydraulic calculations.

**(7) Flow metering plans.** An applicant or permittee proposing or required to install a flow meter(s) shall submit documentation to support the selection of the proposed device as appropriate for the expected flow rate along with a description of the location and information on the installation or construction of each device.

**(a)** Such information proposed by the applicant or permittee shall be submitted to the department with the application for a new, renewed or modified discharge permit.

**(b)** Such information not proposed by the applicant or permittee but required to achieve compliance with the dairy rule shall be submitted to the department within 90 days of the effective date of the discharge permit.

#### **D. Engineering design requirements.**

**(1) Impoundment capacity requirements.** Impoundments designed to store wastewater prior to discharging to a land application area or to dispose of wastewater by evaporation shall meet the capacity requirements specified in the dairy rule. The dairy rule does not specify capacity requirements for the containment of stormwater. However, the dairy rule does not exempt a dairy facility from other applicable local, state and federal regulations or laws, including the EPA regulatory requirements for

concentrated animal feeding operations pursuant to 40 Code of Federal Regulations, Parts 122 and 412, as amended.

**(2) Impoundment capacities - wastewater or wastewater/stormwater combination.**

**(a)** Capacity requirements for dairy facilities discharging wastewater to a land application area.

**(i)** The wastewater impoundments intended to store wastewater prior to discharging to a land application area shall be designed to contain the maximum daily discharge volume authorized by the discharge permit for a minimum period of 21 days to accommodate periods when land application is not feasible, while preserving two feet of freeboard. This capacity requirement may be satisfied by a single wastewater impoundment or by the collective capacity of multiple impoundments intended to store wastewater.

**(ii)** The combination wastewater/stormwater impoundments intended to contain both wastewater and stormwater runoff for storage prior to discharging to a land application area shall be designed to contain the sum of the maximum daily discharge volume authorized by the discharge permit for a minimum period of 21 days to accommodate periods when land application is not feasible and the additional volume intended for the containment of stormwater runoff and direct precipitation, while preserving two feet of freeboard. This capacity requirement may be satisfied by a single combination wastewater/stormwater impoundment or by the collective capacity of multiple impoundments intended to store wastewater or wastewater/stormwater.

**(b)** Capacity requirements for dairy facilities discharging to an evaporative wastewater or combination wastewater/stormwater disposal system.

**(i)** The wastewater impoundments intended to dispose of wastewater by evaporation shall be designed to contain the maximum daily discharge volume authorized by the discharge permit for disposal by evaporation, while preserving two feet of freeboard. This capacity requirement may be satisfied by a single wastewater impoundment or by the collective capacity of multiple impoundments intended to dispose of wastewater by evaporation.

**(ii)** The combination wastewater/stormwater impoundments intended to dispose of both wastewater and stormwater runoff by evaporation shall be designed for disposal by evaporation, the sum of the maximum daily discharge volume authorized by the discharge permit and the additional volume intended for the containment of stormwater runoff and direct precipitation while preserving two feet of freeboard. This capacity requirement may be satisfied by a single combination wastewater/stormwater impoundment or by the collective capacity of multiple impoundments intended to dispose of wastewater or wastewater/stormwater by evaporation.

(c) An impoundment designed and used for solids settling shall not be used to satisfy the impoundment capacity requirements of this subsection.

(d) Notwithstanding Subparagraphs (a) and (b) of this paragraph, a wastewater impoundment or system of wastewater impoundments existing as of the effective date of the dairy rule may continue to be operated based upon the design capacity required under the applicable discharge permit as last issued or amended before the effective date of the dairy rule.

**(3) Stormwater conveyance channels.** Stormwater conveyance channels shall be designed in accordance with the grading and drainage report and plan required by this section.

**(4) Impoundment design and construction - general.** Impoundments required to be lined shall meet the following design and construction requirements.

(a) The inside slopes of an impoundment shall be a maximum of three (horizontal) to one (vertical), and a minimum of four (horizontal) to one (vertical).

(b) The outside slopes of an impoundment shall be a maximum of three (horizontal) to one (vertical).

(c) The sub-grade of an impoundment shall be compacted to a minimum of 90 percent of standard proctor density. If the existing material is unsuitable for compaction, a minimum depth of 18 inches of suitable material shall be used as sub-grade.

(d) The sub-grade of an impoundment shall provide a firm, unyielding surface with no sharp changes or abrupt breaks in grade.

(e) The minimum dike width of an impoundment shall be 12 feet to allow vehicle traffic for maintenance.

**(5) Impoundment design and construction - liner.** An applicant or permittee proposing or required to construct a new or to improve an existing impoundment liner, shall at a minimum use a synthetic liner or a two foot thick compacted clay liner with a maximum demonstrated hydraulic conductivity of  $1 \times 10^{-7}$  cm/sec and that is designed, constructed, installed and maintained in accordance with the Guide for Industrial Waste Management, Part IV: Protecting Ground Water, Chapter 7: Section B, Designing and Installing Liners, Technical Considerations for New Surface Impoundments, Landfills and Waste Piles (U.S. environmental protection agency), incorporated herein by this reference. Synthetic impoundment liners shall include a liner component that is at least 60 mil HDPE or other materials having equivalent performance characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the

impoundment, tensile strength, and tear and puncture resistance and meet the following additional design and construction requirements.

(a) The liner shall be installed with sufficient slack in the liner material to accommodate shrinkage due to temperature changes. Folds in the liner material shall not be present in the completed liner.

(b) The sub-grade shall be free of sharp rocks, vegetation and stubble to a depth of at least six inches below the liner. The surface in contact with the liner shall be smooth to allow for good contact between liner and sub-grade. The surface shall be dry during liner installation. The liner installer shall provide the owner with a sub-grade acceptance certificate prior to installing the liner indicating acceptance of the earthwork.

(c) The liner shall be anchored in an anchor trench. The trench shall be a minimum of 12 inches wide, 12 inches deep and shall be set back at least 24 inches from the top inside edge of the impoundment.

(d) The liner panels shall be oriented such that all sidewall seams are vertical.

(e) If practicable, decomposing organic materials shall be removed from areas over which a liner will be installed. If such materials remain, a liner vent system shall be installed.

(f) Any opening in the liner through which a pipe or other fixture protrudes shall be sealed in accordance with the liner manufacturer's requirements. Liner penetrations shall be detailed in the construction plans and record drawings.

(g) The liner shall be installed by, or the installation supervised by, an individual that has the necessary training and experience as required by the liner manufacturer.

(h) Manufacturer's installation and field seaming guidelines shall be followed.

(i) Liner seams shall be field tested by the installer and verification of the adequacy of the seams shall be submitted to department along with the record drawings.

(j) Concrete slabs installed on top of a liner for operational purposes shall be completed in accordance with manufacturer and installer recommendations to ensure liner integrity.

**(6) Impoundment liner - wastewater or wastewater/stormwater combination.** An applicant or permittee proposing or required to construct a new or to improve an existing wastewater or combination wastewater/stormwater impoundment, shall, at a minimum, use a liner that meets the requirements of Paragraph (5) of this subsection.

**(7) Impoundment liner - stormwater.** Any applicant or permittee required to improve an existing stormwater impoundment pursuant to Subsection A or B of 20.6.6.27 NMAC shall, at a minimum, use a liner that meets the requirements in Paragraph (5) of this subsection.

**(8) Separation between impoundments and ground water.** Impoundments shall not be constructed in a location where the vertical distance between the seasonal high ground water level and the finished grade of the floor of the impoundment is less than or equal to four feet as documented through the most recent ground water data obtained from an on-site test boring(s) or monitoring well(s).

**(9) Impoundment spillways.** Impoundments intended to contain only wastewater shall not be designed with a spillway.

[20.6.6.17 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015]

#### **20.6.6.18 VARIANCES:**

**A.** A petition for variance from the dairy rule shall be submitted in accordance with Subsection A of 20.6.2.1210 NMAC.

**B.** In addition to any other criteria offered by the petitioner, the commission may consider as an unreasonable burden upon the petitioner's activity that the requirements of the dairy rule are unnecessary to prevent ground water pollution due to site-specific conditions.

**C.** In addition to any other information required under Paragraph (7) of that subsection, the petition shall, if applicable, identify any alternative facility design, alternative measuring device, or other variation from the requirements of the dairy rule and describe why variation from the dairy rule is warranted based upon site-specific conditions.

**D.** Notwithstanding Subsection C of 20.6.2.1210 NMAC, a variance from the requirements of the dairy rule may be granted for a period of time in excess of five years through the period of the expected useful life of the feature for which a variance is granted.

**E.** The department may review a variance every five years in conjunction with the discharge permit renewal to determine whether the variance is achieving its designed purpose and whether the variance has caused an exceedance of the standards of 20.6.2.3103 NMAC. If a five year review demonstrates that the variance cannot meet these criteria, the department may request a hearing before the commission to revoke the variance.

[20.6.6.18 NMAC - N, 12/31/2011]

**20.6.6.19 [RESERVED]**

**20.6.6.20 OPERATIONAL REQUIREMENTS FOR ALL DAIRY FACILITIES:**

**A. Notice of presence of lactating cows and wastewater discharge.** A permittee shall provide written notice to the department of the commencement, cessation, or recommencement of wastewater discharge or the placement, removal, or reintroduction of lactating cows as follows.

**(1) For new dairy facilities.**

**(a) Placement of lactating cows.** A permittee shall provide written notice to the department a minimum of 30 days before the placement of lactating cows at the dairy facility. A permittee shall provide written verification to the department of the actual date of placement of lactating cows within 30 days of placement.

**(b) Commencement of wastewater discharge.** A minimum of 30 days prior to the estimated initial wastewater discharge date a permittee shall provide written notice to the department indicating the date discharge is proposed to commence. A permittee shall provide written verification to the department of the actual date of discharge commencement within 30 days of commencement.

**(2) For existing dairy facilities.**

**(a) Removal or reintroduction of lactating cows.** A permittee shall provide written notice to the department indicating the date of removal of all lactating cows from the dairy facility or the date of reintroduction of any lactating cows at the dairy facility, if all lactating cows were previously removed, within 30 days of lactating cow removal or reintroduction.

**(b) Cessation of wastewater discharge.** A permittee shall provide written notice to the department indicating the date wastewater discharge ceased at the dairy facility within 30 days of the cessation of discharge.

**(c) Recommencement of wastewater discharge.** Written notification shall be submitted to the department a minimum of 30 days prior to the date wastewater discharge is expected to recommence. A permittee shall provide written notice to the department of the actual date of discharge recommencement within 30 days of recommencement.

**B. Authorized use of new and existing impoundments.** Impoundments shall meet the liner, design, and construction requirements of Subsection D of 20.6.6.17 NMAC; except an impoundment in existence on the effective date of the dairy rule that does not meet the requirements of Paragraphs (4) through (9) of Subsection D of 20.6.6.17 NMAC may continue to receive wastewater or stormwater provided the requirements of Paragraphs (1) or (2) of this subsection are met. If the requirements of

Paragraph (1) and (2) of this subsection are not met, such an impoundment may continue to receive wastewater or stormwater provided the requirements of Subsection B of 20.6.6.27 NMAC are met.

(1) The water contaminant concentration in a ground water sample and in any subsequent ground water sample collected from a monitoring well(s) intended to monitor the impoundment does not exceed any ground water standard of 20.6.2.3103 NMAC.

(2) The water contaminant concentration in a ground water sample and in any subsequent ground water sample collected from a monitoring well(s) intended to monitor the impoundment does not exceed the water contaminant concentration in a ground water sample collected from the upgradient monitoring well, if the water contaminant concentration associated with the upgradient monitoring well exceeds the ground water standard(s) of 20.6.2.3103 NMAC. For the purpose of this subsection, ground water samples obtained from the impoundment monitoring well and the upgradient monitoring well that are used for comparison of water contaminant concentrations shall be collected within two days of each other. In the event ground water quality data for the upgradient monitoring well are not submitted by the permittee, the ground water standard(s) of 20.6.2.3103 NMAC shall be the applicable standard(s) used to assess compliance with the requirements of this subsection.

**C. Constructed capacity of existing impoundment - determination.** If record drawings are unavailable or have not been completed for an impoundment constructed before the effective date of the dairy rule to indicate the impoundment capacity of each existing wastewater or combination wastewater/stormwater impoundment, the permittee shall complete an up-to-date survey and capacity calculation for each impoundment. The permittee shall submit the survey data and capacity calculations to the department with the application for a renewed or modified discharge permit.

**D. Free-liquid capacity of existing impoundment - determination.** An applicant or permittee shall measure the thickness of settled solids in each existing wastewater and combination wastewater/stormwater impoundment during the twelve-month period prior to the submission of an application for a renewed or modified discharge permit and in accordance with one of the following procedures.

(1) Measure settled solids when the impoundment contains water using the following method:

(a) The total surface area of the impoundment shall be divided into nine equal sub-areas.

(b) A settled solids measurement device shall be used to obtain one settled solids thickness measurement (to the nearest half-foot) per sub-area. The nine settled solids measurements shall be taken on the same day and the date shall be recorded and submitted to the department with the measurements.

(c) The nine settled solids measurements shall be averaged.

(d) The total volume of settled solids in the impoundment shall be estimated by multiplying the average thickness of the solids layer by the area of the top of the settled solids layer. The area shall be calculated using the impoundment dimensions corresponding to the estimated surface of the settled solids layer.

(e) The estimated volume of settled solids shall be subtracted from the design capacity of the impoundment (less two feet of freeboard) to estimate the actual free-liquid capacity.

(f) The settled solids measurements, calculations, estimation of total settled solids volume and volume of the actual free-liquid capacity for each impoundment shall be submitted to the department with the application for a renewed or modified discharge permit.

(2) Measure settled solids when the impoundment has been drained of water to its lowest seasonal level using the following method:

(a) Place a visible mark on each of the sidewalls of the pond showing the design depth allowed for sludge accumulation, or establish at least two vertical staff gauges marked to show the design depth allowed for sludge accumulation. The design depth shall be determined based upon the design capacity approved in the most recent discharge permit.

(b) When the pond is drained to its lowest seasonal level, such that the marks showing the depths described above are visible (or would be visible except for sludge accumulation), photograph each of the markings and submit the photographs with the application.

**E. Impoundment construction or improvement.** Construction of a new impoundment or improvements to an existing impoundment, including relining of an existing impoundment, shall be performed in accordance with the construction plans and specifications and supporting design calculations submitted with the application for a new, renewed or modified discharge permit, or those submitted after issuance of a discharge permit to achieve compliance with the dairy rule. An applicant or permittee shall notify the department at least five working days before starting construction or improvement of an impoundment to allow for an inspection by department personnel. An applicant or permittee shall submit to the department a construction certification report bearing the seal and signature of a licensed New Mexico professional engineer verifying that installation and construction was completed pursuant to Subsection C of 20.6.6.17 NMAC. The construction certification report shall include: record drawings, final specifications, final capacity calculations and the CQA/CQC report.

(1) For new dairy facilities, impoundment construction shall be completed as follows.

(a) Wastewater impoundment construction shall be completed and the construction certification report shall be submitted to the department before discharging wastewater at the dairy facility.

(b) Combination wastewater/stormwater impoundment construction shall be completed and the construction certification report shall be submitted to the department before placing any livestock at the dairy facility.

(2) For existing dairy facilities, impoundment construction shall be completed:

(a) within one year of the effective date of the discharge permit, if construction of a new impoundment or improvement of an existing impoundment is required to achieve compliance with the dairy rule, or pursuant to the contingency timeframe specified in Subsection B of 20.6.6.27 NMAC when invoked after the effective date of a discharge permit issued pursuant to the dairy rule; and

(b) the construction certification report shall be submitted to the department within 90 days of completion of impoundment construction.

**F. Manure solids separator installation.** A permittee shall employ manure solids separation. If a solid separator with a potential to contaminate ground water is proposed, such as a pond or settling basin, it shall be lined in accordance with Paragraph (5) of Subsection D of 20.6.6.17 NMAC. A permittee installing a new wastewater storage or disposal system shall, before discharging to the new system, construct a manure solids separator(s) in accordance with the construction plans and specifications submitted with the application for a new, renewed or modified discharge permit, or those submitted after issuance of a discharge permit to achieve compliance with the dairy rule. Before discharging to the new system, the permittee shall submit to the department confirmation of solids separator construction, including separator type(s) and location(s).

**G. Grading and drainage report and plan - submittal and implementation.** A permittee shall complete a new grading and drainage system, in accordance with the grading and drainage report and plan required by Subsection C of 20.6.6.17 NMAC and submitted with the application for a new discharge permit. A permittee shall submit a post-development drainage report, including record drawings, bearing the seal and signature of a licensed New Mexico professional engineer. The grading and drainage system shall be completed and the post-development drainage report shall be submitted to the department before placing any livestock at the dairy facility.

**H. Stormwater conveyance.** A permittee shall divert stormwater from the corrals and other applicable areas at the dairy facility (i.e., calf pens, alleys, feed storage and mixing, etc.) in accordance with the grading and drainage plan required by Subsection C of 20.6.6.17 NMAC. Stormwater shall be conveyed in a manner that minimizes ponding and infiltration of stormwater.

**I. Stormwater management - unlined impoundment.** A permittee shall transfer stormwater collected in an unlined impoundment(s) to the wastewater impoundment(s) or the distribution system for the land application area after a storm event to minimize the potential for movement to ground water. Operational pumps shall be available at the dairy facility at all times for the transfer of stormwater from stormwater impoundment(s) to the wastewater impoundment(s) or the distribution system for the land application area, as authorized by a discharge permit.

**J. Flow meter installation.** A permittee shall employ a flow metering system that uses flow measurement devices (flow meters) to measure the volume of wastewater discharged at the dairy facility. Flow meters shall be installed in accordance with the plans submitted with the application for a new, renewed or modified discharge permit, or those submitted after issuance of a discharge permit to achieve compliance with the dairy rule, pursuant to this section, Subsection C of 20.6.6.17 NMAC, and Subsections G and H of 20.6.6.21 NMAC. Flow meters shall be labeled with the discharge permit number, meter identification nomenclature as specified in a discharge permit, and the month and year of meter installation. All flow meters shall be calibrated in accordance with the manufacturer's requirements prior to installation or reinstallation following repair. The permittee shall maintain copies of the manufacturer's certificate of calibration and the manufacturer's recommended maintenance schedule. Confirmation of installation shall include a description of the device type, manufacturer, meter identification, location, record drawings, and a copy of the manufacturer's certificate of calibration and a copy of the manufacturer's recommended maintenance schedule.

(1) An applicant or permittee for a new dairy facility shall install flow meters and submit confirmation of flow meter installation to the department before discharging at the dairy facility.

(2) An applicant or permittee for an existing dairy facility shall install flow meters within 150 days of the effective date of the discharge permit and submit confirmation of flow meter installation to the department within 180 days of the effective date of the discharge permit.

**K. Flow metering methods.** Flow metering shall be accomplished by the following methods.

(1) For pumped flow discharge or transfer situations, an applicant or permittee shall install a closed-pipe velocity sensing totalizing flow meter(s) on the pressurized discharge or transfer line(s).

(2) For gravity flow discharge or transfer situations, an applicant or permittee shall install a closed pipe totaling flow meter or an open-channel primary flow measuring device(s) (flume or weir), equipped with head sensing and totalizing mechanisms, on the discharge or transfer line(s).

(3) An applicant may propose and the department may accept a proposal to meter flows by metering the water supply. The proposal shall provide specific detail regarding the flow meter to be used and the relationship between the volume of water supplied and wastewater volume.

**L. Flow meter locations.** An applicant or permittee shall identify flow meter locations in the application for a new, renewed or modified discharge permit. All flow meters shall be located pursuant to this section and Subsections G and H of 20.6.6.21 NMAC, and indicated on the scaled map required by Subsection U of this section.

**M. Authorized use of existing flow meters.** An applicant or permittee proposing to use an existing flow meter(s) shall submit documentation demonstrating that the existing flow meter(s) is installed consistent with this section, and Subsections G and H of 20.6.6.21 NMAC, as appropriate. The proposal shall be submitted with an application for a new, renewed and modified discharge permit and shall include the following documentation.

(1) The location of each existing flow meter indicated on the scaled map required by Subsection U of this section and the identification of the wastewater discharge, or wastewater or stormwater application it is intended to measure.

(2) A copy of the record drawings or manufacturer plans and technical specifications specific to each existing flow meter, if available.

**N. Flow metering - wastewater to impoundment.** A permittee shall install flow meters to measure the volume of wastewater discharged from all wastewater sources to the wastewater or combination wastewater/stormwater impoundment(s). The flow meter(s) shall be installed on the discharge line(s) from all wastewater sources to the wastewater impoundment(s). Meter installation and confirmation of meter installation shall be performed pursuant to this section. Alternatively, a dairy existing on the effective date of the dairy rule that does not utilize flow meters meeting the requirements of the preceding sentence may install a flow meter(s) on the water supply line(s) that serves all wastewater sources. Readings from flow meter(s) on water supply lines shall be used to estimate wastewater volumes discharged to wastewater or combination wastewater/stormwater impoundment(s) without adjustments or deductions to the meter readings.

**O. Flow meter inspection and maintenance.** A permittee shall visually inspect flow meters on a weekly basis for evidence of malfunction. If a visual inspection indicates a flow meter is not functioning to measure flow, the permittee shall initiate repair or replacement of the meter within seven days of discovery. The repaired or replaced flow meter shall be installed and calibrated pursuant to Subsection J of this section.

(1) For repaired meters, the permittee shall submit a report to the department with the next quarterly monitoring report following the repair that includes a description

of the malfunction, a statement verifying the repair, and a copy of the manufacturer's or repairer's certificate of calibration.

(2) For replacement meters, the permittee shall submit a report to the department with the next quarterly monitoring report following the replacement that includes plans for the device pursuant to Subsection C of 20.6.6.17 NMAC, a copy of the manufacturer's certificate of calibration, and a copy of the manufacturer's recommended maintenance schedule.

**P. Impoundment inspection and maintenance.** A permittee shall maintain impoundments to prevent conditions which could affect the structural integrity of the impoundments and associated liners. Such conditions include, but are not limited to, erosion damage; animal burrows or other animal damage; the presence of vegetation including aquatic plants, weeds, woody shrubs or trees growing within five feet of the top inside edge of a sub-grade impoundment, within five feet of the toe of the outside berm of an above-grade impoundment, or within the impoundment itself; evidence of seepage; evidence of berm subsidence; and the presence of large debris or large quantities of debris in the impoundments. A permittee shall inspect impoundments and surrounding berms on a monthly basis to ensure proper condition and control vegetation growing around the impoundments in a manner that is protective of the liners. Within 24 hours of discovery, a permittee shall report to the department any evidence of damage that threatens the structural integrity of a berm or liner of an impoundment or that may result in an unauthorized discharge. A permittee is not required to report routine berm maintenance to the department.

**Q. Pipe and fixture inspection and maintenance.** A permittee shall maintain pipes and fixtures used for the conveyance or distribution of wastewater or stormwater at the dairy facility to prevent the unauthorized release of wastewater or stormwater. The permittee shall visually inspect pipes and fixtures on a weekly basis for evidence of leaks or failure, and shall maintain written records at the dairy facility of all such inspections including repairs to the pipes and fixtures. Where pipes and fixtures cannot be visually inspected because they are buried, the permittee shall inspect the area directly surrounding the features for evidence of leaks or failure (e.g., saturated surface soil, surfacing wastewater, etc.). If there is evidence an unauthorized discharge has resulted from damaged or faulty pipe(s) or fixture(s), the permittee shall repair or replace the pipe(s) or fixture(s) within 72 hours of discovery. The permittee shall report the unauthorized discharge to the department pursuant to 20.6.2.1203 NMAC.

**R. Leachate management - manure solids separation system.** A permittee shall manage the solids captured by and removed from the manure solids separation system(s) and stored at the dairy facility before removal or land application to minimize generation and infiltration of leachate. The manure solids removed from the manure solids separation system and leachate generated from those solids shall be collected and contained on an impervious surface before disposal.

**S. Leachate management - manure and compost storage.** Unless land application of manure solids and composted materials is authorized by a discharge permit, a permittee shall remove manure solids and composted material from the dairy facility. A permittee shall minimize the generation and infiltration of leachate from stockpiled manure solids and composted material before removal from the dairy facility by diverting stormwater run-on and run-off, and preventing ponding within areas used for manure and compost stockpiling.

**T. Leachate management - silage storage.** A permittee shall minimize the generation and infiltration of leachate from silage storage areas and prevent ponding within silage storage areas. Leachate generated from the silage storage areas shall be collected and contained on an impervious surface or the stormwater impoundment before disposal.

**U. Scaled map of dairy facility.** An applicant or permittee shall submit a scaled map of the dairy facility to the department with an application for a new, renewed or modified discharge permit. The map shall be clear and legible, and drawn to a scale such that all necessary information is plainly shown and identified. The map shall show the scale in feet or metric measure, a graphical scale, a north arrow, and the effective date of the map. Multiple maps showing different portions of the facility may be provided using different scales as appropriate to represent the facility. Documentation identifying the means used to locate the mapped objects (i.e., global positioning system (GPS), land survey, digital map interpolation, etc.) and the relative accuracy of the data (i.e., within a specified distance expressed in feet or meters) shall be included with the map. Any object that cannot be directly shown due to its location inside of existing structures, or because it is buried without surface identification, shall be identified on the map in a schematic format and identified as such. The map shall include the following objects:

- (1) the overall dairy facility layout (barns, feed storage areas, pens, etc.);
- (2) the location of all sumps;
- (3) the location of all manure solids separators;
- (4) the location of all wastewater, stormwater, and combination impoundments;
- (5) the location of all mix tanks;
- (6) the location and acreage of each field within the land application area;
- (7) the location of all monitoring wells;
- (8) the location of all irrigation wells;

- (9) the location of all meters measuring wastewater discharges to and from impoundments;
- (10) the location of all meters measuring stormwater applied to the land application area;
- (11) the location of all fixed pumps for discharge and transfer of wastewater or stormwater;
- (12) the location of all wastewater and stormwater distribution pipelines;
- (13) the location of each ditch irrigation system, acequia, irrigation canal and drain;
- (14) the location of all backflow prevention methods or devices;
- (15) all wastewater sampling locations, with the exception of impoundments for disposal by evaporation; and
- (16) location of all septic tanks and leachfields.

**V. Scaled map of dairy facility - updates.** Following completion of additions or changes to the dairy facility layout which affects items required by Subsection U of this section, a permittee shall update and resubmit to the department the dairy facility map required by this section within 90 days of any additions or changes to the dairy facility layout which affects items required by Subsection U of this section.

**W. Animal mortality management.** All animal mortalities that may legally be disposed of (buried or composted) on a dairy facility shall be managed in accordance with the following requirements.

- (1) Only mortalities originating at the dairy facility may be disposed of at the dairy facility.
- (2) Mortalities shall not be stored or buried within 200 feet (measured as horizontal map distance) from private or public wells, or any watercourse.
- (3) Mortalities shall not be stored or buried within 100 feet (measured as horizontal map distance) from the 100-year flood zone of any watercourse, as defined by the most recent federal emergency management administration, FEMA, map.
- (4) Stormwater run-on to disposal areas shall be prevented by use of berms or other physical barriers.
- (5) Mortalities disposed of by burial shall be placed in a pit(s) where the vertical distance between the seasonal high ground water level and the floor of the pit(s)

is greater than 30 feet as documented through the most recent ground water data obtained from an on-site test boring(s) or monitoring well(s).

**X. Determination of ground water conditions.** An applicant or permittee for a dairy facility without a monitoring well from which depth-to-most-shallow ground water can be measured in accordance with the procedure required by Paragraph (1) of Subsection F of 20.6.6.23 NMAC shall evaluate ground water conditions by the following methods.

**(1)** The applicant or permittee shall obtain records from the office of the state engineer for all wells on file with the office of the state engineer located within one mile of the boundary of the dairy facility. The applicant or permittee shall submit to the department in tabular format the following information obtained from the office of the state engineer records: the well identification information; location of each well by latitude/longitude and township, range, and section; use of each well; depth to ground water in each well; and total depth of each well.

**(2)** If any well record information submitted pursuant to Paragraph (1) of this subsection indicates that depth to ground water is less than 100 feet, or in lieu of the requirement of Paragraph (1) of this subsection, the applicant or permittee shall conduct the following activities.

**(a)** The applicant or permittee shall drill one site-specific test boring to the depth of most-shallow ground water or a depth of 75 feet (measured from the ground surface), whichever is encountered first. The test boring shall be drilled in an area of low elevation within the production area outside of an existing or proposed impoundment.

**(b)** The applicant or permittee shall describe the lithology from the ground surface to the completed borehole depth and document the depth of most-shallow ground water or the absence of ground water within 75 feet of the ground surface. If ground water is encountered within 75 feet of the ground surface, the depth of most-shallow ground water shall be measured immediately upon ceasing drilling of the boring and again 24 hours following ceasing drilling. Lithology shall be characterized pursuant to American society of testing and materials (ASTM) test method D 2487 or D 2488 or characterized using standard visual geologic or soils descriptions that shall include lithology, grain size, color (Munsell soil color charts may be used), texture, sorting, percent gravel and degree of induration. The lithologic log and most-shallow ground water information shall be submitted to the department with the application for a new, renewed or modified discharge permit.

**(c)** Upon completion of ground water measurements, unless the borehole is completed as a monitoring or production well, the borehole shall be immediately abandoned by emplacing neat cement grout, bentonite based plugging material, or other sealing material approved by the state engineer in accordance with 19.27.4 NMAC in the borehole from the bottom of the borehole to the ground surface. A written record of borehole abandonment shall be submitted to the department with the

application for a new, renewed or modified discharge permit and shall describe the type of grout used and the depth interval sealed with grout. If a monitoring well is constructed in the borehole, the monitoring well shall be constructed in accordance with Subsection D of 20.6.6.23 NMAC, and a construction log including well record information specified by 19.27.4 NMAC shall be submitted to the department with the application for a new, renewed or modified discharge permit.

**Y. Domestic wastewater.** Domestic wastewater shall not be commingled with wastewater or stormwater generated at a dairy facility. Domestic wastewater shall be treated or disposed of pursuant to 20.7.3 NMAC or a discharge permit issued solely for the discharge of domestic wastewater, as appropriate.

[20.6.6.20 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015]

#### **20.6.6.21 ADDITIONAL OPERATIONAL REQUIREMENTS FOR DAIRY FACILITIES WITH A LAND APPLICATION AREA:**

**A. Impoundment storage capacity management - wastewater and wastewater/stormwater combination.** A permittee shall operate and maintain a wastewater or combination wastewater/stormwater impoundment(s) or a tank for the purpose of storing wastewater prior to discharging to the land application area. A permittee shall manage wastewater or combination wastewater/stormwater impoundments to maintain the capacity and two feet of freeboard required by Subsection D of 20.6.6.17 NMAC.

**B. Authorized land application of wastewater and stormwater.** A permittee shall apply wastewater and stormwater to fields within the land application area, up to the maximum acreage of irrigated cropland specifically authorized by a discharge permit. Wastewater and stormwater shall be distributed uniformly over the field at the planned rate consistent with the nutrient management plan (NMP); ponding shall be minimized.

**C. Land application area - fresh irrigation water required.** Wastewater shall only be applied to fields within the land application area receiving fresh irrigation water. Fresh irrigation water shall be used as the primary source to meet the water consumptive needs of the crop to support crop production and nutrient removal. Wastewater and stormwater are intended as sources of crop nutrients and shall not be used as a primary source to meet the water consumptive needs of the crop. An applicant may propose and the department may accept a proposal to apply wastewater to crops or grazing land without using fresh water for irrigation if the proposal demonstrates to the department's satisfaction that crops or plants to be grazed can be successfully maintained without fresh irrigation water.

**D. Wastewater/irrigation water blending.** Wastewater may be blended in-line (i.e., fresh irrigation water supply lines) when fresh water irrigation lines are equipped with backflow prevention that is installed, operated, inspected and maintained in accordance with Subsections L and M of this section. Wastewater may also be blended in a mix-

tank(s), applied alternately in the same irrigation line which has been physically disconnected from supply wells, or applied in a separate line, as authorized by a discharge permit. Wastewater may be blended with fresh water in a wastewater impoundment prior to land application so long as:

- (1) the permittee maintains an accurate written record of the volume of fresh water added to the wastewater and that volume is accounted for in determining the volumes of wastewater applied for purposes of the nutrient management plan;
- (2) fresh water is introduced in a safe manner to prevent scouring of the liner;
- (3) the impoundment capacity requirements of this rule are met.

**E. Land application area - existing infrastructure.** An applicant or permittee shall submit documentation for the existing infrastructure necessary to transfer, distribute and apply wastewater or stormwater to fields within the land application area that will receive wastewater or stormwater to the department with the application for a new, renewed or modified discharge permit. The documentation shall consist of a narrative statement and photographic documentation that confirm the existing land application distribution system including the type(s) and location(s) of the systems, and the method(s) of backflow prevention employed.

**F. Land application area - new infrastructure.** Before the initial application of wastewater or stormwater to any field within the land application area that has not previously received wastewater or stormwater, an applicant or permittee shall install a land application distribution system to distribute wastewater and stormwater to those fields. The land application distribution system shall be used to distribute and apply wastewater and stormwater to fields within the land application area to meet the requirements of this section. Before the initial application of wastewater or stormwater to any field within the land application area, an applicant or permittee shall submit documentation confirming installation of the land application distribution system. The documentation shall consist of a narrative statement and photographic documentation that confirms the new land application system including the type(s) and location(s) of the system(s), and the method(s) employed for backflow prevention.

**G. Flow metering - wastewater to land application area.** A permittee shall install flow meters to measure the volume of wastewater discharged from the wastewater or combination wastewater/stormwater impoundments to the land application area. The flow meter(s) shall be installed on the discharge line(s) from the wastewater impoundment(s) or tank to the distribution system for the land application area. Meter installation and confirmation of meter installation shall be performed pursuant to Subsections J, K and M of 20.6.6.20 NMAC.

**H. Flow metering - stormwater to land application area.** For a dairy facility transferring stormwater from a stormwater impoundment directly to a distribution system for the land application area, a permittee shall install flow meters to measure the volume

of stormwater applied directly to the land application area. The flow meter(s) shall be installed on the transfer line(s) from the stormwater impoundment(s) to the distribution system for the land application area. Meter installation and confirmation of meter installation shall be performed pursuant to Subsections J, K and M of 20.6.6.20 NMAC.

**I. Nutrient management plan.** Nutrients and other constituents required to be monitored under Subsection C of 20.6.6.25 NMAC and present in wastewater and stormwater shall be applied to irrigated cropland under cultivation in accordance with the requirements of a nutrient management plan (NMP) submitted to the department with the application for a new, renewed, or modified discharge permit. The NMP shall provide for development of a nutrient budget for nitrogen on an annual basis that accounts for the amount of nitrogen from all combined nitrogen sources, including but not limited to wastewater, stormwater, manure solids, composted material, irrigation water and other additional fertilizer(s), along with residual soil nitrogen and nitrogen credits from leguminous crops and that considers estimated and measured nitrogen removal by harvested crops and other losses, considering the monitoring data required to be collected under Section 20.6.6.25 NMAC. The NMP shall describe how planned total nitrogen application rates shall be determined each year based upon realistic yield goals for the planned crops. The information used to set the crop yield goals shall be identified in the NMP. The NMP shall address how nitrogen application rates will be adjusted based upon the results of soil tests required by Subsections K and L of 20.6.6.25 NMAC, consistent with applicable Natural Resource Conservation Service guidance for normal, high and excessive soil nitrogen levels. The NMP shall specify the maximum application rates for wastewater applied through irrigation so as not to exceed the soil intake/infiltration rate. The application of nitrogen to each field within the land application area shall be in accordance with the NMP, and any departures from the NMP due to growing conditions or other factors shall be addressed in the update to the NMP for the following year. Plant material and soil sampling protocols in the NMP shall be, at a minimum, equivalent to the requirements of Subsections I, K and L of 20.6.6.25 NMAC. The NMP shall identify the method(s) of crop removal to be employed. The NMP shall be developed for the term of the discharge permit and updated annually. The NMP shall be developed, signed and dated annually by an individual certified by the American society of agronomy as a certified crop advisor (CCA) or certified professional agronomist (CPAg) or by an individual certified by the New Mexico office of the U.S. department of agriculture natural resources conservation service as a nutrient management planner. The permittee may elect to submit an NMP meeting the requirements of this subsection that is incorporated into a broader plan, such as a comprehensive nutrient management plan or a nutrient management plan prepared to meet the requirements of a permit issued by EPA, in which case only the portions of such plan required by this subsection and Section 20.6.6.25 NMAC shall be considered for purposes of the dairy rule. For a renewed permit where the NMP was not submitted in an application, the permittee shall submit the initial NMP by May 1 of the first year the permit is in effect, and the permittee shall submit annual updates to the NMP to the department in the monitoring reports due by May 1 of each year.

**J. Crop removal - mechanical or grazing.** A permittee shall remove crops from fields within the land application area by mechanical harvest or grazing. An NMP which proposes grazing for crop removal shall also include, at a minimum, estimated values for the following elements.

- (1) The length of the grazing season.
- (2) The size and number of animals to be grazed.
- (3) The estimated weight gain of animals to be grazed, or estimated intake for maintenance or milk production.
- (4) The calculations to determine stocking rates, total acreage needed and residency period.
- (5) The plant species used to establish pastures and the pasture renovation practices to be employed.
- (6) The yield of plant species grown in each pasture and the forage supplied on a monthly basis.
- (7) The grazing management system employed and a map indicating key features of the system including water tanks, fencing, and pasture layout with numbering system and acreage of each pasture.

**K. Irrigation ditches - inspection and maintenance.** Irrigation ditches used to land apply wastewater or stormwater at a dairy facility shall be concrete-lined and shall be maintained in good repair. The permittee shall visually inspect the ditch system on a monthly basis to ensure proper maintenance. Any damage to a lined ditch shall be repaired within a reasonable time period. A log shall be kept on-site documenting the inspection findings and repairs made, and the log shall be made available to the department upon request.

**L. Backflow prevention.** A permittee shall protect all water wells used within the land application distribution system from contamination by wastewater or stormwater backflow by installing and maintaining backflow prevention methods or devices. Backflow prevention shall be achieved by a total disconnect (physical air gap separation of at least two times the pipe diameter or complete piping separation when wastewater is being pumped) or by the installation of, at a minimum an air/vacuum relief valve and a low pressure drain valve located immediately upstream of a check valve between the discharge head of the well pump and wastewater and stormwater delivery systems.

- (1) A permittee for a new dairy facility shall install backflow prevention methods or devices and submit written confirmation of installation to the department before discharging at the dairy facility.

**(2)** A permittee for an existing dairy facility that lacks backflow protection as required by this subsection shall install backflow prevention methods or devices within 90 days of the effective date of the discharge permit. The permittee shall submit written confirmation of installation to the department within 180 days of the effective date of the discharge permit.

**M. Backflow prevention by check valve backflow prevention device - inspection and maintenance.** A permittee shall inspect each check valve device at least monthly when the well is operating. A malfunctioning check valve device shall be repaired or replaced within 30 days of discovery, and use of all wastewater supply lines associated with the check valve device shall cease until repair or replacement has been completed. Copies of the inspection and maintenance records for each check valve device associated with the backflow prevention program for the previous year shall be submitted to the department annually in the monitoring reports due by May 1.

**N. Supply well protection.** With the exception of monitoring wells, all wells located within the land application area of a dairy facility shall have a surface pad constructed in accordance with the recommendations of Subsection G of 19.27.4.29 NMAC and a permanent well cap or cover pursuant to Subsection I of 19.27.4.29 NMAC.

[20.6.6.21 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015; A, 06/30/2015]

**20.6.6.22 ADDITIONAL OPERATIONAL REQUIREMENTS FOR DAIRY FACILITIES DISCHARGING TO AN EVAPORATIVE WASTEWATER DISPOSAL SYSTEM:**

**Impoundment evaporative capacity - wastewater and wastewater/stormwater combination.** A wastewater or combination wastewater/stormwater impoundment shall be operated and maintained for the purpose of disposing of wastewater or both wastewater and stormwater by evaporation. A permittee shall manage wastewater or combination wastewater/stormwater impoundments to maintain the capacity and two feet of freeboard as required by Subsection D of 20.6.6.17 NMAC.

[20.6.6.22 NMAC - N, 01/31/2011]

**20.6.6.23 GROUND WATER MONITORING REQUIREMENTS FOR ALL DAIRY FACILITIES:**

**A. Monitoring wells - required locations.** A permittee shall install a sufficient number of monitoring wells at appropriate depths and locations to monitor ground water quality upgradient of the dairy facility and hydrologically downgradient of each source of ground water contamination: wastewater, stormwater, and combination wastewater/stormwater impoundments, and fields within the land application area. Monitoring wells shall be located pursuant to this section in a location that is protective of the well and to detect an exceedance(s) or a trend towards exceedance(s) of the

ground water standards at the earliest possible occurrence, so that source control or abatement may be implemented.

**(1) Ground water monitoring - installation schedule.**

**(a)** For a new dairy facility, monitoring wells shall be installed before discharging at the dairy facility.

**(b)** For an existing dairy facility, any new monitoring wells shall be installed within 120 days of the effective date of the discharge permit, provided that the department may grant a one-time extension of 60 days for good cause shown.

**(2) Use of existing monitoring wells.** A monitoring well in existence before the effective date of the dairy rule, properly constructed in accordance with department guidelines applicable when the well was constructed, and operating as approved in a previous discharge permit, shall be approved for ground water monitoring at a dairy facility.

**(3) Exceptions to monitoring well requirements.** When appropriate, based on the documented ground water flow direction, one monitoring well may be authorized by a discharge permit to monitor ground water hydrologically downgradient of more than one contamination source under any of the following circumstances.

**(a)** Contiguous impoundments are oriented along a line that is parallel or approximately parallel to the direction of ground water flow beneath the impoundments.

**(b)** Adjacent impoundments are oriented along a line that is parallel or approximately parallel to the direction of ground water flow beneath the impoundments and separated by a distance of 50 feet or less as measured from the top inside edge of one impoundment to the nearest top inside edge of the adjacent impoundment.

**B. Monitoring wells - location proposals.** An applicant or permittee shall identify monitoring well locations in the application for a new, renewed or modified discharge permit pursuant to Subsection A of this section, and shall include the following information.

**(1)** The location of each monitoring well relative to the contamination source it is intended to monitor shall be indicated on the scaled map required by Subsection U of 20.6.6.20 NMAC.

**(2)** A written description of the specific location for each monitoring well including the horizontal map distance (in feet) and compass bearing of each monitoring well from the top inside edge of the impoundment berm or edge of the field it is intended to monitor.

(3) The ground water flow direction beneath the dairy facility used to determine the monitoring well location(s), including supporting documentation used to determine ground water flow direction.

**C. Monitoring wells - identification tags.** A permittee shall identify all monitoring wells required by the dairy rule with a well identification tag. For above-grade wells, the tag shall be affixed to the exterior of the steel well shroud. For wells finished below-grade, the tag shall be placed inside the well vault next to the well riser. The tag shall be printed adhesive or metal:

(1) if metal, made of aluminum;

(2) at least two inches by four inches in size;

(3) for monitoring wells installed after the effective date of the dairy rule, the tag shall include:

(a) the discharge permit number;

(b) the well identification nomenclature specified in a discharge permit;

(c) the name and New Mexico well driller license number of the well driller who drilled the well; and

(d) the month and year of well installation; and

(4) for monitoring wells installed before the effective date of the dairy rule and satisfying the requirements of Paragraph (6) of Subsection A of this section, the tag shall include:

(a) the discharge permit number;

(b) the well identification nomenclature specified in a discharge permit; and

(c) if available, the name and New Mexico well driller license number of the well driller who drilled the well, and the month and year of well installation.

**D. Monitoring wells - construction and completion – new monitoring wells.** A permittee shall construct monitoring wells pursuant to 19.27.4 NMAC and the following requirements.

(1) All well drilling activities shall be performed by an individual with a current and valid well driller license issued by the state of New Mexico pursuant to 19.27.4 NMAC.

**(2)** The well driller shall employ drilling methods that allow for accurate determinations of water table locations. All drill bits, drill rods, and down-hole tools shall be thoroughly cleaned immediately before drilling. The borehole diameter shall allow a minimum annular space of two inches between the outer circumference of the well materials (casing or screen) and the borehole wall to allow for the emplacement of sand and sealant.

**(3)** After completion, the well shall be allowed to stabilize for a minimum of 12 hours before development is initiated.

**(4)** The well shall be developed so that formation water flows freely through the screen and is not turbid, and all sediment and drilling disturbances are removed from the well.

**(5)** Schedule 40 (or heavier) polyvinyl chloride (PVC) pipe, stainless steel pipe, or carbon steel pipe shall be used as casing. The casing shall have an inside diameter not less than two inches. The casing material selected for use shall be compatible with the anticipated chemistry of the ground water and appropriate for the contaminants of interest at the dairy facility. The casing material and thickness selected for use shall have sufficient collapse strength to withstand the pressure exerted by grouts used as annular seals and thermal properties sufficient to withstand the heat generated by the hydration of cement-based grouts.

**(6)** Casing sections shall be joined using welded, threaded, or mechanically locking joints; the method selected shall provide sufficient joint strength for the specific well installation.

**(7)** The casing shall extend from the top of the screen to at least one foot above ground surface. The top of the casing shall be fitted with a removable cap, and the exposed casing shall be protected by a locking steel well shroud. The shroud shall be large enough in diameter to allow easy access for removal of the cap. Alternatively, monitoring wells may be completed below grade. In this case, the casing shall extend from the top of the screen to six to twelve inches below the ground surface; the monitoring wells shall be sealed with locking, expandable well plugs; a flush-mount, watertight well vault that is rated to withstand traffic loads shall be emplaced around the wellhead; and the cover shall be secured with at least one bolt. The vault cover shall indicate that the wellhead of a monitoring well is contained within the vault.

**(8)** A 20-foot section (maximum) of continuous well screen shall be installed across the water table. Screen shall consist of continuous-slot, machine slotted, or other manufactured schedule 40 (or heavier) PVC or stainless steel. Screens created by cutting slots into solid casing with saws or other tools shall not be used. The screen material selected for use shall be compatible with the anticipated chemistry of the ground water and appropriate for the contaminants of interest at the dairy facility. The screen slot size shall be selected to retain 90 percent of the filter pack.

**(a)** Requests for a 30-foot section of continuous well screen may be authorized by a discharge permit when the most recent two years of ground water level data demonstrates a declining water level trend of at least two feet per year. Data supporting ground water levels shall be specific to monitoring wells located at the dairy facility and obtained with a water level measuring device as required by Subsection F of this section.

**(b)** Requests for a 30-foot section of continuous well screen shall be submitted to the department in the application for a new, renewed or modified discharge permit.

**(9)** Screen sections shall be joined using welded, threaded, or mechanically locking joints. The method selected shall provide sufficient joint strength for the specific well installation and shall not introduce constituents that may reasonably be considered contaminants of interest at the dairy facility. A cap shall be attached to the bottom of the well screen. Sumps (i.e., casing attached to the bottom of a well screen) shall not be installed.

**(10)** The bottom of the screen shall be installed no more than 15 feet below the water table, or no more than 25 feet below the water table when additional screen length is authorized by a discharge permit. The top of the well screen shall be positioned not less than five feet above the water table. The well screen slots shall be appropriately sized for the formation materials.

**(11)** Casing and well screen shall be centered in the borehole by installing centralizers near the top and bottom of the well screen.

**(12)** A filter pack shall be installed around the screen by filling the annular space from the bottom of the screen to two feet above the top of the screen with clean silica sand. The filter pack shall be properly sized to exclude the entrance of fine sand, silt, and clay from the formation into the monitoring well. For wells deeper than 30 feet, the sand shall be emplaced by a tremie pipe. The well shall be surged or bailed to settle the filter pack and additional sand added, if necessary, before the bentonite seal is emplaced.

**(13)** A bentonite seal shall be constructed immediately above the filter pack by emplacing bentonite chips or pellets (three-eighths inch in size or smaller) in a manner that prevents bridging of the chips/pellets in the annular space. The bentonite seal shall be three feet in thickness and hydrated with clean water. Adequate time shall be allowed for expansion of the bentonite seal before installation of the annular space seal.

**(14)** The annular space above the bentonite seal shall be sealed with cement grout or bentonite-based sealing material acceptable to the state engineer in accordance with 19.27.4 NMAC. A tremie pipe shall be used to emplace the annular space seal (flow by gravity or pumping through the pipe) if the total depth of the well is greater than 20 feet from the land surface. Annular space seals shall extend from the

top of the bentonite seal to the ground surface (for wells completed above grade) or to a level three to six inches below the top of casing (for wells completed below grade).

**(15)** A concrete pad (two-foot minimum radius, four-inch minimum thickness) shall be poured around the shroud or well vault and wellhead. The concrete and surrounding soil shall be sloped to direct rainfall and runoff away from the wellhead.

**E. Monitoring wells - office of the state engineer requirements.** Should a well permit for a monitoring well be required by the office of the state engineer, the permittee shall obtain the permit prior to well drilling.

**F. Ground water sample collection procedure.** A permittee shall perform all ground water sample collection, preservation, transport and analysis according to the following procedure.

**(1)** Depth-to-most-shallow ground water shall be measured from the top of well casing at point of survey to the nearest 0.01 feet using an electronic water level indicator consisting of dual conductor wire encased in a cable or tape graduated to 0.01 feet, a probe attached to the end of the conductor wire, and a visual or audible indicator.

**(2)** Monitoring wells shall be purged before sample collection by one of the following methods.

**(a)** Three well volumes of water shall be purged from the well before sample collection.

**(b)** The monitoring well shall be purged until measurements of indicator parameters (pH, specific conductance, and temperature) have stabilized. Indicator parameters shall be measured periodically during purging. A parameter stabilization log shall be kept during each sampling event for each monitoring well and include: date; water quality indicator parameter measurements; time for all measurements; and the purge volume extracted. Indicator parameters are considered stable when three consecutive readings made no more than five minutes apart fall within the following ranges: temperature plus or minus 10 percent; pH plus or minus 0.5 units; specific conductance plus or minus 10 percent.

**(3)** Following purging and immediately before sample collection the following field parameters shall be measured and recorded: pH, specific conductance, and temperature.

**(4)** In-line flow-through cells shall be disconnected or by-passed during sample collection, if used during purging.

**(5)** Samples from the well shall be obtained, prepared, preserved and transported to an analytical laboratory for analysis pursuant to the methods authorized by Subsection B of 20.6.6.24 NMAC.

**G. Ground water sampling and reporting - routine.** A permittee shall collect ground water samples quarterly from all monitoring wells required by Subsection A of this section and Subsection C of 20.6.6.27 NMAC. Samples shall be analyzed for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, sulfate and total dissolved solids pursuant to Subsection B of 20.6.6.24 NMAC. A permittee shall submit to the department in the quarterly monitoring reports the depth-to-most-shallow ground water, the field parameter measurements, the parameter stabilization log (if applicable), the analytical results (including the laboratory quality assurance and quality control summary report) and a map showing the location and number of each well in relation to the contamination source it is intended to monitor.

**H. Ground water sampling - new monitoring wells.** A permittee shall collect ground water samples from all newly installed monitoring wells. Samples shall be analyzed for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, sulfate and total dissolved solids pursuant to Subsection B of 20.6.6.24 NMAC.

(1) Samples shall be collected from the newly installed monitoring wells at new dairy facilities before placing livestock at the dairy facility.

(2) Samples shall be collected from the newly installed monitoring wells at existing dairy facilities within 150 days of the effective date of the discharge permit.

(3) For dairy facilities installing a new monitoring well during the term of a discharge permit, during construction of a new impoundment, or as a result of required corrective actions, samples shall be collected from the newly installed monitoring wells within 30 days of well completion, provided the department may grant an extension for good cause shown.

**I. Monitoring well survey and ground water flow determination.** A permittee shall survey monitoring wells to a U.S. geological survey (USGS) benchmark and State Plane coordinates. Survey data shall include northing, easting and elevation to the nearest hundredth of a foot or shall be in accordance with the "Minimum Standards for Surveying in New Mexico", 12.8.2 NMAC. A survey elevation shall be established at the top-of-casing, with a permanent marking indicating the point of survey. The survey shall be completed and bear the seal and signature of a licensed New Mexico professional surveyor. Depth-to-most-shallow ground water shall be measured from the point of survey to the nearest hundredth of a foot in all surveyed wells pursuant to Subsection F of this section, and the data shall be used to develop a map showing the location of all monitoring wells and the direction and gradient of ground water flow at the dairy facility.

(1) For a new dairy facility, monitoring wells shall be surveyed before placing livestock at the dairy facility.

(2) For an existing dairy facility, monitoring wells not previously surveyed in a manner consistent with the requirements of this subsection and Subsection B of

20.6.6.17 NMAC shall be surveyed within 150 days of the effective date of the discharge permit.

**J. Monitoring well completion report.** A permittee shall submit to the department a monitoring well completion report pertaining to all monitoring wells. For a new dairy facility, the report shall be submitted before placing livestock at the dairy facility. For an existing dairy facility, the report shall be submitted within 180 days after the effective date of the discharge permit or within 60 days of completion as specified in a discharge permit. The report shall contain the following information.

(1) Construction and lithologic logs for the new monitoring wells including well record information specified by 19.27.4 NMAC.

(2) Depth-to-most-shallow ground water measured in each new and existing monitoring well.

(3) Survey data and a survey map showing the locations of each new and existing monitoring well and a ground water elevation contour map developed pursuant to Subsection L of this section.

(4) Analytical results of ground water samples collected from the new monitoring wells, including laboratory quality assurance and quality control summary reports, and field parameter measurements.

**K. Monitoring well survey report - existing monitoring wells.** For a dairy facility required to survey existing monitoring wells pursuant to this section a permittee shall submit the monitoring well survey report to the department within 180 days of the effective date of the discharge permit, provided the department may grant an extension for good cause shown. The report shall contain the depth-to-most-shallow ground water measured in each monitoring well, a surveyed map showing the locations of the monitoring wells, and the direction and gradient of ground water flow at the dairy facility.

**L. Ground water elevation contour maps.** A permittee shall develop ground water elevation contour maps on a quarterly basis using data associated with all monitoring wells used for ground water monitoring at the dairy facility. Top of casing elevation data, obtained from monitoring well surveys completed pursuant to this section and quarterly depth-to-most-shallow ground water measurements in monitoring wells, shall be used to calculate ground water elevations at monitoring well locations. Ground water elevations between monitoring well locations shall be estimated using common interpolation methods. Ground water elevations shall be expressed in feet. A contour interval appropriate to the data shall be used, but in no case shall the interval be greater than two feet. Ground water elevation contour maps shall depict the ground water flow direction, using arrows, based on the orientation of the ground water elevation contours, and the location and identification of each monitoring well, impoundment, and field within the land application area. A permittee shall submit ground water elevation contour maps to the department in the quarterly monitoring reports.

**M. Proposed location of monitoring wells - dispute resolution.** If the department provides a notice of technical deficiency pursuant to Subsection G of 20.6.6.10 NMAC due to a disagreement with the number or location of monitoring wells proposed in the application, or if the department notifies a permittee to replace a monitoring well pursuant to Subsection C of 20.6.6.27 NMAC, the applicant or permittee may notify the secretary by certified mail, sent within 30 days after the date of postal notice of the department's notice, that the applicant or permittee invokes dispute resolution under this subsection. Upon such notice, the department, as represented by the secretary, deputy secretary, or division director and the applicant or permittee shall meet in person within 30 days and shall attempt in good faith to resolve the dispute.

[20.6.6.23 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015]

#### **20.6.6.24 MONITORING REQUIREMENTS FOR ALL DAIRY FACILITIES:**

**A. Monitoring reports - schedule of submittal.** A permittee shall submit monitoring reports to the department on a quarterly schedule and shall contain monitoring data and information collected pursuant to the dairy rule. Quarterly monitoring reports shall be submitted according to the following schedule:

- (1) January 1 through March 31 (first quarter) - report due by May 1;
  - (2) April 1 through June 30 (second quarter) - report due by August 1;
  - (3) July 1 through September 30 (third quarter) - report due by November 1;
- and
- (4) October 1 through December 31 (fourth quarter) - report due by February 1.

**B. Sampling and analysis methods.** A permittee shall sample and analyze water pursuant to Subsection B of 20.6.2.3107 NMAC. Analysis of water for total sulfur shall be accomplished pursuant to environmental protection agency method 200.7 or equivalent. Sampling and analysis of soil shall be conducted in accordance with "*methods of soil analysis: part 1. physical and mineralogical methods*," 1986 edition; "*methods of soil analysis: part 2. microbiological and biochemical properties*," 1994 edition; and "*methods of soil analysis: part 3. chemical methods*," 1996 edition, published by the American society of agronomy.

**C. Wastewater volume measurement and reporting.** A permittee shall measure the volume of all wastewater discharged to the wastewater or combination wastewater/stormwater impoundment(s) using flow meters. Meter readings shall be recorded at intervals not to exceed monthly. The average daily discharge volume for each recording interval shall be calculated by dividing the difference between the meter readings by the number of days between meter readings. The permittee shall provide the meter readings including the date, time and units of each measurement, and

calculations for the average daily volumes of wastewater discharged to the impoundments, reported in gallons per day, in the quarterly monitoring reports submitted to the department.

**D. Stormwater sampling and reporting.** A permittee shall collect stormwater samples on a quarterly basis from each stormwater impoundment unless the stormwater will be transferred to a wastewater impoundment(s) before being sent to the land application area. The samples shall be analyzed for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, total sulfur and total dissolved solids pursuant to this section. The permittee shall include analytical results, or a statement that stormwater runoff did not occur, in the quarterly monitoring reports submitted to the department.

[20.6.6.24 NMAC - N, 01/31/2011; A, 06/16/2015]

#### **20.6.6.25 ADDITIONAL MONITORING REQUIREMENTS FOR DAIRY FACILITIES WITH A LAND APPLICATION AREA:**

**A. Volume of wastewater and wastewater/stormwater land applied - measurement and reporting.** A permittee shall measure all wastewater discharges from a wastewater or combination wastewater/stormwater impoundment to each field within the land application area using flow meters. A permittee shall maintain a log recording the date and location of each discharge, flow meter readings immediately prior to and after each discharge, and the calculated total volume of each discharge reported in gallons and acre-feet. A permittee shall submit a copy of the log entries including units of measurement to the department in the quarterly monitoring reports.

**B. Volume of stormwater land applied - measurement and reporting.** A permittee shall measure all stormwater applications from a stormwater impoundment to each field within the land application area using flow meters. A permittee shall maintain a log recording the date and location of each application, flow meter readings immediately prior to and after each application, and the calculated total volume of each application reported in gallons and acre-feet. A permittee shall submit a copy of the log entries including units of measurement to the department in the quarterly monitoring reports.

**C. Wastewater to be land applied - sampling and reporting.** A permittee shall collect and analyze wastewater samples on an annual basis for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, total sulfur and total dissolved solids pursuant to Subsection B of 20.6.6.24 NMAC. Representative samples shall be collected from the wastewater impoundments unless an alternative method is approved for good cause, including safety. The representative samples shall consist of eight samples taken from eight different locations evenly distributed throughout the impoundment or using an alternative method approved by the department for good cause. A permittee shall submit the analytical results to the department in the quarterly monitoring reports.

**D. Manure solids - nitrogen content.** The nitrogen content of the manure solids applied to each field within the land application area shall be estimated at 25 pounds of nitrogen per ton. Should a permittee choose to use actual nitrogen content values of on-site manure solids, the permittee shall collect a composite sample on an annual basis. The composite sample shall consist of a minimum of 30 sub-samples collected on the same day and thoroughly mixed. Manure samples shall be analyzed for total Kjeldahl nitrogen and moisture content. The permittee shall submit the analytical results to the department in the quarterly monitoring reports.

**E. Irrigation water - sampling, volume applied, and reporting.** A permittee shall monitor irrigation wells used to supply fresh water to the fields within the land application area to account for additional potential nitrogen supplied to the land application area in the following manner.

(1) Each irrigation well shall be identified in association with the field(s) to which it supplies fresh water.

(2) An annual sample of irrigation water supplied from each well or a group of physically connected wells shall be collected and analyzed for nitrate as nitrogen and total Kjeldahl nitrogen, pursuant to Subsection B of 20.6.6.24 NMAC. If the results are consistent for the first five years of annual sampling, sampling frequency may be reduced to once every other year.

(3) The annual volume of irrigation water applied to each field within the land application area shall be estimated for each well.

(4) The permittee shall submit the analytical results and the estimated annual volume of irrigation water applied from each well to each field within the land application area to the department in the monitoring reports due by May 1.

**F. Fertilizer application reporting.** A permittee shall maintain a log of all additional fertilizer(s) applied to each field within the land application area. The log shall contain the date of fertilizer application, the type and form of fertilizer, fertilizer analysis, the amount of fertilizer applied in pounds per acre to each field, and the amount of nutrients applied in pounds per acre to each field. The permittee shall submit a copy of the log entries to the department in the quarterly monitoring reports.

**G. Land application data sheets.** A permittee shall complete land application data sheets for each field within the land application area to document the crop grown and amount of total nitrogen applied from wastewater, stormwater, manure solids, composted material, irrigation water and other additional fertilizer(s), and the residual soil nitrogen and nitrogen credits from leguminous crops. The permittee shall submit a land application data sheet or a statement that land application did not occur to the department in the quarterly monitoring reports. The land application data sheet shall include the following elements.

(1) The total monthly volume, reported in acre-feet, of wastewater and stormwater applied to each field within the land application area. Total monthly volumes shall be obtained from flow meter readings of each application pursuant to Subsections A and B of this section.

(2) The total nitrogen concentration of wastewater and stormwater obtained from the corresponding quarterly or annual analyses collected pursuant to Subsection C of this section and Subsection D of 20.6.6.24 NMAC.

(3) The total monthly volume, reported in tons per acre, of manure solids applied to each field within the land application area.

(4) The total nitrogen content of the manure solids estimated at 25 pounds of nitrogen per ton or determined from analysis of manure solids samples collected pursuant to Subsection D of this section.

(5) The total nitrogen concentration within the irrigation water and the amount of irrigation water applied pursuant to Subsection E of this section.

(6) The amount of nitrogen reported in pounds per acre from additional fertilizer(s) applied pursuant to Subsection F of this section.

(7) The amount of residual soil nitrogen and nitrogen from leguminous crops credited to each field within the land application area pursuant to Subsections K and L of this section.

**H. Crop yield documentation.** A permittee shall submit crop yield documentation and plant and harvest dates of each crop grown to the department in the quarterly monitoring reports. Crop yield documentation shall consist of copies of scale-weight tickets or harvest summaries based on scale-weights.

**I. Nitrogen concentration of harvested crop.** A permittee shall determine the total nitrogen concentration of each harvested crop. A composite sample consisting of 15 sub-samples of plant material shall be taken from each field during the final harvest of each crop grown per year. Samples shall be analyzed for percent total nitrogen and percent dry matter. A permittee shall submit the analytical reports to the department in the quarterly monitoring reports.

**J. Nitrogen removal summary of harvested crop.** A permittee shall develop a nitrogen removal summary to determine total nitrogen removed by each crop grown on each field within the land application area. Nitrogen removal shall be determined using crop yield and total nitrogen concentration information collected pursuant to Subsections H and I of this section. A permittee shall submit the summary to the department in the quarterly monitoring reports.

**K. Soil sampling - initial event in a discharge permit term.** A permittee shall collect composite soil samples from each field within the land application area for the first soil sampling event during the first year following the effective date of the discharge permit. Composite soil samples shall be collected for all fields regardless of whether the field is cropped, remains fallow, or has received wastewater or stormwater. One surface composite soil sample (first-foot) and two sub-surface composite soil samples (second-foot and third-foot) shall be collected from each field. Composite soil samples shall be collected and analyzed according to the following procedure.

(1) Each surface and sub-surface soil sample shall consist of a single composite of 15 soil cores collected randomly throughout each field. Should a field consist of different soil textures (i.e., sandy and silty clay), a composite soil sample shall be collected from each soil texture within each field.

(2) Surface soil samples (first-foot) shall be collected from a depth of 0 to 12 inches.

(3) Each second-foot sub-surface soil sample shall be collected from a depth of 12 to 24 inches.

(4) Each third-foot sub-surface soil sample shall be collected from a depth of 24 to 36 inches.

(5) Each surface and sub-surface composite sample shall be analyzed for pH, electrical conductivity, total Kjeldahl nitrogen, nitrate as nitrogen, chloride, organic matter, potassium, phosphorus, sodium, calcium, magnesium, sulfate, soil texture, and sodium adsorption ratio.

(6) pH, electrical conductivity, sodium, calcium, magnesium, and sulfate shall be analyzed using a saturated paste extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Phosphorus shall be analyzed using the Olsen sodium bicarbonate method in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Nitrate as nitrogen shall be analyzed by a 2 molar KCl extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Total Kjeldahl nitrogen, chloride, organic matter, potassium, soil texture, and sodium adsorption ratio shall be analyzed in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC.

(7) The permittee shall submit the analytical results and a map showing the fields and the sampling locations within each field to the department in the monitoring report due by May 1 following the effective date of the discharge permit.

**L. Soil sampling - routine.** Beginning in the year following the initial soil sampling required by this section, the permittee shall collect annual soil samples from each field within the land application area that has received or is actively receiving wastewater or

stormwater. For those fields that have never before received wastewater, the permittee shall collect soil samples immediately before initial wastewater application and annually thereafter. Once a field has received wastewater it shall be sampled annually regardless of whether the field is cropped, remains fallow, or has recently received wastewater or stormwater. One surface composite soil sample (first-foot) and two sub-surface composite soil samples (second-foot and third-foot) shall be collected from each field. Composite soil samples shall be collected and analyzed according to the following procedure.

**(1)** Each surface and sub-surface soil sample shall consist of a single composite of 15 soil cores collected randomly throughout each field. Should a field consist of different soil textures (i.e., sandy and silty clay), a composite soil sample shall be collected from each soil texture within each field.

**(2)** Surface soil samples (first-foot) shall be collected from a depth of 0 to 12 inches.

**(3)** Each second-foot sub-surface soil sample shall be collected from a depth of 12 to 24 inches.

**(4)** Each third-foot sub-surface soil sample shall be collected from a depth of 24 to 36 inches.

**(5)** Surface soil samples shall be analyzed for pH, electrical conductivity, nitrate as nitrogen, chloride, organic matter, potassium, phosphorus, sodium, calcium, magnesium, and sodium adsorption ratio.

**(6)** Sub-surface soil samples shall be analyzed for electrical conductivity, nitrate as nitrogen, and chloride.

**(7)** pH, electrical conductivity, sodium, calcium, and magnesium shall be analyzed using a saturated paste extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Phosphorus shall be analyzed using the Olsen sodium bicarbonate method in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Nitrate as nitrogen shall be analyzed by a 2 molar KCl extract in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC. Chloride, organic matter, potassium, and sodium adsorption ratio shall be analyzed in accordance with the analytical methodology required by Subsection B of 20.6.6.24 NMAC.

**(8)** The permittee shall submit the analytical results and a map showing the fields and the sampling locations within each field to the department in the monitoring report due by May 1.

[20.6.6.25 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015]

**20.6.6.26 ADDITIONAL MONITORING REQUIREMENTS FOR DAIRY FACILITIES DISCHARGING TO AN EVAPORATIVE WASTEWATER DISPOSAL SYSTEM:**

**Wastewater to be evaporated - sampling and reporting.** A permittee shall collect a composite wastewater sample on a semi-annual (once every six months) basis from each wastewater or combination wastewater/stormwater impoundment used for disposal by evaporation. Samples shall be analyzed for nitrate as nitrogen, total Kjeldahl nitrogen, chloride, total sulfur and total dissolved solids pursuant to Subsection B of 20.6.6.24 NMAC. A permittee shall submit the analytical results to the department in the monitoring reports due by May 1 and November 1.

[20.6.6.26 NMAC - N, 01/31/2011; A, 06/16/2015]

**20.6.6.27 CONTINGENCY REQUIREMENTS FOR ALL DAIRY FACILITIES:**

**A. Exceedance of ground water standards - all monitoring wells.** If the constituent concentration in a ground water sample and in the next ground water sample collected from the same monitoring well intended to monitor a contamination source exceeds one or more of the ground water standards of 20.6.2.3103 NMAC and exceeds the concentration of such constituent(s) in a ground water sample collected from the upgradient monitoring well, or if the extent or magnitude of existing ground water contamination is significantly increasing, then the permittee shall take the following actions. For the purpose of this subsection, ground water samples obtained from the source monitoring well and the upgradient monitoring well that are used for comparison of constituent concentrations shall be collected within two days of each other, provided that if there is sufficient ground water quality data to demonstrate that samples from different periods should be compared, the department may allow such a comparison. If ground water quality data for the upgradient monitoring well are not submitted by the permittee, the ground water standards of 20.6.2.3103 NMAC shall be the applicable standard used to determine if the requirements of this subsection must be met. The contingency requirements of Paragraphs (1) and (2) of this subsection shall not apply if corrective action previously has been taken to address ground water contamination and constituent concentrations have stabilized or improved, but this exception shall no longer apply if a constituent concentration increases for two consecutive sampling events and exceeds its standard or the upgradient concentration. Once enacted the contingency requirements of this subsection apply until the permittee has fulfilled the requirements of this subsection and ground water monitoring pursuant to 20.6.6.23 NMAC confirms for a minimum of eight consecutive ground water sampling events that the standards of 20.6.2.3103 NMAC are not exceeded and the total nitrogen concentration in ground water is less than or equal to 10 milligrams per liter or until the department requires an abatement plan pursuant to Paragraph (3) of this subsection.

**(1)** A corrective action plan shall be submitted within 120 days of the subsequent sample analysis date unless a petition for variance is filed in accordance with Paragraph (2) of this subsection. The corrective action plan shall describe any repairs made to address the cause of the exceedance, and propose source control

measures and a schedule for implementation. The implementation schedule shall include a schedule of all proposed corrective action activities and the date that corrective action will be completed. The department shall approve or disapprove the corrective action plan within 60 days of receipt. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised corrective action plan to the department within 60 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the corrective action plan within 60 days of receipt. If the department does not approve the revised corrective action plan, or if the permittee fails to submit a revised plan as required by this subsection, the department may pursue enforcement actions authorized by Section 74-6-10 NMSA 1978.

(2) The permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded. If such an investigation indicates that the source of the contamination is not the source intended to be monitored by the well, the permittee may petition within 120 days of the subsequent sample analysis date for a variance from the requirements of this section in accordance with 20.6.2.1210 NMAC. It is the permittee's burden to prove any claim that the source of the contamination is not the source intended to be monitored by the well. If the petition is denied the permittee shall submit a corrective action plan meeting the requirements of Paragraph (1) of this subsection within 60 days of the denial.

(3) The permittee may be required to submit an abatement plan proposal pursuant to 20.6.2.4106 NMAC within 60 days of written notice from the department. Abatement shall be performed pursuant to 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

**B. Exceedance of ground water standards - impoundment monitoring well.** If the constituent concentration in a ground water sample collected from a monitoring well intended to monitor an impoundment(s) exceeds one or more of the ground water standards of 20.6.2.3103 NMAC and exceeds the concentration of such constituent(s) in a ground water sample collected from the upgradient monitoring well for four consecutive quarters, then the department may require the permittee, by written notice, to take one of the following measures. Before notifying the permittee that action is required under this subsection, the department shall take into consideration site-specific conditions including, but not limited to, geology, depth to ground water, threats to public health, and the trends in contamination at the site. For the purpose of this subsection, ground water samples obtained from the impoundment monitoring well and the upgradient monitoring well that are used for comparison of constituent concentrations shall be collected within two days of each other, provided that if there is sufficient ground water quality data to demonstrate that samples from different periods should be compared, the department may allow such a comparison. If ground water quality data for the upgradient monitoring well are not submitted by the permittee, the ground water standard(s) of 20.6.2.3103 NMAC shall be the applicable standard(s) used to determine

if the requirements of this subsection must be met. The contingency requirements of Subparagraphs (a) through (c) of Paragraph (1) and Sub-subparagraphs (i) through (iii) of Sub-paragraph (a) of Paragraph (2) of this subsection shall not apply if corrective action previously has been taken to address ground water contamination and constituent concentrations have stabilized or improved, but this exception shall no longer apply if a constituent concentration increases for two consecutive sampling events and exceeds its standard or the upgradient concentration. Once enacted the contingency requirements of this subsection apply until the permittee has fulfilled the requirements of this subsection and ground water monitoring pursuant to 20.6.6.23 NMAC confirms for a minimum of eight consecutive ground water sampling events that the standards of 20.6.2.3103 NMAC are not exceeded and the total nitrogen concentration in ground water is less than or equal to 10 milligrams per liter or until the department requires an abatement plan pursuant to Subparagraph (d) of Paragraph (1) or Sub-subparagraph (iv) of Subparagraph (a) of Paragraph (2) of this subsection.

**(1) Clay liner or pre-dairy rule liner not composed of 40/30-mil HDPE (minimum) or equivalent.** For impoundments using a clay liner or a liner installed prior to the effective date of the dairy rule and composed of a material that is not, at a minimum, 40-mil unreinforced HDPE, 30-mil reinforced HDPE, (or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance), the following actions shall be taken.

**(a)** A corrective action plan shall be submitted within 120 days of the date of postal notice from the department that action is required under this subsection unless a petition for variance is filed in accordance with Subparagraph (c) of this paragraph. The corrective action plan shall describe any repairs or changes in practices made to address the cause of the exceedance, and propose source control measures and a schedule for implementation. The implementation schedule shall include a schedule of all proposed corrective action activities and the date that corrective action will be completed. The department shall approve or disapprove the corrective action plan within 60 days of receipt. If the corrective action plan proposes actions to correct deficiencies with the liner, the proposed actions shall include the following items.

**(i)** A proposal for reconstruction and relining of an existing impoundment, or construction and lining of a new impoundment utilizing a synthetic liner as specified in Paragraph (5) of Subsection D of 20.6.6.17 NMAC. Reconstruction or new construction shall be completed pursuant to 20.6.6.17 NMAC within one year of the date of postal notice from the department that action is required under this subsection. If a new impoundment is constructed, the existing impoundment shall be permanently closed pursuant to 20.6.6.30 NMAC.

**(ii)** Reconstruction or construction plans and specifications for the impoundment shall be completed pursuant to 20.6.6.17 NMAC.

**(b)** Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised corrective action plan to the department within 60 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the revised corrective action plan within 60 days of receipt. If the department does not approve the revised corrective action plan, or if the permittee fails to submit a revised plan as required by this subsection, the department may pursue enforcement actions authorized by Section 74-6-10 NMSA 1978.

**(c)** The permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded. If such an investigation indicates that the source of the contamination is not the impoundment intended to be monitored by the well, the permittee may petition within 120 days of the date of postal notice from the department that action is required under this subsection for a variance from the requirements of this section in accordance with 20.6.2.1210 NMAC. It is the permittee's burden to prove any claim that the source of the contamination is not the impoundment intended to be monitored by the well. If the variance is denied the permittee shall submit a corrective action plan meeting the requirements of Subparagraph (a) of this paragraph within 60 days of the denial.

**(d)** The permittee may be required to submit an abatement plan proposal pursuant to 20.6.2.4106 NMAC within 60 days of written notice from the department. Abatement shall be performed pursuant to 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

**(2) Dairy rule liner or pre-dairy rule liner composed of 40/30-mil (minimum) HDPE or equivalent.** For impoundments using a liner installed after the effective date of the dairy rule and composed of a material that is, at a minimum, 60-mil HDPE (or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance), or impoundments using a liner installed prior to the effective date of the dairy rule and composed of a material that is, at a minimum, 40-mil unreinforced HDPE, 30-mil reinforced HDPE, (or other material having equivalent characteristics with regard to permeability, resistance to degradation by ultraviolet light, compatibility with the liquids anticipated to be collected in the impoundment, tensile strength, and tear and puncture resistance), the following actions shall be taken.

**(a) Initial liner.** For impoundments where the existing liner is the initial liner installed, the following actions shall be taken.

**(i)** A corrective action plan shall be submitted within 120 days of the date of postal notice from the department that action is required under this subsection unless a petition for variance is filed in accordance with Sub-subparagraph (iii) of this

subparagraph. The corrective action plan shall describe any repairs or changes in practices made to address the cause of the exceedance, and propose source control measures and a schedule for implementation. The implementation schedule shall include a schedule of all proposed corrective action activities and the date that corrective action will be completed. The department shall approve or disapprove the corrective action plan within 60 days of receipt. If the corrective action plan proposes actions to correct deficiencies with the liner, the proposed actions shall include repair or replacement of the existing liner, or construction and lining of a new impoundment. If liner repair is practicable, repairs shall be made pursuant to 20.6.6.17 NMAC or using a material that is equivalent to the existing liner with respect to material thickness and composition. Repairs shall be completed within 240 days of the date of postal notice from the department that action is required under this subsection. If liner repair is not practicable, the corrective action plan shall propose reconstruction and synthetic relining of the impoundment pursuant to 20.6.6.17 NMAC or construction and synthetic lining of a new impoundment pursuant to 20.6.6.17 NMAC within one year of the subsequent sample analysis date. Reconstruction or construction plans and specifications for the impoundment shall be completed pursuant to 20.6.6.17 NMAC and submitted with the corrective action plan. If a new impoundment is constructed the existing impoundment shall be closed pursuant to 20.6.6.30 NMAC.

**(ii)** Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised corrective action plan to the department within 60 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the revised corrective action plan within 60 days of receipt. If the department does not approve the revised corrective action plan, or if the permittee fails to submit a revised plan as required by this subsection, the department may pursue enforcement actions authorized by Section 74-6-10 NMSA 1978.

**(iii)** The permittee may investigate potential sources of contamination that may have caused a standard(s) to be exceeded. If such an investigation indicates that the source of the contamination is not the impoundment intended to be monitored by the well, the permittee may petition within 120 days of the date of postal notice from the department that action is required under this subsection for a variance from the requirements of this section in accordance with 20.6.2.1210 NMAC. It is the permittee's burden to prove any claim that the source of the contamination is not the impoundment intended to be monitored by the well. If the variance is denied the permittee shall submit a corrective action plan meeting the requirements of Sub-subparagraph (i) of this subparagraph within 60 days of the denial.

**(iv)** The permittee may be required to submit an abatement plan proposal pursuant to 20.6.2.4106 NMAC within 60 days of written notification from the department. Abatement shall be performed pursuant to 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

**(b) Replacement liner.** If source control measures have been previously implemented such that the existing liner replaced a previously installed liner in an impoundment and ground water standard(s) of 20.6.2.3103 NMAC continue to be exceeded, such impoundments are authorized to continue to receive wastewater or stormwater pursuant to the following requirements.

**(i)** The permittee may be required to submit an abatement plan proposal pursuant to 20.6.2.4106 NMAC within 60 days of written notice from the department if abatement has not been previously implemented. Abatement shall be performed pursuant to 20.6.2.4101, 20.6.2.4103, 20.6.2.4104, and 20.6.2.4106 through 20.6.2.4115 NMAC.

**(ii)** If the results of abatement activities indicate that the replacement liner does not successfully control the source of contamination, the department may modify the discharge permit pursuant to Subsection E of 20.6.2.3109 NMAC and include additional conditions pursuant to Subsection H of 20.6.6.10 NMAC. The additional conditions shall address, but are not limited to, further source control measures which may include, but are not limited to design, installation and construction of a composite liner system consistent with those described in the Guide for Industrial Waste Management, Part IV: Protecting Ground Water, Chapter 7: Section B, Designing and Installing Liners, Technical Considerations for New Surface Impoundments, Landfills and Waste Piles (U.S. environmental protection agency), incorporated herein by this reference. The requirements of 20.6.6.15 NMAC shall apply to hearing requests on the proposed additional discharge permit conditions.

**(3)** If the department notifies a permittee that action is required under this subsection, the applicant or permittee may notify the secretary by certified mail, sent within 30 days after the date of postal notice of the department's notice, that the applicant or permittee invokes dispute resolution under this paragraph. Upon such notice, the department, as represented by the secretary, deputy secretary, or division director and the applicant or permittee shall meet in person within 30 days and shall attempt in good faith to resolve the dispute.

**C. Monitoring well replacement.** If information available to the department indicates that a monitoring well(s) required by 20.6.6.23 NMAC is not located hydrologically downgradient of the contamination source it is intended to monitor, is not completed pursuant to 20.6.6.23 NMAC or contains insufficient water to monitor ground water quality effectively, a permittee shall install a replacement monitoring well(s). The replacement monitoring well(s) shall be installed within 120 days of the date of postal notice of notification from the department and a survey of the replacement monitoring well(s) shall be performed within 150 days of the date of postal notice of notification from the department, provided the department may grant an extension for good cause shown. The replacement monitoring well(s) shall be located, installed, completed, surveyed and sampled pursuant to 20.6.6.23 NMAC. The permittee shall develop a monitoring well completion report pursuant to Subsection J of 20.6.6.23 NMAC and submit it to the department within 180 days of the date of postal notice of notification

from the department, provided the department may grant an extension for good cause shown.

**D. Exceedances of permitted maximum daily discharge volume.** If the maximum daily discharge volume authorized by the discharge permit is exceeded by more than ten percent for any four average daily discharge volumes within any 12-week period, the permittee shall submit within 60 days of the fourth exceedance: a corrective action plan for reducing the discharge volume; or an application for a modified or renewed and modified discharge permit pursuant to 20.6.6.10 NMAC. Within 30 days of postal notice of department approval, the permittee shall initiate implementation of the corrective action plan.

**E. Insufficient impoundment capacity.** If a survey, capacity calculations, or settled solids thickness measurements, indicate an existing impoundment is not capable of meeting the capacity requirements required by Subsection D of 20.6.6.17 NMAC, then within 90 days of the effective date of the discharge permit the permittee shall submit a corrective action plan for department approval. The plan may include, but is not limited to, proposals for constructing an additional impoundment, reducing the discharge volume, removing accumulated solids, changing wastewater or stormwater management practices, or installing an advanced treatment system. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. Should the corrective action plan include removal of accumulated solids, solids shall be removed from the impoundment in a manner that is protective of the impoundment liner. The plan shall include the method of removal, and locations and methods for storage and disposal of the solids-slurry. If the plan proposes land application of the solids-slurry, the plan must also include the analytical results of total Kjeldahl nitrogen and chloride obtained from a representative sample of the solids-slurry to be applied. Notwithstanding Paragraph (6) of Subsection D of 20.6.6.17 NMAC, if a corrective action plan required under this subsection calls for construction of a new wastewater impoundment or improvement of an existing wastewater impoundment, and ground water quality standards have not been exceeded in monitoring wells installed to monitor the existing impoundment for the four quarters preceding submission of the corrective action plan, the permittee may propose and the department may approve a liner for the new wastewater impoundment or improvement of the existing impoundment consistent with the liner design approved by the department at the time of the last discharge permit issued by the department before the effective date of the dairy rule.

**F. Inability to preserve required freeboard.** If a minimum of two feet of freeboard cannot be preserved in the wastewater impoundment, the permittee shall submit a corrective action plan to the department for approval. The corrective action plan shall be submitted within 30 days of the date of the initial exceedance of the freeboard requirement. The plan may include, but is not limited to, proposals for constructing an

additional impoundment, reducing the maximum daily discharge volume, changing wastewater management practices, or installing an advanced wastewater treatment system. The corrective action plan shall include actions to be immediately implemented to regain and maintain a minimum of two feet of freeboard until permanent corrective actions have been completed. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. Notwithstanding Paragraph (6) of Subsection D of 20.6.6.17 NMAC, if a corrective action plan required under this subsection calls for construction of a new wastewater impoundment or improvement of an existing wastewater impoundment, and ground water quality standards have not been exceeded in monitoring wells installed to monitor the existing impoundment for the four quarters preceding submission of the corrective action plan, then the permittee may propose and the department may approve a liner for the new wastewater impoundment or improvement of the existing impoundment consistent with the liner design approved by the department at the time of the last discharge permit issued by the department before the effective date of the dairy rule.

**G. Impoundment - structural integrity compromised.** Within 24 hours of discovery, a permittee shall report to the department, any damage to the berms or the liner of an impoundment or any condition that exists that may compromise the structural integrity of the impoundment. Within 15 days of the reported discovery, the permittee shall submit to the department a corrective action plan describing any actions taken or proposed to be taken to repair the damage or condition. Within 30 days of receipt, the department shall respond to the proposed corrective action plan. Repairs to the impoundment liner or berms shall be completed pursuant to 20.6.6.17 NMAC. The corrective action plan shall include a schedule for implementation through completion of corrective actions. The corrective action plan schedule shall propose completion not to exceed one year from the submittal date of the initial corrective action plan. The schedule of corrective actions shall be commensurate to the magnitude and scope of the activities to be completed. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. Notwithstanding Paragraph (6) of Subsection D of 20.6.6.17 NMAC, if a corrective action plan required under this subsection calls for construction of a new wastewater impoundment or improvement of an existing wastewater impoundment, and ground water quality standards have not been exceeded for the four quarters preceding submission of the corrective action plan, then the permittee may propose and the department may approve a liner for the new wastewater impoundment or improvement of the existing impoundment consistent with the liner design approved by the department at the time of the last discharge permit issued by the department before the effective date of the dairy rule.

**H. Unauthorized discharge - reporting and correction.** In the event of a spill or release that is not authorized by the discharge permit, the permittee shall notify the

department and take corrective actions pursuant to 20.6.2.1203 NMAC. Wastewater or stormwater shall be contained and pumped to a permitted sump, impoundment, or land application area pursuant to the dairy rule. Wastewater or stormwater applied to the land application area shall conform to the requirements of 20.6.6.21 and 20.6.6.25 NMAC. The permittee shall repair or replace failed components within 48 hours from the time of failure or as soon as practicable.

[20.6.6.27 NMAC - N, 01/31/2011; A, 12/31/2011; A, 06/16/2015]

#### **20.6.6.28 [RESERVED]**

#### **20.6.6.29 ADDITIONAL CONTINGENCY REQUIREMENTS FOR DAIRY FACILITIES DISCHARGING TO AN EVAPORATIVE WASTEWATER DISPOSAL SYSTEM:**

**Inability to maintain required freeboard.** If a combination wastewater/stormwater impoundment used for disposal by evaporation does not have free capacity below the two-foot freeboard level required by Subsection D of 20.6.6.17 NMAC, then within seven days of the date of discovery of insufficient free capacity the permittee shall submit a corrective action plan for department approval. The plan shall include, but is not limited to, a request for temporary permission to discharge to allow immediate removal and disposal of combined wastewater and stormwater; a proposal for long-term corrective actions which may include constructing an additional impoundment; reducing the discharge volume; changing wastewater or stormwater management practices; or installing an advanced treatment system. The corrective action plan shall include schedule for implementation to complete corrective actions within one year from the submittal date of the initial corrective action plan. Upon department approval, the permittee shall initiate implementation of the corrective action plan.

[20.6.6.29 NMAC - N, 01/31/2011]

#### **20.6.6.30 CLOSURE REQUIREMENTS FOR ALL DAIRY FACILITIES:**

**A. Permanent closure of dairy facility or impoundments.** The following closure actions shall be performed at dairy facilities.

(1) For permanent closure of a dairy facility.

(a) The department shall be notified no later than 30 days after wastewater discharge has permanently ceased at the dairy facility.

(b) Installation of any additional monitoring wells shall be completed pursuant to 20.6.6.23 NMAC.

(c) All wastewater and combination wastewater/stormwater impoundments shall be emptied within six months of permanently ceasing wastewater discharge at the

dairy facility; combination wastewater/stormwater impoundments may continue to receive stormwater after removal of the impounded wastewater/stormwater. All stormwater and combination wastewater /stormwater impoundments shall be emptied of stormwater within one year of cessation of wastewater discharge. Wastewater and stormwater removed from impoundments shall be applied to the designated land application area, as authorized by a discharge permit. In the event that land application is not authorized by a discharge permit, a disposal plan shall be submitted for department approval and the plan implemented upon department approval.

**(d)** Manure solids and compost shall be removed from surface areas at the dairy facility and applied to the designated land application area, as authorized by a discharge permit, or transferred off-site for proper disposal.

**(e)** Complete removal of manure solids from the wastewater impoundment(s) shall be achieved within two years of permanently ceasing wastewater discharge. Complete removal of manure solids from the stormwater and combination wastewater/stormwater impoundment(s) shall be achieved within two years of cessation of wastewater discharge. Manure solids shall be applied to the designated land application area, as authorized by a discharge permit. In the event that land application is not authorized by a discharge permit, a disposal plan shall be submitted for department approval and the plan implemented upon department approval.

**(f)** Impoundment liners shall be perforated or removed and the impoundments shall be re-graded with clean fill to blend with surface topography to prevent ponding within two years of permanently ceasing wastewater discharge.

**(2)** For closure of an impoundment at a facility not undergoing permanent closure (e.g., existing impoundment replaced with new impoundment).

**(a)** Impoundments shall be emptied of wastewater and stormwater within six months of ceasing receipt of wastewater or stormwater into the impoundments. Wastewater and stormwater removed from impoundments shall be applied to the designated land application area, as authorized by a discharge permit. If land application is not authorized by a discharge permit, a disposal plan shall be submitted for department approval and the plan implemented upon department approval.

**(b)** Complete removal of manure solids from impoundments shall be achieved within two years of ceasing receipt of wastewater or stormwater into the impoundments. Manure solids shall be applied to the designated land application area, as authorized by a discharge permit. If land application is not authorized by a discharge permit, a disposal plan shall be submitted for department approval and the plan implemented upon department approval.

**(c)** Liners in impoundments shall be perforated or removed and the impoundments shall be re-graded with clean fill to blend with surface topography to

prevent ponding within two years of ceasing receipt of wastewater or stormwater into the impoundments.

**B. Post-closure ground water sampling and reporting.** Following completion and confirmation by the department of the requirements of Subsection A of this section, ground water monitoring shall continue pursuant to 20.6.6.23 NMAC until a minimum of eight consecutive ground water sampling events confirm that the standards of 20.6.2.3103 NMAC are not exceeded and the total nitrogen concentration in ground water is less than or equal to 10 milligrams per liter. If monitoring results show that one or more of the standards of 20.6.2.3103 NMAC is exceeded or the total nitrogen concentration in ground water is greater than 10 milligrams per liter, the permittee shall implement contingency requirements pursuant to 20.6.6.27 NMAC. Upon notification from the department that post-closure ground water monitoring may cease, the permittee shall abandon all monitoring wells and submit a report to the department pursuant to Subsection C of this section.

**C. Monitoring well abandonment.** Upon notification from the department, the permittee shall abandon monitoring wells pursuant to 19.27.4 NMAC and the following requirements.

(1) The well casing shall be removed and neat cement grout, bentonite based plugging material, or other sealing material approved by the state engineer in accordance with 19.27.4 NMAC shall be placed from the bottom of the borehole to the ground surface using a tremie pipe.

(2) If the casing cannot be removed, neat cement grout, bentonite based plugging material, or other sealing material approved by the state engineer in accordance with 19.27.4 NMAC shall be emplaced in the well using a tremie pipe from the bottom of the well to the ground surface.

(3) A well abandonment report shall be prepared by the permittee and shall provide information equivalent to the plugging record requirements of 19.27.4 NMAC. The well abandonment report shall be submitted to the department within 60 days of completion of well plugging activities.

[20.6.6.30 NMAC - N, 01/31/2011; A, 06/16/2015]

**20.6.6.31 [RESERVED]**

**20.6.6.32 [RESERVED]**

**20.6.6.33 RECORD RETENTION REQUIREMENTS FOR ALL DAIRY FACILITIES:**

**A.** A permittee shall retain a written record at the dairy facility of all data and information related to field measurements, sampling, and analysis conducted pursuant

to the dairy rule and the discharge permit. The following information shall be recorded and shall be made available to the department upon request.

- (1) The dates, exact place and times of sampling or field measurements.
- (2) The name and job title of the individuals who performed each sample collection or field measurement.
- (3) The date of the analysis of each sample.
- (4) The name and address of the laboratory and the name and job title of the person that performed the analysis of each sample.
- (5) The analytical technique or method used to analyze each sample or take each field measurement.
- (6) The results of each analysis or field measurement, including raw data.
- (7) The results of any split, spiked, duplicate or repeat sample.
- (8) A description of the quality assurance and quality control procedures used.

**B.** A permittee shall retain a written record at the dairy facility of any spills, seeps, or leaks of effluent, and of leachate or process fluids not authorized by the discharge permit. Records shall be made available to the department upon request.

**C.** A permittee shall retain a written record at the dairy facility of the operation, maintenance, and repair of all features/equipment used to treat, store or dispose of wastewater, measure flow rates, monitor water quality, or collect other data. Records shall include repair, replacement or calibration of any monitoring equipment and repair or replacement of any equipment used in the waste or wastewater treatment and disposal system. Records shall be made available to the department upon request.

**D.** A permittee shall retain records of all monitoring information at the dairy facility, including all calibration and maintenance records, copies of all reports, and the application for the discharge permit. Records shall be retained for a period of at least 10 years from the date of the sample collection, measurement, report or application.

[20.6.6.33 NMAC - N, 01/31/2011]

#### **20.6.6.34 TRANSFER OF DAIRY DISCHARGE PERMITS:**

**A.** Transfer of discharge permits for dairy facilities shall be made pursuant to 20.6.2.3111 NMAC and this section.

**B.** The transferee(s) shall notify the department, in writing, of the date of transfer of ownership and provide contact information for the new owner(s) pursuant to Subsection B of 20.6.6.11 NMAC and Subsection B of 20.6.6.12 NMAC. Notification shall be submitted to the department of the transfer within 30 days of the ownership transfer date.

[20.6.6.34 NMAC - N, 01/31/2011]

**20.6.6.35 CONTINUING EFFECT OF PRIOR ACTIONS DURING TRANSITION:**

**A.** A discharge permit issued pursuant to 20.6.2.3109 NMAC that has not expired on or before December 31, 2011, shall remain in effect and enforceable pursuant to the conditions of the discharge permit and for its term as designated by Section 74-6-5 NMSA 1978. If an effective discharge permit contains a permit condition with a time period for submittal of a renewal application that is different from the time period contained in Subsection A of 20.6.6.10 NMAC that condition will remain in effect for two years following the effective date of the dairy rule.

**B.** If an application for a new discharge permit or an application for a renewed or modified discharge permit was submitted to the department before December 31, 2011, and the department has not yet proposed a draft discharge permit for the facility, the application shall not be processed by the department. The applicant shall submit to the department an application for a new discharge permit or an application for a renewal, modification, renewal and modification or closure discharge permit pursuant to 20.6.6.10 NMAC and a filing fee and permit fee payment pursuant to 20.6.6.9 NMAC within 180 days of August 1, 2015. Application and permit fees already submitted by the facility shall be credited toward the fees required by 20.6.6.9 NMAC.

**C.** If a discharge permit for a dairy facility was expired on December 31, 2011, and an application for renewal has not been received by the department, the permittee, owner of record of the dairy facility or the holder of the expired discharge permit:

**(1)** shall within 90 days of August 1, 2015, submit to the department an application for a discharge permit renewal, renewal and modification or closure pursuant to 20.6.6.10 NMAC and a filing fee and permit fee payment pursuant to 20.6.6.9 NMAC; or

**(2)** if the dairy facility has not been constructed or operated, the permittee, the owner of record of the dairy facility or the holder of the expired discharge permit may submit a statement to the department instead of an application for renewal certifying that the facility has not been constructed or operated and that no discharges have occurred. Upon the department's verification of the certification, the department shall retire the discharge permit number from use.

**D.** The department shall take action on permit applications pending before the department as of August 1, 2015, and shall consider applications to modify final permits issued by the department under the dairy rule prior to August 1, 2015, as follows:

**(1)** If the department received an application for a discharge permit for a dairy facility after December 31, 2011, which is pending as of August 1, 2015, and the department has not issued a draft permit before August 1, 2015, then the department shall process the application in accordance with 20.6.6.10 NMAC and take action in accordance with the dairy rule, including the amendments effective as of August 1, 2015.

**(2)** If the department has issued a draft permit for a dairy facility, but not a final permit, as of August 1, 2015, then on or before September 30, 2015, the applicant may notify the department in writing to review the draft permit for changes to be consistent with the amendments to the dairy rule.

**(a)** If the department does not receive a written notice from the applicant to review the draft permit by September 30, 2015, then the department may act on the draft permit in accordance with Subsection J of 20.6.6.10 NMAC, including the issuance of a final permit, after considering all comments made on the draft permit and the record of any public hearing.

**(b)** If the department receives a written notice to review the draft permit by September 30, 2015, then the department may require the applicant to submit additional information, consistent with 20.6.6.12 NMAC, as necessary to reflect the amendments to the dairy rule effective as of August 1, 2015, and the applicant may supplement its permit application. After considering the additional information, the department shall either act on the application in accordance with Subsection G of 20.6.6.10 NMAC or, if the department determines that no significant changes to the draft permit are warranted, the department may proceed with a permit decision in accordance with Subsection J of 20.6.6.10 NMAC and shall explain in writing the reasons for not changing the draft permit. If a request for permit review is filed, any information submitted by an applicant who requested review of the draft permit shall be included in the administrative record filed by the department under Paragraph (2) of Subsection A of 20.1.3.16 NMAC.

**(3)** If the department has issued a final permit under the dairy rule before August 1, 2015, the permit holder may submit an application to modify the discharge permit to reflect amendments to the dairy rule pursuant to 20.6.6.10 NMAC along with the applicable fee specified in 20.6.6.9 NMAC.

**(4)** The department shall prioritize its review and permit actions under this subsection based upon potential impacts to ground water quality.

**E.** Any dairy facility discharging, capable of recommencing discharging, or that has ceased discharging within the term of its most recent discharge permit shall continue all monitoring and submittal of monitoring reports as prescribed in the most recent

discharge permit until the department issues a renewed or renewed and modified discharge permit.

[20.6.6.35 NMAC - N, 01/31/2011; A, 06/16/2015]

## **PART 7: GROUND WATER PROTECTION - SUPPLEMENTAL PERMITTING REQUIREMENTS FOR COPPER MINE FACILITIES**

### **20.6.7.1 ISSUING AGENCY:**

Water Quality Control Commission.

[20.6.7.1 NMAC - N, 12/1/13]

### **20.6.7.2 SCOPE:**

All persons subject to the Water Quality Act, Sections 74-6-1 NMSA 1978 et seq. and specifically copper mine facilities and their operations.

[20.6.7.2 NMAC - N, 12/1/13]

### **20.6.7.3 STATUTORY AUTHORITY:**

Standards and regulations are adopted by the commission under the authority of the Water Quality Act, Sections 74-6-1 through 74-6-17 NMSA 1978.

[20.6.7.3 NMAC - N, 12/1/13]

### **20.6.7.4 DURATION:**

Permanent.

[20.6.7.4 NMAC - N, 12/1/13]

### **20.6.7.5 EFFECTIVE DATE:**

12/1/13, unless a later date is cited at the end of a section.

[20.6.7.5 NMAC - N, 12/1/13]

### **20.6.7.6 OBJECTIVE:**

The purpose of 20.6.7 NMAC is to supplement the general permitting requirements of 20.6.2.3000 through 20.6.2.3114 NMAC to control discharges of water contaminants specific to copper mine facilities and their operations to prevent water pollution. Compliance with these rules does not relieve an applicant or permittee of a copper mine

facility from complying with the Mining Act rules in Title 19, Chapter 10 NMAC under the authority of the mining and minerals division.

[20.6.7.6 NMAC - N, 12/1/13]

#### **20.6.7.7 DEFINITIONS:**

**A.** Terms defined in the Water Quality Act and 20.6.2.7 NMAC shall have the meanings as given in such.

**B.** A term defined in this part shall have the following meaning.

(1) "Acid mine drainage" means water that is discharged from an area affected by mining exploration, mining, or reclamation, with a pH of less than 5.5 and in which total acidity exceeds total alkalinity as defined by the latest edition of *standard methods for the examination of water and wastewater*.

(2) "Additional conditions" means conditions and requirements included in a discharge permit pursuant to Subsection D of Section 74-6-5 NMSA 1978 that are based on site specific circumstances and that are in addition to those imposed in the rules of the commission.

(3) "Applicable standards" means the standards set forth in 20.6.2.3103 NMAC; the background concentration approved by the department; or, any alternative abatement standard approved by the commission pursuant to Subsection F of 20.6.2.4103 NMAC.

(4) "Applicant" means the person applying for a new, renewed, modified, or amended discharge permit.

(5) "Area of open pit hydrologic containment" means, for an open pit that intercepts the water table, the area where ground water drains to the open pit and is removed by evaporation or pumping, and is interior to the department approved monitoring well network installed around the perimeter of an open pit pursuant to Paragraph (4) of Subsection B of 20.6.7.28 NMAC and also limited to the area of disturbance authorized by a discharge permit.

(6) "As-built drawings" means engineering drawings which portray units as constructed.

(7) "Background" means the concentration of water contaminants naturally occurring from undisturbed geologic sources of water contaminants.

(8) "Below-grade tank" means a tank including sumps where a portion of the tank's side walls is below the surrounding ground surface elevation. A below-grade tank

does not include an above ground tank that is located at or above the surrounding ground surface elevation and is surrounded by berms.

(9) "Closure" means all activities that are required pursuant to 20.6.7.33 NMAC through 20.6.7.35 NMAC and an approved discharge permit to monitor, minimize, control, mitigate, prevent or abate water pollution associated with a copper mine facility after operations at the copper mine facility, or at an individual unit within the copper mine facility, have ceased.

(10) "Construction quality assurance" or "CQA" means a planned system of activities necessary to ensure that standards and procedures are adhered to and that construction and installation meet design criteria, plans and specifications. A CQA includes inspections, verifications, audits, evaluations of material and workmanship necessary to determine and document the quality of the constructed impoundment or structure, and corrective actions when necessary.

(11) "Construction quality control" or "CQC" means a planned system of operational techniques and activities used to preserve the quality of materials and ensure construction to specifications. Elements of a CQC include inspections, testing, data collection, data analysis and appropriate corrective actions.

(12) "CQA/CQC report" means a report that summarizes all inspection, testing, data collection, data analysis and any corrective actions completed as part of CQA or CQC for a project.

(13) "Copper mine facility" means all areas within which copper mining and its related activities that may discharge water contaminants occurs and where the discharge will or does take place including, but not limited to open pits; waste rock piles; ore stockpiles; leaching operations; solution extraction and electrowinning plants; ore crushing, ore milling, ore concentrators; tailings impoundments; smelters; pipeline systems, tanks or impoundments used to convey or store process water, tailings or impacted stormwater; and truck or equipment washing units.

(14) "Copper mine rule" means 20.6.7 NMAC, as amended.

(15) "Cover system" means any engineered or constructed system designed as a source control measure to minimize to the maximum extent practicable the ingress of water or oxygen into a waste rock pile, leach stockpile or tailing material. A cover system may be comprised of a monolithic layer of, or any combination of, earthen materials, synthetic materials, vegetation, and amendments.

(16) "Critical structure" means earthen or rock structures or embankments (such as an outslope of a rock stockpile), that are likely to cause an exceedance of applicable groundwater standards or undue risk to property in the event of a significant unexpected slope movement.

(17) "Date of postal notice" means the date when the United States postal service first makes notice to the applicant or permittee of its possession of certified mail addressed to the applicant or permittee.

(18) "Discharge" means spilling, leaking, pumping, pouring, emitting, or dumping of a water contaminant in a location and manner where there is a reasonable probability that the water contaminant may reach ground water.

(19) "Discharge permit amendment" means a minor modification of a discharge permit that does not result in a significant change in the location of a discharge, an increase in daily discharge volume of greater than 10% of the original daily discharge volume approved in an existing discharge permit for an individual discharge location, a significant increase in the concentration of water contaminants discharged, or introduction of a new water contaminant discharged.

(20) "Discharge volume" means the volume of discharged process water, impacted stormwater or tailings measured at a specific point at the copper mine facility over a specified period of time.

(21) "Existing copper mine facility" means a copper mine facility operating under an approved discharge permit as of the effective date of the copper mine rule. Existing copper mine facility includes a copper mine covered under an approved discharge permit as of the effective date of the copper mine rule that is on standby status in accordance with mining and minerals division rules.

(22) "Existing impoundment" means an impoundment that is currently receiving or has ever received process water or collected impacted stormwater and that has not been closed pursuant to a discharge permit.

(23) "Expiration" means the date upon which the term of a discharge permit ends.

(24) "Factor of safety" means, for slope stability purposes, the ratio of the resisting forces to the driving forces.

(25) "Final CQA report" means a report prepared by the CQA officer that includes as-built drawings and a detailed description of the installation methods and procedures that document that the work was conducted as designed.

(26) "Flow meter" means a measuring device or structure used to measure the volume of water, process water, tailings or stormwater that passes a particular reference section in a unit of time.

(27) "Freeboard" means the vertical distance between the elevation at the lowest point of the top inside edge of the impoundment and the design high water elevation of the water level in the impoundment.

(28) "Highway" means any public road operated and maintained by the local, county, state or federal government.

(29) "Impacted stormwater" means direct precipitation and runoff that comes into contact with water contaminants within a copper mine facility which causes the stormwater to exceed one or more of the standards of 20.6.2.3103 NMAC and includes overflow from a primary process solution impoundment or other collection system resulting from a precipitation event.

(30) "Impoundment" means any structure designed and used for storage or containment of mine process water, or impacted stormwater, or used for solids settling, excluding a tailings impoundment. A process water or stormwater transfer sump or a tank, below-grade tank, drum or pit bottom is not an impoundment.

(31) "Interbench slope" means the outslope surface between terrace benches or between a terrace bench and any engineered conveyance system (i.e., a system to divert runoff).

(32) "Large copper mine facility" means a copper mine facility that has disturbed or is proposing to disturb an area of 1500 acres or greater.

(33) "Leach stockpile" means stockpiles of ore and all other rock piles associated with mining disturbances that have been leached, are currently being leached or have been placed in a pile for the purpose of being leached.

(34) "Liner system" means an engineered system required by the copper mine rule for the containment, management or storage of process water, leach stockpile material, waste rock, tailings or other materials that have the potential to generate water contaminants including all constructed elements of the system and may include the subgrade, liner bedding, leak detection systems, synthetic liners, earthen liners, overlayers, solution collection systems, anchor trenches, and berms, or other system elements, as applicable.

(35) "Maximum daily discharge volume" means the total daily volume of process water (expressed in gallons per day) or tailings (expressed in tons per day) authorized for discharge by a discharge permit.

(36) "Medium copper mine facility" means a copper mine facility that has disturbed or is proposing to disturb an area of a minimum of 500 acres but less than 1500 acres.

(37) "Mining and minerals division" means the mining and minerals division of the New Mexico energy, minerals, and natural resources department.

(38) "Mining Act" means the New Mexico Mining Act, Sections 69-36-1 through 69-36-20, NMSA 1978.

(39) "New copper mine facility" means a copper mine facility that is not operating under an approved discharge permit as of the effective date of the copper mine rule.

(40) "Non-impacted stormwater" means stormwater run-off generated as a result of direct precipitation at a copper mine facility that does not exceed the standards of 20.6.2.3103 NMAC.

(41) "Open pit" means the area within which ore and waste rock are exposed and removed by surface mining.

(42) "Open pit surface drainage area" means the area in which storm water drains into an open pit and cannot feasibly be diverted by gravity outside the pit perimeter, and the underlying ground water is hydrologically contained by pumping or evaporation of water from the open pit.

(43) "Operator" means the person or persons responsible for the overall operations of a copper mine facility.

(44) "Outslope" means the sloped perimeter of waste rock piles, leach stockpiles and tailings impoundments.

(45) "Owner" means the person or persons who own all or part of a copper mine facility.

(46) "Permittee" means a person who is issued or receives by transfer a discharge permit for a copper mine facility, the holder of an expired discharge permit, or, in the absence of a discharge permit, a person who makes or controls a discharge at a copper mine facility.

(47) "Pipeline corridor" means a constructed pathway that contains concentrate, tailing or process water pipelines, associated spill containment structures, the pipeline subgrade and access roads.

(48) "Pipeline system" means one or more pipelines and associated structures used to transport process water, concentrate, slurry, tailing or impacted stormwater.

(49) "PLS" means pregnant leach solution that is generated from leaching ore or rock stockpiles.

(50) "Process water" means any water containing water contaminants in excess of the standards of 20.6.2.3103 NMAC that is generated, managed or used within a copper mine facility including raffinate; PLS; leachate collected from waste rock stockpiles, leach stockpiles, and tailings impoundments; tailings decant water; pit dewatering water; intercepted ground water, laboratory or other waste discharges containing water contaminants; and domestic wastes mixed with process water.

(51) "Seepage" means leachate that is discharged from a waste rock stockpile or tailing impoundment and emerges above or at the ground surface or that is present in the vadose zone and may be captured prior to entering ground water.

(52) "Slag" means a partially vitreous by-product of the process of smelting ore.

(53) "Slope angle" means the horizontal run distance divided by the vertical rise, measured along the steepest gradient of the interbench slope's physical surface (for example, a 2.5:1 slope refers to 2.5 horizontal and 1 vertical).

(54) "Small copper mine facility" means a copper mine facility that has disturbed or is proposing to disturb less than 500 acres and that does not contain tailings impoundments or leach stockpiles.

(55) "Spillway" means a structure used for controlled releases from a stormwater or process water impoundment, in a manner that protects the structural integrity of the impoundment.

(56) "Stormwater" means all direct precipitation and runoff generated within a copper mine facility from a storm event.

(57) "Surface water(s) of the state" means all surface waters as defined in 20.6.4.7 NMAC.

(58) "SX/EW" means solution extraction and electrowinning.

(59) "Tailings" means finely crushed and ground rock residue and associated fluids discharged from an ore milling, flotation beneficiation and concentrating process.

(60) "Tailings impoundment" means an impoundment that is the final repository of tailings.

(61) "Unauthorized discharge" means a release of process water, tailings, leachate or seepage from individual copper mine facility components, impacted stormwater or other substances containing water contaminants not approved by a discharge permit.

(62) "Underground mine" means the below-surface mine workings within which ore and waste rock are removed.

(63) "Unit" means a component of a mining operation including but not limited to processing, leaching, excavation, storage, stockpile or waste units.

(64) "Variance" means a commission order establishing requirements for a copper mine facility or a portion of a copper mine facility that are different than the requirements in the copper mine rule.

(65) "Waste rock" means all material excavated from a copper mine facility that is not ore or clean top soil.

[20.6.7.7 NMAC - N, 12/1/13]

#### **20.6.7.8 REQUIREMENTS FOR DISCHARGING FROM COPPER MINE FACILITIES:**

**A.** No person shall discharge effluent or leachate from a copper mine facility so that it may move directly or indirectly into ground water without a discharge permit approved by the department. A person intending to discharge from a copper mine facility shall submit an application for a discharge permit pursuant to 20.6.7.10 NMAC and remit fees pursuant to 20.6.7.9 NMAC.

**B.** Permittees, owners of a copper mine facility and holders of an expired permit are responsible for complying with the copper mine rule.

**C.** Unless otherwise noted in 20.6.7 NMAC, the requirements of 20.6.2.3101 through 20.6.2.3114 NMAC apply to a copper mine facility.

**D.** Compliance with commission rules including the requirements of 20.6.7 NMAC does not relieve a copper mine facility owner, operator or permittee from complying with the requirements of other applicable local, state and federal regulations or laws.

[20.6.7.8 NMAC - N, 12/1/13]

#### **20.6.7.9 FEES:**

An applicant or permittee shall pay fees to the department's water quality management fund pursuant to this section in lieu of 20.6.2.3114 NMAC.

**A.** The permittee of a copper mine shall remit an annual permit fee as follows: large copper mines, one hundred and twenty-five thousand dollars (\$125,000); medium copper mines, sixty-two thousand and five hundred dollars (\$62,500); and small copper mines, twelve thousand and five hundred dollars (\$12,500). Annual permit fees shall be due each August 1 after the effective date of the discharge permit until the discharge permit is terminated.

**B.** An applicant for a discharge permit, a discharge permit renewal, discharge permit renewal and modification, or discharge permit modification for a copper mine facility shall remit an application fee of one thousand dollars (\$1,000). The application fee is not refundable and may not be applied toward future discharge permit applications.

**C.** A permittee requesting a discharge permit amendment separate from a discharge permit renewal or modification shall remit with the request a discharge permit amendment fee of five hundred dollars (\$500). The permit amendment fee is not refundable and may not be applied toward future discharge permit applications or amendments.

**D.** A permittee requesting temporary permission to discharge pursuant to Subsection B of 20.6.2.3106 NMAC shall remit with the request a temporary permission fee of one thousand dollars (\$1,000). The temporary permission fee is not refundable and may not be applied toward future discharge permit applications or requests for temporary permission to discharge.

[20.6.7.9 NMAC - N, 12/1/13]

#### **20.6.7.10 GENERAL APPLICATION REQUIREMENTS FOR ALL COPPER MINE FACILITIES:**

This section specifies the general requirements for discharge permit applications for all types of copper mine facilities.

**A.** Before submitting an initial application for a new copper mine facility, a prospective applicant shall schedule a pre-application meeting with the department to discuss the proposed location of the copper mine facility and individual units, the operating plans for the proposed process units, the physical characteristics of the copper mine facility's proposed site and other information that is required to be submitted in an application for a discharge permit. The pre-application meeting shall be held in Santa Fe, unless otherwise agreed to by the department. The pre-application meeting should occur no less than 60 days before the submission of the application except as approved by the department.

**B.** Instead of the information required by Subsection C of 20.6.2.3106 NMAC, an applicant shall provide information and supporting technical documentation pursuant to this section and 20.6.7.11 NMAC.

**C.** Notwithstanding Subsection F of 20.6.2.3106 NMAC, a permittee shall submit an application for renewal of a discharge permit for a copper mine facility or a unit of the copper mine facility to the department at least 270 days before the discharge permit expiration date, unless closure of the copper mine facility is approved by the department before that date.

**D.** For a copper mine facility that has been issued a discharge permit but has not been constructed or operated, a permittee shall submit to the department at least 270 days before the discharge permit expiration date an application for renewal pursuant to Subsection B of this section or a statement certifying that the copper mine facility has not been and will not be constructed and that no discharges have occurred or will occur.

Upon the department's verification of the certification, the department shall terminate the discharge permit, if necessary, and retire the discharge permit number from use.

**E.** An application for a new, renewed, or modified discharge permit for a copper mine facility shall include the information and supporting documentation required by this section except that previously submitted materials may be included by reference in discharge permit renewal or modification applications provided that the materials are current, readily available to the secretary and sufficiently identified to be retrieved. The applicant shall attest to the truth of the information and supporting documentation in the application. The applicant shall provide to the department a hard copy (paper format) of the original signed completed application and all supporting documentation. The applicant shall also provide an electronic copy of the original signed application and all supporting documentation in portable document format (PDF) on a compact disc (CD) or digital versatile disc (DVD) or other format approved by the department.

**F.** Within 90 days of the department notifying the applicant in writing that the application is deemed administratively complete pursuant to Subsection A of 20.6.2.3108 NMAC, the department shall review the application for technical completeness and shall issue a written notice by certified mail to the applicant indicating whether the application is technically complete or is deemed to be deficient. An application must include the information required by Subsection B of this section to be deemed technically complete.

**G.** If the department determines that an application is technically deficient, the applicant shall have 60 days from the date of postal notice of the technical deficiency notification to provide the information required by this section. Upon request by the applicant and for good cause shown, the department may grant one or more extensions of time for the applicant to provide the information required by the technical deficiency notification.

(1) If an applicant for a new discharge permit does not provide all information required by this section to the department within 60 days of the date of postal notice of the technical deficiency, or within any extension granted by the department, the department may deny the application. The department shall provide notice of denial to the applicant by certified mail.

(2) If an applicant for a renewed or modified discharge permit does not provide all information required by this section to the department within 60 days of the date of postal notice of the technical deficiency, or within any extension granted by the department, the department may deny the application or may propose a discharge permit for approval consistent with the requirements of the copper mine rule. If the department denies the application, the department shall provide notice of denial to the applicant by certified mail.

(3) An applicant may supplement an application at any time during the technical review period. The department shall review the information for technical completeness within 90 days of receipt.

H. Within 90 days after an application is deemed technically complete or all information has been submitted to the department pursuant to a technical deficiency notification, the department shall make available a proposed approval of a discharge permit and a draft discharge permit or a notice of denial of a discharge permit application pursuant to Subsection H of 20.6.2.3108 NMAC and provide a copy to the mining and minerals division. The draft discharge permit shall contain applicable conditions specified in the copper mine rule, any conditions based on a variance issued for the copper mine facility pursuant to 20.6.2.1210 NMAC, and any additional conditions imposed under Subsection I of this section. Requests for a hearing on the proposed approval of a discharge permit or denial of a discharge permit shall be submitted to the department pursuant to Subsection K of 20.6.2.3108 NMAC.

I. The department may impose additional conditions on a discharge permit in accordance with Section 74-6-5 NMSA 1978. If the department proposes an additional condition in a discharge permit that is not included in the copper mine rule, the department shall include a written explanation of the reason for the additional condition with the copy of the draft permit and proposed approval sent to the applicant pursuant to Subsection H of 20.6.2.3108 NMAC. Pursuant to subsection K of 20.6.2.3108 NMAC, written comments regarding the additional condition may be submitted to the department during the comment period and a hearing may be requested regarding the additional conditions.

J. The secretary shall approve a discharge permit provided that it poses neither a hazard to public health nor undue risk to property, and:

(1) the requirements of the copper mine rule are met;

(2) the provisions of 20.6.2.3109 NMAC are met, with the exception of Subsection C of 20.6.2.3109 NMAC; and

(3) the denial of an application for a discharge permit is not required pursuant to Subsection E of Section 74-6-5 NMSA 1978.

[20.6.7.10 NMAC - N, 12/1/13]

#### **20.6.7.11 APPLICATION REQUIREMENTS FOR DISCHARGE PERMITS FOR A COPPER MINE FACILITY:**

A. An application for a new discharge permit or a renewal of an existing discharge permit shall include the applicable information in this section. An application for a modification of an existing discharge permit shall include the information in this section relevant to the proposed modification but need not include information listed in this

section if the information was submitted to the department in the prior discharge permit application and the information has not changed since the discharge permit was issued. The department may require separate operational and closure discharge permits, or may combine operational and closure requirements in the same permit.

**B. Contact information.** An application shall include:

- (1) applicant's name, title and affiliation with the copper mine facility, mailing address, and telephone number;
- (2) the name, mailing address and telephone number of each owner and operator of the copper mine facility;
- (3) if different than the applicant, the application preparer's name, title and affiliation with the copper mine facility, mailing address, telephone number and signature;
- (4) the mailing address and telephone number of any independent contractor authorized to assist the copper mine facility with compliance with the Water Quality Act and 20.6.2 NMAC and 20.6.7 NMAC; and
- (5) if the person submitting the application is not the owner or operator of the copper mine facility, a certification that the person is duly authorized to submit the application on behalf of the owner or operator.

**C. Ownership and real property agreements.**

- (1) An application shall include the copper mine facility owner's name, title, mailing address and phone number.
  - (a) If more than one person has an ownership interest in the copper mine facility or a partnership exists, then the applicant shall list all persons having an ownership interest in the copper mine facility, including their names, titles, mailing addresses and telephone numbers.
  - (b) If any corporate entity holds an ownership interest in the copper mine facility, the applicant shall also list the name(s), as filed with the New Mexico public regulation commission, of the corporate entity, and the corporate entity's registered agent's name and address.
- (2) If the applicant is not the owner of the real property upon which the copper mine facility is or will be situated, or upon which the discharge will occur, the applicant shall submit the name, address and telephone number of the owner(s), and a notarized statement from the owner which authorizes the use of the real property for the duration of the term of the requested permit. In the event the property is under federal or state

ownership the applicant shall provide other evidence of authorization to enter public lands for mining.

**D. Setbacks.** An application for a new copper mine facility shall include a scaled map of the proposed copper mine facility layout demonstrating that the copper mine facility meets the setback requirements of 20.6.7.19 NMAC.

**E. Copper mine facility information and location.** An application shall include:

- (1) the copper mine facility name, physical address and county;
- (2) the township, range and section for the entire copper mine facility; and
- (3) the total acreage of the copper mine facility.

**F. Public notice preparation.**

(1) An application for a new, modified or renewed and modified discharge permit shall include the name of a newspaper of general circulation in the location of the copper mine facility for the display advertisement publication, the proposed public location(s) for posting of the 2-foot by 3-foot sign, and the proposed off-site public location for posting of the additional notice, as required by Subsection B of 20.6.2.3108 NMAC.

(2) An application for a renewed discharge permit that does not seek a discharge permit modification shall include the name of a newspaper of general circulation in the location of the copper mine facility for the future display advertisement publication as required by Subsection C of 20.6.2.3108 NMAC.

**G. Pre-discharge total dissolved solids concentration in ground water.** An application shall include the pre-discharge total dissolved solids concentration, or range of concentration, from analytical results of ground water obtained from on-site test data from the aquifer(s) that may be affected by discharges from the copper mine facility. A copy of the laboratory analysis stating the pre-discharge total dissolved solids concentration shall be submitted with the application.

**H. Determination of maximum daily discharge volume.** An application shall include the following information.

- (1) The proposed maximum daily discharge volume of process water and tailings for each discharge location and a description of the discharge locations and the methods and calculations used to determine that volume.
- (2) The identification of all sources of process water and tailings.
- (3) The estimated daily volume of process water and tailings generated.

(4) Information regarding other waste discharges (i.e., domestic or industrial) at the copper mine facility. Permit identification numbers shall be submitted for those discharges that are already permitted.

**I. Process water and tailings quality.** An application shall include estimated concentrations of process water and tailings slurry quality for the constituents identified in 20.6.2.3103 NMAC including the basis for these estimations.

**J. Identification and physical description of the copper mine facility.** An application shall include the following information;

(1) a scaled map of the entire existing or proposed copper mine facility showing the location of all features identified in Paragraphs (2) through (11) of this subsection; the map shall be clear and legible, and drawn to a scale such that all necessary information is plainly shown and identified; the map shall show the scale in feet or metric measure, a graphical scale, a north arrow, and the effective date of the map; multiple maps showing different portions of the copper mine facility may be provided using different scales as appropriate; documentation identifying the means used to locate the mapped objects (i.e., global positioning system (GPS), land survey, digital map interpolation, etc.) and the relative accuracy of the data (i.e., within a specified distance expressed in feet or meters) shall be included with the map; any object that cannot be directly shown due to its location inside of existing structures, or because it is buried without surface identification, shall be identified on the map in a schematic format and identified as such;

(2) a description of each existing or proposed tailing impoundment, leach stockpile, process water and impacted stormwater impoundment, waste rock stockpile, and slag including information about its location, purpose, liner material, storage or disposal capacity, and the methods proposed or used to prevent pollution of ground water;

(3) a description of each existing or proposed open pit and underground mine within the proposed copper mine facility and information about its location, depth, size, and acreage;

(4) a description of each existing or proposed material handling and processing unit including crushing, milling, concentrating, smelting and SX/EW units within the copper mine facility, and information about its location and proposed methods of process water handling and disposal;

(5) a description of existing or proposed sumps, tanks, pipelines and truck and equipment wash units, including information for each unit regarding its location, purpose, construction material, dimensions and capacity; for portable tanks or pipelines or those subject to periodic relocation, identify the areas within which they may be used;

(6) a description of the proposed method(s) to manage stormwater runoff and run-on to minimize leachate that may be discharged;

(7) a description of water wells and monitoring wells, including information for each well regarding its location, construction material, dimensions and capacity;

(8) a description of flow meters required pursuant to the copper mine rule or a discharge permit and fixed pumps for discharge of process water, tailings and impacted stormwater;

(9) a description of any surface water(s) of the state and any other springs, seeps, ditch irrigation systems, acequias, and irrigation canals and drains located within the boundary of the copper mine facility;

(10) a description of proposed sampling locations; and

(11) a description of all septic tanks and leachfields used for the disposal of domestic wastes.

**K. Surface soil survey, geology and hydrology.** An application shall include:

(1) the most recent regional soil survey map and associated descriptions identifying surface soil type(s);

(2) a geologic map covering the area within a one-mile radius of the copper mine facility and geologic and lithological information which provides a geologic profile of the subsurface conditions beneath the copper mine site, including the thickness of each geologic unit, identification of which geologic units are water bearing, cross sectional diagrams and sources of all such information; and

(3) hydrologic information on any surface waters of the state within one-half mile of the boundary of the copper mine facility, and of subsurface conditions for all water bearing zones beneath the copper mine facility including maximum and minimum depths to ground water, direction of ground water flow, hydrologic gradients shown by potentiometric maps, transmissivity and storativity, and ground water quality; the sources of all such information shall be provided with the application.

**L. Location map.** An application shall include a location map with topographic surface contours identifying all of the following features located within a one-mile radius of the copper mine facility:

(1) watercourses, lakebeds, sinkholes, playa lakes, seeps and springs (springs used to provide water for human consumption shall be so denoted);

(2) wells supplying water for a public water system and private domestic water wells;

- (3) irrigation and other water supply wells; and
- (4) ditch irrigations systems, acequias, irrigation canals and drains.

**M. Flood zone map.** An application shall include, if available, the most recent 100-year flood zone map developed by the federal emergency management administration (FEMA), flood insurance rate map or other flood boundary and floodway map with the copper mine clearly identified along with all 100-year frequency flood zones for the copper mine facility, and a description of any engineered measures used for flood protection.

**N. Engineering design, construction and surveying.** Pursuant to 20.6.7.17, 20.6.7.18, 20.6.7.20, 20.6.7.21, 20.6.7.22, 20.6.7.23 and 20.6.7.26 NMAC an application shall include:

- (1) plans and specifications for proposed new or modified tailings impoundments, leach stockpiles, waste rock stockpiles, and process water and impacted stormwater impoundments and associated liners;
- (2) plans and specifications for proposed new or modified tanks, pipelines, truck and equipment wash units and other containment systems; and
- (3) a stormwater management plan.

**O. Material characterization plan and material handling plan.** An application shall include a material characterization plan and, if applicable, a material handling plan for all waste rock excavated at the copper mine facility pursuant to Subsection A of 20.6.7.21 NMAC.

**P. Hydrologic conceptual model.** An application for a discharge permit for a new copper mine facility shall include a site hydrologic conceptual model providing:

- (1) a description of the hydrogeologic setting at the copper mine facility including ground water potentiometric maps, surface water drainages and flows, types of ground water and surface water recharge and its distribution, and hydrologic boundary conditions and divides;
- (2) the site hydrogeologic setting relative to both local and regional hydrology and geology including appropriate cross-sectional diagrams depicting major geologic formations and structures, aquifers, and ground water depths;
- (3) potential sources of water contaminants including discharge types and their locations;
- (4) potential pathways for migration of water contaminants to ground water and surface water; and

(5) any surface waters of the state that are gaining because of inflow of ground water that may be affected by water contaminants discharged from the copper mine facility.

**Q. Waste minimization plan.** An application shall include a waste minimization plan to implement, as practicable, best management practices for minimization and recycling of process water and wastes generated at the copper mine facility to reduce the potential for impacts to ground water.

**R. Monitoring wells.** An application shall include the location of all existing and proposed ground water monitoring wells pursuant to 20.6.7.28 NMAC.

**S. Flow metering.** An application shall describe a copper mine facility's flow metering system pursuant to Paragraph (5) of Subsection C of 20.6.7.17 NMAC, Subsection E of 20.6.7.18 NMAC, and Subsections C and E of 20.6.7.29 NMAC, including:

(1) the method(s) (i.e., pumped versus gravity flow) of process water discharge and stormwater transfer and handling;

(2) the proposed flow measurement devices for each flow method and information about its type and capacity; and

(3) the location of all existing and proposed flow meters required pursuant to the copper mine rule or a discharge permit.

**T. Closure plan.** An application shall include a closure plan for all portions of a copper mine facility pursuant to Subsection A of 20.6.7.18 NMAC, 20.6.7.33 NMAC, 20.6.7.34 NMAC and 20.6.7.35 NMAC unless closure of the copper mine facility is covered, or will be covered, by a separate closure discharge permit.

**U. Financial assurance.** An application shall include a proposal for financial assurance for those portions of a copper mine facility to be reclaimed in accordance with a closure plan submitted pursuant to Subsection A of 20.6.7.18 NMAC, 20.6.7.33 NMAC, 20.6.7.34 NMAC and 20.6.7.35 NMAC.

**V. Variances.** An application shall identify any issued or proposed variances for the copper mine facility pursuant to 20.6.2.1210 NMAC and the sections of the copper mine rule affected by the variance(s).

**W. Meteorological data.** An application shall include a plan to measure meteorological data at sites throughout the copper mine facility including precipitation, temperature, relative humidity, solar radiation, wind speed and wind direction.

[20.6.7.11 NMAC - N, 12/1/13]

**20.6.7.12 [RESERVED]**

**20.6.7.13 [RESERVED]**

**20.6.7.14 REQUIREMENTS FOR A DISCHARGE PERMIT AMENDMENT:**

**A.** A permittee may submit a request for a discharge permit amendment to the department at any time during the term of an approved discharge permit.

**B.** A permittee shall remit a fee pursuant to Subsection C of 20.6.7.9 NMAC with the request for a discharge permit amendment.

**C.** A discharge permit amendment shall be administratively reviewed and evaluated by the department and is not subject to public notice or a public hearing.

**D.** The department shall approve, disapprove or request additional information necessary for a determination regarding a discharge permit amendment within 30 days of receipt of a request.

**E.** The department shall provide notice of all discharge permit amendment approvals or denials to those persons on the copper mine facility-specific list maintained by the department who have requested notice of discharge permit applications.

[20.6.7.14 NMAC - N, 12/1/13]

**20.6.7.15 [RESERVED]**

**20.6.7.16 [RESERVED]**

**20.6.7.17 GENERAL ENGINEERING AND SURVEYING REQUIREMENTS:**

**A. Practice of engineering.** All plans, designs, drawings, reports and specifications required by the copper mine rule that require the practice of engineering shall bear the seal and signature of a licensed New Mexico professional engineer pursuant to the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 61-23-33, NMSA 1978, and the rules promulgated under that authority.

**B. Practice of surveying.** All plans, drawings and reports required by the copper mine rule that require the practice of surveying shall bear the seal and signature of a licensed New Mexico professional surveyor pursuant to the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 61-23-33, NMSA 1978, and the rules promulgated under that authority.

**C. Engineering plans and specifications requirements.** The following engineering plans and specifications and associated requirements shall be submitted to

the department for approval with an application for a new, renewed or modified discharge permit, as applicable.

(1) **Liner system plans and specifications.** An applicant or permittee proposing or required to construct a new or improve an existing liner system required by the copper mine rule or an existing discharge permit, including the repair, modification or replacement of a liner system, shall include the following elements in all liner system plans and specifications submitted to the department.

(a) **Construction plans and specifications.** Detailed and complete construction plans and specifications and supporting design calculations developed pursuant to this section and 20.6.7.18 and 20.6.7. 20 through 20.6.7.26 NMAC shall be submitted to the department.

(b) **Liner system CQA/CQC.** The construction and installation of all liner systems and the repair, modification or replacement of a liner system shall be conducted in accordance with a construction quality assurance/construction quality control (CQA/CQC) plan. A CQA/CQC plan shall be included as part of the design plans and specifications. The CQA/CQC plan shall specify the observations and tests to be used to ensure that construction of the liner system meets all design criteria, plans and specifications. All liner system testing and evaluation reports for liner construction and installation, including modifications and replacements shall be signed and sealed by a licensed New Mexico professional engineer with experience in liner system construction and installation. The CQA/CQC plan shall include the following elements.

(i) the identity of persons responsible for overseeing the CQA/CQC program. The person responsible for overseeing the CQA/CQC plan shall be a licensed New Mexico professional engineer with experience in liner system construction and installation;

(ii) an inspection protocol;

(iii) identification of field and laboratory testing equipment and facilities proposed to be used, and calibration methods;

(iv) the procedures for observing and testing the liner, subgrade, liner bedding, and other liner system construction material;

(v) a protocol for verification of any manufacturers' quality control testing and procedures;

(vi) the procedures for reviewing inspection test results and laboratory and field sampling test results;

(vii) the actions to be taken to replace or repair liner material, subgrade, liner bedding, or other liner system construction materials should deficiencies be identified;

(viii) the procedures for seaming synthetic liners;

(ix) the reporting procedures for all inspections and test data; and

(x) the submission of a CQA/CQC report.

(c) **Management of process water, solids and sludge or impacted stormwater during liner system improvement.** An applicant or permittee proposing or required to improve copper mine facility operational units that requires the use of a liner system, including re-lining or replacement of an existing liner system, shall submit a plan for managing process water, solids and sludges, or impacted stormwater during preparation and construction of the improvement. The plan shall be submitted as part of the design plans and specifications. The plan shall include the following minimum elements.

(i) a plan for handling and disposal of process water, solids and sludges and impacted stormwater discharges during improvement to the impoundment;

(ii) a plan for removal and disposal of process water, solids and sludges or impacted stormwater within the liner system prior to beginning improvement to the liner system;

(iii) a plan and schedule for implementation of the project; and

(iv) if the plan proposes a temporary location for the discharge of process water, solids and sludge, or impacted stormwater not authorized by the effective discharge permit, the applicant or permittee shall request temporary permission to discharge from the department pursuant to Subsection B of Section 20.6.2.3106 NMAC.

(d) **Dam safety.** An applicant or permittee proposing or required to construct a tailings impoundment shall submit documentation of compliance with the requirements of the dam safety bureau of the state engineer pursuant to Section 72-5-32 NMSA 1978, and rules promulgated under that authority, unless exempt by law from such requirements.

(2) **Tank, pipeline, sump or other containment system plans and specifications.** An applicant or permittee proposing or required to construct a new tank, pipeline, sump or other containment system for the management of tailings, process water or other water contaminants shall submit detailed and complete construction plans and specifications and supporting design calculations developed pursuant to this section and 20.6.7.23 NMAC. The construction plans and specifications for an

improvement(s) or replacement of an existing tank, pipeline, sump or other containment systems shall address the management of solids, waste, process water or other water contaminants generated during preparation and construction of the improvements or replacement. This requirement does not apply to portable or temporary tanks, pipelines, sumps, or other containment systems that are subject to periodic relocation during mining operations.

(3) **Process water or impacted stormwater treatment system plans and specifications.** An applicant or permittee proposing or required to construct a treatment system during mine operations for process water or impacted stormwater to be treated prior to discharge shall submit detailed and complete construction plans and specifications and supporting design calculations developed pursuant to this section and 20.6.7.18 NMAC.

(4) **Impacted stormwater management plans and specifications.** An applicant shall submit stormwater management plans and specifications to limit run-on of stormwater and manage impacted stormwater in a manner which prevents water pollution that may cause an exceedance of the applicable standards. The plans and specifications shall be submitted with an application for a new or renewed discharge permit, or as applicable with an application for a modified discharge permit, and shall include the following information.

(a) A scaled map of the copper mine facility showing:

- (i) the property boundaries of the copper mine facility and the mining areas;
- (ii) all existing and proposed structures;
- (iii) existing and proposed final ground surface contours outside of the open pit surface drainage area at appropriate vertical intervals; and
- (iv) existing and proposed stormwater containment and conveyance structures, including construction materials, size, type, slope, capacity and inlet and invert elevation (or minimum and maximum slopes) of the structures, as applicable.

(b) A description of existing surface water drainage conditions.

(c) A description of the proposed post-development surface water drainage conditions.

(d) Supplemental information supporting the stormwater management plan including the following information:

- (i) hydrologic and hydraulic calculations for design storm events;

(ii) hydraulic calculations demonstrating the capacity of existing and proposed stormwater impoundments;

(iii) hydraulic calculations demonstrating the capacity of existing and proposed conveyance channels to divert stormwater or contain and transport runoff to stormwater impoundment(s); and

(iv) a list of tools and references used to develop the hydrologic and hydraulic calculations such as computer software, documents, circulars, and manuals.

(e) A plan to manage impacted stormwater, and to divert run-on of non-impacted stormwater where practicable. The plan shall include, as necessary, design, construction, and installation of stormwater run-on and run-off diversion structures, collection of impacted stormwater, and a description of existing surface water drainage conditions. The plan shall consider:

(i) the amount, intensity, duration and frequency of precipitation;

(ii) watershed characteristics including the size, topography, soils and vegetation of the watershed; and

(iii) runoff characteristics including the peak rate, volumes and time distribution of runoff events.

(5) **Flow metering plans.** An applicant or permittee proposing or required to install a flow meter(s) pursuant to the copper mine rule shall submit a flow metering plan to support the selection of the proposed device along with information or construction plans and specifications, as appropriate, detailing the installation or construction of each device. This information or construction plans and specifications proposed by the applicant or permittee shall be submitted to the department with the application for a new discharge permit or a renewed or modified discharge permit if a new flow meter is proposed.

**D. New impoundment engineering design requirements.** At a minimum, construction of a new impoundment or replacement of an existing impoundment shall be in accordance with the applicable liner, design, and construction requirements of this subsection. These requirements do not apply to tailing impoundments that are subject to the specific engineering design requirements of Paragraph (4) of Subsection A of 20.6.7.22 NMAC.

(1) **General design and construction requirements.**

(a) The outside slopes of an impoundment shall be a maximum of two (horizontal) to one (vertical) and shall meet a minimum static factor of safety of 1.3 with water impounded to the maximum capacity design level, except where an impoundment is bounded by rock walls or is below the surrounding surface grade.

(b) The dikes of an impoundment shall be designed to allow for access for maintenance unless otherwise approved by the department.

(c) Liners shall be installed with sufficient slack in the liner material to accommodate expansion and contraction due to temperature changes. Folds in the liner material shall not be present in the completed liner except to the extent necessary to provide slack.

(d) Liners shall be anchored in an anchor trench. The trench shall be of a size and setback distance sufficient for the size of the impoundment.

(e) Liner panels shall be oriented such that all sidewall seams are vertical.

(f) Any opening in the liner through which a pipe or other fixture protrudes shall be sealed in accordance with the liner manufacturer's requirements. Liner penetrations shall be detailed in the construction plans and as-built drawings.

(g) All liners shall be installed by an individual that has the necessary training and experience as required by the liner manufacturer.

(h) Liner manufacturer's installation and field seaming guidelines shall be followed.

(i) All liner seams shall be field tested by the installer and verification of the adequacy of the seams shall be submitted to the department along with the as-built drawings.

(j) Concrete slabs installed on top of a liner for operational purposes shall be completed in accordance with manufacturer and installer recommendations to ensure liner integrity.

(2) **Impoundment capacity.** Impoundments shall meet the following design capacities. Capacity requirements may be satisfied by a single impoundment or by the collective capacity of multiple interconnected impoundments and any interconnected tanks.

(a) **Capacity requirements for impoundments that contain leach solutions.** Process water systems that impound leach solutions shall be designed for adequate overflow capacity for upset conditions such as power outages, pump or conveyance disruptions and significant precipitation events. Any impoundment that collects leach solutions and is routinely at capacity shall be designed to maintain a minimum of two feet of freeboard during normal operating conditions while conveying the maximum design process flows. The appropriate overflow capacity design shall consider system redundancies such as backup power systems and pumps. The overflow capacity shall be designed to contain the maximum design flows for the collection system for the maximum period of time that is required for maintenance

activities or restoration to normal operating conditions while maintaining two feet of freeboard. If the collection system receives direct precipitation run-off with little or no flow attenuation in the upgradient leach stockpile collection system, the overflow capacity shall be sized to contain the runoff from a 100 year, 24 hour storm event in addition to the upset condition capacity. For process water impoundments located within the open pit surface drainage area, the open pit bottom may be utilized for a portion of the permitted impoundment capacity. Impoundments constructed on a leach stockpile such that any overflow would discharge to and be contained by the approved leach stockpile system are not subject to this capacity requirement.

(b) **Other process water impoundment capacity requirements.** Process water impoundments intended to manage or dispose of process water, other than leach solutions, shall be designed for adequate overflow capacity for upset conditions such as power outages, pump or conveyance disruptions and significant precipitation events. Any impoundment that collects such process water and is routinely at capacity shall be designed to maintain a minimum of two feet of freeboard during normal operating conditions while conveying the maximum design process flows. The appropriate overflow capacity design shall consider system redundancies such as backup power systems and pumps. The overflow capacity shall be designed to contain the maximum design flows for the collection system for the maximum period of time that is required for maintenance activities or restoration to normal operating conditions while maintaining two feet of freeboard. For process water impoundments located within the open pit surface drainage area, the open pit bottom may be utilized for a portion of the permitted impoundment capacity. Impoundments constructed on a leach stockpile such that any overflow would discharge to and be contained by the approved leach stockpile system are not subject to this capacity requirement.

(c) **Combination process water/impacted stormwater impoundment capacity requirements.** Impoundments, other than impoundments for the containment of leach solutions, intended to dispose of a combination of process water and impacted stormwater shall be designed to contain, at a minimum, the volume described in Subparagraph (b) of Paragraph 2 of this subsection and the volume of stormwater runoff and direct precipitation generated from the receiving surface area resulting from a 100 year return interval storm event while preserving two feet of freeboard. For combination process water/impacted stormwater impoundments located within the open pit surface drainage area, the open pit bottom may be utilized for a portion of the impoundment capacity.

(d) **Evaporative impacted stormwater impoundment design requirements.** Impoundments intended to manage or dispose of impacted stormwater by evaporation shall be designed to contain, at a minimum, the volume of stormwater runoff and direct precipitation generated from the receiving surface area resulting from a 100 year return interval storm event while preserving two feet of freeboard. For impoundments located within the open pit surface drainage area, the open pit bottom may be utilized for a portion of the impoundment capacity.

(e) **Other impacted stormwater impoundment design requirements.**

Other impacted stormwater impoundment systems shall be designed to prevent overflow resulting from a 100 year return interval storm event while maintaining two feet of freeboard and may use interconnected impoundments, gravity flow conveyances and pumping systems designed to remove water from individual impoundments at rates to prevent overflow during the design storm event. The appropriate overflow capacity design shall consider system redundancies such as backup power systems and pumps. For impacted stormwater impoundments located within the open pit surface drainage area, the open pit bottom may be utilized for a portion of the permitted impoundment capacity.

(f) **Conveyance design requirement.** Open channel conveyance structures intended to transport stormwater to an impoundment shall be designed to convey, at a minimum, the peak flow from a 100 year return interval storm event while preserving adequate freeboard, but not less than six inches of freeboard. Conveyances shall be designed to minimize ponding and infiltration of stormwater.

(g) **Solids settling.** An impoundment designed and used for solids settling shall not be used to satisfy the impoundment capacity requirements of this paragraph.

(3) **Process water and impacted stormwater long-term storage impoundments.** Process water, and impacted stormwater impoundments that store impacted stormwater for longer than thirty days shall meet the following design and construction requirements, except that process water and impacted stormwater long-term impoundments located within an open pit surface drainage area of an existing copper mine facility may be designed and constructed in accordance with the requirements of Paragraph (4) of this subsection.

(a) **Liner system.** At a minimum, impoundments subject to this paragraph shall be designed and constructed as an engineered liner system consisting of a suitable subgrade and liner bedding overlain by a secondary synthetic liner which is overlain by a leak collection system overlain by a primary synthetic liner, unless an alternate design is approved by the department pursuant to Subparagraph (e) of this paragraph. The liner system shall be installed in accordance with a department approved CQA/CQC plan pursuant to Paragraph (2) of Subsection C of 20.6.7.17 NMAC.

(b) **Liner system sub-grade and bedding.** The liner system shall be placed upon a stable sub-grade. The sub-grade shall be free of sharp rocks, vegetation and stubble to a depth of at least six inches below the liner. Liners shall be placed on a liner bedding of sand or fine soil. The surface in contact with the liner shall be smooth to allow for good contact between liner bedding. The liner bedding surface shall be sufficiently dry during liner installation such that free or excess water will not hinder the welding of seams. The liner installer shall provide the owner or permittee with a sub-grade and liner bedding acceptance certificate prior to installing the liner indicating acceptance of the earthwork.

(c) **Liner type.** The primary and secondary synthetic liners for the impoundment shall provide the same or greater level of containment, including permeability, as a 60 mil HDPE geomembrane liner system. The liner system's tensile strength, tear and puncture resistance and resistance to degradation by ultraviolet light shall be compatible with design loads, exposure and conditions.

(d) **Leak collection system.** A leak collection system shall be constructed between the primary and secondary synthetic liners for the purpose of collecting and rapidly removing fluids from leaks that may occur in the primary liner so that minimal hydraulic head is maintained on the secondary liner. The leak collection system shall consist of a drainage layer, fluid collection pipes and a fluid removal system to prevent hydraulic head transference from the primary liner to the secondary liner and shall meet the following requirements.

(i) The drainage layer shall be constructed of granular soil materials or geosynthetic drainage net (geonet) with a design slope of at least two percent. Drainage material shall have a coefficient of permeability of  $1 \times 10^{-2}$  centimeters/second or greater.

(ii) Perforated fluid collection pipes shall be installed to transmit fluid from the drainage layer to a fluid collection sump(s). Collection pipe material, diameter, wall thickness, and slot size and distribution shall be sufficient to prevent deflection, buckling, collapse or other failure. Collection pipes shall be installed with slopes equivalent to the slope of the drainage layer. Collection pipe systems shall be designed to allow for cleaning of all collection pipes with standard pipe cleaning equipment.

(iii) A fluid removal system shall be installed to remove fluid from the leak collection system. The fluid removal system shall consist of a sump(s), a dedicated pump(s), an automated pump activation system that activates the pump(s) when a specific fluid level is reached in a sump(s), a totalizing flow meter to measure to measure the volume of leachate pumped from the system, and an automated alarm system that provides warning of pump failure. Alternately a gravity drain system may be utilized where practicable and approved by the department.

(e) An applicant or permittee may propose for department approval an alternative design for process water and impacted stormwater long-term storage impoundments that provides the same or greater level of containment as a double synthetically lined system with leak collection.

(4) **Impacted stormwater impoundments.** Impacted stormwater impoundments that store impacted stormwater for less than 30 days shall meet the following design and construction requirements; except that any such impoundments located within an open pit surface drainage area may not require a liner.

(a) **Liner system.** At a minimum, an impacted stormwater impoundment subject to this paragraph shall be constructed as an engineered liner system consisting of a compacted subbase overlain by a synthetic liner. The liner system shall be installed

in accordance with a department approved CQA/CQC plan pursuant to Paragraph (2) of Subsection C of 20.6.7.17 NMAC.

(b) **Liner system subgrade and liner bedding.** The liner system shall be prepared and placed upon a stable subgrade. The top surface of the subgrade shall be smooth and free of sharp rocks or any other material that could penetrate the overlying liner bedding or synthetic liner. Liner bedding shall be placed atop the subgrade and shall consist of a minimum of six inches of sand or fine soil to allow for good contact between liner and liner bedding. The liner bedding surface shall be sufficiently dry during liner installation such that free or excess water will not hinder the welding of seams. The liner installer shall provide the owner or permittee with a sub-grade and liner bedding acceptance certificate prior to installing the liner indicating acceptance of the earthwork.

(c) **Liner type.** Synthetic liners for an impacted stormwater impoundment shall provide the same or greater level of containment, including permeability, as a 60 mil HDPE geomembrane liner system. The liner system's tensile strength, tear and puncture resistance and resistance to degradation by ultraviolet light shall be compatible with design loads, exposure and conditions.

(d) **Wind protection.** Liner systems for impacted stormwater impoundments shall be designed and constructed with a weighting system to secure the liner and limit liner damage during periods of extreme wind events when the impoundment is empty.

(e) **Alternate design.** An applicant or permittee may propose for department approval an alternative design for an impacted stormwater impoundment that provides the same or greater level of containment as the liner system described in Subparagraphs (a) through (d) of this paragraph.

(5) **Non-impacted stormwater impoundments.** Non-impacted stormwater impoundments located outside the open pit surface drainage area over contaminated areas where the water has the potential to infiltrate and produce a leachate that may cause an exceedance of the applicable standards require a liner system designed and installed in accordance with Paragraph (4) this subsection.

(6) **Separation between impoundments and ground water.** Impoundments that require a liner pursuant to this subsection shall not be constructed in a location where the vertical distance between the seasonal high ground water level and the finished grade of the floor of the impoundment is less than or equal to four feet unless the applicant or permittee submits an engineering evaluation from a licensed New Mexico professional engineer that demonstrates that the impoundment design will not be affected by shallow ground water conditions.

(7) **Spillways.** Impacted stormwater impoundments shall have spillways to safely discharge the peak runoff of a 25-year, 24-hour precipitation event, or an event with a 90-percent chance of not being exceeded for the design life of the impoundment.

Impoundments intended as primary containment for process water shall not be designed with a spillway that empties onto the ground surface.

[20.6.7.17 NMAC - N, 12/1/13]

#### **20.6.7.18 GENERAL OPERATIONAL REQUIREMENTS:**

**A. Planning for closure.** To the extent practicable, copper mine facility units shall be designed and operated in a manner that considers implementation of the copper mine facility closure plan submitted pursuant to 20.6.7.33 NMAC including:

(1) identifying material that is suitable for use to construct covers and, when feasible, segregating that material from other mined materials to preserve it for use to construct covers; and

(2) consideration of closure grading and drainage plans in the design and construction of leach stockpiles, tailings impoundments, waste rock stockpiles, and other copper mine facilities.

**B. Construction requirements.** A permittee shall meet the following requirements for construction of a liner system for the containment of water contaminants, including repair or relining of a liner system.

(1) A permittee shall notify the department at least five working days before starting construction or repair or relining to allow for an inspection by the department, except in the case of an emergency repair. If an emergency repair is necessary, the permittee shall notify the department within 24 hours of starting the repair.

(2) A permittee shall submit to the department a construction certification report bearing the seal and signature of a licensed New Mexico professional engineer, when required by the New Mexico Engineering and Surveying Practice Act, Sections 61-23-1 through 61-23-33 NMSA 1978, and the rules promulgated under that authority, verifying that installation and construction was completed pursuant to Subsections C and D of 20.6.7.17 NMAC. The construction certification report shall include as-built drawings, final specifications, final capacity calculations and the CQA/CQC report.

(3) The construction certification report shall be submitted to the department before discharging or placing ore or wastes in a liner system.

**C. Notice of mining operations and discharge.** A permittee shall provide written notice to the department of the commencement, or recommencement of operations as follows.

(1) **For new copper mine facilities.**

(a) **Commencement of construction.** A permittee shall provide written notice to the department a minimum of 30 days before commencing construction of units covered by a permit issued pursuant to the copper mine rule.

(b) **Commencement of discharge.** A minimum of 30 days prior to discharging or emplacement of ore or waste rock in a constructed impoundment, stockpile, or tailings impoundment a permittee shall provide written notice to the department of the anticipated date that discharge or emplacement of ore or waste rock will commence. A permittee shall provide written verification to the department of the actual date of commencement within 30 days of commencement.

(2) **For existing copper mine facilities.**

(a) **Commencement of a new discharge.** A minimum of 30 days prior to discharging or emplacement of ore or waste in a newly constructed impoundment, stockpile, or tailings impoundment the permittee shall provide written notice to the department of the anticipated date that discharge or emplacement of ore or waste will commence. A permittee shall provide written verification to the department of the actual date of commencement within 30 days of commencement.

(b) **Recommencement of mining.** If a permittee is on standby pursuant to the Mining Act, a permittee shall provide written notice to the department indicating the planned date of recommencement of operations at a copper mine facility that include operation of units covered by a permit issued pursuant to the copper mine rule. Written notification shall be submitted to the department a minimum of 30 days prior to the date mining is to recommence.

**D. Stormwater management.** A permittee shall divert and manage stormwater from the open pit, leach stockpiles, waste rock and tailings impoundments and other copper mine facility areas containing material that could generate or release water contaminants in accordance with a stormwater management plan as required by Paragraph (4) of Subsection C of 20.6.7.17 NMAC.

**E. Flow meters.** A permittee shall employ a flow metering system that uses flow measurement devices (flow meters, weirs or other department approved method) to measure the volume of process water and tailings discharged at a copper mine facility as follows.

(1) **Flow meter installation.** Flow meters shall be installed in accordance with the flow meter plans submitted with the application for a new, renewed or modified discharge permit pursuant to Paragraph (5) of Subsection C of 20.6.7.17 NMAC, and this section. Flow meters shall be permanently labeled with meter identification nomenclature, and the month and year of meter installation.

(2) **Flow meter inspection and maintenance.** A permittee shall visually inspect flow meters on a monthly basis for evidence of malfunction. If a visual inspection

indicates a flow meter is not functioning to measure flow, the permittee shall repair or replace the meter within 30 days of or as soon as practicable following discovery. The repaired or replaced flow meter shall be installed and calibrated pursuant to this subsection. The permittee shall submit a report of repaired or replaced meters to the department in the subsequent monitoring report which shall include:

(a) information on repairs including a description of the malfunction; a statement verifying the repair, and a description of calibration of the flow meter pursuant to Paragraph (3) of this subsection.

(b) for replacement meters, information demonstrating that the device is in accordance with the plan for flow metering devices submitted pursuant to Paragraph (5) of Subsection C of 20.6.7.17 NMAC, and that the device has been calibrated pursuant to Paragraph (3) of this subsection.

(3) **Flow meter calibration.** All flow meters required under the copper mine rule shall be calibrated to have their accuracy ascertained according to the flow metering plan submitted pursuant to Paragraph (5) of Subsection C of 20.6.7.17 NMAC and the approved discharge permit. Flow meters shall be calibrated to within plus or minus ten percent of actual flow.

(4) **Excluded flow meters.** A permittee may utilize additional flow meters not required by the copper mine rule and those flow meters are not subject to the copper mine rule requirements.

## **F. Impoundments.**

(1) **New impoundments.** Construction of an impoundment pursuant to a discharge permit issued after the effective date of the copper mine rule shall be performed in accordance with the liner, design, and construction requirements of Subsection D of 20.6.7.17 NMAC.

(2) **Existing impoundments.** An impoundment authorized by a discharge permit issued prior to the effective date of the copper mine rule and in existence on the effective date of the copper mine rule that does not meet the requirements of Paragraph (3) of Subsection D of 20.6.7.17 NMAC may continue to receive process water or impacted stormwater provided the requirements of Subparagraphs (a) and (b) or (c) of this paragraph are met or the impoundment is located within the open pit surface drainage area. If the requirements of Subparagraphs (a) and (b) or (c) of this paragraph are not met, the impoundment shall be replaced or improved in accordance with the liner, design, and construction requirements of Subsection D of 20.6.7.17 NMAC.

(a) Ground water monitoring data from monitoring wells downgradient of the impoundment indicates that the impoundment is functioning as designed.

(b) The impoundment has integrity and is capable of maintaining integrity for its operational life.

(c) The impoundment is covered by a variance granted pursuant to 20.6.2.1210 NMAC.

(3) **Impoundment inspection and maintenance.** A permittee shall maintain impoundments to prevent conditions which could affect the structural integrity of the impoundments and associated liners during active operations. Such conditions include, but are not limited to, erosion damage; animal burrows or other animal damage; the presence of vegetation including aquatic plants, weeds, woody shrubs or trees growing within five feet of the top inside edge of a sub-grade impoundment, within five feet of the toe of the outside berm of an above-grade impoundment, or within the impoundment itself; evidence of seepage; evidence of berm subsidence; and the presence of large debris or large quantities of debris in the impoundments. A permittee shall inspect impoundments and surrounding berms on a quarterly basis to ensure proper condition and control vegetation growing in and around the impoundments in a manner that is protective of the liners. Within 24 hours of discovery, a permittee shall report to the department any evidence of damage that threatens the structural integrity of a berm or liner of an impoundment or that may result in an unauthorized discharge. A permittee is not required to report routine berm maintenance to the department.

(4) **Freeboard.** The fluid level elevation in an impoundment shall be maintained such that a minimum of two feet of freeboard is preserved within the impoundment at all times.

(5) **Leak collection system inspection and maintenance:** A permittee shall inspect and maintain impoundments utilizing primary and secondary liners and equipped with leak collection systems as follows:

(a) liquid accumulation within the sump of the leak collection system shall be returned to the respective impoundment or the process water system utilizing an automatically activated pump or other engineered design approved by the department to minimize hydraulic head on the secondary liner by insuring the interstitial space between the liners does not become saturated; and

(b) the permittee shall inspect the sump(s), dedicated pump(s), any automated pump activation system, any automated alarm system and totalizing flow meter associated with the leak detection and collection system on a monthly basis for evidence of malfunction; if an inspection indicates malfunction of any of these components, the permittee shall repair the component(s) within 30 days of discovery or shall retain a record of why the repair took longer; the permittee shall notify the department of component malfunctions and repairs made in the subsequent quarterly report.

**20.6.7.19 SETBACK REQUIREMENTS FOR A COPPER MINE FACILITY APPLYING FOR A DISCHARGE PERMIT:**

**A.** The setback requirements of this section apply to a new copper mine facility for which an application for a discharge permit is received by the department after the effective date of the copper mine rule.

**B.** The setback requirements shall be measured as horizontal map distances.

**C.** The required setback distances shall be met as certified by the applicant as of the receipt date of the application.

**D.** If the setback requirements apply to a copper mine facility, an applicant or permittee shall not propose or construct a leach stockpile, waste rock stockpile, tailing impoundment, or process water and impacted stormwater impoundment that does not meet the setback as determined as of the receipt date of the application for a new discharge permit by the department.

**E. Leach stockpile, waste rock stockpile, tailing impoundment, process water impoundment or impacted stormwater impoundment setback requirements.**

(1) Leach stockpiles, waste rock stockpiles, tailing impoundments, process water impoundments or impacted stormwater impoundments shall be located:

(a) greater than 500 feet from a private domestic water well or spring that supplies water for human consumption; and

(b) greater than 1000 feet from any water well or spring that supplies water for a public water system as defined by 20.7.10 NMAC, unless a wellhead protection program established by the public water system requires a greater distance.

(2) The requirements of Subparagraph (a) of Paragraph (1) of this subsection shall not apply to wells or springs that supply water to the copper mine facility for human consumption and are located within the property boundary of the copper mine facility.

(3) The requirements of Paragraph (1) of this subsection shall not apply to wells that are constructed after a copper mine facility received a discharge permit for a leach stockpile, waste rock stockpile, tailing impoundment, process water impoundment or impacted stormwater impoundment.

(4) Setback distances shall be measured from the toe of the outer edge of a leach stockpile, waste rock stockpile, tailing impoundment, process water impoundment or impacted stormwater impoundment at its final design build out.

## 20.6.7.20 REQUIREMENTS FOR LEACH STOCKPILES AND SX/EW PLANTS:

**A. Engineering design requirements.** At a minimum, the following requirements shall be met in designing leach stockpiles at copper mine facilities unless the applicant or permittee can demonstrate that an alternate design will provide an equal or greater level of containment.

(1) **New leach stockpiles.** New leach stockpiles shall meet the following requirements.

(a) **Liner system.** A new leach stockpile shall be placed on an engineered liner system consisting of a subgrade and compacted earthen liner overlain by a synthetic liner which is overlain by a solution collection system designed to transmit process fluids out of the leach stockpile. The liner system shall be approved by the department prior to installation and shall be installed in accordance with a department approved CQA/CQC plan pursuant to Paragraph (1) of Subsection C of 20.6.7.17 NMAC.

(b) **Liner system subgrade and earthen liner.** A liner system earthen liner shall be prepared and placed upon a stable subgrade. The prepared earthen liner shall consist of a minimum of 12 inches of soil that has a minimum re-compacted in-place coefficient of permeability of  $1 \times 10^{-6}$  cm/sec. The top surface of the earthen liner shall be smooth and free of sharp rocks or any other material that could penetrate the overlying synthetic liner.

(c) **Liner type.** A synthetic liner for a leach stockpile shall provide the same or greater level of containment, including permeability, as a 60 mil HDPE geomembrane liner system. The liner system's tensile strength, tear and puncture resistance and resistance to degradation by ultraviolet light shall be compatible with design loads, exposures and conditions. A licensed New Mexico professional engineer with experience in liner system construction and installation shall identify the basis for the geomembrane composition and specific liner based upon:

- (i) the type, slope and stability of the subgrade;
- (ii) the overliner protection and provisions for hydraulic relief within the liner system;
- (iii) the load and the means of applying the load on the liner system;
- (iv) the compatibility of the liner material with process solutions applied to the leach stockpile and temperature extremes of the location at which it will be installed; and
- (v) the liner's ability to remain functional for five years after the implementation of closure of the leach stockpile.

(d) **Solution collection system.** A solution collection system shall be constructed in an overliner protection and drainage system. The solution collection system shall be designed to remain functional for five years after the operational life of the leach stockpile. The overliner protection shall be designed and constructed to protect the synthetic liner from damage during loading and minimize the potential for penetration of the synthetic liner. A sloped collection system shall be designed that will transmit fluids out of the drainage layer of the leach stockpile. The collection system shall be designed to maintain a hydraulic head of less than the thickness of the drainage layer but the drainage layer shall not exceed five feet in thickness. Any penetration of the liner by the collection system through which a pipe or other fixture protrudes shall be constructed in accordance with the liner manufacturer's requirements. Liner penetrations shall be detailed in the construction plans and as-built drawings.

(e) **Solution containment systems.** PLS flows exiting the leach stockpile shall be collected, contained and conveyed to a process water impoundment(s) or tank(s) using pipelines or lined conveyance systems.

(f) **Alternate design.** An applicant may propose and the department may approve an alternative design for a leach stockpile located within an open pit surface drainage area provided that the stockpile and solution capture systems are designed to maximize leach solution capture considering the site-specific conditions of the open pit, underlying geology and hydrology, and leach solutions will not migrate outside of the open pit surface drainage area.

(2) **Solution extraction/electrowinning (SX/EW) plants.** All SX/EW plants shall be designed to contain all associated process fluids within impermeable vessels with secondary containment or process water impoundments meeting the requirements of Subsection D of 20.6.7.17 NMAC. All pipeline and tank systems associated with SX/EW plants shall be designed and operated pursuant to 20.6.7.23 NMAC.

## **B. Construction.**

(1) **New leach stockpile and SX/EW plants.** Construction of a new leach stockpile or SX/EW plant, including expansion of an existing leach stockpile beyond its ground surface footprint on the effective date of the copper mine rule, shall be performed in accordance with the applicable engineering requirements of Subsection A of 20.6.7.20 and 20.6.7.17 NMAC.

(2) **Existing leach stockpiles.** A leach stockpile system, including its associated solution collection or containment system, at a copper mine facility in existence on the effective date of the copper mine rule is not required to meet the design and construction requirements of Subsection A of 20.6.7.20 NMAC and may continue to operate as previously permitted under a discharge permit subject to compliance with the contingency requirements of 20.6.30 NMAC. A permit issued for such an existing leach stockpile system after the effective date of the copper mine rule

may include the conditions of the existing discharge permit, which shall not be considered to be "additional conditions" under Subsection I of 20.6.7 NMAC.

### **C. Operational requirements.**

(1) **Leach stockpile operating requirements.** A permittee operating a leach stockpile shall operate the stockpile pursuant to the following requirements.

(a) The stockpile shall remain within the area identified in the discharge permit.

(b) The perimeter of the stockpile and the solution collection system shall be inspected monthly.

(c) Any evidence of instability in the stockpile that could potentially result in a slope failure or an unauthorized discharge shall be reported to the department as soon as possible, but not later than 24 hours after discovery and corrected pursuant to Subsection H of Section 20.6.7.30 NMAC.

(d) Any leaks or spills of PLS or leach solutions outside the leach stockpile or containment system shall be recorded and reported pursuant to 20.6.2.1203 NMAC.

(e) If seeps occur they shall be monitored on a monthly basis and an estimate of the seep flow rate shall be made. Monthly records of the seep inspections and flow rates shall be maintained and included in the site monitoring reports.

(f) Leach solution application rates shall not exceed the maximum rates approved in the discharge permit.

(g) The daily leach solution application and PLS collection rate shall be determined using flow meters installed in accordance with this section and Paragraph (5) of Subsection C of 20.6.7.17 NMAC.

(h) The daily rate and monthly volume of leach solution applied and PLS collected shall be recorded, maintained, and included in the site monitoring reports.

(2) **Solution extraction/electrowinning (SX/EW) plants.** A permittee operating a SX/EW plant shall operate the SX/EW plant pursuant to the following requirements.

(a) All solution management and extraction operations shall be contained within pipeline and tank systems designed and operated pursuant to 20.6.7.23 NMAC or process water impoundments meeting the requirements of Subsection D of 20.6.7.17 NMAC.

(b) Sludge and spent electrolyte from the SX/EW plant shall be either placed upon the leach stockpile for leaching or disposed of at an approved location.

[20.6.7.20 NMAC - N, 12/1/13]

## **20.6.7.21 REQUIREMENTS FOR COPPER MINE WASTE ROCK STOCKPILES:**

### **A. Material characterization requirements.**

(1) **Material characterization and acid mine drainage prediction.** All waste rock stored, deposited or disposed of at a copper mine facility shall be evaluated for its potential to generate acid and to release water contaminants at levels in excess of the standards of 20.6.2.3103 NMAC. A plan for determining the potential of the material to release water contaminants, and the method for such evaluations shall be submitted to the department for approval in a material characterization plan that includes the following.

(a) The geologic, mineralogical, physical, and geochemical characteristics of the material stored, deposited or disposed of at the copper mine facility.

(b) A sampling and analysis plan to provide representative samples of the entire range of material stored, deposited or disposed of at the copper mine facility. The plan shall include quality assurance/quality control procedures to be implemented to ensure the validity of the sample results. The plan shall consider the following factors in collecting and establishing representative samples.

- (i) lithological variations;
- (ii) particle size distribution of each lithology;
- (iii) hydraulic conductivity, water content and matric suction relationship for each lithology;
- (iv) mineralogical and textural variations;
- (v) the nature and extent of sulfide mineralization;
- (vi) color variation;
- (vii) degree and nature of fracturing;
- (viii) variations in oxidation and reducing conditions; and
- (ix) the nature and extent of secondary mineralization.

(c) A static testing program using, at a minimum, acid/base accounting, or a department approved equivalent testing method, to evaluate the acid generation and neutralization potential of the material; and meteoric water mobility procedure or other department approved method for whole rock testing to determine water contaminant leaching potential.

(d) If the results of static testing indicate that a material may be acid generating or may generate a leachate containing water contaminants, a kinetic testing program shall be proposed to evaluate reaction rates, provide data to estimate drainage quality, the lag time to acidification of the material, and primary weathering and secondary mineral precipitation/dissolution as it may affect acidification, neutralization and drainage quality. The length of and means of determining when kinetic tests will be discontinued shall be approved by the department prior to implementation of the kinetic testing program.

(e) If the results of the static testing or kinetic testing indicate that the material will be acid generating or generate water contaminants, and the materials will be placed outside of an open pit surface drainage area, a plan shall be submitted to the department to evaluate whether discharges of leachate from the stockpile may cause an exceedance of applicable standards, including an evaluation of the geology and hydrology of the area where the material is to be placed. The plan may include either a department approved model or other department approved demonstration.

(f) If an interceptor system pursuant to Subparagraph (d) of Paragraph (1) of Subsection B of this section or a liner system is proposed for storage or disposal of waste rock, the kinetic testing program is not required.

(2) **Material handling plan.** A permittee shall manage waste rock that may generate or release water contaminants according to a material handling plan approved by the department. The material handling plan shall address:

(a) segregation of acid generating materials and materials that may generate or release water contaminants and the method for handling, storage or disposal of the materials in a manner designed to prevent an exceedance of applicable standards;

(b) stockpiling of non-acid generating materials for potential use in neutralizing acid generating materials or in reclamation;

(c) blending or layering of material types to maximize the benefit of acid neutralizing material;

(d) any chemical amendments of the waste rock;

(e) a description of any proposed containment system(s) proposed in accordance with Subsection B of 20.6.7.21 NMAC.

**B. Engineering design requirements for new waste rock stockpiles.** At a minimum, the following requirements shall be met in designing engineered structures for waste rock stockpiles at copper mine facilities unless the applicant or permittee can demonstrate that an alternate design will provide an equal or greater level of containment.

(1) **New waste rock stockpiles located outside an open pit surface drainage area.** New waste rock stockpiles located outside an open pit surface drainage area shall meet the following requirements unless the applicant or permittee demonstrates through material characterization or implementation of a material handling plan pursuant to Subsection A of this section that the waste rock pile will not cause an exceedence of applicable standards.

(a) Stormwater run-on shall be diverted or contained to minimize contact between stormwater run-on and the stockpiled material.

(b) Seepage from the sides of a waste rock stockpile shall be captured and contained through the construction of headwalls, impoundments and diversion structures as applicable.

(c) Ground water impacted by waste rock stockpiles in excess of applicable standards shall be captured and contained through the construction of interceptor systems as applicable.

(d) The applicant shall submit design plans signed and sealed by a qualified licensed New Mexico professional engineer along with a design report that includes the following.

(i) The proposed areal extent and configuration of the waste rock stockpile.

(ii) The topography of the site where the waste rock stockpile will be located.

(iii) The geology of the site.

(iv) The design of waste rock stockpile seepage collection systems, to be proposed based on consideration of site-specific conditions.

(v) The design of stormwater diversion structures to minimize contact between stormwater run-on and the waste rock material. The design shall consider the amount, intensity, duration and frequency of precipitation; watershed characteristics including the area, topography, geomorphology, soils and vegetation of the watershed; and run-off characteristics of the watershed including the peak rate, volumes and time distribution of run-off events.

(vi) An aquifer evaluation to determine the potential nature and extent of impacts to ground water from the waste rock stockpile based on the proposed waste rock stockpile design and geochemical characteristics. The aquifer evaluation shall include a complete description of aquifer characteristics and hydrogeologic controls on the movement of leachate from the waste rock stockpile and ground water impacted by the waste rock stockpile based on actual field data.

(vii) A design report for a proposed interceptor system for containment and capture of ground water impacted by the waste rock stockpile based on the aquifer evaluation required in Subparagraph (d) of Paragraph (1) of Subsection B of this section. The design report shall include, at a minimum construction drawings and interceptor system performance information, recommended equipment including pumps and meters, recommended pump settings and pumping rates, methods for data collection, and a demonstration that the permittee has adequate water rights to operate the system as designed. The design report shall include a demonstration that the interceptor system design will capture ground water impacted by the waste rock stockpile such that applicable standards will not be exceeded at monitor well locations specified by 20.6.7.28 NMAC. The interceptor system shall be designed to maximize capture of impacted ground water and minimize the extent of ground water impacted by the waste rock stockpile.

(viii) within 120 days of completion of seepage collection and interceptor system construction, or liner system installation a final report shall be submitted to the department that includes complete as-built drawings and a summary of how the items in Subparagraph (a) of Paragraph (1) of Subsection B of 20.6.7.21 thru Subparagraph (d) of Paragraph (1) of Subsection B of 20.6.7.21 NMAC were incorporated into the design.

(e) If the department determines that the proposed waste rock stockpile, seepage collection and interceptor systems when operated in accordance with the design plan specified in this paragraph would cause ground water to exceed applicable standards at monitoring well locations specified by 20.6.7.28 NMAC, the department shall require additional controls which may include but are not limited to a liner system as additional conditions in accordance with Subsection H of 20.6.7.10 NMAC.

(2) **New waste rock stockpiles located inside an open pit surface drainage area.** Stormwater run-on shall be diverted or contained to minimize contact between stormwater run-on and the stockpiled material.

### **C. Construction.**

(1) **New waste rock stockpiles.** Construction of a new waste rock stockpile shall be performed in accordance with the applicable engineering requirements of Subsection B of 20.6.7.21 NMAC and 20.6.7.17 NMAC.

(2) **Existing waste rock stockpiles.** A waste rock stockpile in existence on the effective date of the copper mine rule is not required to meet the design and

construction requirements of Subsection B of 20.6.7.21 NMAC and may continue to operate as previously authorized under a discharge permit unless ground water monitoring of the stockpile pursuant to 20.6.7.28 NMAC requires implementation of corrective action under Subsection A of 20.6.7.30 NMAC. A permit issued for such an existing waste rock stockpile after the effective date of the copper mine rule may include the conditions of the existing discharge permit, which shall not be considered to be "additional conditions" under Subsection I of 20.6.7 NMAC.

**D. Operational requirements.** A permittee operating a waste rock stockpile shall operate the stockpile pursuant to the following requirements.

(1) The stockpile shall remain within the area identified in the approved design plan required in Paragraph (1) of Subsection B of 20.6.7.21 NMAC.

(2) The perimeter of the stockpile and the solution collection systems shall be inspected monthly.

(3) Any evidence of mass instability in the stockpile that could potentially result in a slope failure that may result in an unauthorized discharge shall be reported to the department as soon as possible, but not later than 24 hours after discovery and corrected pursuant to Subsection H of Section 20.6.7.30 NMAC.

(4) Any leaks or spills of leachate outside the waste rock stockpile and any associated containment system shall be recorded and reported pursuant to 20.6.2.1203 NMAC.

(5) If seeps occur, they shall be monitored on a monthly basis and an estimate of the seep flow rate shall be made. Monthly records of the seep inspections and flow rates shall be maintained and included in the site monitoring reports.

(6) Interceptor system collection rates shall be determined using flow meters installed in accordance with Paragraph (5) of Subsection C of 20.6.7.17 NMAC.

(7) The placement of waste rock shall be in accordance with an operating plan that describes the sequencing of waste rock deposition on an annual basis, operation of seepage collection systems, operation of interceptor systems, operation of systems to return water to the concentrator or other locations as appropriate, and any other water management features.

(8) If an interceptor system to maintain capture of ground water impacted by a waste rock stockpile exists, the permittee shall submit an interceptor system monitoring and evaluation report pursuant to 20.6.7.29 NMAC.

[20.6.7.21 NMAC - N, 12/1/13]

## **20.6.7.22 REQUIREMENTS FOR COPPER CRUSHING, MILLING, CONCENTRATOR, SMELTING AND TAILINGS IMPOUNDMENT UNITS:**

**A. Engineering design requirements.** At a minimum, the following requirements shall be met in designing crushing, milling, concentrating, smelting and tailings impoundment units at copper mine facilities unless the applicant or permittee can demonstrate that an alternate design will provide an equal or greater level of containment.

(1) **New crushing and milling units.** New crushing and milling units, including associated ore storage, except when located within the open pit surface drainage area, shall be designed to contain and manage all materials containing water contaminants that have the potential to migrate to ground water and cause an exceedance of applicable standards on concrete or low permeability surfaces approved by the department.

(2) **New concentrator units.** New concentrator units shall be designed to contain and manage in tank and pipeline systems designed and operated pursuant to 20.6.7.23 NMAC all materials containing water contaminants that have the potential to migrate to ground water and cause an exceedance of applicable standards. Tailing and concentrate thickener tanks may be constructed with concrete or low permeability bottoms consisting of a minimum of 12 inches of soil that has a minimum re-compacted in-place coefficient of permeability of  $1 \times 10^{-6}$  cm/sec. The tank designs shall be based on plans and specifications signed and sealed by a licensed New Mexico professional engineer. For low permeability bottoms, such plans and specifications shall describe how process rates, material density and settling rates were considered in the design to minimize infiltration such that water contaminants in the tank will not migrate to ground water and cause an exceedance of applicable standards.

(3) **New smelting units.** New smelting units shall be designed to contain and manage on impermeable surfaces all materials, including associated slag and flue dust, containing water contaminants that have the potential to migrate to ground water and cause an exceedance of applicable standards.

(4) **New tailings impoundments.** Tailings impoundments shall be designed according to the following requirements.

(a) Stormwater run-on shall be diverted and/or contained to minimize contact between stormwater run-on and the tailing material.

(b) Seepage from the sides of a tailing impoundment shall be captured and contained through the construction of headwalls, impoundments and diversion structures as applicable.

(c) Ground water impacted by the tailing impoundment in excess of applicable standards shall be captured and contained through the construction of interceptor

systems designed in accordance with Subparagraph (d) of Paragraph (4) of Subsection A of 20.6.7.22 NMAC.

(d) The applicant shall submit design plans signed and sealed by a licensed New Mexico professional engineer along with a design report that includes the following.

(i) The annual volumes and daily maximum design rates of tailings or other discharge approved by the department to be deposited in the impoundment.

(ii) The topography of the site where the impoundment will be located.

(iii) The geology of the site.

(iv) The design footprint of the tailing impoundment.

(v) The design of tailing seepage collection systems, to be proposed based on consideration of site-specific conditions.

(vi) The design of stormwater diversion structures to minimize contact between stormwater run-on and the tailing material. The design shall consider the amount, intensity, duration and frequency of precipitation; watershed characteristics including the area, topography, geomorphology, soils and vegetation of the watershed; and run-off characteristics of the watershed including the peak rate, volumes and time distribution of run-off events.

(vii) An aquifer evaluation to determine the potential nature and extent of impacts on ground water from the tailings impoundment based on the proposed tailings impoundment design. The aquifer evaluation shall include a complete description of aquifer characteristics and hydrogeologic controls on movement of tailing drainage and ground water impacted by the tailings impoundment.

(viii) A design report for a proposed interceptor system for containment and capture of ground water impacted by the tailings impoundment based on the aquifer evaluation required in Subparagraph (d) of Paragraph (4) of Subsection A of this section. The design report shall include, at a minimum construction drawings and interceptor system performance information, recommended equipment including pumps and meters, recommended pump settings and pumping rates, methods for data collection, and a demonstration that the permittee has adequate water rights to operate the system as designed. The design report shall include a demonstration that interceptor system design will capture ground water impacted by the tailings impoundment such that applicable standards will not be exceeded at monitoring well locations specified by 20.6.7.28 NMAC. The interceptor system shall be designed to maximize capture of impacted ground water and minimize the extent of ground water impacted by the tailings impoundment.

(ix) Within 120 days of seepage collection and interceptor well system construction, or liner system installation a final report shall be submitted to the department that includes complete as-built drawings and a summary of how the items in Subparagraph (a) thru Subparagraph (d) of Paragraph (4) of Subsection A of 20.6.7.22 NMAC were incorporated into the design.

(e) If the department determines that the proposed tailings impoundment, seepage collection and interceptor systems when constructed and operated in accordance with the design plan specified in this paragraph would cause ground water to exceed applicable standards at monitoring well locations specified by 20.6.7.28 NMAC, the department shall require additional controls, which may include but are not limited to, a liner system as additional conditions in accordance with Subsection I of 20.6.7.10 NMAC.

(5) **New dry stack tailing piles.** New dry stack tailings piles shall comply with the material characterization, engineering design, construction, and operational requirements of 20.6.7.21 NMAC, as applicable.

## **B. Construction.**

(1) **New crushing, milling, concentrating, smelting, or tailings impoundment.** Construction of a new crushing, milling, concentrating, smelting, or tailings impoundment shall be performed in accordance with the applicable engineering requirements of Subsection A of 20.6.7.22 and 20.6.7.17 NMAC.

(2) **Existing crushing, milling, concentrating, smelting or tailings impoundments.** Crushing, milling, concentrating, smelting and tailings impoundments at an existing copper mine facility in existence on the effective date of the copper mine rule are not required to meet the liner, design, and construction requirements of Subsection A of 20.6.7.22 NMAC and may continue to operate as previously authorized under a discharge permit subject to compliance with the contingency requirements of 20.6.7.30 NMAC so long as they are maintained within the existing footprint. A permit issued for such an existing crushing, milling, concentrating, smelting or tailings impoundment after the effective date of the copper mine rule may include the conditions of the existing discharge permit, which shall not be considered to be "additional conditions" under Subsection I of 20.6.7 NMAC.

## **C. Operational Requirements.**

(1) **Tailings impoundment operating requirements.** A permittee operating a tailings impoundment shall operate the impoundment pursuant to the following requirements.

(a) The tailings impoundment shall remain within the area identified in the approved design.

(b) The perimeter of the tailings impoundment and any associated solution collection systems shall be inspected monthly.

(c) Any evidence of instability in the tailings impoundment that could potentially result in a dam failure and an unauthorized discharge shall be reported to the department as soon as possible, but not later than 24 hours after discovery.

(d) Any leaks or spills outside the tailings impoundment and any associated containment system shall be recorded and reported pursuant to 20.6.2.1203 NMAC.

(e) If seeps occur, they shall be monitored on a monthly basis and an estimate of the seep flow rate shall be made. Monthly records of the seep inspections and flow rates shall be maintained and included in the site monitoring reports.

(f) The monthly volume of tailings placed in the impoundment shall be recorded, maintained, and included in the site monitoring reports.

(g) Tailings deposition rates shall not exceed the maximum rates approved in the discharge permit.

(h) The daily tailings deposition and associated solution system collection rate shall be determined using flow meters installed in accordance with Paragraph (5) of Subsection C of 20.6.7.17 NMAC.

(i) The average daily rate and monthly volume of tailings deposited and solution collected shall be recorded, maintained, and included in the site monitoring reports.

(j) The placement of tailings and effluent shall be in accordance with an operating plan that describes the following:

- (i) the sequencing of tailings deposition on an annual basis;
- (ii) measures to manage the surface impoundment area to maintain adequate freeboard;
- (iii) operation of seepage collection systems;
- (iv) operation of interceptor systems;
- (v) operation of systems to return water to the concentrator or other locations as appropriate; and
- (vi) any other water management features.

(k) If an interceptor system to maintain capture of ground water impacted by a tailings impoundment exists on the effective date of the Copper Rule, the permittee shall submit an interceptor system monitoring and evaluation report pursuant to 20.6.7.29 NMAC.

(2) **Smelting units.** A permittee operating a smelting unit shall operate pursuant to the following requirements.

(a) The smelting unit shall remain within the area identified in the discharge permit.

(b) Slag and flue dust generated as a result of smelting activities shall be characterized, managed, and properly stored and disposed of.

(c) Any leaks or spills outside the containment systems of the smelter unit shall be recorded and reported pursuant to 20.6.2.1203 NMAC.

(3) **Crushing, milling and concentrating unit operating requirements.** A permittee operating a crushing, milling, or concentrating unit shall operate pursuant to the following requirements.

(a) The crushing, milling and concentrating operations shall remain within the area identified in the discharge permit.

(b) All containment system structures shall be inspected monthly.

(c) Any leaks or spills of process water outside the containment system shall be recorded and reported pursuant to 20.6.2.1203 NMAC.

[20.6.7.22 NMAC - N, 12/1/13]

### **20.6.7.23 REQUIREMENTS FOR NEW PIPELINES AND TANKS:**

**A. Engineering design requirements.** At a minimum, the following requirements shall be met in designing new pipeline or tank systems at copper mine facilities that contain process water or impacted stormwater unless the applicant or permittee can demonstrate that an alternate design will provide an equal or greater level of containment.

(1) **New Pipelines.** New pipelines shall:

(a) be constructed of impermeable materials that are compatible with the particular contents that are contained and carried in the pipeline and are resistant to degradation by ultraviolet light if they will be exposed to sunlight;

(b) for pipelines located outside of the open pit surface drainage area and outside an area authorized for discharge of process water, impacted stormwater or tailings, incorporate a mechanism for monitoring the integrity of the pipeline system including visual inspections, pressure change sensors, or other appropriate means; and

(c) for pipelines located outside of the open pit surface drainage area and outside an area authorized for discharge of process water, impacted stormwater or tailings, incorporate a mechanism of secondary containment to contain and control leaks and spills including berms, placement within or drainage toward areas authorized for discharge of the conveyed fluids, and impoundments that are constructed consistent with the requirements of Subsection D of 20.6.7.17.D NMAC.

(2) **Tanks.** New tank systems shall meet the following requirements.

(a) Tanks shall be designed and constructed of steel, concrete or impermeable materials that are compatible with the particular contents that are contained within the tank and resistant to degradation by ultraviolet light where exposed to sunlight.

(b) A tank system shall have a constructed foundation consisting of a stable, level base free of rocks, debris, sharp edges or irregularities that could puncture, crack or indent the tank materials.

(c) A tank system shall be designed to prevent overflow and the collection of surface water run-on.

(d) An above-ground tank system shall be bermed to contain 110 percent of the volume of the largest tank within the system or the largest interconnected tanks.

(e) A below-grade tank system shall either be placed in such a manner that the side walls are open for visual inspection or the tank shall be designed with a secondary containment and leak detection system.

## **B. Construction.**

(1) **New pipeline and tank units.** Construction of a new pipeline or tank system shall be performed in accordance with the applicable requirements of Subsection A of 20.6.7.23 NMAC and 20.6.7.17 NMAC.

(2) **Existing pipeline and tank units.** A pipeline or tank system in existence on the effective date of the copper mine rule is not required to meet the design requirements of Subsection A of 20.6.7.23 NMAC and may continue to operate as previously permitted under a discharge permit provided that, for a tank in contact with the ground surface and located outside an open pit surface drainage area, it is inspected and tested at least once every ten years for integrity pursuant to Subsection C of 20.6.7.23 NMAC. If an existing tank or pipeline system cannot maintain integrity it

shall be replaced in accordance with the engineering requirements of Subsection A of 20.6.7.23 NMAC and 20.6.7.17 NMAC as applicable. A permit issued for such an existing tank or pipeline system after the effective date of the copper mine rule may include the conditions of the existing discharge permit, which shall not be considered to be "additional conditions" under Subsection I of 20.6.7 NMAC.

**C. Operational requirements.** A permittee operating a pipeline or tank system shall operate the system pursuant to the following requirements, as applicable.

(1) Pipelines and tanks shall remain within the area identified in the discharge permit.

(2) Pipelines, tanks and secondary containment systems shall be inspected on a monthly basis.

(3) The permittee shall maintain and operate a below-grade tank(s) to prevent overtopping of the tank(s).

(4) Any evidence of leaks or spills of fluids, process water or tailings from a pipeline or tank system outside of permitted secondary containment systems or outside an area permitted for discharge shall be recorded, reported and corrected pursuant to Subsection G of 20.6.7.30 NMAC.

(5) Any evidence of leaks or spills of fluids, process water or tailings from a pipeline or tank system inside of permitted secondary containment systems or inside an area permitted for discharge shall be recorded and reported to the department in the semiannual reports submitted pursuant to Subsection A of 20.6.7.29 NMAC.

(6) Existing pipelines that do not meet the engineering requirements of Subsection A of 20.6.7.23 NMAC shall be evaluated for integrity at least once every five years. A pipeline evaluation plan for such pipelines shall be included in an application for renewal of a discharge permit for a copper mine facility.

(7) Existing below-grade tanks that do not meet the engineering requirements of Subsection A of 20.6.7.23 NMAC shall be emptied and visually inspected for integrity at least once every five years.

(8) A written record of all pipeline and tank system inspections and integrity testing shall be maintained by the permittee for a period of at least five years.

(9) Any wastes generated from the cleaning of pipeline or tank systems shall be disposed of offsite in accordance with applicable laws or onsite in a manner approved by the department.

[20.6.7.23 NMAC - N, 12/1/13]

#### **20.6.7.24 REQUIREMENTS FOR OPEN PITS:**

**Operational requirements.** A permittee operating an open pit shall operate the open pit pursuant to the following requirements, as applicable.

**A.** The open pit shall remain within the area identified in the discharge permit.

**B.** Stormwater shall be diverted outward and away from the perimeter of the open pit and, to the extent practicable, shall not be directed into the open pit.

**C.** Water generated from within the perimeter of the open pit and pit dewatering activities shall be managed according to a mine operation water management plan. The water management plan shall be submitted to the department for approval in a discharge permit application for a new copper mine facility or in an application for a discharge permit renewal.

**D.** During operation of an open pit, the standards of 20.6.2.3103 NMAC do not apply within the area of open pit hydrologic containment.

**E.** Leach stockpiles, waste rock piles, and other regulated mine units in and surrounding an open pit surface drainage area shall be designed and located to minimize the size of the open pit surface drainage area to the extent practicable.

[20.6.7.24 NMAC - N, 12/1/13]

#### **20.6.7.25 REQUIREMENTS FOR UNDERGROUND COPPER MINE FACILITIES:**

**A. Material characterization requirements:** All waste rock removed from an underground mine and taken to the surface shall be characterized and managed pursuant to the copper mine rule. Any waste rock removed from an underground copper mine facility, any tailings or any other waste that is intended to be deposited in the mine shall be evaluated for its potential to generate acid or to release water contaminants that would cause an exceedance of applicable standards following placement in the underground mine. A plan for determining the potential of the material to release water contaminants, and the method for such evaluations, shall be submitted to the department for approval in a material characterization plan pursuant to Paragraph (1) of Section A of 20.6.7.21 NMAC.

**B. Deposition of material in an underground copper mine.** A permittee of an underground copper mine facility shall not:

(1) deposit any waste rock or tailings in an underground mine that may generate a leachate that may cause an exceedance of applicable standards as determined by Subsection A of this section;

(2) deposit any other wastes in an underground mine unless deposition of the waste is expressly authorized by a discharge permit approved by the department.

**C. Operational requirements.** A permittee authorized to deposit waste rock, tailings or other waste in an underground copper mine shall maintain records of the monthly volume of waste rock, tailings or waste placed in the mine, and include this information in the site monitoring reports submitted pursuant to 20.6.7.29 NMAC.

[20.6.7.25 NMAC - N, 12/1/13]

#### **20.6.7.26 REQUIREMENTS FOR TRUCK AND EQUIPMENT WASHING UNITS:**

**A. Engineering design requirements.** At a minimum, the following requirements shall be met in designing new truck and equipment washing units at copper mine facilities unless the applicant or permittee can demonstrate that an alternate design will provide an equal or greater level of containment.

(1) Truck and equipment washing shall be conducted on a concrete pad or a pad constructed of materials of equivalent or lower permeability designed to capture all wash water.

(2) Captured wash water shall freely drain from the containment pad and when necessary be conveyed to an oil water separator to remove oil and grease from the wash water.

(3) Wash water from the oil water separator shall be conveyed to a tank system designed and constructed pursuant to 20.6.7.23 NMAC, an impoundment meeting the requirements of Subsection D of 20.6.2.7.17 NMAC, or may be directed to the mine process water circuit for use.

#### **B. Construction.**

(1) **New wash units for trucks or equipment.** Construction of new truck or equipment wash shall be performed in accordance with the applicable engineering requirements of Subsection A of 20.6.7.26 and 20.6.7.17 NMAC.

(2) **Existing wash units for trucks and equipment.** A truck or equipment wash unit in existence on the effective date of the copper mine rule and located outside of the open pit surface drainage area shall meet the design requirements of Subsection A of 20.6.7.26 NMAC within one year of the approval of a discharge permit renewal pursuant to the copper mine rule.

**C. Operational requirements.** A permittee operating a truck or equipment wash unit at a copper mine facility shall operate pursuant to the following requirements.

(1) The truck or equipment wash unit shall remain within the area identified in the discharge permit.

(2) Wash water generated at the unit shall be contained within the designed containment pad, separator and tank system, or impoundment until treated to meet applicable standards for discharge or conveyed to the process water circuit.

(3) The tank systems associated with the unit shall meet the operational requirements of 20.6.7.26 NMAC.

(4) Any leaks or spills of wash water from the containment pad, separator, tank system or impoundment shall be recorded, reported and corrected pursuant to Subsection G of 20.6.7.30 NMAC.

(5) Any wastes generated from the oil water separator or the tank system shall be disposed of offsite in accordance with applicable laws or onsite in a manner approved by the department.

[20.6.7.26 NMAC - N, 12/1/13]

#### **20.6.7.27 [RESERVED]**

#### **20.6.7.28 WATER QUALITY MONITORING REQUIREMENTS FOR ALL COPPER MINE FACILITIES:**

The following water quality monitoring requirements apply to all copper mine facilities unless otherwise specified.

**A. Monitoring wells - location proposals.** An applicant for a new, renewed or modified discharge permit or permittee shall submit a plan for department approval identifying the proposed location of monitoring wells required pursuant to Subsection B of this section, and shall include the following information.

(1) The location of each monitoring well relative to the unit of the copper mine facility it is intended to monitor shall be indicated on the scaled map required by Subsection J of 20.6.7.11 NMAC.

(2) The ground water flow direction beneath the copper mine facility used to determine the monitoring well location(s), including supporting documentation used to determine ground water flow direction.

**B. Monitoring wells – required locations.** A permittee shall monitor ground water quality as close as practicable around the perimeter and downgradient of each open pit, leach stockpile, waste rock stockpile, tailings impoundment, process water impoundment, and impacted stormwater impoundment. The department may require additional wells around the perimeter of mine units that are underlain by areas where

ground water flow directions are uncertain, including fracture flow systems, and around copper mine units that have the potential to cause ground water mounding. The department may require additional monitoring wells at any other unit of a copper mine facility that has the potential to cause an exceedance of applicable standards as additional permit conditions in accordance with Subsection I of 20.6.7.10 NMAC. Monitoring wells shall be located pursuant to this section to detect an exceedance(s) or a trend towards exceedance(s) of the applicable standards at the earliest possible occurrence, so that investigation of the extent of contamination and actions to address the source of contamination may be implemented as soon as possible.

(1) **Use of existing monitoring wells.** A monitoring well in existence before the effective date of the copper mine rule shall be deemed to be in an approved location for ground water monitoring purposes provided the following requirements are met:

(a) the monitoring well location was previously approved by the department;  
and

(b) the monitoring well is constructed as previously approved by the department; or

(c) if the monitoring well and construction was not previously approved by the department, the applicant or permittee can demonstrate that the well meets the location and construction requirements of this section.

(2) **Ground water monitoring - leach stockpiles, waste rock stockpiles, tailings impoundments.** A permittee shall install monitoring wells around the perimeter and downgradient of each new leach stockpile, waste rock stockpile and tailings impoundment located outside of the open pit surface drainage area, including its leachate and solution capture and containment systems, to adequately monitor ground water that may be impacted by water contaminants from those units. Each monitoring well shall be installed as close as practicable to the proposed leach stockpile, waste rock stockpile or tailings impoundment, including its leachate and solution capture and containment systems, taking into account surface topography, hydrogeologic conditions, geologic controls, infrastructure, engineering design plans, depth to ground water, working distance and safety.

(a) For a new copper mine facility, the monitoring well networks shall be installed at least 180 days before emplacement of ore, waste rock or discharge of tailings at an individual leach stockpile, waste rock stockpile or tailings impoundment to allow sampling prior to discharge.

(b) A permittee constructing a new leach stockpile, waste rock stockpile or tailings impoundment at an existing copper mine facility, or expanding the footprint of an existing leach stockpile, waste rock stockpile, or tailings impoundment, shall install the monitoring well networks required to monitor ground water around and downgradient of the leach stockpile, waste rock stockpile or tailings impoundment before emplacement

of ore, waste rock or discharge of tailings unless an existing monitor well network adequately monitors water quality in the area of the new leach stockpile, waste rock stockpile or tailings impoundment.

(3) **Ground water monitoring - process water and impacted stormwater impoundments.** A minimum of one monitoring well shall be located downgradient and within 75 feet (measured as horizontal map distance) or as close as practicable taking into account surface topography, hydrogeologic conditions, infrastructure, working distance and safety of each new process water or impacted stormwater impoundment located outside of an open pit surface drainage area.

(a) For a new copper mine facility, monitoring wells shall be installed at least 90 days before discharging to an individual process water or impacted stormwater impoundment at the copper mine facility to allow for sampling prior to discharge.

(b) A permittee constructing a new process water or impacted stormwater impoundment at an existing copper mine facility shall install the monitoring well(s) required to monitor ground water downgradient of the impoundment before discharging process water to the impoundment, before collecting impacted stormwater in the impoundment unless an existing monitor well network adequately monitors water quality in the area of the new impoundment.

(4) **Ground water monitoring - open pit.** A permittee shall install a sufficient number of monitoring wells around the perimeter of an open pit to monitor ground water quality and the hydrologic gradient around the pit. For a new open pit, an applicant or permittee shall submit a monitor well network installation plan to the department for approval. The plan shall include proposed locations of monitoring wells, a statement of the reasons for selection of the monitoring well locations, and a schedule for installation.

(5) **Ground water monitoring - upgradient of each potential contaminant source.** A minimum of one monitoring well shall be located upgradient of each new leach stockpile, waste rock stockpile, tailings impoundment, and process water and impacted stormwater impoundment at a copper mine facility to establish upgradient ground water quality conditions not likely to be affected by each contamination source that is being monitored. If an applicant or permittee has existing monitoring wells located appropriately to obtain sufficient background data at a copper mine facility and establish and monitor upgradient conditions, the department may waive the requirement for additional upgradient wells.

(a) For a new copper mine facility, upgradient source monitoring wells shall be installed a minimum of 180 days before emplacement of ore, waste rock or discharge of tailings or other water contaminants at an individual leach stockpile, waste rock stockpile, tailings impoundment or other impoundment.

(b) A permittee constructing a new leach stockpile, waste rock stockpile, tailings impoundment or other impoundment at an existing copper mine facility shall

install the monitoring well(s) required to monitor ground water quality upgradient of a leach stockpile, waste rock stockpile, tailings impoundment or other impoundment before emplacement of ore, waste rock or discharging of tailings or water contaminants into the individual source required to be monitored.

(6) **Ground water monitoring - upgradient of the copper mine facility.** A sufficient number of monitoring wells shall be located upgradient of all potential ground water contamination sources at a copper mine facility to establish upgradient ground water quality conditions that are not affected by any potential contamination sources at the copper mine facility. For a new copper mine facility, upgradient monitoring wells shall be installed at least 180 days before emplacement of ore, waste rock or discharge of tailings or other water contaminants at an individual leach stockpile, waste rock stockpile, tailings impoundment or other impoundment.

**C. Monitoring wells - identification tags.** A permittee shall clearly identify all monitoring wells required by the copper mine rule with a permanent well identification tag that contains well identification nomenclature included on the scaled map required by Subsection J of 20.6.7.11 NMAC.

**D. Monitoring wells - construction and completion.** A permittee shall construct monitoring wells pursuant to 19.27.4 NMAC and the following requirements unless the department approves of an alternate monitoring well construction and completion design based upon site-specific hydrogeologic conditions.

(1) All well drilling activities shall be performed by an individual with a current and valid well driller license issued by the state of New Mexico pursuant to 19.27.4 NMAC.

(2) The well driller shall employ drilling methods that allow for accurate determinations of water table locations unless otherwise approved by the department in advance of drilling. All drill bits, drill rods, and down-hole tools shall be thoroughly cleaned immediately before drilling. The borehole diameter shall allow a minimum annular space of two inches between the outer circumference of the well materials (casing or screen) and the borehole wall to allow for the emplacement of sand and sealant.

(3) The well shall be developed so that formation water flows freely through the screen and is not turbid, and sediment and drilling disturbances are removed from the well to the maximum extent practicable.

(4) Unless otherwise approved by the department, schedule 40 (or heavier) polyvinyl chloride (PVC) pipe, stainless steel pipe, or carbon steel pipe shall be used as casing. The casing shall have an inside diameter not less than two inches. The casing material selected for use shall be compatible with, and chemically inert with respect to the anticipated chemistry of the ground water and appropriate for the contaminants of interest at the copper mine facility. The casing material and thickness selected for use

shall have sufficient collapse strength to withstand the pressure exerted by grouts used as annular seals and thermal properties sufficient to withstand the heat generated by the hydration of cement-based grouts.

(5) Casing sections shall be joined using welded, threaded, or mechanically locking joints. The method selected shall provide sufficient joint strength for the specific well installation.

(6) The casing shall extend from the top of the screen to at least 18 inches above ground surface. The top of the casing shall be fitted with a removable cap, and the exposed casing shall be protected by a locking steel well shroud. The shroud shall be large enough in diameter to allow easy access for removal of the cap. Alternatively, monitoring wells may be completed below grade. In this case, the casing shall extend from the top of the screen to between six and twelve inches below the ground surface; the monitoring wells shall be sealed with locking, expandable well plugs; a flush-mount, watertight well vault that is rated to withstand traffic loads shall be emplaced around the wellhead; and the cover shall be secured with at least one bolt. The vault cover shall indicate that the wellhead of a monitoring well is contained within the vault.

(7) **Well Screen.**

(a) **For water table monitoring wells.** A maximum 20-foot section of continuous well screen shall be installed across the water table with at least five feet of well screen placed above the water table interface to allow for seasonal fluctuations. The department may approve a greater screen length based on the hydraulic properties of the aquifer, the hydrogeologic setting, predictable water level decline rates, or the depth of the well. Screen shall consist of continuous-slot, machine slotted, or other manufactured schedule 40 (or heavier) PVC or stainless steel. Screens created by cutting slots into solid casing with saws or other tools, other than as performed by the manufacturer, shall not be used. The screen material selected for use shall be compatible with the anticipated chemistry of the ground water and appropriate for the contaminants of interest at the copper mine facility. The screen slot size shall be selected to retain 90 percent of the filter pack.

(b) **For deep or confined aquifer monitoring wells.** Monitoring wells installed in confined aquifers or below the water table elevation of the shallowest aquifer to monitor ground water conditions in different aquifers at depth shall be installed with a maximum ten foot section of continuous well screen. The department may approve a greater screen length based on the hydraulic properties of the aquifer, the hydrogeologic setting, or the depth of the well. The top of the screen shall be placed at the location of the geologic boundary between the top of the aquifer and the bottom of confining aquifers. Screen shall consist of continuous-slot, machine slotted, or other manufactured schedule 40 or heavier PVC or stainless steel. Screens created by cutting slots into solid casing with saws or other tools shall not be used. The screen material selected for use shall be compatible with the anticipated chemistry of the ground water

and appropriate for the contaminants of interest at the copper mine facility. The screen slot size shall be selected to retain 90 percent of the filter pack.

(8) Screen sections shall be joined using welded, threaded, or mechanically locking joints. The method selected shall provide sufficient joint strength for the specific well installation and shall not introduce constituents that may reasonably be considered contaminants of interest at the copper mine facility. A cap shall be attached to the bottom of the well screen.

(9) Casing and well screen shall be centered in the borehole by installing centralizers near the top and bottom of the well screen.

(10) A filter pack shall be installed around the screen by filling the annular space from the bottom of the screen to at least two feet above the top of the screen with clean silica sand using methods that prevent bridging. The filter pack shall be properly sized to exclude the entrance of fine sand, silt, and clay from the formation into the monitoring well. All filter pack placed deeper than twenty feet below land surface shall be placed by tremie pipe. The well shall be surged or bailed to settle the filter pack and additional sand added, if necessary, before the bentonite seal is emplaced.

(11) A bentonite seal shall be constructed immediately above the filter pack by emplacing bentonite chips or pellets, three eighths of an inch in size or smaller, in a manner that prevents bridging of the chips/pellets in the annular space. All bentonite seals placed deeper than twenty feet below land surface shall be placed by tremie pipe. The bentonite seal shall be a minimum of three feet in thickness and hydrated with clean water. Adequate time shall be allowed for expansion of the bentonite seal before installation of the annular space seal.

(12) The annular space above the bentonite seal shall be sealed with cement grout or bentonite-based sealing material acceptable to the state engineer in accordance with 19.27.4 NMAC. All annual sealing materials placed deeper than twenty feet below land surface shall be placed by tremie pipe. Annular space seals shall extend from the top of the bentonite seal to the ground surface for wells completed above grade, or to a level three to six inches below the top of casing for wells completed at or below grade.

(13) A concrete pad with a minimum two-foot radius and a minimum four-inch thickness shall be poured around the shroud or well vault and wellhead. The concrete and surrounding soil shall be sloped to direct rainfall and runoff away from the wellhead.

**E. Monitoring wells - office of the state engineer requirements.** A permittee shall obtain any well permits required by the office of the state engineer prior to well drilling.

**F. Ground water sample collection procedure.** A permittee shall perform all ground water sample collection, preservation, transport and analysis according to the following procedure.

(1) Depth to ground water shall be measured from the top of well casing at point of survey to the nearest 0.01 feet using an electronic water level indicator consisting of dual conductor wire encased in a cable or tape graduated to 0.01 feet, a probe attached to the end of the conductor wire, and a visual or audible indicator; pneumatically or by using a fiberglass or steel measuring tape using the chalk method, or other method approved by the department.

(2) Monitoring wells shall be purged before sample collection by one of the following methods, unless otherwise approved by the department.

(a) Three well volumes of water shall be purged from the well using conventional methods before sample collection.

(b) The monitoring well shall be purged using low-flow purging methods as approved by the department until measurements of indicator parameters have stabilized. Low-flow purging shall be conducted with a low-flow pump using a low-stress approach, micro-purge method or minimal drawdown method. Indicator parameters shall be measured periodically during purging. A parameter stabilization log shall be kept during each sampling event for each monitoring well and include: date; water quality indicator parameter measurements; time for all measurements; and the purge volume extracted.

(c) For low yield wells, the well shall be purged of all available water.

(3) Following purging and immediately before sample collection the following field parameters shall be measured and recorded: pH, specific conductance, and temperature.

(4) In-line flow-through cells shall be disconnected or by-passed during sample collection, if used during purging.

(5) Samples from the well shall be obtained, prepared, preserved and transported to an analytical laboratory for analysis pursuant to the methods authorized by Subsection B of 20.6.7.29 NMAC.

**G. Ground water sampling - existing copper mine facilities.** For existing copper mine facilities a permittee shall collect ground water samples from all monitoring wells, seeps and springs for the analytes and at the frequency specified in an existing discharge permit. A permittee shall submit to the department semi-annual monitoring reports containing the information required in Section 20.6.7.29 NMAC.

**H. Ground water sampling - reduction of sampling analytes.** A permittee may request approval from the department to reduce the sampling frequency of individual water quality analytes. The basis for consideration of reduction of sampling frequency may include a demonstration that the analyte is not present in the impoundment or mine unit being monitored, or could not be generated from the materials present through degradation, oxidation, decay or any other expected process. A permittee may also request approval from the department to reduce sampling frequency of an individual analyte if it has not been detected in a particular monitoring well, is consistently below the applicable standard, or is stable and predictable for eight consecutive quarters. Ground water sampling analyte lists and the frequency of sampling shall be reevaluated upon permit renewal.

**I. Ground water sampling - new monitoring wells.** A permittee shall submit to the department for approval a proposal for quarterly ground water sampling from each newly installed monitoring required pursuant to this section. Sampling analyte lists shall be based on the geochemical characteristics of the solution or material contained in the impoundment or mine unit intended to be monitored, including constituents that can be generated from the materials present through degradation, oxidation, decay or any other expected process. Proposed analytes shall include field parameters as required in Subsection F of this section, alkalinity-bicarbonate, alkalinity-carbonate, metals, and other analytes from Section 20.6.2.3103 NMAC as applicable.

(1) Samples shall be collected from each newly installed monitoring well required pursuant to this section for a copper mine facility before emplacement of ore, waste rock or discharge of tailings or other water contaminants at an individual leach stockpile, waste rock stockpile, tailings impoundment or other impoundment.

(2) For copper mine facilities installing a new monitoring well during the term of a discharge permit, during construction of a new impoundment, or as a result of required corrective actions, samples shall be collected from the newly installed monitoring wells within 30 days of well completion and prior to commencing operation of the newly constructed unit as applicable.

**J. Monitoring well survey and ground water flow determination.** The permittee shall survey or otherwise locate monitoring wells and provide location information as required by this section. The coordinate location (northing and easting) shall be provided in the established coordinate system for the copper mine facility with an accuracy (rounded to the nearest foot/tenth meter) and shall also be provided to the department in one of the following coordinate systems: NM state plane (NAD 83) to the nearest foot, UTM (NAD 83) to the nearest tenth of a meter, or latitude/longitude (Lat/Long - WGS84) to the nearest tenth of a second. Elevation of the ground surface at the well location shall be provided to the nearest foot above mean sea level. Elevation of the water level measuring point shall be provided to the nearest hundredth of a foot above mean sea level. The water level measuring point for monitoring wells shall be clearly marked on the casing. Depth to ground water at each monitoring well location shall be measured from the point of survey to the nearest hundredth of a foot in all

surveyed wells pursuant to Subsection F of this section, and the data shall be used to develop a map showing the location of all monitoring wells and the direction and gradient of ground water flow at the copper mine facility.

**K. Monitoring well completion report.** A permittee shall submit to the department a monitoring well completion report for all newly installed monitoring wells. The report shall be submitted within 60 days of completion of installation of the monitoring well. The report shall contain the following information.

(1) Construction and lithologic logs for the new monitoring wells including well record information specified by 19.27.4 NMAC.

(2) Depth to ground water measured in each new monitoring well.

(3) Survey data and a survey map showing the locations of each new monitoring well and a ground water elevation contour map developed pursuant to Subsection L of this section.

(4) Analytical results of ground water samples collected from the new monitoring wells, including laboratory quality assurance and quality control summary reports, and field parameter measurements.

**L. Ground water elevation contour maps.** A permittee shall develop ground water elevation contour maps on a semi-annual basis using data associated with all monitoring wells installed in the appropriate geologic formation and as required pursuant to this section. Top of casing elevation data, obtained from monitoring well surveys completed pursuant to this section and quarterly depth to ground water measurements in monitoring wells shall be used to calculate ground water elevations at monitoring well locations. Ground water elevations between monitoring well locations shall be estimated using common interpolation methods. Ground water elevations shall be expressed in feet. A contour interval appropriate to the data shall be used. Ground water elevation data used to create potentiometric maps shall be limited to data collected during the quarter being reported. Ground water elevation contour maps shall depict the ground water flow direction, using arrows, based on the orientation of the ground water elevation contours, and the location and identification of each monitoring well and monitored structure or impoundment. A permittee shall submit ground water elevation contour maps to the department in the semi-annual monitoring reports, and submit annually a map showing the extent of the existing open pit surface drainage area as defined in Paragraph (43) of Subsection B of 20.6.7.7 NMAC.

**M. Perennial stream sampling and reporting - routine.** A permittee shall submit to the department for approval a proposal to collect quarterly surface water samples from each perennial surface waters of the state within a copper mine facility as necessary to monitor potential ground water inflow to the perennial surface water. Analytes to be sampled and analyzed shall be based on the geochemical characteristics of the solution or material contained in the impoundment or mine unit closest to or most

likely to effect the perennial stream being sampled. A permittee shall submit to the department in the semi-annual monitoring reports the field parameter measurements, the analytical results (including the laboratory quality assurance and quality control summary report) and a map showing the location of each sampling location in relation to the copper mine facility.

**N. Process water, tailings slurry, impacted stormwater, seep, and spring sampling and reporting.** An applicant for a new, renewed or modified discharge permit or permittee shall submit for department approval a sampling and analysis plan to monitor quarterly the quality of process water, tailings slurry, impacted stormwater, seeps and springs at a copper mine facility. Proposed analytes shall include field parameters as required in Subsection F of this section, alkalinity-bicarbonate, alkalinity-carbonate, metals, and other analytes from Section 20.6.2.3103 NMAC as applicable.

[20.6.7.28 NMAC - N, 12/1/13]

#### **20.6.7.29 GENERAL MONITORING REQUIREMENTS FOR ALL COPPER MINE FACILITIES:**

**A. Monitoring reports – schedule of submittal.** A permittee shall submit monitoring reports to the department on a semi-annual schedule that shall contain all quarterly monitoring data and information collected pursuant to the copper mine rule. Semi-annual monitoring reports shall be submitted according to the following schedule:

(1) January 1 through June 30 (first and second quarter sample periods) – report due by August 31; and

(2) July 1 through December 31 (third and fourth quarter sample periods) – report due by February 28.

**B. Monitoring reports - general requirements.** A permittee shall submit monitoring reports to the department that include a summary providing of all activities related to discharges at the copper mine facility during the preceding six months including, but not limited to the following:

- (1) operational activities;
- (2) minor spills and corrective actions not reportable under Section 20.6.2.1203 NMAC;
- (3) major spills and corrective actions reportable under Section 20.6.2.1203 NMAC;
- (4) maintenance and repairs of discharge systems or units;
- (5) a synopsis of completed studies relevant to the copper mine facility or unit;

- (6) monitoring well installation and abandonment;
- (7) construction or demolition of structures;
- (8) general locations and volumes of leach ore placement;
- (9) general locations and volumes of waste rock placement; and
- (10) a summary of seep and spring flows, if applicable.

**C. Monitoring Reports - analytical requirements.** A permittee shall submit monitoring reports to the department that include the following analytical information.

(1) A single table shall be provided semi-annually in a paper and electronic spreadsheet format approved by the department. The table shall include water quality data with those parameters analyzed and water levels measured shown in columns. Single sampling events for each monitoring site shall be shown in rows with the site name in the far left column, the sampling date in the second column, the water level in the third column, followed by individual analytes in the following columns. Tabulated electrical conductivity shall include the measured field values and corrected values to 25 degrees Celsius. Values exceeding standards shall be bolded. Any constituent not analyzed for a particular site shall be shown as "NA", any site not sampled shall be shown as "NS" with an associated reason, and any site not measured for water levels shall be shown as "NM" with an associated reason.

(2) Semi-annual monitoring reports shall include water quality trends, laboratory CQA/CQC, trends in hydrographs, and potentiometric surface maps. At a minimum, graphs with the previous five years of indicator parameter data shall be presented for TDS, sulfate, and water levels. pH may substituted for water levels at reservoirs or springs.

**D. Sampling and analysis methods.** A permittee shall sample and analyze water pursuant to Subsection B of 20.6.2.3107 NMAC.

**E. Process water, leach solutions, tailings and liner solution collection system volume measurement and reporting.** A permittee shall measure the volume of process water, leach solutions applied, and tailings discharges and solution collection system fluids collected using flow meters pursuant to Paragraph (5) of Subsection C of 20.6.7.16 NMAC. Meter readings shall be recorded at intervals no less than once per week. The average daily discharge volume for each recording interval shall be calculated by dividing the difference between the meter readings by the number of days between meter readings. The permittee shall provide the meter readings including the date, time and units of each measurement, and calculations for the average daily volumes discharged and collected in gallons per day, in the semi-annual monitoring reports submitted to the department.

**F. Flow meter accuracy.** Flow meters shall be monitored for accuracy by comparing flow meter readings with prior readings and noting any significant variations in readings that are not consistent with changes in operating conditions. If a flow meter shows inconsistent readings or otherwise appears to be non-operational, the permittee shall make a record of the inconsistent readings and shall repair or replace a flow meter that does not appear to be operating properly with a flow meter calibrated according to the flow metering plan pursuant to Paragraph (5) of Subsection C of 20.6.7.17 NMAC. The permittee shall submit the results of any inconsistent meter readings and the repair or replacement of any flow meter(s) to the department annually in the monitoring report due by February 1, including information on the location and meter identification nomenclature specified in Paragraph (1) of Subsection E of 20.6.7.18 NMAC.

**G. Meteorological data.** A permittee shall annually submit to the department meteorological data collected at sites throughout the copper mine facility during each calendar year according to the approved meteorological data plan submitted pursuant to Subsection W of 20.6.7.11 NMAC. The data shall be submitted to the department in the monitoring report due on February 28 of each year.

**H. Interceptor system monitoring and evaluation.** A permittee operating an interceptor well system for a tailing impoundment or a waste rock stockpile shall provide an annual monitoring and evaluation report of the interceptor system. The report shall be submitted to the department in the monitoring report due by February 28 of each year and shall include the following information obtained from within and surrounding the interceptor system as applicable:

(1) monthly measurements of the volume of impacted ground water pumped by individual wells, interceptor trenches, or other interceptor system components and the total volume pumped within the monitoring period;

(2) the operational status of interceptor system components;

(3) water level measurements of monitoring and interceptor wells or other system components as applicable;

(4) semi-annual ground water elevation contour maps pursuant to the requirements of Subsection L of 20.6.7.28 NMAC;

(5) semi-annual iso-concentration maps of contaminants of concern; and

(6) an annual performance evaluation assessment of the interceptor well system that contains information on:

(a) the performance of individual interceptor wells and/or other interceptor system components over time;

(b) accumulated drawdown maps showing the historical change in water level;

(c) time series hydrographs and graphs of water quality trends for contaminants of concern covering at a minimum data from the past five year time period;

(d) water quality distribution within the system over time;

(e) cross-sectional diagrams depicting the geologic, water level elevation and water quality in vertical profile;

(f) an analysis of the data, maps, graphs and diagrams contained in the assessment; and

(g) recommendations for changes to optimize performance of the system.

[20.6.7.29 NMAC - N, 12/1/13]

#### **20.6.7.30 CONTINGENCY REQUIREMENTS FOR COPPER MINE FACILITIES:**

**A. Exceedance of ground water standards.** If monitoring of a water contaminant source indicates that applicable standards are exceeded, or if the extent or magnitude of existing ground water contamination is significantly increasing, the permittee shall collect a confirmatory sample from the monitoring location(s) within 15 days to confirm the initial sampling results, unless the permittee elects to accept the initial sampling results as an accurate measurement of water quality. Within 30 days of the confirmation of the exceedance of applicable standards or significant increases in existing contamination, the permittee shall take the following actions. The department may approve a longer time period not to exceed 90 days for good cause shown.

(1) A corrective action plan shall be submitted to the department for approval. The corrective action plan shall describe any repairs made or proposed to address the cause of the exceedance or increase and shall propose source control measures and a schedule for implementation. The department shall approve or disapprove the corrective action plan within 60 days of receipt. Following the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan according to the approved schedule. If the department does not approve the corrective action plan, the department shall notify the permittee of the deficiencies by certified mail. The permittee shall submit a revised corrective action plan to the department within 60 days of the date of postal notice of the notice of deficiency. The department shall approve or disapprove the revised corrective action plan within 60 days of receipt.

(2) If the corrective action plan proposes actions to correct deficiencies with a liner, the proposed actions shall include repair or replacement of the existing liner, or construction and lining of a new impoundment. If liner repair is practicable, repairs shall

be made pursuant to 20.6.7.17 NMAC or using a material that is equivalent to the existing liner with respect to material thickness and composition. Repairs shall be completed in accordance with the approved schedule. If liner repair is not practicable, the corrective action plan shall propose reconstruction and relining of the impoundment pursuant to 20.6.7.17 NMAC or construction and lining of a new impoundment pursuant to 20.6.7.17 NMAC. Reconstruction or construction plans and specifications for the impoundment shall be completed pursuant to 20.6.7.17 NMAC and submitted with the corrective action plan along with a schedule for implementation. If a new impoundment is constructed the existing impoundment shall be closed pursuant to 20.6.7.33 NMAC.

(3) The permittee may be required to submit to the department for approval an abatement plan, which includes a site investigation to define the source, nature and extent of contamination; a proposed abatement option, and a schedule for its implementation. The site investigation and abatement option shall be consistent with the requirements and provisions of Sections 20.6.2.4101, 20.6.2.4103, 20.6.2.4106, 20.6.2.4107, 20.6.2.4108 and 20.6.2.4112 NMAC.

(4) A corrective action plan or abatement plan approved or submitted prior to the date of the copper mine rule shall satisfy the requirements of this subsection provided that any substantial change in monitoring results after the effective date of the copper mine rule may require additional corrective action under this Subsection or modification of a previously approved or submitted corrective action plan or abatement plan.

**B. Monitoring well replacement.** If information available to the department indicates that a monitoring well(s) required by 20.6.7.28 NMAC is not located downgradient of or does not adequately monitor the contamination source it is intended to monitor, is not completed pursuant to 20.6.7.28 NMAC, or contains insufficient water to effectively monitor ground water quality, a permittee shall install a replacement monitoring well(s). The replacement monitoring well(s) shall be installed within 120 days of the date of postal notice of notification from the department and a survey of the replacement monitoring well(s) shall be performed within 150 days of the date of postal notice of notification from the department. The replacement monitoring well(s) shall be located, installed, completed, surveyed and sampled pursuant to 20.6.7.28 NMAC. The permittee shall develop a monitoring well completion report pursuant to Subsection K of 20.6.7.28 NMAC and submit it to the department within 180 days of the date of postal notice of notification from the department. The department may approve longer time periods for good cause shown.

**C. Exceedance of permitted maximum daily discharge volume.** If the maximum daily discharge volume authorized by the discharge permit at a particular permitted location is exceeded by more than 10% for any three average daily discharge volumes within any one year period, the permittee shall submit within 60 days of the third exceedance a corrective action plan for reducing the discharge volume or an application for a modified or renewed and modified discharge permit pursuant to 20.6.7.10 NMAC.

Within 30 days of postal notice of department approval, the permittee shall initiate implementation of the corrective action plan.

**D. Insufficient impoundment capacity.** If a survey or capacity calculations indicate an existing impoundment or impoundment system is not capable of meeting the capacity requirements in Subsection D of 20.6.7.17 NMAC, within 90 days of the effective date of the discharge permit the permittee shall submit a corrective action plan for department approval. The plan may include, but is not limited to, proposals for constructing an additional impoundment, reducing the discharge volume, removing accumulated solids, or changing process water or impacted stormwater management practices. The corrective action plan shall include a schedule for implementation. The schedule shall propose completion within one year from the submittal date of the initial corrective action plan. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan. Should the corrective action plan include removal of accumulated solids, solids shall be removed from the impoundment in a manner that is protective of the impoundment liner. The plan shall include the method of removal, and locations and methods for storage and disposal of the solids.

**E. Inability to preserve required freeboard.** If a minimum of two feet of freeboard cannot be preserved in the process water or impacted stormwater impoundment, the permittee shall submit a corrective action plan to the department for approval. The corrective action plan shall be submitted within 30 days of the date of discovery of the initial exceedance of the freeboard requirement. The plan may include, but is not limited to, proposals for constructing an additional impoundment, reducing the maximum daily discharge volume, or changing process water or impacted stormwater management practices. The corrective action plan shall include actions to be immediately implemented to regain and maintain a minimum of two feet of freeboard until permanent corrective actions have been completed. The corrective action plan shall include a schedule for implementation. The schedule shall propose completion within one year from the submittal date of the initial corrective action plan. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan.

**F. Impoundment - structural integrity compromised.** Within 24 hours of discovery, a permittee shall report to the department any damage to the berms or the liner of an impoundment or any condition that may compromise the structural integrity of the impoundment. Within 15 days of discovery, the permittee shall submit to the department a corrective action plan describing any actions taken or proposed to be taken to repair the damage or condition. Within 30 days of receipt, the department shall approve or disapprove the proposed corrective action plan. Repairs to the impoundment liner or berms shall be completed pursuant to 20.6.7.17 NMAC. The corrective action plan shall include a schedule for implementation. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan.

**G. Unauthorized discharge - reporting and correction.** In the event of a spill or release that is not authorized by the discharge permit, the permittee shall notify the department and take corrective actions pursuant to 20.6.2.1203 NMAC. Process water or impacted stormwater or other material that is spilled or released that has the potential to impact water quality shall be contained and pumped to a sump, impoundment, or leach stockpile permitted pursuant to the copper mine rule. The permittee shall repair or replace failed components within 48 hours from the time of failure or as soon as practicable.

**H. Leach stockpiles, tailings impoundment or waste rock stockpiles - unstable slopes.** Within 24 hours of discovery, a permittee shall report to the department any evidence of instability of the slope of a leach stockpile or tailings impoundment or any condition that may compromise the structural integrity of the leach stockpile, tailings impoundment or waste rock stockpile. Within 15 days of discovery, the permittee shall submit to the department a corrective action plan describing any actions taken or proposed to be taken to repair the damage or condition. Within 30 days of receipt, the department shall respond to the proposed corrective action plan. Repairs to the slopes shall be completed consistent with the requirements of 20.6.7.20, 20.6.7.21, 20.6.7.22, and 20.6.7.33 NMAC, as applicable. The corrective action plan shall include a schedule for implementation. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan.

**I. Erosion of cover system or compromised stormwater conveyance structure, ponding of stormwater, or other conditions.** Within 24 hours of discovery, a permittee shall report to the department any evidence of significant erosion of a cover system required by 20.6.7.33 NMAC or compromise of a stormwater conveyance structure; any significant ponding of stormwater on the cover system; or any other condition that may significantly compromise the cover system or stormwater conveyance structure. Within 15 days of the reported discovery, the permittee shall submit to the department a corrective action plan describing any actions taken or proposed to be taken to repair the damage or condition. Within 30 days of receipt, the department shall respond to the proposed corrective action plan. Repairs to the cover system or stormwater conveyance structure shall be completed consistent with the applicable requirements of 20.6.7.33 NMAC. The corrective action plan shall include a schedule for implementation. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan.

**J. Water management and water treatment system failure.** Within 24 hours of discovery, a permittee shall report to the department any significant failure of a water management or water treatment system constructed and operated pursuant to 20.6.7.33 NMAC or any condition that may cause a significant failure of the water treatment system. Within 15 days of the reported discovery, the permittee shall submit to the department a corrective action plan describing any actions taken or proposed to be taken to repair the damage or condition. Within 30 days of receipt, the department

shall respond to the proposed corrective action plan. Repairs to the water treatment system shall be completed consistent with the applicable requirements of 20.6.7.33 NMAC. The corrective action plan shall include a schedule for implementation. Within 30 days of the date of postal notice of the department's approval of the corrective action plan, the permittee shall initiate implementation of the plan.

**K. Interim Emergency Water Management.** An applicant or permittee shall develop and submit to the department an interim emergency fluid management plan. The purpose of the interim emergency water management plan is to provide information to the department on how process water systems, interceptor wells, seepage collection systems and storm water management systems are operated and maintained to prevent discharges in the event the department assumes management of the copper mine facility. An applicant or permittee shall include in the plan process water flow charts showing electrical system requirements, pump operations, seepage collection and interceptor well operations and applicable operation and maintenance requirements. The interim process water management plan shall be updated as major process water system changes occur that would affect the interim emergency water management plan. The interim emergency water management plan shall be maintained on site and be available for department review. The plan shall be submitted within 180 days of discharge permit renewal for an existing copper mine facility and no less than 60 days prior to discharge at a new copper mine facility.

[20.6.7.30 NMAC - N, 12/1/13]

**20.6.7.31 [RESERVED]**

**20.6.7.32 [RESERVED]**

**20.6.7.33 CLOSURE REQUIREMENTS FOR COPPER MINE FACILITIES:**

An applicant or permittee shall submit a closure plan for all portions of a copper mine facility covered by a discharge permit that addresses the following requirements.

**A. Design storm event.** Permanent storm water conveyances, ditches, channels and diversions required for closure of a discharging unit at a copper mine facility shall be designed to convey the peak flow generated by the 100 year return interval storm event. The appropriate design storm duration shall be selected based on the maximum peak flow generated using generally accepted flood routing methods. Sediment traps or small basins intended as best management practices may not be subject to this requirement, based on department approval.

**B. Slope stability.** At closure, tailing impoundment(s) not regulated by the office of the state engineer, leach stockpile(s) or waste rock stockpile(s) shall be constructed to promote the long-term stability of the structure. Closure of all critical structures at a copper mine facility shall be designed for a long-term static factor of safety of 1.5 or greater and non-critical structures shall be designed for a long-term static factor of

safety of 1.3 or greater. The units being closed shall also be designed for a factor of safety of 1.1 or greater under pseudostatic analysis. A stability analysis shall be conducted for the unit and shall include evaluation for static and seismic induced liquefaction.

**C. Surface re-grading.** During closure of any tailing impoundment, waste rock pile or leach stockpile at a copper mine facility, the surface shall be re-graded to a stable configuration that minimizes ponding and promotes the conveyance of surface water off the unit. The operator may propose for department approval a grading plan that allows ponding as an appropriate part of closure provided additional ground water protection measures, such as synthetic liner systems, are included as part of the design.

(1) The top surfaces of all tailing impoundments at a copper mine facility shall be constructed to a minimum final grade of 0.5% after accounting for the estimated magnitude and location of large-scale settlement due to totaling consolidation or differential settlement. Prior to final re-grading activities, the permittee shall ensure that adequate drainage of the tailing impoundment has occurred to ensure that large-scale settlement following grading is minimized. The CQC and CQA plan shall provide the methods and procedures to ensure that the design and construction activities will be completed according to the approved final design and specifications, including design aspects related to potential future settlement.

(2) The top surfaces of all waste rock and leach stockpiles at a copper mine facility shall be constructed to a minimum final grade of 1%.

(3) The outslopes of all tailing impoundments, waste rock and leach stockpiles at a copper mine facility shall be constructed to an interbench slope no steeper than three horizontal to one vertical (3H:1V). Alternative slope gradients may be allowed within an open pit surface drainage area, or if the permittee provides information showing that the cover performance objectives in Subsection F of this section are met and the exception is approved by the department.

(a) At existing copper mine facilities, where re-grading of individual outslopes would intersect a highway, cultural resource, physical infrastructure or a surface water of the state, outslopes may be re-graded no steeper than 2.5:1 or as otherwise approved by the department in Paragraph (3) of this subsection.

(b) At existing copper mine facilities, the waste rock and leach stockpile outslopes within an open pit surface drainage area are not required to be graded and covered.

(4) For design purposes, allowable uninterrupted slope lengths shall be calculated using a generally accepted erosion estimation method and shall be based on the final slope angle and cover material characteristics representative of the cover materials proposed for use at the site. The maximum uninterrupted slope lengths shall be no greater than 300 feet for 4.0:1, 200 feet for 3:1 slopes and 175 feet for 2.5:1

slopes. Alternative slope lengths may be allowed if the permittee provides information showing that the cover performance objectives specified in Subsection F of this section will be achieved and the exception is approved by the department.

**D. Open pits.** The applicant or permittee shall provide detailed information and a closure plan for open pits that demonstrates how the following criteria will be addressed through water management or other activities at open pits to minimize the potential to cause an exceedance of applicable water quality standards:

(1) Open pits in which the evaporation from the surface of an open pit water body is predicted to exceed the water inflow shall be considered to be a hydrologic evaporative sink. If an open pit is determined to be a hydrologic evaporative sink, the standards of 20.6.2.3103 NMAC do not apply within the area of open pit hydrologic containment. This is limited to contaminants associated with standard copper mining practices and found to be present within the open pit, or that can be generated from the natural materials present in the open pit through degradation, oxidation, decay or other expected process.

(2) After closure, if water within an open pit is predicted to flow from the open pit into ground water and the discharge from an open pit may cause an exceedance of applicable standards at monitoring well locations specified by 20.6.7.28 NMAC, then the open pit shall be considered a flow-through pit. In a flow-through pit system the open pit water quality must meet ground water standards of 20.6.2.3103 NMAC or the open pit must be pumped in order to maintain an area of open pit hydrologic containment.

**E. Surface water management.** The permittee of a copper mine facility shall maintain and implement a plan for the management of all stormwater and sediment generated from the copper mine facility during reclamation and following closure.

**F. Cover system.** At closure, a permittee shall install a cover system on waste rock piles, leach stockpiles, tailing impoundments and other units that have the potential to generate leachate and cause an exceedance of applicable standards at monitoring well locations specified by 20.6.7.28 NMAC using the following criteria, as appropriate. Any soil cover systems installed before the effective date of the copper mine rule are not subject to the requirements of the copper mine rule unless the department determines that an exceedance of applicable standards has occurred or is likely to occur as a result of the existing installed cover system, and that modification of the cover will prevent further impacts to ground water. Any cover system installed at an existing copper mine facility after the effective date of the copper mine rule shall be a store and release earthen cover system with a thickness of thirty-six inches and shall be constructed in accordance with the applicable requirements of Paragraphs (1) through (3) of this subsection. For leach and waste rock stockpiles inside the open pit surface drainage area, a thirty-six inch cover is only required on the top surfaces.

(1) The cover system shall be constructed of thirty-six inches of earthen materials that are capable of sustaining plant growth without continuous augmentation

and have erosion resistant characteristics. Erosion rates shall be equal to or less than stable slopes in the surrounding environment after the vegetation has reached near-equilibrium cover levels. Erosion will be estimated using generally acceptable methods.

(2) Soil cover systems shall be designed to limit net-percolation by having the capacity to store within the fine fraction at least 95 percent of the long-term average winter (December, January and February) precipitation or at least 35% of the long-term average summer (June, July and August) precipitation, whichever is greater. The water holding capacity of the cover system will be determined by multiplying the thickness of the cover times the incremental water holding capacity of the approved cover materials. Appropriate field or laboratory test results or published estimates of available water capacity shall be provided by the permittee to show that the proposed cover material meets this performance standard.

(3) Cover thickness or other design criteria may be reduced or modified if:

(a) the cover system is installed over a lined unit and the design and function of the liner system will complement the cover system, or the permittee proposes a composite, layered or an alternate cover system with an equal or greater level of ground water protection described in Paragraphs (1) and (2) of this section; or

(b) a demonstration is made that an alternate proposed cover system will ensure that an exceedance of applicable standards will not occur in ground water; such a demonstration shall include:

(i) a comprehensive modeling study to estimate the quantity of net-percolation through a cover system that will not result in an exceedance of applicable standards in ground water;

(ii) a plan for performance monitoring of the cover system, including ground water monitoring; and

(iii) an agreement by the permittee to pay for the cost of a third party review of the modeling study and performance monitoring plan.

(4) A CQA/CQC plan shall be submitted for department review as part of the final cover design. The plan shall identify a licensed New Mexico professional engineer as the designated CQA officer and include his or her supervision of the CQA plan and shall identify the methods proposed to ensure that the closure construction will be completed in accordance with the design and specifications. Following the completion of the work, the CQA officer shall prepare a final CQA report. The final CQA report shall provide a detailed description of the installation methods and procedures and document that the work was conducted as designed.

**G. Process solution reduction plans.** The closure plan shall include a process solution reduction plan for the copper mine facility. The process solution reduction plan

shall be a conceptual engineering document that describes the processes and methods that are expected to be used at a copper mine facility to reduce the quantities of process water in storage and circulation inventory at the end of copper production in preparation for long-term water management or treatment. The plan shall describe and list the current or proposed process water management units and inventories of process water. The plan shall describe the modifications to the process water management system required to create an efficient process water reduction system and the operation and maintenance requirements for the system with material take-offs of sufficient detail to prepare an engineering-level cost estimate equivalent to the cost estimate to be provided with the closure plan. The plan shall provide an estimate of the required water reduction period based on the water reduction calculations provided in the plan to be used for planning and operation and maintenance cost calculations.

**H. Closure water management and water treatment plan.** The applicant or permittee shall submit a closure water management and water treatment plan. The closure water management and water treatment plan shall consist of a conceptual engineering document that describes the processes and methods that are expected to be used at a copper mine facility for long-term management or treatment of process water. The plan shall include an analysis of the expected operational life of each long-term water management or water treatment system, including interceptor systems, until each system is no longer needed to protect ground water quality and applicable standards are met. The plan shall describe the long-term water management and water treatment systems with sufficient detail, including locations of key components, expected operational life, material take-offs, and capital, operational and maintenance costs to prepare an engineering-level cost estimate. The plans shall provide sufficient detail to estimate capital and operating costs to provide the basis for financial assurance for these activities.

**I. Impoundments.** The permittee shall close all reservoirs and impoundments in a manner that ensures that the requirements of the Water Quality Act, commission rules and the discharge permit are met. Closure activities shall meet the following requirements:

(1) Fluids from reservoirs and impoundments shall be drained and appropriately disposed of.

(2) Sediments in the reservoir or impoundment shall be characterized and abated or appropriately disposed of in a manner that will not cause an exceedance of applicable standards.

(3) Materials underlying the reservoir or impoundment shall be characterized to determine if releases of water contaminants have occurred.

(4) Where characterization results show materials remaining within or beneath any reservoir or other impoundment that are not naturally occurring to be a source or potential source of ground water contamination outside the open pit surface

drainage area, the reservoir or impoundment, shall be covered and re-vegetated pursuant to this section.

(5) Based on the characterization conducted pursuant to Paragraph (4) of this subsection, further characterization of ground water beneath and adjacent to the reservoir or impoundment may be required to determine if abatement is necessary.

(6) Reservoirs and impoundments located outside the open pit surface drainage area shall be closed in a manner that creates positive drainage away from the impoundments, unless needed during closure and post closure for storm water retention or seepage interception, post-closure water management and treatment, or unless otherwise approved by the department. Post-closure reservoirs or impoundments to be used for the collection of non-impacted storm water and located over areas where residual wastes, vadose zone contamination or ground water contamination remains shall be synthetically lined pursuant to the design and construction criteria of Paragraph (4) of Subsection D of 20.6.7.17 NMAC.

(7) The department may approve alternative plans for closure of impoundments based on site-specific conditions when the alternative closure method will provide the same level of ground water protection as the methods specified in Paragraphs (1) through (6) of this subsection.

**J. Pipelines, tanks and sumps.** The permittee shall remove and properly dispose of the tailing, process water, or other materials contained in pipelines, tanks or sumps as soon as they are no longer needed for site operations, water treatment, or other post-closure water management. Any residual tailing, process water, sediments or contaminated water shall be removed from the pipelines, tanks or sumps prior to closure and dispose of the material in a department approved manner. Pipelines may be removed for appropriate disposal or cleaned and buried in place. Sumps may be removed for disposal or cleaned and broken up and buried in place. During pipeline, tank or sump closure, the permittee shall inspect the entire pipeline, tank or sump area for evidence of past spills and characterize the impacts and potential impacts of such spills. The permittee shall document all areas where there is evidence of spills and propose to the department appropriate corrective actions pursuant to 20.6.2.1203 NMAC. Following pipeline, tank or sump removal, the permittee shall remove for disposal or reclaim in place all acid generating pipeline, tank or sump bedding material that has the potential to impact water quality in excess of the applicable standards.

**K. Crushing, milling, concentrating and smelting.** The permittee shall close all crushing, milling, concentrating or smelting areas in a manner that ensures that the requirements of the Water Quality Act, commission rules and the discharge permit are met. Any remaining materials containing water contaminants that may cause an exceedance of the applicable standards shall be removed or disposed of in a department approved manner or covered pursuant to this section. The permittee shall characterize the crushing, milling, concentrating or smelting area for the presence of any remaining potential water contaminants. If water contaminants are present that may

with reasonable probability move directly or indirectly into ground water and cause an exceedance of the applicable standards, the area shall be covered pursuant to this section.

**L. Closure monitoring and maintenance.** During closure the permittee shall continue monitoring pursuant to 20.6.7.28 and 20.6.7.29 NMAC. The permittee may propose and the department may approve modifications to the required monitoring to reflect changes in conditions during closure, including abandonment of monitoring wells.

**M. Exceptions to design criteria.** The closure design criteria of this section may be modified if approved by the department. Design criteria required by the office of the state engineer dam safety bureau for regulated units, such as jurisdictional impoundments (including tailing impoundments), shall supersede the criteria in this section.

[20.6.7.33 NMAC - N, 12/1/13]

#### **20.6.7.34 IMPLEMENTATION OF CLOSURE:**

**A. Notification of intent to close.** A permittee shall notify the department in writing of its intent to implement the closure plan for a copper mine facility or an individual unit of a copper mine facility. Notification shall be given at least 30 days prior to implementation of closure construction activities.

**B. Initiation of closure.** Upon notice of intent to implement a closure plan, a permittee shall commence closure in accordance with the approved closure plan. Implementation of closure includes preparation and submittal of a final design and CQA/CQC plan. The permittee shall submit the final design and CQA/CQC plan to the department for approval within 180 days of submission of a notice of intent to implement the closure plan. The permittee shall commence final closure construction of the copper mine facility or unit within 180 days of receipt of written approval of the final design and CQA/CQC plan. These timelines may be modified by the department upon request by the permittee for good cause shown, including allowance for time for procurement and mobilization of construction services and materials prior to actual closure construction.

**C. Notification of change in operational status.** Whenever operation of a copper mine facility subject to closure requirements under the copper mine rule is suspended or resumed, the permittee shall provide the department written notification within 30 days of the date operation is suspended or resumed. Each subsequent semi-annual report submitted during suspension of operation of a copper mine facility shall state whether the permittee intends to resume operations and the anticipated date of resumption of operations or the conditions under which operations will resume.

**D. Department notice regarding suspended operations and enforcement action.** If leaching operations or milling operations at a copper mine facility are suspended for more than one year, the department may issue a written notice to the

permittee requesting that the permittee provide evidence that the permittee is capable of and intends to resume operation of the unit. If the permittee does not respond within 30 days of postal notice of the department's written notice, or if the permittee does not provide evidence that the copper mine facility or unit is capable of resuming operation, that the permittee intends to resume operation of the copper mine facility or unit, and that the copper mine facility or unit does not pose a threat to public health or cause undue damage to property, the department may determine that the permittee is in violation of the copper mine rule for failure to implement closure of the copper mine facility or unit in a timely manner and may take appropriate enforcement action pursuant to Section 74-6-10 NMSA 1978, including requiring implementation of closure in accordance with 20.6.7.33 NMAC and this section.

**E. Deferral of closure.** A permittee may request deferral of closure of a unit at a copper mine facility that has reached the end of its useful life with no intent by the permittee to resume operations if the proximity of active operations at the copper mine facility could result in ongoing contamination of the unit, closure would require relocation or replacement of infrastructure that supports ongoing operations, or for other good cause shown. The department may approve a deferral of closure if the permittee demonstrates that adequate water management measures are being implemented and maintained to protect ground water quality during the period of deferral.

**F. Final design.** The permittee shall submit a final design and CQA/CQC plan to the department for approval at least 60 days prior to construction, including commencement of surface shaping activities, of any area subject to a closure plan pursuant to the copper mine rule including, but not limited to, tailing impoundments, waste rock piles, leach stockpiles, and any other area where cover is required under the approved closure plan. The CQA/CQC plan must include detailed engineering designs for storm water management structures and associated conveyance systems, cover design specifications, a cover material suitability assessment, a borrow source location, a rip rap suitability assessment, a rip rap source location, a post reclamation storm water management plan, and a schedule for completion. In addition, the final design and CQA/CQC plan shall include best management practices that will be employed during reclamation to address erosion and storm water management in a manner that meets the requirements of the Water Quality Act and commission regulations. The final design and CQA/CQC plan shall bear the signature and seal of a licensed professional engineer in accordance with Subsection A of 20.6.7.17 NMAC.

**G. CQA/CQC report.** Within 180 days after project completion, the permittee shall submit a final CQA/CQC report to the department. The CQA/CQC report shall include, at a minimum, as-built drawings of the entire reclaimed area including test pit locations and cover thickness data, a final survey report and topographic map following cover placement, a summary of work conducted, construction photographs, the location of reclaimed borrow areas, soil testing results, and laboratory analytical reports. The contour intervals on topographic maps shall be no greater than two feet for the top surfaces and no greater than 10 feet for the out slopes for closure of tailing impoundments, leach stockpiles or waste rock stockpiles. The CQA/CQC report shall

provide summaries of the quality assurance data, documenting that the project was completed according to the approved final design and CQA/CQC plan with significant exceptions explained. The CQA/CQC report shall bear the signature and seal of a licensed professional engineer in accordance with Subsection A of 20.6.7.17 NMAC.

[20.6.7.34 NMAC - N, 12/1/13]

### **20.6.7.35 POST-CLOSURE REQUIREMENTS:**

For each unit closed at a copper mine facility, the closure period shall cease, and the post-closure period shall commence, following the permittee's submission and department approval of a final CQA/CQC report that includes as-built drawings and a closure report documenting completion of regrading, covering, seeding, and construction of any other elements required for closure of a unit. The post-closure period for a copper mine facility or unit shall begin when the final CQA report is approved and only monitoring, inspections, maintenance, or operation of a closure water treatment and management plan remain to be conducted. During the post-closure period, a permittee shall conduct post-closure monitoring, inspection, reporting, maintenance, and implementation of contingency actions as specified by this section. The post-closure period shall end for a unit of a copper mine facility upon the completion of post-closure monitoring, inspection and maintenance for the unit as required by this section. The post-closure period shall cease when all monitoring, inspections, maintenance, and operation of the water management and treatment plan required under this section may cease. For units of a copper mine facility subject to an abatement plan, monitoring, inspection, reporting, and operation of abatement systems shall be conducted in accordance with the approved abatement plan rather than this section.

**A. Interceptor system inspections.** A permittee shall perform quarterly inspections and annual evaluations of all interceptor systems and perform maintenance as necessary to ensure that the systems are performing as designed and are functioning in a manner that is protective of ground water quality. The inspection results and any maintenance performed by the permittee on interception systems shall be reported pursuant to Subsection D of this section.

**B. Water quality monitoring and reporting.** A permittee shall perform water quality monitoring and reporting during the post-closure period pursuant to 20.6.7.28 and 20.6.7.29 NMAC, as applicable and modified by this section. Ground water elevation contour maps required pursuant to Subsection L of 20.6.27 NMAC shall be submitted annually during the post-closure period. A permittee may request to reduce the frequency of or cease sampling a water quality monitoring location if the water contaminants in a monitoring well have been below the applicable standards for eight consecutive quarters, provided an adequate monitoring well network remains. If sampling of a monitoring well ceases in accordance with this subsection, the monitoring well shall be abandoned in accordance with applicable requirements unless the

permittee requests and the department approves the monitoring well to remain in place for an alternative use or future monitoring.

### **C. Reclamation monitoring, maintenance, and inspections.**

(1) **Vegetation.** To ensure that vegetated covers required by the copper mine rule or the approved discharge permit are protective of water quality, a permittee shall perform post-closure monitoring of vegetation pursuant to schedules and monitoring requirements approved by the mining and minerals division. Any proposed changes to the closure or post-closure vegetation monitoring plan to meet Mining Act requirements shall be submitted to the department to ensure monitoring is protective of water quality. The permittee shall provide the department with a copy of monitoring results for vegetated covers, including photographic documentation as required by the mining and minerals division. At such time as the mining and minerals division vegetation success requirements under the Mining Act have been met, the permittee shall provide a final report to the department and vegetation monitoring may cease.

(2) **Erosion, subsidence, slope instability, ponding, and other features.** The permittee shall visually inspect closed discharge permit areas where a cover was installed for signs of excessive erosion, subsidence features, slope instability, ponding, development of fissures, or any other feature that may compromise the functional integrity of the cover system or drainage channels. Drainage channels, diversion structures, retention ponds, and auxiliary erosion control features shall be inspected in accordance with professionally recognized standards (e.g., U.S. department of agriculture natural resources conservation service standards). The inspections shall be conducted monthly for the first year following submission of the final CQA/CQC report for the unit, and quarterly thereafter until the end of post-closure monitoring, provided the department may approve a schedule allowing less-frequent monitoring. Discharge permit areas where covers were installed shall also be inspected for evidence of excessive erosion within 24 hours, or the next business day, following storm events of one inch or greater as measured at the nearest rain gauge on the copper mine facility. The permittee shall report and take corrective action pursuant to 20.6.2.7.30 NMAC regarding signs of excessive erosion, subsidence features, slope instability, ponding, development of fissures, or any other feature that may compromise the functional integrity of the cover system or drainage channels. Monitoring and inspection results shall be reported as required by Subsection D of this section.

(3) **Entry.** A permittee shall inspect and maintain the fencing or other management systems required by the discharge permit to prevent access by wildlife and unauthorized members of the public to an open pit, reservoir, impoundment or any sump that contains water that may present a hazard to public health or wildlife.

(4) **Cover maintenance.** A permittee shall perform maintenance on all areas where a cover system was installed as required by the copper mine rule, including associated drainage channels and diversion structures if their performance may affect cover system function. Based on monitoring of vegetation and erosion required by

Paragraphs (1) and (2) of this subsection, a permittee shall provide recommendations for maintenance work in semiannual monitoring reports described in Subsection D of this section, including a schedule for completion of work.

(5) **Other inspection and maintenance.** A permittee shall routinely inspect and maintain all structures, units, and equipment the failure of which may impact ground water quality. Water collected that exceeds the ground water quality standards in Section 20.6.2.3103 NMAC shall be stored, conveyed, treated and discharged in a manner that is consistent with the closure water treatment and management plan any other applicable regulatory requirements. The inspection results shall be reported as required in Subsection D of this section. Inspections and maintenance shall include but are not limited to:

- (a) storm water retention reservoir(s);
- (b) water treatment plant(s);
- (c) pumps and pipelines to deliver water to water treatment plant(s); and
- (d) seepage collection ponds.

(6) **Implementation of water management and treatment plan.** The permittee shall continue to implement the water management and treatment plan required by Subsection H of 20.6.7.33 NMAC during the post-closure period. The water management and treatment plan may be modified in accordance with its terms or by approval of the department to reflect changes in site conditions.

**D. Reporting.** A permittee shall submit to department semi-annual reports pursuant to the schedule in Subsection A of 20.6.7.29 NMAC until the post-closure period ends for the copper mine facility. The reports shall contain:

- (1) a description and the results of all post-closure monitoring conducted pursuant to this section;
- (2) a description of any work completed during the preceding semi-annual period including but not limited to:
  - (a) the status of post-closure activities for the copper mine facility; and
  - (b) any maintenance and repair work conducted for any closure unit; and
- (3) semi-annual potentiometric maps including data from all monitoring wells, extraction wells, piezometers, seeps and springs appropriate to the water table being mapped.

**E.** The contingency requirements of 20.6.7.30 NMAC apply to any deficiencies in the implemented closure systems discovered during the post-closure monitoring and inspections required pursuant to this section.

[20.6.7.35 NMAC - N, 12/1/13]

**20.6.7.36 [RESERVED]**

**20.6.7.37 RECORD RETENTION REQUIREMENTS FOR ALL COPPER MINE FACILITIES:**

**A.** A permittee shall retain a written record at the copper mine facility of all data and information related to field measurements, sampling, and analysis conducted pursuant to the copper mine rule and the discharge permit. The following information shall be recorded and shall be made available to the department upon request.

- (1) The dates, exact location and times of sampling or field measurements.
- (2) The name and title of the individuals who performed each sample collection or field measurement.
- (3) The date of the analysis of each sample.
- (4) The name and address of the laboratory and the name and title of the person that performed the analysis of each sample.
- (5) The analytical technique or method used to analyze each sample or take each field measurement.
- (6) The results of each analysis or field measurement, including raw data.
- (7) The results of any split, spiked, duplicate or repeat sample.
- (8) A description of the quality assurance and quality control procedures used.

**B.** A permittee shall retain a written record at the copper mine facility of any spills, seeps, or leaks of effluent, and of leachate or process fluids not authorized by the discharge permit. Records shall be made available to the department upon request.

**C.** A permittee shall retain a written record at the copper mine facility of the operation, maintenance, and repair of all features/equipment used as required by the copper mine rule or the approved discharge permit to treat, store or dispose of process water, tailings, and impacted stormwater, measure flow rates, monitor water quality, or collect other data. Records shall include repair, replacement or calibration of any monitoring equipment and repair or replacement of any equipment used in the process

water, tailings or impacted stormwater discharge system required by the copper mine rule or the approved discharge permit. Records shall be made available to the department upon request.

**D.** A permittee shall retain records of all monitoring information at the copper mine facility required by the copper mine rule, including all sampling results and other monitoring, calibration and maintenance records, copies of all reports, and the application for the discharge permit. Records shall be retained for a period of at least ten years from the date of the sample collection, measurement, report or application.

[20.6.7.37 NMAC - N, 12/1/13]

#### **20.6.7.38 TRANSFER OF COPPER MINE DISCHARGE PERMITS:**

**A.** Transfer of discharge permits for copper mine facilities shall be made pursuant to 20.6.2.3111 NMAC and this section.

**B.** The transferor(s) shall notify the department, in writing, of the date of transfer of ownership, control or possession and provide contact information for the transferee(s) pursuant to Subsection B of 20.6.7.11 NMAC and Subsection B of 20.6.7.12 NMAC. Notification shall be submitted to the department of the transfer within 30 days of the ownership transfer.

[20.6.7.38 NMAC - N, 12/1/13]

#### **20.6.7.39 CONTINUING EFFECT OF PRIOR ACTIONS DURING TRANSITION:**

**A.** A discharge permit issued pursuant to 20.6.2.3109 NMAC that has not expired on or before the effective date of the copper mine rule shall remain in effect and enforceable pursuant to the conditions of the discharge permit and for its term as designated by the permit. If an effective discharge permit contains a permit condition with a time period for submittal of a renewal application that is different from the time period contained in Subsection C of 20.6.7.10 NMAC that condition will remain in effect for two years following the effective date of the copper mine rule.

**B.** An application for a new discharge permit or an application for a renewed or modified discharge permit for an existing copper mine facility submitted to the department before the effective date of the copper mine rule and for which a draft permit has not been provided to the applicant shall be processed by the department pursuant to the copper mine rule. The applicant shall submit applicable permit fees to the department pursuant to 20.6.7.9 NMAC within 90 days of the effective date of the copper mine rule.

**C.** An application for a new discharge permit or an application for a renewed or modified discharge permit for an existing copper mine facility submitted to the department before the effective date of the copper mine rule and for which a draft permit

has been provided to the applicant shall be processed by the department pursuant to 20.6.2.3000 through 20.6.2.3113 NMAC. The applicant shall submit applicable permit fees to the department pursuant to 20.6.7.9 NMAC within 90 days of the effective date of the copper mine rule.

**D.** If a discharge permit for a copper mine facility is expired on the effective date of the copper mine rule and an application for renewal has not been received by the department, the permittee or owner of the copper mine facility:

(1) shall within 90 days of the effective date of the copper mine rule submit to the department an application for a discharge permit renewal, renewal and modification or closure pursuant to 20.6.7.10 NMAC and applicable permit fees pursuant to 20.6.7.9 NMAC; or

(2) if the copper mine facility has not been constructed or operated, the permittee or the owner of record of the copper mine facility may submit a statement to the department instead of an application for renewal certifying that the copper mine facility has not been constructed or operated and that no discharges have occurred. Upon the department's verification of the certification, the department shall retire the discharge permit number from use.

**E.** The permittee or owner of record of any copper mine facility discharging, capable of recommencing discharging, or that has ceased discharging within the term of its most recent discharge permit shall continue all monitoring and submittal of monitoring reports as prescribed in the most recent discharge permit until the department issues a renewed or renewed and modified discharge permit.

[20.6.7.39 NMAC - N, 12/1/13]

## **CHAPTER 7: WASTEWATER AND WATER SUPPLY FACILITIES**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: RURAL WATER SUPPLY, WASTEWATER AND SOLID WASTE INFRASTRUCTURE**

#### **20.7.2.1 ISSUING AGENCY:**

Department of Environment.

[20.7.2.1 NMAC - Rp, 20 NMAC 7.2.100, 10/31/2001]

#### **20.7.2.2 SCOPE:**

All persons applying for financial assistance under the Rural Infrastructure Act, Chapter 75, Article 1 NMSA 1978.

[20.7.2.2 NMAC - Rp, 20 NMAC 7.2.101, 10/31/2001]

**20.7.2.3 STATUTORY AUTHORITY:**

NMSA 1978, Section 75-1-3, and NMSA 1978, Section 9-7A-6D.

[20.7.2.3 NMAC - Rp, 20 NMAC 7.2.102, 10/31/2001]

**20.7.2.4 DURATION:**

Permanent.

[20.7.2.4 NMAC - Rp, 20 NMAC 7.2.103, 10/31/2001]

**20.7.2.5 EFFECTIVE DATE:**

October 31, 2001. Unless a later date is cited at the end of a section.

[20.7.2.5 NMAC - Rp, 20 NMAC 7.2.104, 10/31/2001]

**20.7.2.6 OBJECTIVES:**

A. To provide financial assistance to local authorities for the construction or modification of water supply, wastewater, and solid waste facilities.

B. To provide guidelines for the department's ranking of water supply, wastewater and solid waste facility construction projects submitted pursuant to the RIA, for highest priority based on public health needs.

[20.7.2.6 NMAC - Rp, 20 NMAC 7.2.105, 10/31/2001; A, 10/29/2007]

**20.7.2.7 DEFINITIONS:**

A. "Administrative account" means a separate account established within the fund to carry out the administrative functions of the Rural Infrastructure Act.

B. "Average residential user cost reduction grant" means a grant for the purpose of reducing the average residential user cost to a reasonable level as determined by the department for an eligible financially needy loan recipient whose water supply facility serves a population of less than three thousand.

C. "Base interest rate" means the annual interest rate for loans to local authorities that do not qualify for average user cost reduction grants or zero percent loans.

D. "Fund" means the rural infrastructure revolving loan fund.

E. "Local authority" means a mutual domestic association, or water and sanitation district that supplies water, wastewater or solid waste services to, or a municipality that has a population of less than twenty thousand or a county with a population less than two hundred thousand.

F. "Operate and maintain" means to conduct all necessary activities, including but not limited to replacement of equipment or appurtenances, to assure the dependable and economical function of a water supply or wastewater facility in accordance with its intended purpose.

G. "Priority ranking system" means the system for ranking water supply, wastewater, and solid waste facility construction projects for which loan applications have been received pursuant to the Rural Infrastructure Act.

H. "Priority list" means a list of water supply, wastewater and solid waste facility construction projects ranked according to the priority ranking system.

I. "RIA" means the Rural Infrastructure Act, Chapter 75, Article 1 NMSA 1978.

J. "Secretary" means the secretary of the environment department.

K. "Solid waste facility" includes transfer and convenience facilities, landfills or other equipment or systems used for processing, transformation, recycling or disposal of solid waste.

L. "Water supply facility" includes the source of supply of water, pumping equipment, storage facilities, transmission lines, treatment works, and distribution systems.

M. "Wastewater facility" includes collection lines, pumping equipment, treatment works, and disposal piping or process units.

N. "Zero percent loan" means a loan which carries no interest for the purpose of reducing the average residential user cost to a reasonable level as determined by the department for an eligible financially needy loan recipient whose water supply, wastewater, or solid waste facility serves a population of less than 3,000.

[20.7.2.7 NMAC - Rp, 20 NMAC 7.2.106, 10/31/2001; A, 10/29/2007]

#### **20.7.2.8-20.7.2.199 [RESERVED]**

[20.7.2.8 - 20.7.2.199 NMAC - Rp, 20 NMAC 7.2.107 - 199, 10/31/2001]

#### **20.7.2.200 ELIGIBILITY:**

A. Grants and loans shall be made only to local authorities that:

- (1) agree to operate and maintain the water supply, wastewater, or solid waste facilities so that the facilities will function properly over their structural and material design life, which shall not be less than twenty years;
- (2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978;
- (3) provide a written assurance, signed by an attorney, that the local authority has proper title, easements, and rights-of-way to the property upon or through which the water supply, wastewater, or solid waste facility proposed for funding is to be constructed or extended;
- (4) meet the requirements for financial capability set by the department to assure sufficient revenues to operate and maintain the facility for its useful life and to repay the loan;
- (5) pledge sufficient revenues for repayment of the loan, provided that such revenues may by law be pledged for that purpose;
- (6) agree to properly maintain financial records and to conduct an audit of the project's financial records;
- (7) are included on the RIA priority list;
- (8) have a treasurer, clerk, secretary-treasurer, or other individual responsible for the financial aspects of the project who is bonded;
- (9) employ a registered professional engineer licensed in the state of New Mexico to provide and be responsible for all engineering services on a project; and
- (10) provide a written notice to the department of completion and start of operation of the water supply, wastewater, or solid waste facility.

B. Loans and grants made pursuant to the RIA shall not be used by the local authority on any project constructed in fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act, Sections 47-5-1 to 47-5-8 NMSA 1978, or the New Mexico Subdivision Act, Sections 47-6-1 to 47-6-29, and 47-5-9 NMSA 1978.

C. Plans and specifications for a water supply, wastewater, or solid waste facility construction project shall be approved by the department before grant or loan disbursements to pay for construction costs are made to a local authority.

D. A local authority which receives RIA funds shall comply with all applicable federal, state, and local laws and regulations, including those related to procurement practices, construction wage rates, and these regulations.

[20.7.2.200 NMAC - Rp, 20 NMAC 7.2.200, 10/31/2001; A, 10/29/2007]

**20.7.2.201 ELIGIBLE AND NONELIGIBLE ITEMS:**

A. Eligible items include the costs of engineering feasibility reports, contracted engineering services, archeological surveys, and contracted construction.

B. The following items are eligible for loan funds only: water rights, land, system acquisition, easements, rights-of-way, legal costs, fiscal agents' fees, and refinancing of program loans.

C. Administrative costs of the local authority are ineligible.

[20.7.2.201 NMAC - Rp, 20 NMAC 7.2.201, 10/31/2001; A, 10/29/2007]

**20.7.2.202 RESPONSIBILITIES OF THE DEPARTMENT; APPLICATION PROCEDURES:**

A. The department shall administer the RIA Program. Money in the fund is appropriated to the department to carry out the provisions of the Rural Infrastructure Act. The department may allocate up to two percent of the total balance in the fund to pay for administrative expenses necessary to carry out the provisions of the Rural Infrastructure Act. Money allocated for administrative expenses shall be placed in a separate administrative account in the fund to be used solely for administrative expenses, and the department shall at the beginning of the fiscal year determine the projected administrative costs for the year and deposit in the account the appropriate amount; provided that the amount to be deposited does not exceed two percent of the total balance fund. Money in the account shall remain in the account at the end of a fiscal year.

B. Applications are to be submitted on standard forms provided by the department.

C. All applications for assistance under the RIA are due on the date(s) specified by the department.

D. The department shall review the application for eligibility, technical merits, and financial capability, and rate the applications based on the priority ranking system described in Section 20.7.2.300 NMAC.

E. The department shall make loans and, if applicable, average user cost reduction grants and/or zero percent loans to local authorities in order of priority on the current fiscal year priority list and considering the following:

- (1) willingness of a local authority to accept a loan;
- (2) financial capability of the local authority to repay the loan, to properly operate and maintain the water supply, wastewater or solid waste facility, to maintain a replacement fund and a debt service reserve fund; and
- (3) readiness to proceed with the project.

F. The department shall establish procedures to determine when the principal and interest portion of an average residential user cost is a reasonable cost.

G. The department shall establish procedures for the allocation and approval of average residential user cost reduction grants and zero percent loans which:

- (1) shall reduce only the principal and interest portion of the average residential user cost for a recipient whose water supply, wastewater or solid waste facility serves a population of less than 3,000; and
- (2) shall be for financially needy local authorities receiving RIA loan funds and which comply with the conditions outlined in the RIA:
  - (a) the construction project is designed using the most cost-effective and dependable option;
  - (b) the system is designed with adequate built-in expansion capacity;
  - (c) other sources of grant funds have been sought and are not available in a timely manner;
  - (d) the project cannot feasibly be reduced in scope or phased, so as to bring it within available loan funds and within reasonable user cost; and
  - (e) the local authority's median household income (MHI) is less than ninety percent of the statewide non-metropolitan MHI based on the most current decennial census.

H. Loan agreements will be prepared by the department and executed for those projects which can be financed with available funds.

I. The department may:

- (1) conduct periodic reviews of the operation of a local authority that has received funding from the department;
- (2) require the local authority to submit information relevant to the loan to the department;

(3) require the submission of financial reports relevant to the ability of the local authority to repay the loan; and

(4) review and require changes to the rate-setting analysis that supports the loan payments.

[ 20.7.2.202 NMAC - Rp, 20 NMAC 7.2.202, 10/31/2001; A, 10/29/2007]

#### **20.7.2.203 LOAN AND GRANT DISBURSEMENT REQUIREMENTS:**

A. Interim loan disbursements to pay for contracted engineering services and other professional services may be made prior to approval of the plans and specifications by the department.

B. Interim and final loan and grant disbursements may be made by the department on a monthly basis as work is progressing.

C. The above loan and grant disbursements shall be made provided the local authority receiving RIA funds has complied with the requirements of these regulations and the department's administrative procedures.

[20.7.2.203 NMAC - Rp, 20 NMAC 7.2.203, 10/31/2001]

#### **20.7.2.204 LOAN AND GRANT LIMITATIONS:**

A. The base interest rate shall be an annual interest rate set by the secretary that is at or below market interest rate.

B. No loan recipient eligible to receive a grant under the RIA shall receive a grant in any one year totaling more than \$500,000.

C. A zero percent interest loan, in any one year, may not exceed \$500,000.

D. The total of all loans in any one year for any single local authority may not exceed \$2,000,000.

E. The maximum assistance, including both loans and grants, which a local authority may receive in any one year under the RIA is \$2,000,000.

F. A loan under RIA shall be for a period of time not to exceed twenty years.

G. The repayment of a loan shall be in annual, quarterly, or monthly installments as approved by the department beginning one year after completion of the project. The repayment of the interest on the loan accumulated during the design and construction of a project may be included in the final loan amount, but it shall not be counted in determining the maximum loan amount.

H. Existing loans under the Rural Infrastructure Act may be refinanced when the annual interest rate set by the department is at least one percentage point less than the annual interest rate on the existing loan. The request for refinance of an existing loan must be submitted in writing to the department.

[20.7.2.204 NMAC - Rp, 20 NMAC 7.2.204, 10/31/2001; A, 10/29/2007]

#### **20.7.2.205 RATE-SETTING AUTHORITY:**

In the event a local authority fails to make the prescribed loan repayment, the department is authorized to set water, wastewater, or solid waste user rates in the area of the local authority's jurisdiction in order to provide sufficient money for repayment of the loan and proper operation and maintenance of the water supply, wastewater, or solid waste facility.

[20.7.2.205 NMAC - Rp, 20 NMAC 7.2.205, 10/31/2001; A, 10/29/2007]

#### **20.7.2.206-20.7.2.299 [RESERVED]**

[20.7.2.206 - 20.7.2.299 NMAC - Rp, 20 NMAC 7.2.206 - 299, 10/31/2001]

#### **20.7.2.300 ELEMENTS OF RANKING CRITERIA:**

A. The department's ranking procedures for water supply construction projects submitted pursuant to the RIA shall include evaluation of:

- (1) microbiological, turbidity, inorganic, organic, radiological, secondary parameters, and any other water quality parameters determined by the department to be pertinent to the overall quality of the water provided by the water supply facility;
- (2) components of the water supply facility, including but not limited to:
  - (a) treatment;
  - (b) disinfection;
  - (c) storage;
  - (d) distribution capacity;
  - (e) reliability of the system;
  - (f) potential for emergency assistance;
  - (g) need for expansion;

(h) age of the system; and

(i) overall condition of the system; and

(3) the number of individuals served by the local authority's water supply facility, with a project serving a smaller number of individuals receiving a higher ranking than a project serving a larger number of individuals.

B. The department's ranking procedures for wastewater facility construction projects submitted pursuant to the RIA shall include evaluation of:

(1) stream standards, groundwater quality, quality of wastewater discharge, and any other water quality parameters determined by the department to be pertinent to the quality of surface or ground waters of the state.

(2) components of the wastewater facility, including but not limited to:

(a) collection;

(b) pumping;

(c) treatment;

(d) disposal;

(e) reliability of the system;

(f) potential for emergency assistance;

(g) need for expansion;

(h) age of the system;

(i) overall condition of the system; and

(3) the number of individuals served by the local authority's wastewater facility, with a project serving a smaller number of individuals receiving a higher ranking than a project serving a larger number of individuals.

C. The department's ranking procedures for solid waste facility construction projects submitted pursuant to the RIA shall include evaluation of:

(1) current solid waste standards within the state, any potential impact of current solid waste systems to groundwater and/or surface water quality, closure or upgrades to facilities that do not meet current state standards for liner and/or cover systems, regionalization of substandard facilities, solid waste collection, recycling, re-

use or disposal facilities that do not meet current state regulation(s) and/or have an administrative order for compliance in force at the time of application, and any other solid waste practice standard determined by the department to be pertinent to the overall quality of solid waste collection, recycling, reuse, or disposal provided by the solid waste facility.

(2) components of the solid waste facility, including:

- (a) collection;
- (b) transportation;
- (c) disposal;
- (d) storage;
- (e) source separation;
- (f) recycling;
- (g) reuse;
- (h) capacity;
- (i) reliability of the system;
- (j) age of the system;
- (k) overall condition of the system; and

(3) the number of individuals served by the authority's solid waste system, with a project serving a smaller number of individuals receiving a higher ranking than a project serving a larger number of individuals.

D. New systems shall be rated by evaluating only those applicable elements of the ranking criteria listed in Subsection A, B or C of this section.

[20.7.2.300 NMAC - Rp, 20 NMAC 7.2.300, 10/31/2001; A, 10/29/2007]

**20.7.2.301-20.7.2.399 [RESERVED]**

[20.7.2.301 - 20.7.2.399 NMAC - Rp, 20 NMAC 7.2.301 - 399, 10/31/2001]

**20.7.2.400 SEVERABILITY:**

If any provision or application of this Part is held invalid, the remainder or its application to other situations of persons shall not be affected.

[20.7.2.400 NMAC - Rp, 20 NMAC 7.2.400, 10/31/2001]

**20.7.2.401 CONSTRUCTION:**

This Part shall be construed so as to effectuate the purpose of the RIA.

[20.7.2.401 NMAC - Rp, 20 NMAC 7.2.401, 10/31/2001]

**20.7.2.402 SAVINGS CLAUSE:**

Repeal of 20 NMAC 7.2 shall not affect any action pending under those provisions on the effective date of this Part.

[20.7.2.403 NMAC - Rp, 20 NMAC 7.2.403, 10/31/2001]

**PART 3: LIQUID WASTE DISPOSAL AND TREATMENT**

**20.7.3.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.7.3.1 NMAC - Rp, 20.7.3.1 NMAC, 9/1/13]

**20.7.3.2 SCOPE:**

A. This part, 20.7.3 NMAC, applies to on-site liquid waste systems, and effluent from such systems, that receive 5,000 gallons or less of liquid waste per day, and that do not generate discharges that require a discharge plan pursuant to 20.6.2 NMAC or a national pollutant discharge elimination system (NPDES) permit.

B. 20.7.3.306 and 808 NMAC apply to the disposal of on-site septage and holding tank wastes.

[20.7.3.2 NMAC - Rp, 20.7.3.2 NMAC, 9/1/13; A, 9/15/14]

**20.7.3.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 74-1-6, 74-1-7(A)(3), 74-1-8(A)(3), and 74-1-9 (Repl. Pamp 1993 and Cum. Supp. 1997).

[20.7.3.3 NMAC - Rp, 20.7.3.3 NMAC, 9/1/13]

**20.7.3.4 DURATION:**

Permanent.

[20.7.3.4 NMAC - Rp, 20.7.3.4 NMAC, 9/1/13]

**20.7.3.5 EFFECTIVE DATE:**

September 1, 2013, except where a later effective date is indicated in the history note at the end of a section.

[20.7.3.5 NMAC - Rp, 20.7.3.5 NMAC, 9/1/13]

**20.7.3.6 OBJECTIVE:**

To protect the health and welfare of present and future citizens of New Mexico by providing for the prevention and abatement of public health hazards and surface and groundwater contamination from on-site liquid waste disposal practices.

[20.7.3.6 NMAC - Rp, 20.7.3.6 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.7 DEFINITIONS:**

As used in 20.7.3 NMAC.

A. Terms starting with the letter 'A' are defined as follows:

(1) "absorption area" means the area in square feet of infiltrative surface in a soil disposal system designated to receive effluent from a treatment unit;

(2) "absorption bed" means a conventional disposal bed greater than three feet in width and where the minimum horizontal dimension is greater than the vertical dimension;

(3) "advanced treatment" means any process of wastewater treatment that removes a greater amount of contaminants than is accomplished through primary treatment; "advanced treatment" may include physical or chemical processes;

(4) "aggregate" means clean washed gravel or crushed rock, having a hardness value of 3 or more on the Mohs scale of hardness, or a synthetic media reviewed by the wastewater technical advisory committee and approved by the department; shall have a minimum size of 3/4 inch and a maximum size of 2 1/2 inches, no greater than 4% fines by weight or volume and provide no less than 35% void space under field conditions; shall be durable, inert, maintain its integrity, not collapse or disintegrate with time, and not be detrimental to the performance of the system or to groundwater quality;

(5) "alternative disposal" means any approved on-site liquid waste disposal method used in lieu of, including modifications to, a conventional disposal method;

(6) "amendment of permit" means a change that does not affect the permitability of a liquid waste system, including a change of ownership or installer, and is not a "modification" as defined in this section;

(7) "applicant" means the owner applying for a permit to install, modify or operate an on-site liquid waste system;

(8) "approved" means:

(a) materials, products or procedures that have been reviewed by the wastewater technical advisory committee, if required, and accepted for use by the department;

(b) a liquid waste system that was permitted and installed in compliance with the standards and requirements of this regulation and received department authorization for use;

(c) a person or entity authorized by the department to design, install, modify or maintain liquid waste systems or a person authorized by the department to perform site or liquid waste system evaluations;

(d) materials, products or procedures that are approved or meet minimum standards certified by the international association of plumbing and mechanical officials (IAPMO), as applicable; and

(9) "arroyo" means a dry wash or draw that flows occasionally in response to precipitation, a watercourse (as a creek or stream) in an arid region or a water carved gully or channel.

B. Terms starting with the letter 'B' are defined as follows:

(1) "bedrock" means the more or less solid, undisturbed rock in place either at the surface or beneath surficial deposits of gravel, sand or soil, or a consolidated rock formation of impervious material that may exhibit jointed, fractured or deteriorated characteristics, or the R horizon of a soil profile as defined in the United States department of agriculture (USDA) soil survey manuals;

(2) "bedroom" means any room within a building that is designated as a sleeping room on drawings submitted to the responsible building permitting authority, manufactured housing authority, or in the case of unpermitted systems, to the department;

(3) "biochemical oxygen demand" or "BOD" means the rate at which organisms use the oxygen in water or wastewater while stabilizing decomposable organic matter under aerobic conditions;

(4) "blackwater" means waste from a liquid flushing toilet, urinal, kitchen sinks, dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers;

(5) "body of water" means all constrained water including water situated wholly or partly within or bordering upon New Mexico, whether surface or subsurface, public or private;

(6) "building drain" means that part of the lowest piping of a drainage system that receives the collective liquid waste discharge from soil, waste and other drainage piping inside a building and conveys it to the building sewer that begins two feet outside the vertical plane of the building wall, residential or commercial unit; and

(7) "building sewer" means that part of the horizontal piping of a drainage system that extends from the end of the building drain located two feet outside the building wall and that receives the liquid waste discharge from the building drain and conveys it to a liquid waste treatment unit or approved point of disposal.

C. Terms starting with the letter 'C' are defined as follows:

(1) "canal" means a man-made ditch or channel that carries water for purposes other than domestic consumption;

(2) "certificate of registration" means a permit to operate an unpermitted liquid waste system installed prior to February 1, 2002 after an evaluation is conducted pursuant to Subsection J of 20.7.3.401 NMAC;

(3) "cesspool" means an excavation or non-water tight unit that receives untreated water-carried liquid waste allowing direct discharge to the soil;

(4) "clay" means:

(a) a soil separate consisting of particles less than 0.002 millimeters in diameter; or

(b) the textural class name of any soil that contains 40% or more clay, less than 45% sand and less than 30% silt;

(5) "clearance" means the vertical thickness of suitable soil between the lowest point of a liquid waste disposal system and the seasonal high groundwater table, bedrock or other limiting layer;

(6) "cluster system" means a wastewater system that serves more than one unit and treats 5,000 gallons per day or less of wastewater;

(7) "coarse sand" means soil comprised of 25% or more of soil particles 0.5 to 2.0 mm in diameter and less than 50% of any other grade of sand;

(8) "commercial unit" means a structure that is not a residential unit but which has sewage producing fixtures such as sinks, baths, showers, toilets, urinals, dish- and clothes-washers or floor drains for receiving liquid waste including but not limited to uses included in Table 201.1;

(9) "conditional approval" means the approval of an on-site treatment or dispersal product that has been reviewed by the wastewater technical advisory committee and granted permission by the department to install the product or products on a limited number of sites for the purpose of verifying performance of the product;

(10) "conventional disposal" means a subsurface soil absorption system with gravity distribution of the effluent, with or without a lift station, constructed in accordance with the standards set forth in this regulation, including trenches, absorption beds and seepage pits;

(11) "conventional treatment" means a septic tank where primary treatment occurs; and

(12) "conventional treatment system" means an on-site liquid waste system utilizing both conventional treatment and conventional disposal, including privies, holding tanks and vaults.

D. Terms starting with the letter 'D' are defined as follows:

(1) "degrade a body of water" means to reduce the physical, chemical or biological qualities of a body of water and includes, but is not limited to, the release of material that could result in the exceeding of standards established by 20.6.4 NMAC, Standards for Interstate and Intrastate Surface Waters, by 20.6.2 NMAC, Ground and Surface Water Protection and by 20.7.10 NMAC, Drinking Water;

(2) "department" means the New Mexico environment department;

(3) "design flow" means the flow rate for which an on-site liquid waste system must be designed in order to assure acceptable system performance, assuming the use of conventional plumbing fixtures;

(4) "disinfected" or "disinfection" means the use of any process designed to effectively kill most micro-organisms contained in liquid waste effluent including essentially all pathogenic (disease causing) organisms, as indicated by the reduction of

the E. coli concentration to a specific level; these processes include, but are not limited to, suitable oxidizing agents such as chlorine, ozone and ultraviolet light;

(5) "disposal system" means a generally recognized system for disposing of the discharge from a liquid waste treatment unit and includes, but is not limited to, seepage pits, drainfields, evapotranspiration systems, sand mounds and irrigation systems;

(6) "domestic liquid waste" means wastewater that does not exceed 300 mg/l BOD, 300 mg/l TSS, 80 mg/l total nitrogen or 105 mg/l fats, oils and grease; and

(7) "drainage ditch" means an unlined trench dug for the purpose of draining water from the land or for transporting water for use on the land.

E. Terms starting with the letter 'E' are defined as follows:

(1) "edge of a watercourse, canal or arroyo" means that point of maximum curvature at the upper edge of a definite bank or, if no definite bank exists, the highest point where signs of seasonal high water flow exist;

(2) "effluent" means the discharge from the final treatment unit;

(3) "effluent disposal well" means a prohibited method of disposal consisting of a drilled, driven or bored shaft or dug hole with depth greater than any surface dimension, used for subsurface emplacement of liquid waste, including, but not limited to, abandoned water supply wells, irrigation wells and test holes, but excluding seepage pits used as disposal systems, which conform to the standards in 20.7.3.702 NMAC;

(4) "effluent irrigation" means the use of wastewater effluent to water landscaped areas, fruit trees or nut trees;

(5) "elevated system" means a system installed either partially or completely above grade in a constructed fill area for the purpose of meeting clearance to a limiting layer;

(6) "enclosed system" means a watertight on-site liquid waste system that does not discharge to the soil, including, but not limited to, holding tanks and lined evapotranspiration systems;

(7) "established on-site liquid waste system" means an on-site liquid waste system that has been in active use at any time during the 10 years prior to submission of a permit application and in compliance with any liquid waste disposal regulation in effect at the time of installation, excluding the permitting or registration process, but does not include cesspools installed after September 14, 1973;

(8) "evaluator" or "third party evaluator" means a third party who has the qualifications as set forth in Paragraph (2) of Subsection B of 20.7.3.904 NMAC;

(9) "evapotranspiration system" means a disposal system designed to dispose of effluent through evaporation and plant uptake and transpiration; and

(10) "experimental approval" means the approval of an on-site treatment or dispersal product that has been reviewed by the wastewater technical advisory committee and granted permission by the department to install the product or products on a very limited number of sites for the purpose of verifying performance and obtaining advancement to conditional approval.

F. Terms starting with the letter 'F' are defined as follows:

(1) "failed system" means, without limitation, an on-site liquid waste system that does not operate as permitted, that does not provide a level of treatment at least as effective as that provided by on-site liquid waste systems that meet the requirements of 20.7.3 NMAC or that poses a hazard to public health or degrades a body of water; and

(2) "fixture units" means a quantity of flow as defined in the New Mexico plumbing code upon which plumbing systems are sized.

G. Terms starting with the letter 'G' are defined as follows:

(1) "gravel" means, for purposes of soils classification, a soil separate consisting of particles greater than 2 mm in diameter;

(2) "graywater" means untreated household wastewater that has not come in contact with toilet waste and includes wastewater from bathtubs, showers, washbasins, clothes washing machines and laundry tubs, but does not include wastewater from kitchen sinks, dishwashers or laundry water from the washing of material soiled with human excreta, such as diapers; and

(3) "groundwater" means interstitial water that occurs in saturated earth material and is capable of entering a well in sufficient amounts to be utilized as a water supply.

H. Terms starting with the letter 'H' are defined as follows:

(1) "hazard to public health" means the indicated presence in water or soil of biological, chemical or other contaminants under such conditions that could adversely impact human health, including, but is not limited to, surfacing liquid waste, degradation to a body of water used as, or has the potential to be used as, a domestic water supply source, presence of an open cesspool or tank or exposure of liquid waste or septage in a manner that allows transmission of disease;

(2) "holding tank" means a non-discharging watertight tank designed to receive and retain liquid waste for periodic pumping and disposal off-site;

(3) "homeowner" means a person or persons who owns and occupies, or plans to occupy, a single family home; and

(4) "household hazardous waste" means a wide range of household products that have the characteristics of hazardous waste when discarded, including but not limited to, pesticides and herbicides, oil-based paints and stains, automobile fluids (antifreeze, motor oil, transmission, steering and brake fluids, gasoline), pool chemicals, hobby chemicals and darkroom chemicals.

I. Terms starting with the letter 'I' are defined as follows:

(1) "imminent hazard to public health" means any situation with the potential to immediately and adversely impact or threaten public health or safety;

(2) "impervious formation" means any soil or rock formation with a hydraulic conductivity of  $10^{-7}$  cm/sec or less;

(3) "industrial process wastewater" means non-household wastewater, excepting the following: human excreta; used water from showers, washbasins and dishwashers; and food preparation waste; any wastewater generated in a commercial activity that contains the materials prohibited by Subsection A of 20.7.3.304 NMAC is industrial process wastewater;

(4) "inspector" means a person employed by the department who is competent in the physical examination and evaluation of on-site liquid waste systems;

(5) "installer" means any person who holds a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division for the construction of on-site liquid waste systems;

(6) "installer specialist" means a person certified by the department pursuant to Subsection E of 20.7.3.904 NMAC;

(7) "interstitial water" means water in spaces between solid earth particles;  
and

(8) "invert" means the lowest portion of the internal cross section of a pipe or fitting.

J. Terms starting with the letter 'J' are defined as follows: **[RESERVED]**

K. Terms starting with the letter 'K' are defined as follows: **[RESERVED]**

L. Terms starting with the letter 'L' are defined as follows:

(1) "lateral" means a secondary water or wastewater pipeline branching directly from a central supply pipeline or manifold leading to an irrigation site;

(2) "limiting layer" means an impervious formation, bedrock or the seasonal high groundwater table;

(3) "liner" means a manufactured or naturally occurring substance that restricts seepage to no more than  $10^{-7}$  cm/sec. over the design service life of the lined unit; manufactured liners must have a minimum single-ply thickness of 20 mils and have no leaks;

(4) "liquid capacity" means the volume of liquid that is contained in a septic tank or treatment unit measured from the invert of the outlet; "liquid capacity" shall be calculated by multiplying the inside length by the inside width by the depth measured from the invert of the outlet to the unit's floor and converting the result of this calculation to gallons;

(5) "liquid waste" means wastewater generated from any residential or commercial unit where the total wastewater received by a liquid waste system is 5,000 gallons per day or less; liquid waste includes without limitation human excreta and water carried waste from plumbing fixtures, including, but not limited to, wastes from toilets, sinks, showers, baths, clothes- and dish-washing machines and floor drains; "liquid waste" also includes non-water carried wastes discharged into holding tanks, privies and vaults; specifically excluded from the definition of "liquid waste" are industrial process wastewaters, roof drainage, mine or mill tailings or wastes;

(6) "liquid waste system" means a liquid waste treatment unit or units and associated disposal systems, or parts thereof, serving a residential or commercial unit; "liquid waste systems" include enclosed systems, holding tanks, vaults and privies but do not include systems or facilities designed to receive or treat mine or mill tailings or wastes;

(7) "liquid waste treatment unit" means a component of the on-site liquid waste system where removal, reduction or alteration of the objectionable contaminants of wastewater is designed to occur; it may include a holding component but does not include soil;

(8) "load" or "loading" means:

(a) in the context of the biological or chemical load received by an on-site liquid waste system, the amount of material applied to an on-site system liquid waste component per unit area or unit volume;

(b) in the context of the structural load applied to an on-site liquid waste structural component, the structural force applied to a liquid waste system component per surface area; and

(9) "lot" means a unified parcel legally recorded or validated by other means, including any contiguous parcel subject to a legally recorded perpetual easement that dedicates the servient parcel for the disposal of liquid waste generated on the dominant parcel.

M. Terms starting with the letter 'M' are defined as follows:

(1) "maintenance contract" means a contract between the system owner and a maintenance service provider in which the maintenance service provider agrees to provide periodic inspections in regards to the operation, maintenance and repair of the system;

(2) "maintenance service provider" means a public entity, company or individual in the business of maintaining liquid waste systems according to manufacturers' specifications;

(3) "manifold" means a part of a water distribution system normally located between the laterals and central supply line; the "manifold" splits the flow into a number of flows, either for distribution or for application to the land;

(4) "may" means discretionary, permissive or allowed; and

(5) "modify" or "modification" of a liquid waste system means:

(a) to change the method of on-site liquid waste treatment or disposal;

(b) to change the design of the on-site liquid waste system;

(c) to increase the design flow or load received by the on-site liquid waste system above the original design flow or load; or

(d) replace or expand the treatment unit or disposal system.

N. Terms starting with the letter 'N' are defined as follows:

(1) "New Mexico plumbing code" means 14.8.2 NMAC; and

(2) "non-discharging system" means a watertight system that allows no discharge of wastewater except through evaporation, transpiration or pumping, including, but not limited to, lined evaporation systems, lined evapotranspiration systems, holding tanks and vaults.

O. Terms starting with the letter 'O' are defined as follows:

- (1) "off-site water" means the domestic water supply for the lot is from:
  - (a) a private water supply source that is neither within the lot nor outside the lot within one hundred (100) feet of the property line of the lot; or
  - (b) a public water supply source that is not within the lot;
- (2) "on-site" means located on or within a lot;
- (3) "on-site liquid waste system" means a liquid waste system located on the lot where the liquid waste is generated;
- (4) "on-site water" means the domestic water supply for the lot is from:
  - (a) a private water supply source that is within the lot or within 100 feet of the property line of the lot; or
  - (b) a public water supply source that is within the boundaries of the lot; and
- (5) "owner" means any person or persons who own:
  - (a) an on-site liquid waste system or any component thereof; or
  - (b) any lot upon which any on-site liquid waste system or any component thereof is located; in the case of property sold or purchased on a real estate contract, the "owner" of the property is the buyer; if the property sold or purchased is owned collectively by multiple owners, the "owner" of the common property is the entity or governing body specifically designated in governance documents for the common property.

P. Terms starting with the letter 'P' are defined as follows:

- (1) "percolation rate" means the rate of entry of water into soil as determined by a standard soil percolation test at the depth and location of the proposed soil disposal system;
- (2) "permanently displayed" means, in context of septic tank legends, embossed into the tank surface or a mechanically attached, non-corrosive plate;
- (3) "permit" means a written approval from the department to install, modify, or operate an on-site liquid waste system;
- (4) "permittee" means any owner of a permitted on-site liquid waste system;

(5) "person" means any individual, partnership, firm, public or private corporation, association, trust, estate, the state or any political subdivision or agency or any other legal entity or their legal representative, agent or assign;

(6) "primary treatment" means a liquid waste treatment process that takes place in a treatment unit and allows those substances in wastewater that readily settle or float to be separated from the water being treated;

(7) "primary treatment standards" means the primary treated wastewater does not exceed 200 mg/l BOD, 100 mg/l TSS, 60 mg/l total nitrogen or 60 mg/l fats, oils and grease;

(8) "private water supply source" means a water supply source such as a well, spring, infiltration gallery or surface water withdrawal point used to provide water to a water supply system, if such system does not have a least 15 service connections and does not serve an average of 25 individuals at least 60 days out of the year;

(9) "privy" or "outhouse" means a receptacle for non-liquid-carried human excreta allowing direct discharge to the soil;

(10) "professional engineer" or "P.E." means a professional engineer licensed under the New Mexico Engineering and Surveying Practice Act; "professional engineer" includes engineers licensed in any state of the United States for engineering related to a product design and manufacture of proprietary products;

(11) "proprietary system" means a system patented, trademarked or otherwise the intellectual property of manufacturers not in the public domain; and

(12) "public water supply source" means a water supply source such as a well, spring, infiltration gallery or surface water intake structure used to provide water to a public water supply system for human consumption if the system served has at least 15 service connections or regularly services an average of 25 individuals at least 60 days out of the year.

Q. Terms starting with the letter 'Q' are defined as follows:

(1) "qualified homeowner" means a person who is the owner residing at the property who has been provided homeowner installation training materials and who has passed an exam administered by the department.

(2) **[RESERVED]**

R. Terms starting with the letter 'R' are defined as follows:

(1) "real estate contract" means a contractual document creating rights and obligations between a seller and buyer of real property under which the buyer acquires

equitable title to the property at the time the parties enter into the real estate contract and the seller agrees to transfer legal title to the property to the buyer at some time in the future upon buyer's fulfillment of all terms and conditions of the real estate contract;

(2) "repair" means servicing or replacing, with like kind, mechanical or electrical parts of an approved liquid waste system, pumping of septage or making minor structural corrections to a tank or distribution box;

(3) "residential unit" means a structure that is primarily used for living quarters but does not include facilities listed in Table 201.1; and

(4) "retention/detention area" means an area on a parcel of property specifically designated and designed to capture and hold water resulting from the runoff of precipitation.

S. Terms starting with the letter 'S' are defined as follows:

(1) "sand" means:

(a) a soil separate consisting of individual rock or mineral fragments that range in diameter from 0.05 to 2.0 millimeters; or

(b) the textural class name of any soil that contains 85% or more sand and not more than 10% clay;

(2) "sand-lined trench" means a combined treatment component and disposal system consisting of 24 inches of sand, meeting the latest version of ASTM C33-03 specifications or equivalent, below a low pressure pipe disposal system;

(3) "seasonal high groundwater table" means the highest level to which the upper surface of groundwater may be expected to rise within 24 consecutive months;

(4) "seasonal high water flow" means the highest level that perennial or intermittent surface waters may be expected to rise as a result of a 25 year, 6-hour storm event;

(5) "secondary treatment" means a reduction of the 5-day biochemical oxygen demand (BOD5) and total suspended solids (TSS) concentrations;

(6) "secretary" means the secretary of environment or a designated representative;

(7) "seepage pit" means a type of absorption system that uses a vertical, underground receptacle so constructed as to allow the disposal of effluent by soil absorption through the sidewalls; the maximum horizontal dimension shall not exceed the vertical dimension;

(8) "septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank;

(9) "septic tank" means a liquid waste treatment unit designed to provide primary treatment and anaerobic treatment prior to disposal;

(10) "setback distance" means the distance measured by a straight horizontal line between the on-site liquid waste system, or portion thereof, and the object being considered;

(11) "shall" means mandatory;

(12) "silt" means:

(a) a soil separate consisting of particles between 0.05 and 0.002 millimeters in diameter; or

(b) the textural class name of any soil that contains 80% or more silt and less than 12% clay;

(13) "soil" means sediment or other unconsolidated accumulations of mineral particles that may or may not contain organic material and that have filtering properties;

(14) "soil replacement" means replacement of existing soil with suitable soil in a new or existing disposal system site to overcome limitations of the existing soil;

(15) "split flow" means a building drain for the conveyance of wastewater that is designed to capture two waste streams, one stream from the toilet and the other stream from all other fixtures including bathtubs, showers washbasins, clothes washing machines, laundry tubs, kitchen sinks and dishwashers, for the purpose of reducing the total nitrogen discharged from the building; a "split flow" system shall consist of a holding tank for the toilet waste only and a disposal system for the remainder of the waste;

(16) "suitable soil" means a soil, whether naturally occurring or introduced, that will treat the primary effluent effectively and act as an effective filter and remove organisms and suspended solids prior to the effluent reaching groundwater, bedrock or a limiting layer, and that will provide adequate transmission to prevent a failed system; suitable soils are classified Table 703.1; and

(17) "surface application" means the application of disinfected effluent to the ground surface where access is restricted by artificial or natural conditions.

T. Terms starting with the letter 'T' are defined as follows:

(1) "tertiary treatment" means additional treatment beyond secondary treatment standards, specifically, the reduction in the total nitrogen concentration;

(2) "test hole" means a hole dug in the proposed disposal field area a minimum of seven feet deep or four feet below the bottom of disposal field, whichever is greater, and a minimum of two feet wide; the "test hole" shall be sufficient to examine the soil visually for type, structure, mottling, impervious layers and other soil characteristics, and to determine the seasonal high water table level; a soil boring may be used to determine the soil characteristics and soil depth;

(3) "total design flow" means the sum of design flows for all on-site liquid waste systems and other wastewater discharges on a lot;

(4) "total nitrogen" or "TN" means the combined organic nitrogen, ammonia, nitrite and nitrate contained in the wastewater or effluent;

(5) "total suspended solids" or "TSS" means the measurable component of solid matter suspended in water or wastewater; and

(6) "transfer" means the transfer of equitable or legal title to a property.

U. Terms starting with the letter 'U' are defined as follows: **[RESERVED]**

V. Terms starting with the letter 'V' are defined as follows:

(1) "vault" means a non-discharging, watertight tank designed to receive and retain non-liquid carried human excreta for periodic pumping and disposal off-site; and

(2) "variance" means an administrative procedure authorizing the issuance of a permit or use of a system that does not meet the specific requirements of 20.7.3 NMAC but which meet the intent of 20.7.3 NMAC.

W. Terms starting with the letter 'W' are defined as follows:

(1) "wastewater" means blackwater and graywater;

(2) "wastewater technical advisory committee" or "WTAC" means the wastewater technical advisory committee created by NMSA 1978 Section 9-7A-15;

(3) "watercourse" means any perennial, intermittent or ephemeral surface water conveyance channel including but not limited to a river, creek, arroyo, canyon, draw, canal or wash, or any other channel having definite banks and beds with visible evidence of the flow of water;

(4) "water(s) of the state" means surface waters of the state as defined by Paragraph (5), Subsection S of 20.6.4.7 NMAC, or its successor definition;

(5) "watertight" means not allowing water to pass in or out or as otherwise determined in 20.7.3 NMAC; and

(6) "wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico; constructed wetlands are not included in this definition.

X. Terms starting with the letter 'X' are defined as follows: **[RESERVED]**

Y. Terms starting with the letter 'Y' are defined as follows: **[RESERVED]**

Z. Terms starting with the letter 'Z' are defined as follows: **[RESERVED]**

[20.7.3.7 NMAC - Rp, 20.7.3.7 NMAC, 9/1/13; A, 9/1/13; A, 9/15/14]

### **20.7.3.8 GENERAL PROVISIONS:**

A. Interpretation: The definitions in 20.7.3.7 NMAC shall be construed so as to achieve the objective of 20.7.3 NMAC.

B. Alternative resources: When guidance is sought in areas not covered by 20.7.3 NMAC, the most recent version of the following resources may provide guidance. In cases where reference to these alternative resources is proposed the department shall make the final determination of applicability.

(1) The American national standards institute (ANSI) book of codes.

(2) The American society for testing and materials (ASTM) testing manual.

(3) The international association of plumbing and mechanical officials (IAPMO) codes.

(4) The national sanitation foundation (NSF) standard 40, standard 41, and standard 46.

(5) EPA design manuals for onsite wastewater treatment and disposal systems.

(6) USDA soil survey manuals.

(7) New Mexico administrative code.

(8) Wisconsin mound soil absorption system: siting, design and construction manual, university of Wisconsin-Madison.

(9) The consortium of institutes for decentralized wastewater treatment (CIDWT), decentralized wastewater treatment glossary and installation manual.

(10) other technical publications.

C. The department field offices shall make educational materials regarding on-site liquid waste systems available to the public and to permit applicants. Information on proper maintenance of systems shall be given to new permittees. Educational materials shall be in both English and Spanish.

[20.7.3.8 NMAC - Rp, 20.7.3.8 NMAC, 9/1/13]

### **20.7.3.9-20.7.3.200 [RESERVED]**

#### **20.7.3.201 PROCEDURES; GENERAL REQUIREMENTS:**

A. Every owner shall be responsible for the storing, treating and disposing of liquid waste generated on that property. Every owner shall be responsible for ensuring that the liquid waste system on that property and any excavation related to the liquid waste system do not pose a public safety hazard.

B. No person shall discharge untreated liquid waste except into a permitted and approved enclosed system, a permitted and approved liquid waste treatment unit or a public sewer system, except for the discharge of graywater pursuant to 20.7.3.810 NMAC. All liquid waste systems installed in accordance with a liquid waste permit issued by the department prior to July 1, 2012 shall be deemed to have operational approval. No person shall discharge liquid waste or effluent into a cesspool or effluent disposal well.

C. No person shall discharge effluent from a liquid waste treatment unit except through a permitted and approved liquid waste disposal system or to a permitted public sewer system. No person shall discharge effluent from a liquid waste treatment unit to a cesspool or effluent disposal well.

D. No person shall install, have installed, modify or have modified, own, operate or use an on-site liquid waste system that, by itself or in combination with other on-site liquid waste systems, may cause a hazard to public health or degrade any body of water. All on-site liquid waste systems shall be installed, operated and maintained in accordance with the permit and applicable regulations.

E. All residential and commercial units utilizing an on-site liquid waste system shall connect to a public sewer upon availability and if required in accordance with the local authority that has jurisdiction. A public sewer shall be deemed available when the public sewer has capacity and is located in any thoroughfare, right-of-way or easement abutting the lot on which the residential or commercial unit is located. The on-site liquid

waste system shall be properly abandoned in accordance with 20.7.3.307 NMAC within 30 days of connection to the public sewer.

F. The type of on-site liquid waste system shall be determined on the basis of location, lot size, soil and site characteristics. The system, except as otherwise approved, shall consist of a liquid waste treatment unit and associated disposal system.

G. An on-site liquid waste system shall be located wholly on the same lot, which is the site of the source or sources served by the on-site liquid waste system.

H. A privy may be used for the disposal of human excreta and toilet paper, but not for the disposal of other liquid wastes.

I. On-site liquid waste systems, other than holding tanks, receiving waste from recreational vehicles (RVs) shall provide treatment of the waste to concentrations equal to or less than primary treatment standards as defined in Paragraph (7), Subsection P of 20.7.3.7 NMAC, if necessary, prior to discharging to a conventional disposal system. Monitoring of the effluent may be required in accordance with 20.7.3.901 NMAC. Existing permitted on-site liquid waste systems receiving waste from recreational vehicles (RVs) shall continue to be authorized to operate. Upon modification of these existing systems, the system shall be required to provide the level of treatment of the waste identified above. This subsection shall not apply to homeowners who occasionally empty waste from one personal RV into the on-site liquid waste system serving their residence, provided that the RV is not used as a permanent living quarters.

J. On-site liquid waste systems permitted, but not installed, prior to the effective date of 20.7.3 NMAC shall be installed in accordance with the regulations in effect at the time of the permit issuance, provided that the installation of the system shall be completed within one year of the effective date of 20.7.3 NMAC.

K. Existing on-site liquid waste systems shall meet the regulations in effect at the time of their initial installation or subsequent modification or the current regulation, whichever is less stringent, unless otherwise noted in this regulation.

L. Nothing contained in 20.7.3 NMAC shall be construed to prevent the department from requiring compliance with more stringent requirements than those contained herein, where the department finds that such more stringent requirements are necessary to prevent a hazard to public health or the degradation of a body of water. The following parameters may be considered when determining if a body of water is potentially vulnerable to degradation from liquid waste effluents, and if more stringent requirements may be necessary to prevent such degradation:

(1) a water-table aquifer (includes both unconfined and semi-confined conditions) with a vadose zone thickness of 100 feet or less containing no soil or rock formation that would act as a barrier to saturated or unsaturated wastewater flow;

- (2) sites within 1/4 mile of a known groundwater plume of anthropogenic anoxic or nitrate contamination caused by migration through undisturbed vadose zone, provided that the site overlies the same aquifer;
- (3) an aquifer overlain by fractured bedrock;
- (4) an aquifer in karst terrain; and
- (5) a gaining stream or other body of water adversely affected by nutrients from liquid waste systems.

M. Upon written request, the department shall provide a letter of determination stating whether or not more stringent requirements may be imposed on a lot or parcel of land. This determination shall be valid for one year. The department shall issue the determination letter within 10 working days of receipt of the written request. This letter of determination in no way neither waives or precludes an applicant's regulatory requirements under this part nor predetermines the regulatory requirements of this part when obtaining a permit.

N. The secretary, or a designated representative, upon presentation of proper credentials and with consent or with an administrative search warrant:

- (1) shall have the right of entry to any property on which a permitted or unpermitted on-site liquid waste system regulated by 20.7.3 NMAC exists or is required for the limited purpose of inspecting the liquid waste system or to determine compliance with these regulations or permit conditions; failure to provide reasonable access for the purpose of inspecting a liquid waste system or to determine compliance with these regulations or permit conditions shall be cause for revocation or suspension of a permit;

- (2) shall have access to and may copy any record required to be established and maintained by these regulations or permit conditions; failure to provide reasonable access to or copies of any record required to be established and maintained by these regulations or permit conditions shall be cause for revocation or suspension of a permit; and

- (3) may obtain any samples required to determine compliance with 20.7.3 NMAC or permit conditions; failure to provide reasonable access to facilities for the purpose of obtaining samples shall be cause for revocation or suspension of a permit.

O. Eligibility for permitting under 20.7.3.2 NMAC, which restricts effluent flow to 5,000 gallons per day or less, shall be determined as follows:

- (1) Wastewater flows from residential sources shall be calculated at 80% of the design flow as determined according to Subsection P of 20.7.3.201 NMAC. Multiple families dwelling unit wastewater flows shall be calculated as the sum of wastewater flows for each single family unit included.

(2) Wastewater flows from residential and nonresidential sources shall be based on Table 201.1 or generally accepted references, such as the New Mexico plumbing code or the EPA design manuals for on-site wastewater treatment and disposal.

(3) Wastewater flows for residential and nonresidential sources also may be based on:

(a) professional engineering design calculations that bear the seal and signature of a professional engineer licensed in New Mexico, pursuant to the New Mexico engineering and surveying practice act and the rules promulgated under that authority; such calculations shall be reviewed by a department engineer, as appropriate; or

(b) the submittal of actual metered water use or effluent flow meter data; to use actual meter data to establish wastewater flow, the applicant must present at least one year of existing meter data collected within the previous five years; calculate the daily wastewater flow according to the following formula:  $A \div B = Q$ , where **A** = highest quarterly totalized meter reading in gallons for the minimum one year period; **B** = total number of days in highest metered quarter; **Q** = daily wastewater flow in gallons per day.

(c) Meter data or certification by a professional engineer shall not be used to determine wastewater flow on exclusively residential properties consisting of less than five residential units.

(d) If meter data is not representative of the actual wastewater discharge, as determined by the department, the applicant may be required to submit additional meter data or the department may disallow the use of meter data where its use would result in a gross misrepresentation of the wastewater discharge.

(e) The department may require a calibration of the meter used for determining water or wastewater flow and may disallow the use of inaccurate meter data. Applicants may be required to make future records of metered flow available for inspection by the department.

(f) If a permit is issued and there are meter records for any quarter that indicate the daily wastewater flow exceeds 5,000 gallons per day, quarterly meter records for the following two quarters shall be submitted to the department within 30 days of becoming available to the permittee. If meter data or other information available to department indicates the average daily wastewater flow has exceeded 5,000 gallons per day, the department may void the permit and refer the facility to the ground water quality bureau. The department may require a tamper-proof type meter be installed to verify that future wastewater flows do not exceed 5,000 gallons per day.

P. Determining treatment and disposal system design flow:

(1) For residential sources, the design flow shall be based on the number of bedrooms as follows:

- (a) 1 bedroom = 150 gallons per day;
- (b) 2 bedrooms = 300 gallons per day;
- (c) 3 bedrooms = 375 gallons per day;
- (d) 4 bedrooms = 440 gallons per day;
- (e) 5 bedrooms = 500 gallons per day; and
- (f) each additional bedroom = 50 gallons per day;

(g) design flows for multiple family dwelling units shall be calculated as the sum of design flows for each single family unit included.

(2) Where nonresidential wastewater flow is calculated based upon Table 201.1 or generally accepted references, no design factor is necessary to determine the design flow except as noted in Paragraph (3) below.

(3) For residential and nonresidential facilities with highly variable flows not certified by a professional engineer, a design factor greater than 1.5 may be required to be applied to determine the design flow. Alternatively, flow equalization or other methods of accommodating peak flows may be used with department approval.

(4) Where residential and nonresidential wastewater flow is certified by a professional engineer, no design factor is necessary to determine the design flow, unless deemed appropriate by the professional engineer.

(5) Where residential or nonresidential wastewater flow is determined using existing meter data and calculated in accordance with Subparagraph (b) of Paragraph (3) of Subsection O of 20.7.3.201 NMAC, a design factor of 1.5 shall be applied to the daily average flow to determine design flow. An additional peaking factor may be required in accordance with Paragraph (3) above.

(6) If the design flow could increase significantly beyond existing meter data due to increased occupancy or facility size, the department may require that additional area be available for future expansion of both the treatment and disposal systems.

**Table 201.1: Established liquid waste design flow rates**

TYPE OF OCCUPANCY	GALLONS PER DAY

1. Airport, Bus Terminal, Train Station	20 per employee 5 per passenger
2. Beauty & Barber Shop	75 per service chair
3. Bowling alleys (snack bar only)	75 per lane
4. Bed and Breakfast	150 first bedroom 100 each additional bedroom
5. Camps:	
campground with central comfort station	35 per person
with flush toilets, no showers	25 per person
day camps (no meals served)	15 per person
summer and seasonal	50 per person
6. Churches (Sanctuary)	2 per seat
with kitchen waste	7 per seat
7. Dance hall	5 per person
8. Doctor and Dentist Office	250 per practitioner, 15 per employee
9. Factories, excluding industrial waste: per 8-hour shift	
no showers	25 per employee
with showers	35 per employee
cafeteria, add	5 per employee
10. Food Operations:	
Restaurants operating 16 hours or less per day	40 per seat
Restaurants operating more than 16 hours per day	60 per seat
Bar, cocktail lounge	20 per seat
add per pool table or video game	15 each
Carry out only, including caterers	50 per 100 sq ft floor space
	20 per employee

add per 8-hour shift	10 per 100 sq ft floor space
Food outlets only	40 per 100 sq ft floor space
add for deli	40 per 100 sq ft floor space
add for bakery	75 per 100 sq ft floor space
add for meat department	200
add per public restroom	
11. Hotels, Motels, Lodges	60 per bed
laundries, lounges and restaurants calculated separately	
12. Institutions (resident)	75 per person
nursing homes	125 per person
rest homes	125 per person
13. Laundries	
self-service (minimum 10 hours/day)	50 per wash cycle
commercial	per manufacturer's specifications
14. Offices	20 per employee per 8-hour shift
15. Parks:	
picnic park - toilets only	20 per parking space
16. Recreation Vehicles (RV) Park	
without water hookup	75 per space
with water and sewer hookup	100 per space
RV dump stations	50 per RV
17. Schools - staff and office	20 per person
elementary and day care	15 per student
intermediate and high	20 per student
boarding, total waste	100 per person

	gym and showers, add	5 per student
	with cafeteria, add	3 per student
18.	Service stations and convenience stores	400 per toilet
	uni-sex restrooms	800 per toilet
19.	Stores	20 per employee
	public restrooms	10 per 100 sq ft. floor
20.	Swimming and bathing places, including spas and hot tubs, public	10 per person
21.	Theaters, auditoriums	5 per seat
	Drive-ins	10 per space
22.	Veterinary Clinic	250 per practitioner
	add	15 per employee
	add	20 per kennel, stall, or cage

Liquid waste generated by the occupancies above, that exceeds the concentrations in the definition of domestic liquid waste, shall require treatment to primary treatment standards as defined in Paragraph (7), Subsection P of 20.7.3.7 NMAC prior to discharging to a conventional disposal system.

Q. The minimum liquid capacity of a septic tank shall be determined as follows:

(1) for residential units, the liquid capacity shall be based on the number of bedrooms using Table 201.2; and

(2) for commercial units, the liquid capacity shall be based on the number of plumbing fixture units using Table 201.2; or

(3) if based on flows calculated from Table 201.1 or from estimated design flows pursuant to Paragraphs (2), (3), (4) or (5) of Subsection P of 20.7.3.201 NMAC, the minimum liquid capacity shall be 2.5 times the design flow, whichever is greater.

**Table 201.2: Capacity of septic tanks**

Single family dwellings, number of bedrooms	Other uses maximum fixture units*	Minimum septic tank capacity in gallons served
1	10	750

2 - 3	12	1000
4	15	1200
5 - 6	20	1500
7 - 9	27	2000
	29	2250
	32	2500
	35	2750

\* 100 fixture units or less are equal to 31.1 gallons per fixture unit.

R. Waste from a water softener unit shall comply with the following.

(1) Softener waste may be discharged to a conventional treatment unit. If the waste is not discharged to the treatment unit, the waste may be disposed in accordance with other applicable regulations.

(2) For new construction utilizing an advanced treatment system, the softener waste shall not be discharged to the advanced treatment unit. The softener waste shall bypass the advanced treatment unit and discharge directly to the drainfield or be disposed of in some manner acceptable to the department and meets all other state and local regulations.

(3) If a water softener unit is installed at an existing residential or commercial unit utilizing an advanced treatment unit:

(a) the current liquid waste permit shall be amended to reflect the installation;

(b) a written notice shall be submitted to the maintenance service provider of the advanced treatment unit; and

(c) either a demand-initiated regeneration control device (DIR device) shall be installed or the softener waste shall bypass the advanced treatment unit.

(4) If an advanced treatment unit is to be installed at an existing residential or commercial unit with an existing water softener, the installation shall be done in accordance with the permit.

[20.7.3.201 NMAC - Rp, 20.7.3.201 NMAC, 9/1/13; A, 9/1/13; A, 9/15/14]

### **20.7.3.202 PROCEDURES; MODIFICATION OF EXISTING SYSTEMS:**

A. Prior to the modification of an established on-site liquid waste system, a permit application must be submitted in accordance with 20.7.3.401-405 NMAC. The portion of the system requiring modification shall be in accordance with the current version of 20.7.3 NMAC except as noted in Subsections C and D of 20.7.3.202 NMAC below.

B. Replacement components for on-site liquid waste systems shall be of materials approved by the department.

C. On-site liquid waste systems modified after the effective date of this regulation:

(1) shall meet the lot size requirements of the regulations in effect at the time of the initial installation or most recent permitted modification; and

(2) the total lot flow shall be increased only if all current standards and requirements are met pursuant to 20.7.3 NMAC. More stringent requirements may be required pursuant to Subsection L of 20.7.3.201 NMAC.

D. The septic tank need not be replaced as part of the modification if the tank is structurally sound, watertight, constructed of approved materials, is functioning properly and if the existing tank has a liquid capacity within one tank size of the capacity required by Subsection Q of 20.7.3.201 NMAC. In addition, the tank shall be pumped and the inlet and outlet baffles or sanitary tees checked and repaired or replaced, if needed.

E. Upon modification of any part of the system, an approved effluent filter shall be installed in accordance with Subsection H of 20.7.3.502 NMAC and access risers shall be installed over the tank inlet and outlet access openings in accordance with Subsection D of 20.7.3.502 NMAC.

F. Upon the issuance of the permit to modify and the subsequent inspection and approval of the modification, a previously unpermitted system shall be considered permitted and authorized to operate.

[20.7.3.202 NMAC - Rp, 20.7.3.202 NMAC, 9/1/13; A, 9/1/13]

### **20.7.3.203 PROCEDURES; CONSTRUCTION INSPECTIONS AND TESTING:**

A. The department may perform site inspections prior to making a decision on a permit application or variance petition, during construction or modification of the system and after completion of the system. The department may require test holes to be excavated and documentation to be provided for purposes of determining soil types, depth of soil and water table depths. In areas where soil conditions are well characterized and groundwater depth is documented, test holes may be waived. The department may collect samples of soil, liquid waste and water, including water from wells, to determine compliance with 20.7.3 NMAC.

B. Upon granting the permit or variance application, if the department determines an inspection is necessary, the department shall indicate the point in the construction process where the first construction inspection is to be scheduled or in accordance with Subsection A of this section.

(1) The person doing the work authorized by the permit shall notify the department, orally or in writing, to schedule an inspection time, a minimum of two working days prior to the inspection. The department may assess a re-inspection fee if the work is not ready for inspection at the time of the scheduled inspection. In the event the inspection is not conducted within one hour after the appointed time of inspection, the installer shall take photographs that accurately identify the site and features of the installation and proceed with the installation. Copies of such photographs shall be submitted to the department.

(2) All homeowner installed systems shall be inspected by the department.

(3) If an inspection results in the issuance of a notice of non-approval, a re-inspection shall be required. The person shall notify the department as indicated above.

(4) An installer specialist doing the work authorized by the permit shall notify the department, orally or in writing, of the day and time the work will be ready for inspection. Such notification shall be given at least two working days, calculated to the hour, prior to the time of the requested inspection. If the department inspector does not arrive at the site within one hour of the notified time of completion, the installer specialist shall take digital photographs of all components of the installation, shall complete an inspection form provided by the department and may complete the installation. The installer specialist shall provide electronic copies of the photographs and inspection form to the department within five working days.

C. System components shall be properly identified as to manufacturer and shall meet all specifications specified in 20.7.3 NMAC.

D. The department may require testing to verify watertight construction and initial functioning of any liquid waste system.

(1) Liquid waste treatment units, pump stations or pump chambers shall be considered watertight by successfully completing one of the following testing procedures.

(a) Water pressure testing: Seal the unit, fill with water and let stand for 24 hours. Refill the unit. The unit is approved if the water level is held for 60 minutes.

(b) Vacuum testing: Seal the unit and apply a vacuum to two inches (50mm) of mercury. The unit is approved if the vacuum is held for 60 minutes.

(2) The department may require a flow test be performed through the system to the point of effluent disposal. All lines and components shall be watertight. Capacities, required air space and fittings shall meet the requirements of 20.7.3 NMAC.

(3) The department may require operational testing of advanced treatment components to verify initial functioning.

[20.7.3.203 NMAC - Rp, 20.7.3.203 NMAC, 9/1/13]

**20.7.3.204-20.7.3.300 [RESERVED]**

**20.7.3.301 STANDARDS; LOT SIZE REQUIREMENTS:**

A. The requirements of this section apply to all conventional treatment systems that discharge to the soil. Compliance with the requirements of this section shall be based on the total design flow for the lot. Water conservation devices or demonstrated actual flows shall not be used to reduce the requirements of this section. For the purposes of 20.7.3 NMAC, lot sizes shall be calculated to the nearest hundredth (0.01) acre.

B. The date of record for a lot shall be considered to be either:

(1) the date of legal recording in the county clerk's office or validation by other means associated with the most recent change in lot size or boundaries; or

(2) for those lots in subdivisions having received final approval from governments having jurisdiction therein prior to February 1, 1990, such date of record shall be two and one-half years from the date of final government approval or July 1, 1992, whichever occurs first.

C. A conventional treatment system shall not be installed on a lot sized smaller than 0.75 acre, where there is not an established on-site liquid waste system, except as otherwise provided in Subsection F of 20.7.3.301 NMAC. The size of a lot shall be the total area of the lot plus or minus the area of any liquid waste disposal easements granted to or by another lot, respectively. The design flow for a conventional treatment system shall not exceed 500 gallons per day per acre. For total design flows that exceed the allowable flow or for lots that do not meet the minimum lot size, the total nitrogen discharged to the lot shall be reduced in accordance with Subsection B of 20.7.3.603 NMAC.

D. On-site liquid waste systems installed prior to the effective date of 20.7.3 NMAC shall meet the lot size requirements of the regulations in effect at the time of their initial installation or if there has been a permitted modification, the regulations in effect at the time of the most recent prior permitted modification.

E. Table 301.1 lists the minimum lot sizes required for typical flow rates for conventional treatment systems for lots with a date of record of February 1, 1990 or later.

**Table 301.1**

TOTAL DESIGN FLOW (gallons per day)	MINIMUM LOT SIZE (acres)
375 or less	0.75

440	0.88	
500	1.00	
750	1.50	
1125	2.25	
1500	3.00	
1875	3.75	
2000	4.00	

F. The department may issue permits for lots not complying with Subsection C of 20.7.3.301 NMAC for areas the department has identified and mapped where groundwater is not at risk from nitrogen loading from on-site liquid waste systems. The following hydrogeologic conditions may be considered when determining if groundwater is not at risk:

- (1) groundwater does not exist;
- (2) the uppermost groundwater contains a total dissolved solids concentration greater than 10,000 milligrams per liter;
- (3) the uppermost groundwater occurs under confined conditions;
- (4) the uppermost groundwater occurs at a depth between 400 and 600 feet with one or more geologic strata in the vadose zone that may act as a capillary barrier; and
- (5) the uppermost groundwater occurs at a depth greater than 600 feet.

In areas that have not been identified and mapped by the department, the applicant must demonstrate one of the above conditions exists prior to the issuance of a permit.

G. The following Table 301.2 summarizes the minimum lot size requirements, in acres, and permissible design flows in effect prior to February 1, 1990 and is for the purpose of determining the requirements existing at the time of initial installation or most recent permitted modification.

**Table 301.2**

RECORD DATE				
01/01/60	11/01/73	09/07/79	03/01/80	11/09/85
to	to	to	to	to
11/01/73	09/07/79*	03/01/80	11/09/85	02/01/90

	Minimum Lot Size	Soil Group**	Min. Lot Size	Total Design Flow (gpd)	Min. Lot Size	Total Design Flow (gpd)	Min. Lot Size	Total Design Flow (gpd)	Min. Lot Size
OFF-SITE WATER**	0.25***	A	0.50	0-1000	0.50	0-375	0.33	0-375	0.33
		B	0.75	1000-1500	1.00	376-1000	0.50	376-750	0.50
		C	1.00	1500-2000	1.25	1000-1500	1.00	750-1125	1.00
		D	****			1501-2000	1.25	1126-1500	1.25
								1501-2000	1.75
ON-SITE WATER**	0.50***	A	0.75	0-1000	0.75	0-1000	0.75	0-375	0.75
		B	1.00	1000-1500	1.25	1000-1500	1.25	376-750	1.50
		C	1.25	1500-2000	1.70	1501-2000	1.70	750-1125	2.00
		D	****					1126-1500	2.75
								1501-2000	3.50

(1) \* The maximum total design flow was 1,000 gpd for the lot sizes shown.

(2) \*\* See Subsection H of 20.7.3.301 NMAC.

(3) \*\*\* These requirements applied to lots in subdivisions that were required at the time of subdivision to obtain state health department review and approval.

(4) \*\*\*\* No on-site liquid waste disposal to soil allowed.

(5) NOTE: Roadways were excluded from figuring lot sizes from 11/09/85 to 9/1/13.

H. The following Table 301.3 lists the soil types for lot size determinations for the period November 1, 1973 to September 7, 1979: The minimum lot size required for the location of an individual liquid waste disposal system is determined by the most limiting soil group under which any soil characteristic falls.

**Table 301.3**

SOIL CHARACTERISTICS	A Slight Limitations	B Slight Limitations	C Moderate Limitations	D Severe Limitations
1. SOIL DEPTH  (depth to bedrock, in feet)	More than 6  and	More than 6  and	4 - 6  or	Less than 4  or
2. PERCOLATION RATE  (rate of percolation of water into soil in minutes per inch)	0 - 15  and	16 - 30  and	31 - 60  or	More than 60  or
3. SEASONAL WATER TABLE  (depth to shallowest water table during the year, in feet)	More than 12  and	More than 12  and	4 - 12  or	Less than 4  or
4. SLOPE  (incline of the land surface, in percent)	0 - 8  and	0 - 8  and	8 - 25  or	More than 25  or

5. FLOODING POTENTIAL  (overflow frequency,  in years)	None	None	No more than  1 in 25	More than  1 in 25
---	------	------	--------------------------------	--------------------------

I. If the size or boundaries of a lot with an existing on-site liquid waste system are changed so that the total design flow for the lot exceeds the total design flow limitation provided for in Subsection C of 20.7.3.301 NMAC, the permit for the system shall be void.

J. If the size or boundaries of a lot with an existing on-site liquid waste system are changed so that the total design flow for the lot does not exceed the total design flow limitation provided for in Subsection C of 20.7.3.301 NMAC, an amendment to the existing permit shall be submitted.

[20.7.3.301 NMAC - Rp, 20.7.3.301 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.302 STANDARDS; SETBACK REQUIREMENTS:**

A. On-site liquid waste systems shall be located to meet setback distances, in feet, specified in the following Table 302.1. Setback distances apply to any part of the on-site liquid waste system.

**Table 302.1: Minimum setback and clearance requirements**

<b>From: To:</b>	<b>Building Sewer</b>	<b>Treatment Unit*</b>	<b>Disposal Field</b>	<b>Seepage Pit</b>
Property lines	clear	5 ft.	5 ft.	8 ft.
Building or structure	2 ft.	5 ft.	8 ft.	8 ft.
Distribution box	--	--	5 ft.	5 ft.
Disposal field	--	10 ft.*****	4 ft****	10 ft.
Seepage pit	--	10 ft.	10 ft.	12 ft.
Drinking water line*****:				
- private	1 ft.	10 ft.	10 ft.	10 ft.
- public	10 ft.	10 ft.	10 ft.	10 ft.
Drinking water source/well:				
- private	50 ft.	50 ft.	100 ft.	100 ft.
- public	50 ft.	100 ft.	200 ft.	200 ft.
Irrigation well	50 ft.	50 ft.	100 ft.	100 ft.
Lined canals	--	10 ft.**	10 ft.**	10 ft.**
Unlined canals, drainage ditches	--	15 ft.**	25 ft.**	25 ft.**
Arroyos	--	15 ft.**	25 ft.**	25 ft.**

Other watercourses,				
Waters of the state	--	50 ft.	100 ft.	100 ft.
Retention/detention area or flood irrigation areas	--	15 ft.	15 ft.	15 ft.
Seasonal high water table, bedrock and other impervious layers***	--	--	4 ft. to bottom of system	4 ft. to bottom of system

- (1) \* Applies to privy pits, enclosed systems, other liquid waste treatment units.
- (2) \*\* Plus depth of channel.
- (3) \*\*\* Unlined privy pits shall provide clearance of at least four feet.
- (4) \*\*\*\* Plus two feet for each additional foot of depth below the invert of the distribution pipe.
- (5) \*\*\*\*\* May be five feet when Schedule 40 PVC/DWV pipe is used.
- (6) \*\*\*\*\*Or applicable plumbing code.

B. Setback distances to watercourses, canals and arroyos shall be measured from the edge of the defined bank to the on-site liquid waste system component. Setback distances to artificially controlled lakes or reservoirs shall be measured from the closest projected shoreline at the maximum controlled water level.

C. Multiple liquid waste systems, each with an actual design flow of 5,000 gallons per day (gpd) or less, may be permitted by the department even if they are located on a single lot provided that the disposal systems are set back from each other by a distance equal to the sum of two radii of adjacent circular areas, each circular area representing certain boundaries of a disposal system. The center of each circle is located at a point nearest to the outer boundary of each adjacent liquid waste disposal system. The radius for each circle may be calculated utilizing Table 302.2 below based on the number of bedrooms, or by using the following formula:  $r = \sqrt{A/\pi}$  or  $r^2 = A/\pi$ , where:

- (1) "r" means radius of the circular area measured in feet;
- (2) " $\sqrt{\quad}$ " means square root;
- (3) "A" means the area of a circle in square feet, calculated as follows:
  - (a)  $A = (\text{design flow, gpd}) \times (1 \text{ acre}/500 \text{ gpd}) \times (43,560 \text{ square feet/acre});$  or

(b)  $A = (\text{design flow, gpd}) \times 87.12$ ; and

(4)  $\pi (\text{pi}) = 3.1416$ .

D. Table 302.2 below provides examples of radii for design flows based on number of bedrooms only. Radii for other design flows shall be calculated with the formula above. Separation distances to facilities permitted by other entities, such as the ground water quality bureau, may be considered on a case by case basis.

**Table 302.2: Radii for calculating minimum distance between systems on a large parcel**

No. of bedrooms	Actual flow, gpd	Minimum acreage	Radius of A, feet
1	150	0.75	102.0
2	300	0.75	102.0
3	375	0.75	102.0
4	440	0.88	110.5
5	500	1.0	117.8
6	550	1.1	123.5

E. In order to meet the criteria of this section, the disposal system may be moved to meet the minimum separation distance. This may require the use of an effluent pump system. Alternatively, if the minimum separation distance cannot be achieved, tertiary treatment may be installed. Other methods of providing equal protection will be considered on a case by case basis by the department.

F. Lots with existing liquid waste systems totaling less than 5,000 gallons per day may be permitted to add additional liquid waste systems provided the individual systems do not exceed 5,000 gallons per day, meet the setback requirements to the existing systems as allowed above and meet lot size requirements in Subsection C of 20.7.3.301 NMAC.

G. If the department discovers that a private drinking water well has been drilled at a location that is not set back from an existing liquid waste system by the distance required in Table 302.1, the department shall:

(1) send a certified letter to the owners of the water well and liquid waste system that identifies the subject water well and liquid waste system, and describes the potential hazards created by insufficient setback;

(2) provide the office of the state engineer with a copy of the letter; and

(3) not administer the water well setback requirements in Table 302.1 pertaining to the subject well provided that the liquid waste system remains in compliance with 20.7.3 NMAC, and is not modified.

[20.7.3.302 NMAC - Rp, 20.7.3.302 NMAC, 9/1/13; A, 9/1/13; A, 9/15/14]

**20.7.3.303 STANDARDS; CLEARANCE REQUIREMENTS:**

A. Seasonal high groundwater levels and seasonal high water flows shall be determined by the department either by direct observation, by the presence of mottling in the soil profile, by reliance upon the findings of a qualified professional or upon published scientific material, well records or other sources acceptable to the department. The department may adjust the measured water table to compensate for factors such as season, drought, irrigation or flooding. Compliance with seasonal high groundwater table and seasonal high water flow clearances in this section shall be based on the best-documented evidence available to the department at the time of installation or modification.

B. No conventional on-site liquid waste system shall discharge liquid waste into the soil where the vertical clearance from the bottom of the absorption area to seasonal high groundwater table, impervious formation or other limiting layer is less than four feet of suitable soil. A reduction in this clearance may be allowed with appropriate advanced treatment or alternative disposal.

C. Unlined privy pits shall provide a clearance of no less than four feet of suitable soil from the bottom of the excavation to the seasonal high groundwater table, the seasonal high water flow, impervious formation or other limiting layer.

[20.7.3.303 NMAC - Rp, 20.7.3.303 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.304 STANDARDS; PROHIBITIONS:**

A. No person shall introduce into an on-site liquid waste system household hazardous wastes, solvents, fertilizers, livestock wastes, vehicle and equipment wash water or other materials of a composition or concentration not generally considered liquid waste as defined in 20.7.3 NMAC.

B. Liquid waste treatment additives shall not be used as a means to reduce the frequency of proper maintenance and removal of septage from a treatment unit.

C. Effluent shall not be stored with any other source of water, either potable or non-potable.

[20.7.3.304 NMAC - Rp, 20.7.3.304 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.305 STANDARDS; WASTE INTERCEPTORS:**

A. When liquid wastes are discharged containing excessive amounts of grease, garbage, flammable wastes, sand or other ingredients that may affect the operation of

an onsite liquid waste system, an interceptor for such wastes shall be installed in-line prior to the liquid waste treatment unit.

B. Installation of interceptors shall require a permit from the authorized building department.

C. Waste interceptors shall be maintained in accordance with manufacturer's specifications and require a maintenance contract to be in effect at all times.

[20.7.3.305 NMAC - Rp, 20.7.3.305 NMAC, 9/1/13]

#### **20.7.3.306 STANDARDS; SEPTAGE:**

Disposal of septage shall occur only at a permitted facility with the knowledge and consent of the facility owner, and shall not cause a hazard to public health nor degrade a body of water. Transport and disposal of septage shall be in conformance with applicable federal, state and local regulations. Septage pumpers shall keep customer invoices and disposal records for three years and shall, upon written request by the department, make such records available to the department for inspection.

[20.7.3.306 NMAC - Rp, 20.7.3.306 NMAC, 9/1/13; A, 9/1/13]

#### **20.7.3.307 STANDARDS; ABANDONED SEWERS AND ON-SITE LIQUID WASTE SYSTEMS:**

A. Every abandoned building sewer, or part thereof, shall be plugged or capped within five feet of the property line using a cap or plug prescribed by the New Mexico plumbing code.

B. Every cesspool, holding tank, septic tank, seepage pit or other liquid waste treatment unit that has been abandoned or has otherwise been discontinued from further use or to which no waste or building sewer from a plumbing fixture is connected shall have the liquid waste pumped there from and properly disposed. The bottom of the unit shall be opened or ruptured, or the entire unit collapsed so as to prevent the unit from retaining water. The unit shall be completely filled with earth, sand, gravel, concrete or other approved material.

C. The top cover or arch over the cesspool, holding tank, septic tank, seepage pit or other liquid waste treatment unit shall be removed or collapsed before filling and the filling shall not extend above the top of the vertical portions of the sidewalls or above the level of any outlet pipe until inspection or authorization by the department. After such inspection or authorization, the cesspool, holding tank, septic tank, seepage pit or other liquid waste treatment unit shall be filled to the level of the top of the ground.

D. Where on-site treatment systems are abandoned consequent to connecting any premises with a public sewer, the permittee making the connection shall fill all

abandoned treatment units as required by the department within 30 days from the time of connection.

[20.7.3.307 NMAC - Rp, 20.7.3.307 NMAC, 9/1/13]

**20.7.3.308-20.7.3.400 [RESERVED]**

**20.7.3.401 PERMITTING; GENERAL REQUIREMENTS:**

A. No person shall install or have installed a new on-site liquid waste system or modify or have modified an existing on-site liquid waste system, unless that person obtains a permit issued by the department, including payment of the permit fee, prior to construction of such installation or modification. Failure to obtain the required permit may result in the initiation of enforcement actions by the department.

B. No person shall construct or modify a residential or commercial unit on, or transport a residential or commercial unit onto, a lot for which an on-site liquid waste system is required unless the department has issued an on-site liquid waste system permit prior to such construction, modification or transportation.

C. No person shall construct, install or modify an on-site liquid waste system unless that person holds a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division, except that a qualified homeowner may install or modify permitted septic tanks and conventional trench or bed disposal fields. Obtaining a permit from the department for the installation or modification of an on-site liquid waste system does not relieve any person from the responsibility of obtaining any other approval, license or permit required by state, city or county regulations or ordinances or other requirements of state or federal laws.

D. A permit is not required for graywater discharges or for systems designed for the discharge of graywater that meet the requirements of 20.7.3.810 NMAC.

E. An applicant seeking a permit shall do so by submitting an application to the field office of the department having jurisdiction for the area where the system is to be installed or modified. The application shall be:

- (1) made on a form provided by the department;
- (2) accompanied by the recorded deed or other recorded description and such other relevant information as the department may reasonably require to establish lot size, boundaries, date of record and ownership; and
- (3) signed by the applicant or their authorized representative.

F. The department shall require complete and accurate information before a permit is issued for an on-site liquid waste system.

G. The department shall deny the application if the proposed system will not meet the requirements of 20.7.3 NMAC.

H. The department shall maintain a file of all permits issued and applications denied. The file shall be open for public inspection.

I. All systems shall be installed, operated and maintained in accordance with the permit and applicable regulations.

J. Unpermitted conventional systems installed or modified prior to February 1, 2002 may be issued a certificate of registration for continued operation if, after evaluation by the department or by an installer specialist:

(1) the treatment unit is pumped by a septage pumper hired by the system owner and the unit is determined to be watertight, is functioning properly and the tank has a liquid capacity within one tank size of the capacity required in Subsection Q of 20.7.3.201 NMAC;

(2) the liquid waste system appears to meet setback and clearance requirements based on a non-intrusive evaluation;

(3) the disposal system appears to be functioning properly;

(4) meets the lot size requirements of the regulation in effect at the time of the initial installation;

(5) the system does not constitute a public health or safety hazard; and

(6) the appropriate permit fee is paid for the system installed.

If any of the above conditions are not met, a certificate of registration cannot be issued and an application for modification pursuant to 20.7.3.202 NMAC must be submitted.

K. Unpermitted conventional systems installed or modified on or after February 1, 2002 may be permitted if:

(1) the treatment unit and the disposal system are adequately exposed to allow full inspection by the department to determine all relevant aspects of construction and materials, including, but not limited to: soil type; pipe size, type and material; proper placement of aggregate and cover; and proper trench size, slope and spacing;

(2) the on-site liquid waste system is determined, upon inspection by the department, to meet all requirements of 20.7.3 NMAC; and

(3) the appropriate permit fee is paid; and

(4) at the discretion of the department, an administrative penalty is paid in accordance with Environmental Improvement Act, Chapter 74, Article 1 NMSA 1978.

L. If the department finds that specific requirements in addition to, or more stringent than, those specifically provided in 20.7.3 NMAC are necessary to prevent a hazard to public health or the degradation of a body of water, the department shall issue permit conditions with more stringent requirements or additional specific requirements. Such additional or more stringent requirements may apply to system design, siting, construction, inspection, operation and monitoring.

M. The installation or modification of an on-site liquid waste system shall be in accordance with the permit and all regulatory requirements of 20.7.3 NMAC. Any change from the permitted installation or modification, including a change of installer, must receive department approval prior to implementation. An amendment of the permit shall be submitted within seven days of the completion of the installation.

N. No person shall operate or use an on-site liquid waste system until the department has granted final approval of the system after installation or modification of the system is completed. No person shall occupy a newly constructed or transported dwelling for which an on-site liquid waste system is required until the department has granted such final approval and, if applicable, until the governmental body with authority to regulate construction has granted an occupancy permit. The department shall not grant final approval if the system as installed or modified does not meet the requirements of 20.7.3 NMAC.

O. The department may cancel a permit if the installation or modification of the on-site liquid waste system has not been completed within one year after issuance or if the department determines that material information in the application is false, incomplete or inaccurate and that the correct information would have resulted in the department denying the original application. If a permit is canceled, the department shall notify the permittee of the decision in writing and the reason for cancellation and appropriate regulations cited.

P. Only the permittee may request that the department cancel a permit. The request must be made in writing.

Q. An installer whose New Mexico construction industries division license number is on a permit approved by the department for construction may, upon written notice to both the permittee and to the department, withdraw from the permit. Upon installer withdrawal, the permit approval shall be suspended until the permittee amends the permit either to include another licensed installer or to reflect approval as a qualified homeowner in accordance with Subsection A of 20.7.3.904 NMAC. Construction of the liquid waste system shall not proceed until the permit amendment is approved by the department. If the contractor withdraws after construction has commenced, the owner shall eliminate any public safety hazards posed by open treatment systems, excavations or other conditions related to unfinished construction.

R. A permittee may amend the permit to change the installer without installer withdrawal, provided that the permittee provides written notice to the installer.

[20.7.3.401 NMAC - Rp, 20.7.3.401 NMAC, 9/1/13]

**20.7.3.402 PERMITTING; CONVENTIONAL TREATMENT AND DISPOSAL SYSTEMS:**

A. For liquid waste systems utilizing conventional treatment and conventional disposal, the department shall require the following information to be included with the application.

(1) A detailed site plan, completely dimensioned, showing direction and approximate slope of surface; location of all present or proposed retaining walls; arroyos, canals, irrigation or drainage channels; water supply lines, wells or other water sources; other on-site liquid waste systems; paved areas, roadways and structures; location of the proposed liquid waste system with relation to lot lines and structures; and to all sources of water supply located within 200 feet.

(2) Sufficient details of construction, materials and components necessary to assure compliance with the requirements of 20.7.3 NMAC.

(3) A set of floor plans or verification of the total flow for the structure(s) served by the liquid waste system.

B. The department may also require the following information be included with the application:

(1) A detailed log of soil formations and groundwater level as determined by soil borings or a test hole(s) dug in close proximity to any proposed seepage pit or disposal field.

(2) Any additional information that may be necessary to demonstrate that the permit will not create a hazard to public health or degrade a body of water.

C. Except as otherwise provided in Subsection D of this section, the department shall, within 10 working days after receipt of the completed application, grant the permit, grant the permit subject to conditions or deny the permit and shall notify the applicant of the action taken. Within five working days, the department shall determine if a permit application is administratively complete. The department shall notify the applicant, orally or in writing, if the application is administratively incomplete. The determination that an application is administratively complete does not mean that the proposed system meets the requirements of 20.7.3 NMAC.

D. If the department's initial review of the application indicates that the imposition of more stringent requirements may be necessary pursuant to Subsection L of 20.7.3.201

NMAC or Subsection L of 20.7.3.401 NMAC, the department may extend the time for the review of the application until 20 working days after receipt of the completed application provided that the department shall notify the applicant of such extension within 10 working days after receipt of the completed application.

E. When the permit is granted subject to conditions, denied or more stringent conditions applied, the reason for the action shall refer to the appropriate regulation(s) and be given in writing.

[20.7.3.402 NMAC - Rp, 20.7.3.402 NMAC, 9/1/13]

### **20.7.3.403 PERMITTING; ADVANCED TREATMENT OR ALTERNATIVE DISPOSAL:**

A. An application for a permit proposing advanced treatment (with conventional or alternative disposal) or alternative disposal (with conventional treatment) may be submitted.

B. Applications shall include the information required for a conventional treatment or disposal system, and:

(1) for applications proposing advanced treatment with either conventional or alternative disposal:

(a) the applicant shall demonstrate that the system has been approved by the department and shall include operation and maintenance information, monitoring plans and maintenance agreements;

(b) the applicant must demonstrate the applicability and effectiveness of the technology on the site where it is to be used;

(c) a copy of all signed maintenance and sampling contracts shall be attached to the application; the effective date of the maintenance and sampling contracts shall be the day of final permit approval;

(d) the property owner shall have maintenance and sampling contracts in effect for the duration of the permit; and

(e) the property owner shall provide to the department copies of all maintenance and sampling contracts within 30 days of contract issuance or renewal; and

(2) for applications proposing alternative disposal with conventional treatment, the applicant shall include details of design, sizing, construction and operation; such disposal systems include, but are not limited to, mounds, evapotranspiration systems,

pressure dosed systems, alternating drainfields, non-discharging constructed wetlands, non-gravity systems and approved surface applications.

C. For applications proposing advanced treatment or alternative disposal, within 10 working days, the department shall determine if a permit application for advanced treatment or alternative disposal is administratively incomplete. The department shall notify the applicant, orally or in writing, if the application is administratively incomplete. The determination that an application is administratively complete does not mean that the proposed system meets the requirements of 20.7.3 NMAC. Within 20 working days after receipt of the administratively complete application, the department shall grant the permit, grant the permit subject to conditions or deny the permit and shall notify the applicant of the action taken.

D. When the permit is granted subject to conditions or the application denied, the reason for the action shall refer to the appropriate regulation(s) and be given in writing.

E. For advanced treatment systems, the authorization to operate the system shall be valid until a change of ownership of the system occurs. At the time of transfer of ownership, the new owner shall submit an amendment of permit updating the ownership change and also provide the department a copy of the valid maintenance and sampling contract in the name of the new owner.

[20.7.3.403 NMAC - Rp, 20.7.3.403 NMAC, 9/1/13]

#### **20.7.3.404 PERMITTING; HAVING RECEIVED EXPERIMENTAL OR CONDITIONAL APPROVAL:**

A. The department may issue a permit, on an individual basis, for the installation of an on-site liquid waste system that has received experimental or conditional approval. The permit applicant must demonstrate that the proposed system, by itself or in combination with other on-site liquid waste systems, will neither cause a hazard to public health nor degrade a body of water and that the proposed system will provide a level of treatment at least as effective as that provided by on-site liquid waste systems, except privies and holding tanks, that meet the requirements of 20.7.3 NMAC.

B. Prior to the approval of a permit for an on-site liquid waste system that has received experimental or conditional approval, the system shall be reviewed by the wastewater technical advisory committee pursuant to 20.7.3.905 NMAC.

C. A field demonstration, which meets the following requirements, shall be required for a system proposed for experimental approval.

(1) Conditions for installation, operation, maintenance and monitoring at the proposed demonstration site shall be reviewed and approved by the department. Systems with experimental approval may only be installed on lots where a conventional system would be allowed.

(2) On-site testing and evaluation, as required by the department and paid for by the permit applicant, shall be performed for a period recommended by the wastewater technical advisory committee and adopted by the department. The results of the evaluation period shall be forwarded to the wastewater technical advisory committee for review and further action.

D. A contingency plan shall be included to provide liquid waste treatment that meets the requirements of 20.7.3 NMAC if the system with experimental or conditional approval fails to meet the requirements of 20.7.3 NMAC.

E. A copy of a signed maintenance contract and sampling contract, if applicable, between the property owners and a certified maintenance service provider shall be attached to the permit application for each system with experimental or conditional approval. The property owner shall have a maintenance contract in effect for the duration of the permit. The property owner shall provide to the department copies of all maintenance contracts required to be in effect within 30 days of contract issuance or renewal.

[20.7.3.404 NMAC - Rp, 20.7.3.404 NMAC, 9/1/13; A, 9/1/13]

#### **20.7.3.405 PERMITTING; VARIANCES:**

A. Any person seeking a variance from the requirements contained in 20.7.3 NMAC shall do so by filing a written petition with the field office of the department having jurisdiction for the area where the system is to be installed.

B. The petition shall be made on a form provided by the department, signed by the petitioner or an authorized representative and accompanied by relevant documents or materials that supports the petitioner's request for a variance. The petitioner shall give notice to all landowners sharing a common boundary and within 100 feet when sharing a common right-of-way. If no property boundary is within 1000 feet of the system, notification is not required, except as otherwise provided in this part. In addition, all parties sharing a private or public water supply source located on the lot where the variance is proposed shall be notified. Said notice shall include the nature of the variance petition, the date of submission of the petition to the department, the address of the department field office to which the petition is being submitted and the time frame for department action as provided in Subsection D of 20.7.3.405 NMAC below.

C. Upon review of the petition, the department may require the submittal of other relevant information to provide reasonable assurance that the conditions set forth in Paragraphs (1) and (2) of Subsection E of 20.7.3.405 NMAC are met.

D. The department shall, after a minimum of 10 but not more than 20 working days following receipt of the completed petition, grant the variance, grant the variance subject to conditions or deny the variance and shall so notify the applicant and any other person

making a written submission concerning the petition. The reason for the department's action shall be provided in writing and the appropriate regulations cited.

E. The department shall deny the variance petition unless the petitioner establishes by clear and convincing evidence that:

(1) the proposed on-site liquid waste system will, by itself or in combination with other on-site liquid waste systems or other discharges subject to 20.6.2.3000 through 20.6.2.3114 NMAC, neither cause a hazard to public health or degrade any body of water; and

(2) granting the variance will result in public health and environmental protection equal to or greater than the minimum protection provided by the varied requirement.

F. The department shall maintain a file of all variances granted and denied. The file shall be open for public inspection.

[20.7.3.405 NMAC - Rp, 20.7.3.405 NMAC, 9/1/13]

#### **20.7.3.406 PERMITTING; APPEALS:**

A. Any affected person who is dissatisfied with action taken by the department on a permit application or variance petition may appeal to the secretary. The request must be made in writing to the secretary within 15 working days after notice of the department's action has been issued. Unless an appeal is received by the secretary within 15 working days after notice to the applicant or petitioner of the department's action, the decision of the department shall be final.

B. If an appeal is received within the 15 working day time limit, the secretary shall hold a hearing within 15 working days after receipt of the request. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail. If the appeal is on a variance petition, the secretary shall also notify all persons involved under Subsection B of 20.7.3.405 NMAC of the hearing date, time and place of the hearing by certified mail.

C. In the appeal hearing, the burden of proof is on the person who requested the hearing. Where the department requires more stringent requirements pursuant to Subsection L of 20.7.3.201 NMAC, the burden of proof of the necessity for the more stringent requirements shall be upon the department.

D. Appeal hearings shall be held at a place designated by the secretary in the area where the proposed on-site liquid waste system is to be located, unless other mutually agreed upon arrangements are made. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final

decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

E. Upon request, the hearing shall be recorded. The person who requests the recording shall pay recording costs.

F. In appeal hearings, the rules governing civil procedure and evidence in district court do not apply. Hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary shall decide and announce if the hearing record will remain open and for how long and for what reason it will be left open.

G. Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within 15 working days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice. Appeals from the secretary's final decision are by Rule 1-075 NMRA.

[20.7.3.406 NMAC - Rp, 20.7.3.406 NMAC, 9/1/13]

### **20.7.3.407-20.7.3.500 [RESERVED]**

### **20.7.3.501 DESIGN; LIQUID WASTE TREATMENT UNITS; GENERAL:**

A. Plans for treatment units that have not been previously approved by the department, including septic tanks, shall be submitted to the department for approval and certification. Such plans shall show all dimensions, reinforcement, structural calculations and such other pertinent data as may be required by the department. Plans for advanced treatment units shall be submitted to the department for review by the wastewater technical advisory committee pursuant to 20.7.3.905 NMAC. Plans for advanced treatment units that have not been previously approved by the department shall meet the requirements set forth by the wastewater technical advisory committee. All plans shall be stamped by a professional engineer.

(1) Septic tanks shall be recertified on an annual basis. A recertification fee is required pursuant to 20.7.11.9 NMAC. Failure to recertify shall result in the suspension of department approval.

(2) Failure of the manufacturer of an advanced treatment unit to comply with the conditions of approval by the department shall result in non-approval or suspension of department approval for the advanced treatment unit.

B. All treatment units and tanks, regardless of material or method of construction and unless otherwise specified in 20.7.3 NMAC, shall:

- (1) be designed and constructed to withstand all reasonable lateral earth pressures under saturated soil conditions with the tank empty;
- (2) support a minimum live load at the surface of 300 pounds per square foot with three feet of cover unless heavier loads are expected;
- (3) not be subject to excessive corrosion or decay;
- (4) have the manufacturer's name, New Mexico registration number, year of construction and tank capacity in gallons permanently displayed on the tank above the outlet pipe;
- (5) be watertight;
- (6) not be constructed or manufactured on site, in the ground, when saturated soil conditions during construction are closer than three inches to the bottom of the excavation;
- (7) be protected against flotation under high groundwater conditions and for units installed in floodplains;
- (8) be installed so that they are easily locatable and accessible;
- (9) be approved by the international association of plumbing and mechanical officials (IAPMO); or meet IAPMO minimum standards as demonstrated to the department by approved laboratory testing; or meet all requirements of 20.7.3.501 and 502 NMAC as certified by a professional engineer; or be recommended by the wastewater technical advisory committee and approved by the department; and
- (10) all access risers shall be attached to the treatment unit with a watertight or water resistant seal.

C. Treatment units may be constructed of the following materials:

- (1) precast reinforced concrete;
- (2) poured-in-place concrete;
- (3) fiberglass;
- (4) polyethylene; or
- (5) other materials as approved in writing by the department.

D. Metal, wooden, concrete block and homeowner built tanks are prohibited.

E. A secure lid shall consist of one or more of the following:

- (1) a padlock;
- (2) a twist lock cover requiring special tools for removal;
- (3) covers weighing 58 pounds or more, net weight;
- (4) a hinge and hasp mechanism that uses stainless steel or other corrosion resistant fasteners to fasten the hinge and hasp to the lid and tank for fiberglass, metal or plastic lids; or
- (5) other mechanisms approved by the department.

F. Wherever vehicular traffic is anticipated to cross over the liquid waste treatment unit, pump station or pump chamber, the unit shall be designed by a professional engineer to withstand the anticipated traffic loading.

G. All solid wall pipe connections, fittings and penetrations shall be watertight.

H. Each tank shall be structurally designed to withstand all anticipated earth or other loads. All septic tank covers shall be capable of supporting an earth load of not less than 300 pounds per square foot when the maximum fill coverage does not exceed three feet. All access risers covers shall be capable of supporting a live load of not less than 300 pounds per square foot.

I. Fiberglass or reinforced plastic septic tanks shall be certified to IAPMO standards. Fiberglass or plastic septic tanks shall be installed according to the manufacturer's instructions. A copy of the manufacturer's installation instructions shall be available for inspection by the department at the installation site.

J. Concrete liquid waste treatment units.

- (1) Minimum concrete thickness.
  - (a) walls: two and one-half inches in thickness.
  - (b) floors: three inches in thickness.
  - (c) covers: three inches in thickness.
- (2) Floors shall be an integral part of the tank.

(3) Where sections are used, tongue and groove joints or keyways shall be used and shall be sealed with an approved sealer and shall be watertight.

(4) Poured-in-place tanks shall be designed and certified by a professional engineer.

(5) All concrete liquid waste treatment units, except those approved for use utilizing concrete meeting type V specifications, shall be protected from corrosion by coating internally with an approved bituminous coating or by other acceptable means. The coating shall cover all exposed concrete and shall extend to at least six inches below the waterline.

(6) Treatment unit construction materials shall meet the following minimum specifications:

(a) concrete strength - 3500 psi @ 28 days, density 140 PCF;

(b) cement Portland type II or V per the latest version ASTM specifications;

(c) admixtures per the latest version of ASTM specifications; and

(d) reinforcing per the latest version of ASTM specifications for steel bars, grade 40/60 or equivalent.

(7) Be installed level on undisturbed or compacted soil, 1/4 to 3/4 inch pea gravel or sand.

[20.7.3.501 NMAC - Rp, 20.7.3.501 NMAC, 9/1/13; A, 9/1/13]

### **20.7.3.502 DESIGN; CONVENTIONAL TREATMENT UNITS; CONSTRUCTION STANDARDS:**

A. All conventional treatment units, regardless of material or method of construction and unless otherwise specified in this part, shall be designed to produce a clarified effluent and shall provide adequate space for sludge and scum accumulations based on a minimum hydraulic retention time of 24 hours at maximum sludge depth and scum accumulation.

B. Septic tanks shall have a minimum of two compartments. The inlet compartment of a septic tank shall be 2/3 of the total liquid capacity of the tank, but not less than 500 gallons liquid capacity, and shall be at least three feet in width and five feet in length. Liquid depth shall be not less than two feet and six inches nor more than six feet. The second compartment of a septic tank shall have a liquid capacity of 1/3 of the total capacity of such tank. In septic tanks having over ,1500 gallons capacity, the second compartment may not be less than three feet in length.

C. Multiple tanks installed in series may be allowed with department approval provided the total tank volume is at least 2.5 times the system design flow. Minimum tank sizes are as follows:

(1) for flows up to 1,000 gpd, the capacity of each tank must be at a minimum 900 gallons; and

(2) for flows between 1,000 and 5,000 gpd, the capacity of each tank must be a minimum of 1,200 gallons.

D. Access to each septic tank shall be provided by at least two access openings, each of which shall be at least 20 inches in minimum dimension. One access opening shall be placed over the inlet and one access opening shall be placed over the outlet. Whenever a first compartment exceeds 12 feet in length, an additional access opening shall be provided over the baffle wall. Each access opening shall be extended to the surface of the ground with a secure lid. These access risers shall be 24 inches in diameter for depths of zero to three feet and for depths greater than three feet shall be at least 30 inches in diameter. If the access risers are made of concrete, they shall be coated with a coating approved by the department. "Wet-or-dry" coatings and mastics, or other water-based materials are not acceptable. Access risers shall be constructed of precast concrete, premanufactured plastic made for risers, culvert or double wall high density polyethylene or equivalent plastic with proper covers or lids. Rain barrels, trash cans or 55-gallon drums or other inappropriate materials are not acceptable access riser material.

E. The inlet and outlet pipe openings shall be not less in size than the connecting sewer pipe and shall have a watertight seal approved by the department. The vertical leg of round inlet and outlet fittings shall not be less in size than the connecting sewer pipe nor less than four inches. A baffle type fitting shall have the equivalent cross-sectional area of the connecting sewer pipe and not less than a four inch horizontal dimension when measured at the inlet and outlet pipe inverts, unless it is a pumped system.

F. The inlet and outlet pipe or baffle shall extend at least four inches above and at least 12 inches below the water surface. The invert of the inlet pipe shall be at a level not less than two inches above the invert of the outlet pipe. Inlet and outlet pipe or baffles shall be, at a minimum, schedule 40 PVC, ABS or cast-in-place concrete.

G. Inlet and outlet pipe fittings or baffles and compartment partitions shall have a free vent area equal to the required cross-sectional area of the building sewer or private sewer discharging into the septic tank to provide free ventilation above the water surface from the disposal field or seepage pit through the septic tank, building sewer and stack to the outer air.

H. All septic tanks shall include an effluent filter approved by the department, installed on the outlet of the tank before final discharge, with an access riser installed to grade, and with a handle extending to within six inches of the top of the riser.

I. The sidewalls, except on cylindrical tanks, shall extend at least nine inches above the liquid depth. The cover of the septic tank shall be at least two inches above the back vent openings.

J. Partitions or baffles between compartments shall be of solid, non-corrosive, durable material and shall extend at least four inches above the water level. Metal or wooden baffles are prohibited.

(1) An inverted fitting equivalent in size to the tank inlet, but in no case less than four inches in size, shall be installed in the inlet compartment side of the baffle with the bottom of the fitting placed midway in the depth of the liquid.

(2) If a horizontal slot is used, the slot shall extend the width of the tank, be no more than six inches in height and located midway in the depth of the liquid.

K. Fiberglass or reinforced plastic tanks shall be certified to current IAPMO standards.

(1) Each access and inspection hole cover shall have approved fasteners not subject to deterioration by liquid or gases normally present in septic tank systems to assure that the covers will remain in place. All covers shall overlap the hole by a minimum of two inches in all directions.

(2) Each tank shall be free from visual defects such as foreign inclusions, dry spots, air bubbles, pimples and delamination. The inner and outer surfaces shall have a smooth, continuous finish with no exposed fibers. Both the inner and outer surfaces shall have a continuous resin rich surface and no fibers shall be exposed either directly from cracks, porosity or holes, or indirectly through bubbles that may break and expose fibers.

[20.7.3.502 NMAC - Rp, 20.7.3.502 NMAC, 9/1/13; A, 9/15/14]

### **20.7.3.503 DESIGN; PUMP STATIONS AND EQUIPMENT:**

A. Pump stations or pump chambers shall be watertight and shall be constructed of concrete, plastic, fiberglass or other approved material. Tanks and chambers shall be designed and constructed so as to serve their intended purpose, meet appropriate material and structural requirements equal to those required of septic tanks as described in 20.7.3.501 NMAC, and appropriately coated to resist corrosion with the exception of concrete tanks constructed of type V concrete. Tanks are subject to water tightness testing at the department's discretion.

B. All valves, motors, pumps, aerators and other mechanical or electrical devices shall be located where they will be accessible for inspection and repair at all times without requiring entry into the tank and protected with a locking removable cover on an access port of at least 20 inches in minimum dimension. Concrete tanks and chambers may have covers of at least 58 pounds in place of a cover and locking mechanism.

C. Pump stations or pump chambers shall be equipped with both audible and visible alarms, or remote and visual alarms, for high water and pump failure. All alarm and control circuits shall be on a separate circuit from pumps and shall be contained in weather-proof control boxes or located inside a building or other weather-proof structure. Alarms shall be placed in a conspicuous location approved by the department.

D. Pumps and equipment shall be designed to pump sewage, septic effluent or treated wastewater as appropriate, to prevent freezing and prevent siphoning of the dispersal area back to the tank and shall be sized to serve their intended purpose.

[20.7.3.503 NMAC - Rp, 20.7.3.812 NMAC, 9/1/13]

#### **20.7.3.504 DESIGN; BUILDING SEWER:**

A. The building sewer connects the building drain to the septic tank or liquid waste treatment unit. Horizontal building sewer piping shall be run in practical alignment and a uniform slope of not less than 1/4 of an inch per foot or 2% toward the point of disposal provided that where it is impractical due to the structural features or arrangement of any building or structure to obtain a slope of 1/4 of an inch or 2%, any such pipe or piping four inches in diameter or larger may have a slope of not less than 1/8 of an inch per foot or 1%, when first approved by the department.

B. Each horizontal sewer pipe shall be provided with a cleanout at its upper terminal and each run of pipe that is more than 100 feet in length shall be provided with a cleanout for each 100 feet or fraction thereof. Cleanouts shall be installed pursuant to the New Mexico plumbing code.

C. Sewer piping shall be approved material having a smooth uniform bore. Vitrified clay pipe or fittings shall not be used above ground or where pressurized by a pump or ejector. Vitrified clay pipe or fittings shall be a minimum of 12 inches below ground.

[20.7.3.504 NMAC - Rp, 20.7.3.813 NMAC, 9/1/13]

#### **20.7.3.505-20.7.3.600 [RESERVED]**

#### **20.7.3.601 DESIGN; ADVANCED TREATMENT SYSTEMS; GENERAL:**

A. The level of treatment required and the type of disposal allowed shall be determined by the site evaluation and the character of the waste to be treated and

disposed using 20.3.7.605 NMAC. A liquid waste system with an approved non-discharging disposal design may be installed in lieu of the required advanced treatment system.

B. Prior to installation, all proprietary treatment systems proposed for secondary or tertiary treatment must be capable of meeting the performance standards of 20.7.3.602-604 NMAC, must be recommended for approval by the wastewater technical advisory committee and approved by the secretary of the department. Manufacturers of advanced treatment systems must comply with all conditions set by the department.

C. Any design of a conventional or advanced treatment system with site or other limiting conditions that cannot be addressed by following a standard design from alternative resources recognized by the department shall be designed and sealed by a professional engineer.

D. Ventilation of treatment units providing advanced treatment shall be in accordance with the manufacturer's recommendation.

E. If an adequate sampling port or sampling point is not provided in the design of an advanced treatment system, the installer shall provide an acceptable sampling port in the effluent line for the treatment unit. The installer may propose a sampling port configuration.

(1) An acceptable sampling port for a residential unit may be manufactured from an eight inch diameter pipe. The sample port shall be watertight. The water depth in the pipe shall be at least four inches. The outlet will be one inch lower than the inlet.

(2) If there are significant settled solids in the sampling well, the sampler shall clean out the sampling port. The sample can be collected either from the influent overflow or from the water collected in the sample port after cleaning.

[20.7.3.601 NMAC - Rp, 20.7.3.601 NMAC, 9/1/13]

### **20.7.3.602 DESIGN; SECONDARY TREATMENT STANDARDS:**

A. Secondary treatment systems shall produce an effluent that meets the following requirements:

- (1) 5-day biochemical oxygen demand of 30 mg/l; and
- (2) total suspended solids of 30 mg/l.

B. Secondary treatment systems may be installed to overcome site conditions set forth in 20.7.3.605 NMAC.

C. The secondary treatment unit shall be operated in accordance with the manufacturer's specifications and department approval conditions.

[20.7.3.602 NMAC - Rp, 20.7.3.602 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.603 DESIGN; TERTIARY TREATMENT STANDARDS:**

A. Tertiary treatment systems shall provide total nitrogen (TN) removal in addition to secondary treatment.

B. For lots that exceed the allowable hydraulic loading pursuant to Subsection C of 20.7.3.301 NMAC, a department approved tertiary treatment unit may be installed. The treatment unit must be capable of removing TN to a concentration equal to or less than the concentration limit calculated pursuant to Subsection C 20.7.3.603 NMAC.

C. Utilizing the standard loading equation,  $(\text{flow (gpd)} \times \text{conc. (mg/l)} \times 8.34 \text{ lbs./gal.} \times 365 \text{ days/yr}) / 1,000,000 = \text{lbs./yr/ac.}$ , and assuming an average of 60 mg/l of TN in the septic tank effluent and a maximum flow of 500 gpd/ac, the following simplified equation shall be used for determining the required TN concentration allowed for a specific lot size:  $\text{total nitrogen concentration (in mg/l)} = [\text{lot size (in acres)} / \text{design flow (in gpd)}] \times 30,000$ .

D. The treatment unit shall be operated in accordance with the manufacturer's specifications and department approval conditions.

E. Total nitrogen effluent testing, when required pursuant to Subsection C of 20.7.3.901 NMAC, shall meet the concentration limit calculated pursuant to Subsection C of 20.7.3.603 NMAC.

[20.7.3.603 NMAC – Rp, 20.7.3.603 NMAC, 9/1/13; A, 9/1/13; A, 9/15/14]

**20.7.3.604 DESIGN; DISINFECTION TREATMENT STANDARDS:**

A. Systems requiring disinfection shall provide treated effluent that shall not exceed 126 colony forming units (CFUs) of E. coli bacteria per 100 ml.

B. Disinfection is required to meet the specific site conditions set forth in 20.7.3.605 NMAC.

C. When disinfection is required, the effluent shall be subject to a minimum of secondary treatment prior to disinfection.

[20.7.3.604 NMAC - Rp, 20.7.3.604 NMAC, 9/1/13]

**20.7.3.605 DESIGN; MINIMUM REQUIRED TREATMENT LEVELS FOR SITE CONDITIONS:**

A. The required level of treatment shall be based on the most restrictive combination of siting conditions.

B. The following treatment levels are required for the soil types as described in Table 703.1:

- (1) type Ia - secondary treatment and disinfection except as noted in Subsection F of 20.7.3.703 NMAC;
- (2) type Ib, II, and III - primary treatment; and
- (3) type IV - primary treatment with an appropriate disposal method as approved by the department.

C. The following treatment levels are required for the depth of suitable soil:

- (1) greater than or equal to four feet of suitable soil - primary treatment;
- (2) one to less than four feet of suitable soil - secondary treatment and disinfection; and
- (3) no discharge with less than one foot of suitable soil to groundwater, karst or fractured bedrock.

D. The following treatment levels are required for hydraulic loading rates and lot size:

- (1) less than or equal to 500 gallons per day per acre with a minimum lot size of 0.75 acre - primary treatment; and
- (2) greater than 500 gallons per day per acre or less than 0.75 acre - tertiary treatment;
- (3) for lots less than 0.75 acre overlaying anoxic groundwater, secondary treatment shall be required and tertiary treatment may be required; to be exempt from tertiary treatment requirements, the permit applicant shall show by clear and convincing evidence that the discharge of liquid waste shall not degrade a body of water.

E. The following are requirements for a reduction in the disposal field setback distance, as set forth in Table 302.1:

- (1) Tertiary treatment and disinfection are required for any reduction in setback distance between 50 feet and less than 100 feet from a private drinking water well located on the subject property.

(2) A variance is required and tertiary treatment and disinfection are required for any reduction in setback distance to:

(a) any private drinking water well located on the subject property less than 50 feet from the disposal system;

(b) any private drinking water well not located on the subject property; or

(c) any public drinking water well.

F. A non-discharging system may be used in lieu of advanced treatment.

G. A mound system or elevated system in accordance with 20.7.3.806 NMAC may be used to meet clearance requirements or to overcome soil type limitations in lieu of advanced treatment. A sand-lined trench or bottomless sand filter in accordance with 20.7.3.812 NMAC may be used to meet clearance requirements in lieu of advanced treatment.

H. If the existing level of nitrate-N in the groundwater exceeds 5 mg/l, more stringent requirements pursuant to Subsection L of 20.7.3.201 NMAC may be required.

[20.7.3.605 NMAC - Rp, 20.7.3.605 NMAC, 9/1/13; A,9/1/13]

#### **20.7.3.606-20.7.3.700 [RESERVED]**

#### **20.7.3.701 DESIGN; CONVENTIONAL DISPOSAL FIELD; DESIGN AND CONSTRUCTION:**

A. Disposal trenches shall conform to the following:

(1) the trench width shall be no less than one foot or no more than three feet;

(2) a minimum of six inches of aggregate shall be placed below the invert of the distribution pipe; and

(3) up to a maximum of three feet of aggregate may be placed below the distribution pipe.

B. Absorption beds shall conform to the following:

(1) a minimum of six inches of aggregate shall be placed below the invert of the distribution pipes; and

(2) up to an additional one foot of aggregate may be placed below the distribution pipes.

C. For conventional disposal trenches and absorption beds, the distribution lines shall have an inside diameter of no less than four inches. Perforated pipe shall have two rows of holes and a minimum perforated area of one and one-half square inches per linear foot. Perforations shall be located not less than 30 degrees or more than 60 degrees from the vertical on either side of the center line of the bottom of the pipe. All plastic pipe and fittings shall conform to the current and appropriate ASTM standards. End caps shall be installed on all distribution lines.

D. Before placing aggregate or drain lines in a prepared excavation, all smeared or compacted surfaces shall be removed from trenches by raking to a depth of one inch and the loose material removed. Aggregate shall be placed in the trench to the depth and grade required. Drain lines shall be placed on the aggregate. The drain lines shall then be covered with aggregate to a minimum depth of two inches and then covered with untreated building paper, straw or similar porous material to prevent closure of voids with earth backfill. When geotextile fabric is utilized, no aggregate cover of the drainlines is required. No earth backfill shall be placed over the aggregate cover until authorized by the department.

E. The department shall allow drainfields for proprietary systems to be sized in accordance with recommendations by the wastewater technical advisory committee that have been approved by the secretary. The wastewater technical advisory committee shall make its recommendations upon standardized, objective evaluations in accordance with Section 9-7A-15 NMSA 1978. Drainfields for proprietary systems shall not be reduced in size by more than 30% in comparison to a conventional system.

F. Capped inspection ports shall be constructed, at a minimum, of four inch diameter, SDR 35 or better pipe installed at the end of each trench, provide inspection access to the bottom of the trench and terminate at finished ground level. Inspection ports may be installed below grade if located in a protective enclosure and locatable with GPS coordinates or a metal detector.

G. If seepage pits are used in combination with disposal fields, the aggregate in the trenches shall terminate at least 10 feet from the pit excavation and the line extending from such points to the seepage pit shall be constructed of approved pipe with watertight joints.

H. Where two or more drain lines are installed, an approved distribution box of sufficient size to receive lateral lines shall be installed at the head of each disposal field. The inverts of all outlets shall be level and the invert of the inlet shall be at least one inch above the outlets. Distribution boxes shall be designed to ensure equal flow and shall be installed on a level base in natural undisturbed or compacted soil or on a concrete footing. Access to the distribution box shall be provided at the ground surface. However, the installer, after approval by the department, may install in lieu of a distribution box a tee fitting and a distribution header to multiple trenches provided that the tee and header pipe are level.

(1) Concrete distribution boxes shall be coated on the inside with bituminous coating or other approved method acceptable to the department.

(2) All laterals from a distribution box to the disposal field shall be approved pipe with watertight joints. Multiple disposal field laterals, wherever practicable, shall be of uniform length.

(3) Connections between a septic tank and distribution box or drainfield shall be laid with approved pipe with watertight joints on natural ground or compacted fill or appropriate bedding material. Such approved pipe shall be SDR 35 or better.

I. When more than 500 lineal feet of distribution line is required, a low-pressure dosed system shall be used.

J. Disposal fields shall be constructed as follows:

	MINIMUM	MAXIMUM
Number of drain lines	1 per field	
Length of each line	--	160 ft.
Bottom width of trench	12 in.	36 in.
Depth of earth cover of lines	9 in.	--
Grade of lines	level	3 inch/100 ft.
Aggregate under drain lines	6 in.	3 ft.
Aggregate over drain lines with:		
geotextile fabric	0 in.	--
other material	2 in.	--

K. Minimum spacing between trenches or absorption beds shall be four feet plus two feet for each additional foot of depth below the invert of the distribution line. Distribution drain lines in absorption beds shall not be more than six feet apart on centers and no part of the perimeter of the bed shall be more than three feet from a distribution drain line.

L. When necessary to prevent line slope in excess of three inches per 100 feet, absorption trenches or beds shall be stepped. The lines between each horizontal

section shall be made with watertight joints and shall be designed so each horizontal trench or bed shall be utilized to the maximum capacity before the effluent shall pass to the next lower trench or bed. The lines between each horizontal absorption section shall be made with approved watertight joints and installed on natural or unfilled ground.

M. Sites with type Ia or type IV soils may use soil replacement. Sites with failed disposal systems may also use soil replacement. In addition to other design, setback and clearance requirements of 20.7.3 NMAC, the following conditions are required:

- (1) The replacement soil shall be type Ib, or a higher level, as described in Table 703.1.
- (2) Replacement soil shall be placed to a depth of at least 48 inches below the bottom of each trench.
- (3) Replacement soil is placed to a width of at least 24 inches on both sides and ends of each trench.
- (4) The application rate used for design of the trench shall be 2.00 square feet per gallon per day.

N. Disposal systems, including both conventional and alternative disposal, shall not be paved over or covered by concrete or any material that can reduce or inhibit any possible evaporation of effluent. Disposal systems shall not be subjected to vehicular traffic of any kind.

[20.7.3.701 NMAC - Rp, 20.7.3.701 NMAC, 9/1/13; A, 9/1/13; A, 9/15/14]

[For specifications for drainfield pipe, see the most recent versions of the ASTM standards: For Type PSM Poly (Vinyl Chloride)(PVC) Sewer Pipe and Fittings, for Poly (Vinyl Chloride)(PVC) Pipe and Fittings, for Corrugated Polyethylene (PE) Tubing and Fittings, and for Smoothwall Polyethylene (PE) Pipe for Use in Drainage and Waste Disposal Absorption Fields]

#### **20.7.3.702 DESIGN; SEEPAGE PIT; DESIGN AND CONSTRUCTION:**

Seepage pits should only be installed on sites where conventional disposal systems cannot be installed due to site restrictions.

A. The minimum capacity of seepage pits shall conform to the requirements of 20.7.3.703 NMAC.

B. Multiple seepage pit installations shall be served through an approved distribution box or be connected in series by means of a watertight connection laid on undisturbed or compacted soil. The outlet from each seepage pit shall have an approved vented leg fitting extending at least 12 inches below the inlet fitting.

C. Each seepage pit shall have an excavated horizontal dimension of not less than four feet and the maximum horizontal dimension shall not exceed the vertical dimension. Each such pit shall be lined with approved type whole, new, hard-burned clay brick, concrete brick, concrete circular type cesspool blocks or other approved materials.

D. The lining in each seepage pit shall be circular and laid on a firm foundation. Lining materials shall be placed tight together and laid with joints staggered. Except in the case of approved type pre-cast concrete circular sections, no brick or block shall be greater in height than its width and shall be laid flat to form at least a four inch wall. Brick or block greater than 12 inches in length shall have chamfered matching ends and be scored to provide for seepage. Excavation voids behind the brick, block or concrete liner shall have a minimum of six inches of clean 3/4 inch gravel or rock.

E. All brick or block used in seepage pit construction shall have a minimum compressive strength of 2500 pounds per square inch.

F. Each seepage pit shall have a minimum sidewall (not including the arch) of 10 feet below the inlet pipe.

G. The arch, cover or dome of any seepage pit shall be constructed in one of the following three ways.

(1) Approved type hard-burned clay brick, solid concrete brick or block laid in cement mortar.

(2) Approved brick or block laid dry. In both of the above methods, an approved cement mortar covering of at least two inches in thickness shall be applied, said covering to extend at least six inches beyond the sidewalls of the pit.

(3) Approved type one or two piece reinforced concrete slab of 3,000 pounds per square inch minimum compressive strength, not less than five inches thick and designed to support an earth load of not less than 400 pounds per square foot.

H. Each such arch, dome or cover shall be provided with a nine inch minimum inspection hole with plug or cover and shall be coated on the underside with an approved bituminous or other nonpermeable protective compound.

I. The top of the arch, dome or cover must be a minimum of 12 inches but not more than four feet below the surface of the ground. Risers must be provided to extend the arch, dome or cover to within 12 inches of the surface.

J. An approved vented inlet fitting shall be provided in every seepage pit so arranged as to prevent the inflow from damaging the sidewall. When using a one or two piece concrete slab cover, the inlet fitting must be an approved 1/4 bend fitting discharging through an opening in the top of the slab cover. On multiple seepage pit

installations, the outlet fittings shall meet the requirements of Subsection B of 20.7.3.702 NMAC.

K. A six inch layer of bentonite clay shall be installed at the bottom of the seepage pit to restrict effluent flow through the bottom area. Alternative material to the bentonite clay may be approved by the department after review.

[20.7.3.702 NMAC - Rp, 20.7.3.702 NMAC, 9/1/13]

### **20.7.3.703 DESIGN; AREA OF DISPOSAL FIELD AND SEEPAGE PITS:**

A. The minimum required absorption area in a disposal field in square feet, and in seepage pits in square feet of side wall, shall be predicated on the liquid waste design flow rate and shall be determined by utilizing the following Table 703.1 based on the soil classification found in the proposed location of the disposal field.

B. Two test holes, located at opposite ends of the proposed disposal area, may be required for obtaining the soil profile and as provided in Subsection A of 20.7.3.203 NMAC.

C. A detailed soil profile, in accordance with USDA soil classification methodology, shall be submitted with the liquid waste application for each hole, indicating soil horizons, horizon thickness as a function of depth, and soil texture.

D. USDA soil surveys may be used where available to help assess typical soils in the area of the proposed installation.

E. The required absorption area shall be sized on the most restrictive soil horizon located below and within four feet of the bottom of the absorption area.

F. Conventional treatment systems shall not be constructed in type Ia soils where the depth to groundwater is less than 30 feet. For these soils, refer to 20.7.3.605 NMAC.

G. Effluent distribution to type IV soils shall be accomplished with an appropriate disposal method as approved by the department such as timed low pressure dosed distribution or alternating drainfields.

H. The required absorption area shall be calculated by the following formula:  
**ABSORPTION AREA = Q X AR**, where: Q = the design flow rate in gallons per day; AR = application rate (from Table 703.1)

### **Table 703.1: Application Rates by Soil Types for Conventional Treatment Systems**

Soil Type	Soil Texture	Application Rate (AR) (sq. ft./gal/day)
Ia  Ib	Coarse Sand or up to 30% gravel  Medium Sand, Loamy Sand	1.25  (See Subsection F of 20.7.3.703 NMAC)  2.00
II	Sandy Loam, Fine Sand , Loam	2.00
III	Silt, Silt Loam, Clay Loam, Silty Clay Loam,  Sandy Clay Loam	2.00
IV	Sandy Clay, Silty Clay, Clay	5.00  (See Subsection G of 20.7.3.703 NMAC)

I. The gravel content of in-place natural soil shall not exceed 30%. The department may identify and map areas of the state where groundwater is not at risk from microbial contamination from on-site liquid waste disposal systems that discharge into gravel, and where gravel contents greater than 30% may be allowed. The following hydrogeologic conditions may be considered when determining if groundwater is not at risk:

- (1) groundwater does not exist;
- (2) uppermost groundwater contains a total dissolved solids concentration greater than 10,000 milligrams per liter;
- (3) uppermost groundwater occurs under confined conditions; and

(4) uppermost groundwater occurs at a depth of 30 feet or greater with at least four feet of suitable soil in the vadose zone.

J. Disposal trenches:

(1) The total absorption area shall be calculated utilizing the total trench bottom and sidewall area below the distribution pipe.

(2) The total absorption area shall not exceed seven square feet per linear foot of trench.

(3) A minimum of 300 square feet of absorption area shall be provided for each system exclusive of any hard pan, caliche, rock, clay or other impervious formations.

K. Absorption beds may be used in lieu of trenches. The absorption area of the bed shall be at least 50% greater than the minimum required absorption area for trenches with a minimum of 450 square feet of absorption area. The total absorption area shall be calculated utilizing the total bed bottom and sidewall area.

L. The minimum effective absorption area in any seepage pit shall be calculated as the excavated side wall area below the inlet pipe exclusive of any hardpan, caliche, rock, clay or other impervious formations and may be provided in one or more seepage pits.

M. For secondary and tertiary treated effluent, the minimum calculated absorption area required for conventional treatment may be reduced 30%. In no case shall the maximum reduction for the drainfield absorption area exceed 30%.

[20.7.3.703 NMAC - Rp, 20.7.3.703 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.704-20.7.3.800 [RESERVED]**

**20.7.3.801 PRIVIES AND VAULTS:**

A. A privy may be used to dispose of non-liquid-carried human excreta directly to the soil. A vault may be used to dispose of non-liquid-carried human excreta for subsequent pumping and disposal in accordance with 20.7.3.306 NMAC. In addition to all setback and clearance requirements in 20.7.3 NMAC, the following conditions are required.

(1) The privy or vault is constructed to prevent access by flies or vermin.

(2) The privy or vault is located to prevent flooding.

(3) There are sufficient replacement locations for two additional privy pits. Vaults do not require replacement locations.

(4) Privy pits shall be filled with clean earth when excreta accumulate to within one foot of the ground surface.

B. No person shall install or have installed a privy or vault unless that person obtains a permit issued by the department prior to construction of such installation. At the time of application, the total number of privies or vaults and their replacement locations, if required, shall be indicated. When a privy pit is filled, the privy may be moved to a previously identified replacement location on the same lot without modifying or amending the permit.

[20.7.3.801 NMAC - Rp, 20.7.3.802 NMAC, 9/1/13; A, 9/1/13]

### **20.7.3.802 CLUSTER SYSTEMS:**

A. Use of a cluster system may be considered when lot sizes, location or site conditions make conventional disposal unacceptable.

B. Cluster systems shall be designed and constructed in accordance with the requirements of this regulation. In addition, cluster systems shall be maintained in accordance with 20.7.3.902 NMAC.

C. Each user and successors and assignees in interest connected to the system shall be a permittee and shall be indicated on the permit.

D. After the effective date of the regulation, each permittee and successors and assignees in interest on a cluster system shall be a party to a legally binding, written agreement that provides for the service and maintenance for the life of the system. The agreement shall be recorded in the county in which the property is located. A copy of the agreement shall be provided to the department.

E. The parties to the written agreement shall obtain all necessary rights-of-way, easements or ownership of properties necessary for the operation of the system. All parties that use the cluster system shall be a party to the agreement.

F. The combined area of the lots served by the cluster system plus the area of the parcel where the system is located, if separated from the lots served, shall be used to determine the allowable lot size.

[20.7.3.802 NMAC - Rp, 20.7.3.803 NMAC, 9/1/13]

### **20.7.3.803 COMPOSTING AND INCINERATING TOILETS:**

A. The installation of composting and incinerating toilets shall be in accordance with the New Mexico plumbing code and the local plumbing authority.

B. The installation of a composting/incinerating toilet shall not reduce the design flow for the property.

[20.7.3.803 NMAC - Rp, 20.7.3.804 NMAC, 9/1/13]

**20.7.3.804 EFFLUENT IRRIGATION/REUSE SYSTEMS:**

A. Effluent used for irrigation shall meet secondary treatment standards.

B. The effluent may only be utilized subsurface.

C. Application of the effluent resulting in standing or ponding of the effluent, whether liquid or frozen, shall be prohibited. The application of effluent shall not result in the effluent leaving the application area.

D. Effluent irrigation systems shall have no cross connections, direct or indirect, with potable water systems.

E. All effluent irrigation systems shall be pressure dosed to assure an even distribution and loading of effluent throughout the application area.

F. All parts of the reuse system shall be protected from freezing.

G. Effluent shall be contained on the permitted property.

H. The effluent shall only be applied to a suitable landscaped area or to fruit trees or nut trees.

I. Secondary treated and disinfected effluent may be used for toilet flushing or fire suppression with department approval.

J. Setback requirements for effluent irrigation systems shall meet the requirements of 20.7.3.302 NMAC except for the following:

(1) property lines, two feet for disposal area; and

(2) building or structure, two feet for disposal area.

K. Approved proprietary effluent drip irrigation systems shall be designed and installed according to manufacturers' specification.

L. A permitted and approved disposal system shall be provided for times when effluent irrigation is not utilized.

[20.7.3.804 NMAC - Rp, 20.7.3.805 NMAC, 9/1/13]

### **20.7.3.805 EVAPOTRANSPIRATION SYSTEMS:**

A. Evapotranspiration systems shall consist of a treatment unit and an evapotranspiration bed (ET bed) for disposal. Evapotranspiration systems shall meet the requirements of 20.7.3.302 NMAC. Unlined ET beds are a discharging system and shall meet the clearance, set back and lot size requirements for conventional absorption systems. Lined ET beds are non-discharging systems and shall be underlain by a liner as specified in Paragraph (3) of Subsection L of 20.7.3.7 NMAC.

B. The minimum bottom area of ET beds shall be determined from the following formula:

**A = 391 x Q ÷ E<sub>L</sub>**, where: A = the bottom area of the bed in square feet; Q = the design flow in gallons per day; and E<sub>L</sub> = the average annual lake evaporation for the site in inches per year.

C. The average annual lake evaporation shall be determined from the map "Gross Annual Lake Evaporation, New Mexico", USDA, April 1972, or successor version or a mutually acceptable evaporation rate.

D. The minimum bed depth shall be 24 inches as measured from the bottom of the ET bed to the overflow level. The surface crowning, which increases runoff from the ET bed, is above the overflow level of the ET bed. Maximum ET bed depth shall be 30 inches. The bottom of the ET bed shall be level.

E. The ET bed location shall be in an area where exposure to the sun and wind will be maximized.

F. The distribution piping within the ET bed shall be embedded in gravel and covered meeting the specifications in 20.7.3.701 NMAC. Use of approved proprietary drainfield products may be used in lieu of pipe and gravel.

G. The capillary sand fill shall contain 85% or more sand; the percentage of silt plus one and one-half times the percentage of clay shall not exceed 15%. Fine to medium sand is preferred.

H. Loamy sand shall be used for the surface crown. Where loamy sand is not available, capillary sand may be used.

I. The crown surface shall be planted with vegetation suited to the climate and soil of the site and to the wastewater quality and quantity.

J. For a gravity feed system, the overflow height of the ET bed shall be lower than the invert of the septic tank outlet.

K. All ET beds shall be equipped with an inspection port that is suitable to use to pump the system, if needed.

[20.7.3.805 NMAC - Rp, 20.7.3.806 NMAC, 9/1/13]

**20.7.3.806 MOUND AND ELEVATED SYSTEMS:**

A. Mound systems shall meet the requirements of 20.7.3.302 NMAC.

B. Mounds are generally constructed entirely above the surrounding ground surface, however, the mound may be partially buried.

C. The design of the mound system shall be in accordance with the most current design standards of the Wisconsin mound system as specified in the reference materials in Paragraph (8) of Subsection B of 20.7.3.8 NMAC, or other system designs as approved by the department.

D. Pressure distribution to the mound shall be required.

E. An elevated system shall meet the requirements of 20.7.3.302 NMAC.

F. Elevated systems may be constructed entirely above the surrounding grade or partially buried, as site conditions require.

G. An elevated system must be installed in accordance with proven design criteria and approved by the department.

[20.7.3.806 NMAC - Rp, 20.7.3.807 NMAC, 9/1/13]

**20.7.3.807 LOW PRESSURE DISPOSAL SYSTEMS:**

A. Low pressure dosed (LPD) disposal systems are used to achieve uniform distribution of wastewater throughout the entire disposal system. Effluent is pumped under low pressure through solid pipe into perforated lateral lines installed within a disposal system.

(1) Low pressure dosed disposal systems may be used with any on-site liquid waste system including conventional treatment systems, gray water systems and advanced treatment systems.

(2) Low pressure dosed disposal systems may be used with any disposal system including trenches, beds, mounds, gravelless systems and evapotranspiration systems.

(3) Lift stations are not classified as low pressure dosed disposal systems.

(4) Low pressure dosed disposal systems may use a timer to equalize the flow over a 24-hour period. LPD disposal systems may also be designed to rotate between separate disposal areas by using rotator valves.

(5) All pumps shall be rated by the manufacturer for pumping sewage or effluent.

(6) A single pump may be used for design flows equal to or less than 1,000 gpd. Dual alternating pumps are required for design flows over 1,000 gpd.

(7) Design of the system shall include:

(a) design flow;

(b) except for mound systems, soil absorption area sized according to the effluent loading rates found in 20.7.3.703 NMAC;

(c) total length of header and lateral pipes;

(d) diameter of perforated lateral lines used;

(e) size and spacing of holes or emitters; and

(f) pump performance sizing with allowances for head and friction losses at rated flows in gallons per minute.

(8) A ball valve shall be located vertically at the end of each lateral line for inspection and flushing except for proprietary drip irrigation systems.

B. A low pressure pipe (LPP) disposal system is a pressurized distribution system placed in shallow, narrow trenches. The effluent discharged to a LPP system must meet, at a minimum, primary treatment standards.

(1) The low pressure pipe system shall be sized as follows.

(a) The required absorption area shall be sized in accordance with Subsection H of 20.7.3.703 NMAC.

(b) A sizing credit of five square feet per linear foot of lateral pipe shall be applied to the total required absorption area.

(c) Each individual lateral shall not exceed 75 feet in length from the feed point unless the design is such that the discharge rate between any two points in the system does not exceed 10%.

(2) Design for LPP systems shall conform to the following.

- (a) Trenches shall be 12 inches to 18 inches wide and 12 inches deep.
  - (b) When aggregate is used, the lateral pipe shall be embedded at or above the center of the column of aggregate.
  - (c) The aggregate shall be covered with geotextile material to prevent soil intrusion.
  - (d) If a proprietary drainfield product other than aggregate is used, the distribution pipe shall be placed so as to prevent soil intrusion into the pipe.
  - (e) A minimum of four inches and a maximum of 18 inches of soil cover over the trench is required.
  - (f) Lateral lines shall be placed parallel to the natural contours of the site.
  - (g) Provisions shall be made for the prevention of siphoning back to the pump tank on upgrade systems and the prevention of draining of the tank on downgrade or flat systems.
  - (h) All requirements for conventional disposal systems shall be met, including but not limited to, setback and clearance requirements, lot size, design flow calculations, septic tank sizing, prohibitions, wastewater characteristics and advanced treatment requirements.
  - (i) Runoff shall be diverted away from the system to avoid oversaturation, where possible.
  - (j) A vegetative cover shall be maintained over the disposal area.
- (3) Materials and equipment for LPP systems shall conform to the following.
- (a) All treatment units and pump tanks shall meet the structural requirements of 20.7.3.501 NMAC.
  - (b) The pump tank shall be a single compartment with a 500 gallon minimum useful volume and allowance to be made for tank volume between the pump intake and tank floor. For septic tank effluent, a separate pump tank, in addition to the septic tank, is required.
  - (c) Effluent type pumps are required on all systems.
  - (d) A system design shall demonstrate that the system comes to the design pressure during every pumping cycle.

(e) An alternating valve or solenoid valve system is required to feed separate laterals with elevation differences resulting in 23 feet (10 psi) or greater head differentials. Manual or automatic flushing valves with turn-ups are required on distal ends of all laterals.

(f) In areas of freezing conditions, provisions for the draining of the headers must be made, such as vacuum breakers or vent holes at the system high points.

(g) Pipe shall be rated at 160 psi minimum, ASTM compression drainpipe, schedule 40 or better.

(h) The manifold pipe shall be sized appropriately for system size and configuration. The lateral pipe shall be one inch to two inches in diameter.

(i) The orifice size shall be 5/32 inch to 1/4 inch for septic effluent and 1/8 inch to 1/4 inch for secondary and tertiary treated effluent.

(j) The lateral pipe shall be installed with orifices facing upward.

(4) A maintenance contract shall be required on all LPP systems. Maintenance is to include pump inspection and cleaning, float operation (if applicable), lateral flushing annually at a minimum and septic tank and pump tank pumping as needed.

C. Designs that do not conform to the design parameters specified in Subsections A and B above must be accompanied by documentation justifying the design submitted, including proprietary software input and output reports, and will be considered on a case-by-case basis.

[20.7.3.807 NMAC - Rp, 20.7.3.808 NMAC, 9/1/13; A, 9/1/13]

#### **20.7.3.808 HOLDING TANK REQUIREMENTS:**

A. The installation of holding tanks for the disposal of liquid wastes shall be authorized on a temporary basis only and only for residential units where conventional or alternative liquid waste treatment systems cannot be installed, except where noted in Subsection E below.

B. The installation of holding tanks shall not be authorized for commercial units except where noted in Subsection E below.

C. Holding tanks shall not be installed to serve any design flow greater than 375 gallons per day, except for the direct collection of RV waste or to replace an existing holding tank. Total design flow on any property served by a holding tank shall not exceed 375 gallons per day except for the direct collection of RV waste.

D. The installation of holding tanks shall be authorized for no more than one year from the date of installation for units occupied more than 120 days per calendar year.

E. The installation of holding tanks shall be authorized for permanent use only for the following:

(1) residential units, with a design flow rate of 375 gpd or less, occupied 120 days or less per calendar year;

(2) residential units utilizing the holding tank only for the discharge of toilet waste in conjunction with a conventional treatment system for the remainder of the wastewater;

(3) non-residential, non-commercial units, such as guard shacks, toll booths, etc., with a design flow rate of 100 gpd or less; and

(4) the direct collection of RV waste and portable toilet waste for disposal in accordance with 20.7.3.306 NMAC.

F. Holding tanks shall be constructed of the same materials, by the same procedures and to the same standards as described in 20.7.3.501-502 NMAC except that they shall have no discharge outlet.

G. All holding tank installations shall be tested on-site for water tightness.

H. The minimum size of a holding tank shall be 1,000 gallons or four times the design flow, whichever is greater.

I. Holding tanks shall be located in an area readily accessible to a pump vehicle under all weather conditions and where accidental spillage during pumping will not create a nuisance or a hazard to public health.

J. Holding tanks shall be protected against flotation under high groundwater conditions by weight of tank (ballasting), earth anchors or by surface or shallow installation. Holding tanks shall be protected from freezing.

K. Holding tanks shall be equipped with a visible and audible high water alarm system placed in a conspicuous location approved by the department. The alarm shall be set to activate at 80% of the tank capacity. It shall be a violation of these regulations to tamper with or disconnect the alarm system.

L. The owner of a holding tank shall have the tank pumped to prevent discharge from the tank and the liquid waste (septage) properly disposed of in compliance with all applicable laws and regulations. Owners of holding tanks shall maintain records demonstrating pumping and proper disposal of septage from the units to prevent discharge. Copies of pumping and disposal manifests shall be retained by the owner for

at least seven years and shall be made available to the department for inspection on request. The records shall be:

- (1) kept on a form provided by the department if requested;
- (2) accompanied by such other documentation as the department may reasonably require;
- (3) signed by the lot owner or an authorized representative;
- (4) submitted on a semi-annual basis, or a schedule otherwise determined by the department, to the department field office having jurisdiction, and
- (5) included in any transfer inspection report or unpermitted system inspection report.

M. No person shall install, operate, modify or maintain a holding tank that allows discharge to the soil or to waters of the state.

N. The department may perform site inspections periodically to ensure that a holding tank does not discharge.

O. All units utilizing a holding tank shall connect to a public sewer upon availability and in accordance with the local authority that has jurisdiction. A public sewer shall be deemed available when the public sewer is located in any thoroughfare, right-of-way or easement abutting the lot on which the unit is located. The holding tank shall be properly abandoned in accordance with 20.7.3.307 NMAC within 30 days of connection to the public sewer.

[20.7.3.808 NMAC - Rp, 20.7.3.809 NMAC, 9/1/13; A, 9/1/13]

#### **20.7.3.809 GRAYWATER SYSTEMS:**

Graywater systems not meeting the requirements of 20.7.3.810 NMAC shall meet the following requirements.

A. The installation of separate graywater systems shall be authorized for residential units and shall be located on the lot served. The capacity of the on-site liquid waste system shall not be decreased or otherwise affected by the existence or proposed installation of a graywater system servicing the lot.

B. All information required in 20.7.3.402 NMAC for the issuance of a permit shall be required.

C. Design flows for graywater systems shall be calculated by the following:

(1) 20% of the liquid waste design flow for the segregation of laundry waste;  
and

(2) 33% of the liquid waste design flow for the segregation of the bathroom (showers, tubs and wash basin) waste.

D. For graywater systems on lots where the residential unit is served by a sewerage system, the minimum lot size set forth in 20.7.3.301 NMAC shall not be required.

E. Clearance requirements for graywater systems shall meet the requirements of 20.7.3.303 NMAC.

F. Setback requirements for graywater systems shall meet the requirements of 20.7.3.302 NMAC except for the following:

- (1) property lines, two feet for disposal area;
- (2) building or structure, two feet for disposal area; and
- (3) building or structure, zero feet for above ground tanks.

G. A treatment unit shall be required for all graywater systems. If a tank is utilized as the treatment unit:

- (1) the tank may be a single compartment;
- (2) the tank shall be sized to accommodate one day design flow; and
- (3) access to the tank shall be provided by a tamper resistant lid installed to grade.

H. Graywater should be utilized within 24 hours of collection unless additional treatment is provided.

I. Tanks installed below ground shall meet the requirements of 20.7.3.501-502 NMAC except for the requirements in Subsection G of this section. Tanks shall be protected against possible floatation.

J. Above ground tanks shall be constructed of solid, durable materials, not subject to corrosion or decay and shall be approved by the department. Above ground tanks shall be set on a three inch minimum concrete pad. Metal tanks shall not be authorized.

K. All tanks shall have an overflow drain with a permanent connection to the building drain or building sewer. The tank shall be protected against sewer line backflow by a backwater valve.

L. Each tank shall be vented as required by the New Mexico plumbing code.

M. Each tank shall have its rated liquid capacity permanently marked on the unit. In addition, a sign "GRAYWATER SYSTEM, DANGER – UNSAFE WATER" shall be permanently marked on the tank.

N. The disposal system shall be constructed in accordance with 20.7.3.804 NMAC.

O. The graywater system shall have no direct or indirect cross connection with potable water systems.

P. Graywater use for purposes other than irrigation or toilet flushing is prohibited. Irrigation of edible food crops except for fruit trees or nut trees is prohibited.

[20.7.3.809 NMAC - Rp, 20.7.3.811 NMAC, 9/1/13; A, 9/1/13]

### **20.7.3.810 GRAYWATER DISCHARGES:**

Graywater discharge of less than 250 gallons per day of private residential graywater originating from a residence for the resident's household flower gardening, composting or landscaping irrigation shall be allowed if:

A. a constructed graywater distribution system provides for overflow into the sewer system or on-site wastewater treatment and disposal system;

B. a graywater storage tank is covered to restrict access and to eliminate habitat for mosquitos or other vectors;

C. a graywater system is sited outside of a floodway;

D. graywater is vertically separated at least five feet above the groundwater table;

E. graywater pressure piping is clearly identified as a non-potable water conduit;

F. graywater is used on the site where it is generated and does not run off the property lines;

G. graywater is discharged in a manner that minimizes the potential for contact with people or domestic pets;

H. ponding is prohibited, discharge of graywater is managed to minimize standing water on the surface and to ensure that the hydraulic capacity of the soil is not exceeded;

I. graywater is not sprayed;

J. graywater is not discharged to a watercourse;

K. graywater use within municipalities or counties complies with all applicable municipal or county ordinances enacted pursuant to Chapter 3, Article 53 NMSA 1978;

L. graywater is not stored longer than 24 hours before being discharged;

M. graywater use for purposes other than irrigation or composting is prohibited, unless a permit for such use is issued by the department;

N. graywater is not used to irrigate food plants except for fruit and nut trees;

O. graywater is discharged to a mulched surface area or to an underground irrigation system;

P. graywater is not discharged closer than 100 feet to a watercourse or private domestic well, or closer than 200 feet to a public water supply well;

Q. graywater does not create a public nuisance;

R. for residential units using an on-site liquid waste system for blackwater treatment and disposal, the use of a graywater system does not change the design, capacity or absorption area requirements for the on-site liquid waste system at the residential unit, and the on-site liquid waste system is designed and sized to handle the combined blackwater and graywater flow if the graywater system fails or is not fully used; and

S. graywater does not contain hazardous chemicals derived from activities such as cleaning car parts, washing greasy or oily rags or disposing of waste solutions from home photo labs or similar hobbyist or home occupational activities.

[20.7.3.810 NMAC - Rp, 20.7.3.810 NMAC, 9/1/13; A, 9/1/13]

### **20.7.3.811 SPLIT FLOW SYSTEMS:**

Split flow systems may be installed for the purpose of reduction of total nitrogen discharges in lieu of installation of non-discharging or tertiary treatment systems.

A. Based on the assumption that toilet waste contains 80% of the total nitrogen in domestic liquid waste and that the quantity of liquid waste from toilets is 25% of the total domestic waste stream, the following formula shall be used to calculate the minimum lot size allowed for permitting of a split flow system: minimum lot size (in acres) = 0.0003 x design flow.

B. The disposal system for non-toilet waste shall be based on the assumption that non-toilet waste comprises 75% of the design flow and therefore may be reduced to 75% of the minimum required absorption area in 20.7.3.703 NMAC.

C. The toilet waste holding tank shall have a minimum capacity of 1000 gallons and shall meet all requirements of holding tanks described in 20.7.3.808 NMAC, except for Subsections A, B, C, D, E and H.

D. Effluent from the waste holding tank may be discharged to an ET bed constructed in accordance with 20.7.3.805 NMAC and sized at 25% of design flow. An effluent filter is required on the waste holding tank.

[20.7.3.811 NMAC - N, 9/1/13]

**20.7.3.812 SAND-LINED TRENCHES AND BOTTOMLESS SAND FILTERS:**

A. Effluent applied to a sand-lined trench shall not exceed primary treatment standards.

B. The required absorption area shall be calculated based on a maximum loading rate of 1.00 gallon per day per square foot of sand surface. No sidewall credit is allowed.

C. The distribution system shall conform to the requirements of 20.7.3.807 NMAC, Low Pressure Disposal Systems.

D. A minimum of 24 inches of sand, meeting the latest version of ASTM specifications, shall be installed beneath the distribution system.

E. Trench width shall be a minimum of 12 inches and a maximum of 36 inches.

F. The effluent dosing rate shall be at least four doses per day and not more than 24 doses per day.

G. A sand-lined trench may be used to reduce setbacks and clearances as follows:

- (1) one foot to a limiting layer;
- (2) 50 feet to waters of the state; or
- (3) 50 feet to an irrigation well located on the subject property.

H. A bottomless sand filter is a special case sand-lined trench consisting of a bottomless containment structure located partially above or at grade of the existing ground level. A bottomless sand filter must be located parallel to the contours on a sloping site and be as long and narrow as possible to limit the linear loading rate on the disposal area.

I. A maintenance contract shall be required. Maintenance is to include pump inspection and cleaning, float operation (if applicable), lateral flushing annually at a minimum and septic tank and pump tank pumping as needed.

[20.7.3.812 NMAC - N, 9/1/13]

**20.7.3.813-20.7.3.900 [RESERVED]**

**20.7.3.901 MONITORING:**

A. As a condition to any permit, the owner of an on-site liquid waste system shall allow department personnel or maintenance service provider personnel right of entry to the property at reasonable times to allow for maintenance, system monitoring, effluent sampling or evaluating the general state of repair or function of the system.

B. Advanced treatment liquid waste systems require maintenance and monitoring. These systems shall be maintained and monitored, at a minimum, semi-annually or more as per manufacturer's recommendations.

(1) Monitoring will include all the following parameters:

(a) dissolved oxygen (DO);

(b) temperature;

(c) pH;

(d) sludge depth; and

(e) other parameters recommended by the manufacturer.

(2) Parameters should be measured at locations within the treatment unit that will demonstrate the effectiveness of treatment.

(3) Monitoring shall be completed utilizing field instruments including a DO meter, thermometer, pH meter, sludge sampler or other approved instruments.

(4) Parameters and maintenance requirements shall be included in the permit application design statement and be consistent with the manufacturer's recommendations for proper operation.

(5) Field instruments shall be calibrated as per manufacturer's recommendations and a log maintained on the operation and calibration of each instrument. Logs shall be made available to the department upon request.

C. Effluent sampling shall be required for on-site liquid waste systems that do not conform to manufacturer's guidelines for field parameters pursuant to Subsection B of 20.7.3.901 NMAC, for systems where the manufacturer has not established guidelines for field parameters or for systems that the department has determined are not operating properly. Sampling shall be conducted annually or as otherwise required by the department.

(1) On-site liquid waste systems that require primary treatment levels be achieved may be sampled and analyzed or monitored as specified in the permit.

(2) On-site liquid waste systems that require secondary treatment levels be achieved may be sampled and analyzed only for 5-day BOD (BOD5) or monitored as specified in the permit. Chemical oxygen demand (COD) may be substituted for BOD5 with a calibration curve acceptable to the department.

(3) On-site liquid waste systems that require tertiary treatment levels be achieved may be sampled and analyzed only for total nitrogen or monitored as specified in the permit.

(4) On-site liquid waste systems that require disinfection may be sampled and analyzed only for E. coli or monitored as specified in the permit. In addition:

(a) when chlorine is used for disinfection, the total chlorine residual, at all times, shall be equal to or greater than 1.0 mg/l after 30 minutes detention time at peak flows; and

(b) alternative disinfection methods, such as ultraviolet light, ozone or other methods, may be used.

D. All sampling, maintenance, monitoring and analysis shall be performed by certified personnel in accordance with the most current edition of *standard methods for the examination of water and wastewater* or other methods, including field instruments, approved by the department and recommended by the manufacturer.

E. Monitoring and sampling shall occur between the hours of 7:00 am and 7:00 pm.

F. Monitoring reports, sampling records and maintenance reports/logs shall be submitted to the local field office within 30 days of the maintenance, monitoring or required sampling event.

G. All monitoring or sampling results exceeding the permit limits shall be reported to the local field office within five working days.

H. If any two consecutive samples exceed the permitted treatment limit, the system design and operation shall be evaluated by a professional engineer or a maintenance service provider for conformance with permitting conditions and shall be adjusted to

bring the effluent quality into compliance. The system shall be resampled no later than 30 days from the evaluation and results submitted to the department within five working days of analysis.

I. If the resample required in Subsection H above exceeds the permitted treatment limit, the treatment system shall be subject to review and re-evaluation with regard to operation and maintenance. A department approved contingency plan, including more training for the maintenance service provider or replacement with a more experienced operator, may be implemented.

J. The following shall be considered as violations of the monitoring requirements of the permit.

(1) Failure to collect, analyze and report maintenance, monitoring or sampling results.

(2) The submission, by the owner or maintenance entity of an advanced treatment system or agent or employee thereof, of misleading or inaccurate information to the department, through neglect.

(3) The submission of fraudulent data including the following:

(a) apparent measurement results for which no measurement or test results were actually made as determined by the absence of the supporting records that are usually made;

(b) measurements or test results obtained by deliberately and knowingly making measurements or collecting samples at places and times other than as specified in the permit or 20.7.3 NMAC; and

(c) test results obtained through use of unapproved and erroneous sampling, preservation, storage or analysis procedures.

[20.7.3.901 NMAC - Rp, 20.7.3.901 NMAC, 9/1/13; A, 9/1/13]

### **20.7.3.902 OPERATION AND MAINTENANCE REQUIREMENTS AND EVALUATION REQUIREMENTS AT TIME OF TRANSFER:**

A. The owner of an on-site liquid waste system, including systems existing prior to the effective date of this regulation, shall be responsible for properly operating and maintaining the system in accordance with the recommendations of the manufacturer or designer of the system.

B. The owner of an advanced treatment system installed after the effective date of this regulation shall enter into a department approved maintenance contract with a maintenance service provider that will assure maintenance of the system in accordance

with the recommendations of the manufacturer or designer of the system. A maintenance contract shall be in effect at all times.

C. Household hazardous waste shall not be introduced into the system. Wastewater that exceeds domestic liquid waste may be treated by an appropriately designed advanced treatment system.

D. Any spillage that may occur during tank pumpout shall be cleaned up immediately and the spill area disinfected with a sodium or calcium hypochloride solution.

E. Prior to the transfer of a property with an established on-site liquid waste system, the transferor of the property shall have the system evaluated. Liquid waste systems shall be evaluated by an evaluator qualified in accordance with Subsection B of 20.7.3.904 NMAC utilizing a department approved form. Unpermitted liquid waste systems shall be registered pursuant to Subsections J of 20.7.3.401 NMAC or permitted pursuant to Subsection K of 20.7.3.401 NMAC.

F. For permitted conventional liquid waste systems, a non-invasive evaluation shall be conducted, with a report provided to the buyer. The evaluation shall determine whether or not:

(1) the treatment unit is watertight, is functioning properly and the existing tank has a liquid capacity within one tank size of the capacity required by Subsection Q of 20.7.3.201 NMAC;

(2) the disposal system appears to be functioning properly;

(3) the liquid waste system appears to meet setbacks and clearances;

(4) lot size requirements of the regulations in effect at the time of the initial installation, or in effect at the time of the most recent permitted modification, are met; and

(5) the system does not constitute a public health or safety hazard.

G. For permitted advanced treatment systems, in addition to the requirements of Subsection F of 20.7.3.902 NMAC:

(1) the system shall be sampled in accordance with permit conditions for compliance with 20.7.3.602-604 NMAC if a regularly scheduled sampling event has not occurred within 180 days of the evaluation; the sampling results shall be included with the system report; if a regularly scheduled sampling event has occurred within 180 days of the evaluation, the results of the sampling shall be included in the evaluation report; and

(2) an amendment of permit reflecting ownership change is required pursuant to Subsection E of 20.7.3.403 NMAC.

H. Evaluations shall be recorded on forms approved by the department. Evaluation reports shall be kept on file by the evaluator of the on-site liquid waste system. Evaluators shall submit to the department copies of all evaluation reports, whether completed or not, within 15 days of the evaluation. A permit or variance application shall be submitted within 15 days of the evaluation by the party who is or will be the owner of the property on the 15<sup>th</sup> day following the evaluation to correct any deficiencies or permit violations identified by the evaluation. In addition, all evaluation reports shall include the global positioning system (GPS) coordinates of the treatment unit. Once an evaluation is requested, all results, whether complete or not, shall be submitted to the department.

I. If a final inspection with final approval for a new or modified system or a property transfer evaluation for an existing system has been done within 180 days of the transfer of the property, the property transfer evaluation need not be conducted.

J. In the event of a failed system, that includes, but is not limited to disposal fields, the owner shall remedy the failed system with department approval. In the event, property with an existing permitted on-site liquid waste system is transferred prior to the remediation of a failed system, the transferee becomes responsible under these regulations for remedying the failed system.

[20.7.3.902 NMAC - Rp, 20.7.3.902 NMAC, 9/1/13]

**20.7.3.903 MAINTENANCE SERVICE PROVIDERS (MSP) FOR CONVENTIONAL AND ADVANCED ON-SITE LIQUID WASTE SYSTEMS:**

A. Maintenance service providers (MSP) shall at a minimum:

(1) inspect, operate and maintain the system in accordance with the manufacturer's specification and permit requirements; and

(2) submit pumping and inspection records as requested by the department.

B. The MSP personnel shall possess a valid and appropriate CID license when required for the specific activities performed and have at least one of the certifications listed below:

(1) certification by the manufacturer for the proprietary unit being maintained,  
or

(2) operator certification for small advanced wastewater systems, or higher, from the state of New Mexico; or

(3) certification at an acceptable level as a wastewater operator from another state; or

(4) certification based on other credentials as approved by the department.

C. The MSP personnel shall have the ability to sample the unit in accordance with approved sampling methods under this part.

D. The MSP shall be able to respond to emergency situations within 48 hours of being notified.

E. A public MSP shall adopt an ordinance, bylaw or rule, as appropriate, approved by the department, detailing the terms and conditions of service.

F. A private MSP shall use a contract for service that contains, at least, minimum standards approved by the department.

G. The MSP shall have a quality assurance/quality control plan acceptable to the department and shall provide a copy to the department upon request.

H. The MSP shall notify the department within five working days of any failed system.

I. The MSP must properly maintain and sample all systems for which they have an active maintenance or sampling contract.

[20.7.3.903 NMAC - Rp, 20.7.3.903 NMAC, 9/1/13; A, 9/1/13]

#### **20.7.3.904 REQUIREMENTS FOR QUALIFICATION:**

A. Qualified homeowner.

(1) A homeowner must become qualified to install an on-site liquid waste system by passing an exam administered by the department.

(2) Homeowner training materials and opportunities for exams, by appointment, shall be available at all department field offices.

(3) A qualified homeowner may apply for a permit to install or modify a conventional on-site liquid waste treatment and disposal system serving the qualified homeowner's personal residence in accordance with Subsection C of 20.7.3.401 NMAC.

(4) A qualified homeowner shall not install or modify an on-site liquid waste system serving a rental unit, or other property that is not the qualified homeowner's personal residence.

(5) A homeowner qualification shall be valid for one year from the date of issuance of qualification; the department may extend the qualification beyond one year for good cause shown.

(6) A qualified homeowner may install no more than one liquid waste system during a twelve month period.

(7) A qualified homeowner who self-installs a system shall not compensate any person to perform any phase of the system construction, unless that person holds a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division.

B. Third party evaluators.

(1) Evaluations of liquid waste systems prior to property transfers are required by Subsection E of 20.7.3.902 NMAC. The department shall inspect unpermitted liquid waste systems installed after February 1, 2002. Third party evaluators shall evaluate permitted liquid waste systems and unpermitted systems installed prior to February 1, 2002.

(2) Qualification as a third party evaluator shall be based on one of the following:

(a) a valid and appropriate classification of licensure by the construction industries division of the regulation and licensing department;

(b) licensure as a professional engineer;

(c) accreditation in on-site wastewater inspection by the national sanitation foundation (NSF);

(d) certification by the national environmental health association (NEHA) as an installer of on-site wastewater treatment systems;

(e) certification as a registered environmental health specialist (REHS) or a registered sanitarian (RS); or

(f) demonstration of a similar accreditation or certification or a combination of training and experience as approved by the department.

(3) Inspection of advanced wastewater treatment systems shall be performed only by persons qualified pursuant to Subsection C of 20.7.3.904 NMAC.

C. Maintenance service provider of an advanced treatment system.

(1) Maintenance service providers shall comply with 20.7.3.903 NMAC.

(2) In order to obtain approval by the department, and in addition to receiving a recommendation for approval by the wastewater technical advisory committee, manufacturers or their authorized trainers of advanced treatment systems shall provide a written training and certification program, for approval by the department, for installers and maintenance service providers of their systems. Installers and maintenance service providers of advanced treatment systems shall receive the training approved by the department at least once per year. Department representatives may audit training classes provided by the manufacturers for the purpose of evaluating the training provided.

#### D. Septage pumpers.

(1) Septage pumpers shall demonstrate familiarity with applicable regulations and demonstrate competence in locating and exposing septic tanks, measuring septic sludge and scum levels, the complete pumping of septic tank sludge, maintenance of pumping equipment in a sanitary condition, prevention of pathogen transmission and preparation of an appropriate safety plan for normal operations.

(2) Septage pumpers shall maintain his or her equipment to ensure no sewage spills occur during transport or storage and that his or her employees or the public are not subjected to a hazard to public health.

(3) Septage pumpers shall have a written contingency plan for spill abatement and shall have the equipment and supplies needed to abate spills onsite during each pumping operation.

(4) Septage pumpers shall notify the department of the facilities they use for the septage disposal and shall provide the department with copies of any permits or licenses issued by the owner of the disposal facility to the septage pumper.

#### E. Installer specialist.

(1) Any person who possesses all of the following minimum qualifications may apply to the department for certification as an installer specialist:

(a) a valid and appropriate classification of contractor's license issued by the New Mexico construction industries division for the construction of on-site liquid waste systems;

(b) three years of professional experience installing on-site liquid waste systems in New Mexico; or the installation or repair of either 100 on-site liquid waste systems in New Mexico in compliance with liquid waste permits approved by the department or Bernalillo county; or 50 on-site liquid waste systems in New Mexico in compliance with liquid waste permits approved by the department or by Bernalillo county, plus certification as an installer of on-site wastewater systems by a national industry or trade organization;

(c) 16 hours of training credits approved by the department completed during the previous three calendar years;

(d) successful completion of a 20.7.3 NMAC training class and examination provided by the department during the previous twelve months;

(e) no compliance orders issued to the applicant within the past three years for violation of any provision of 20.7.3 NMAC, except for compliance orders that are presently under appeal or that have been overturned on appeal or withdrawn by the department; and

(f) no criminal convictions pursuant to NMSA 1978, Section 74-1-10 within the past five years for violation of any provision of 20.7.3 NMAC.

(2) Application for certification as an installer specialist shall be made in writing on a form provided by the department and shall include documentation of qualification requirements in Subparagraph (a), (b) and (c) of Paragraph (1) of Subsection E of 20.7.3.904 NMAC.

(3) The department shall, within 15 working days of receipt of a complete application, notify the applicant in writing of approval or disapproval of the application.

(4) Department disapproval of an application may be appealed pursuant to the adjudicatory procedures in 20.1.5 NMAC.

(5) Installer specialist certification shall be valid for no longer than three years, expiring on January 31 of the applicable year.

(6) Installer specialists shall be recertified upon submission to the department, no later than January 31 of each applicable year, of documentation that the installer specialist has received 16 hours of approved training credits completed during the previous three calendar years.

(7) The department shall maintain on its internet website a list of training curricula that have been approved for qualification and recertification as installer specialist.

(8) The department shall accept registrations for a 20.7.3 NMAC training class and exam no less frequently than quarterly within each department district.

(9) The department shall maintain on its internet website a list of certified installer specialists, along with a description of the minimum qualification requirements for certification.

(10) Subsection E of 20.7.3.904 NMAC shall cease to be effective three years after September 1, 2013 unless the department has provided prior to that date a written

report to the New Mexico environmental improvement board documenting or stating successful implementation of the installer specialist certification and recommending that Subsection E of 20.7.3.904 NMAC continue to be effective.

F. Suspensions, revocations and denials.

(1) The department may deny a qualification if it determines that an applicant does not meet all eligibility requirements set forth above.

(2) The department, at any time, may suspend or revoke a qualification for cause to include fraud, misrepresentation, failure to provide required documentation, failure to provide service in accordance with the qualification or failure to comply with 20.7.3 NMAC. Suspension or revocation shall be by issuance of an order by the department.

(3) Any person who desires to appeal a denial, suspension, revocation or disqualification may appeal to the secretary. An appeal is initiated by submitting a request for a hearing. The request for a hearing must be in writing and made no later than 30 days after notice of the action is served. Upon such request, the secretary shall conduct a hearing pursuant to the adjudicatory procedures in 20.1.5 NMAC.

[20.7.3.904 NMAC - Rp, 20.7.3.904 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.905 WASTEWATER TECHNICAL ADVISORY COMMITTEE:**

Technical product review and approval shall be in accordance with 9-7A-15 NMSA 1978.

[20.7.3.905 NMAC - Rp, 20.7.3.905 NMAC, 9/1/13; A, 9/1/13]

**20.7.3.906 ADMINISTRATIVE ENFORCEMENT:**

A. Any violation of these regulations is a petty misdemeanor subject to criminal penalties as authorized by NMSA 74-1-10.

B. The department may appear and prosecute any misdemeanor proceeding if the appearance is by an employee authorized by the secretary to institute or cause to be instituted an action on behalf of the department.

C. The secretary, at his discretion, may elect to pursue criminal or civil penalties, or both, for any violations of these regulations.

D. Upon any violation of these regulations, the department may:

(1) issue a compliance order stating the nature of the violation requiring compliance immediately or within a specific time period and assess a civil penalty for any past or current violation or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

E. Any penalty assessed in the compliance order for residential on-site liquid waste systems shall not exceed one hundred dollars (\$100) for each violation.

F. Any penalty assessed in the compliance order for non-residential on-site liquid waste systems shall not exceed one thousand dollars (\$1,000) for each violation.

G. If a violator fails to achieve compliance within the time specified in the compliance order, the secretary shall assess civil penalties of not more than one thousand dollars (\$1,000) for each noncompliance with the order.

H. A compliance order issued pursuant to this section shall become final unless, no later than 30 days after the compliance order is served, the party named in the order submits a written request to the secretary for a hearing.

I. All requests for hearings shall be in accordance with 20.7.3.406 NMAC.

J. Penalties collected pursuant to violations of 20.7.3 NMAC shall be deposited in the state treasury to be credited to the general fund.

K. Any noncompliance with any provision of 20.7.3 NMAC or any permit provision may be subject to penalties.

[20.7.3.906 NMAC - Rp, 20.7.3.906 NMAC, 9/1/13]

#### **20.7.3.907 AUTHORITY TO DISCONNECT SOURCE OF WATER SUPPLY:**

After due process is provided, the department may disconnect the source of water supply to a commercial or residential unit that is served by any on-site liquid waste system that has become a failed system and that presents an imminent hazard to public health. This authority includes authority to disconnect power utilities if necessary to disconnect the source of water supply. The department shall give notice of its actions to the unit owner and the tenants affected or as otherwise provided by the law.

[20.7.3.907 NMAC - Rp, 20.7.3.907 NMAC, 9/1/13]

#### **20.7.3.908-20.7.3.1000 [RESERVED]**

#### **20.7.3.1001 CONSTRUCTION:**

20.7.3 NMAC shall be liberally construed to carry out its purpose.

[20.7.3.1001 NMAC - Rp, 20.7.3.1001 NMAC, 9/1/13]

**20.7.3.1002 TEMPORARY PROVISIONS:**

All registration certificates, permits, orders, rulings and variances issued pursuant to the regulations in effect at the time such registration certificates, permits, orders, rulings, or variances were issued shall remain in full force and effect until repealed, replaced, superseded or amended pursuant to 20.7.3 NMAC.

[20.7.3.1002 NMAC - Rp, 20.7.3.1002 NMAC, 9/1/13]

**20.7.3.1003 SEVERABILITY:**

If any provision or application of 20.7.3 NMAC is held invalid, the reminder, or its application to other situations or persons, shall not be affected.

[20.7.3.1003 NMAC - Rp, 20.7.3.1003 NMAC, 9/1/13]

**20.7.3.1004 REFERENCES IN OTHER REGULATIONS:**

Any reference to the liquid waste treatment and disposal regulations in any other rule shall be construed as a reference to 20.7.3 NMAC.

[20.7.3.1004 NMAC - Rp, 20.7.3.1004 NMAC, 9/1/13]

**20.7.3.1005 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of the liquid waste disposal regulations shall not affect any administrative or judicial action for the enforcement thereof.

[20.7.3.1005 NMAC - Rp, 20.7.3.1005 NMAC, 9/1/13]

**20.7.3.1006 COLLATERAL REQUIREMENTS:**

Compliance with 20.7.3 NMAC does not relieve any person from the responsibility of meeting more stringent city or county regulations or ordinances or other requirements of state or federal laws governing the treatment or disposal of liquid waste.

[20.7.3.1006 NMAC - Rp, 20.7.3.1006 NMAC, 9/1/13]

**20.7.3.1007 LIMITATIONS OF DEFENSE:**

The existence of a valid permit for installation or modification of an on-site liquid waste system shall not constitute a defense to a violation of any section of 20.7.3 NMAC except the requirement for obtaining a permit (20.7.3.401-404 NMAC).

[20.7.3.1007 NMAC - Rp, 20.7.3.1007 NMAC, 9/1/13]

**20.7.3.1008-20.7.3.1100 [RESERVED]**

## **PART 4: UTILITY OPERATOR CERTIFICATION**

### **20.7.4.1 ISSUING AGENCY:**

Water Quality Control Commission.

[20.7.4.1 NMAC - Rp, 20 NMAC 7.4.100, 1-26-01]

### **20.7.4.2 SCOPE:**

All persons, facilities and systems subject to the act.

[20.7.4.2 NMAC - Rp, 20 NMAC 7.4.101, 1-26-01; A, 11-15-06]

### **20.7.4.3 STATUTORY AUTHORITY:**

Utility Operators Certification Act, NMSA 1978, Sections 61-33-1 to 10.

[20.7.4.3 NMAC - Rp, 20 NMAC 7.4.102, 1-26-01]

### **20.7.4.4 DURATION:**

Permanent.

[20.7.4.4 NMAC - Rp, 20 NMAC 7.4.103, 1-26-01]

### **20.7.4.5 EFFECTIVE DATE:**

January 26, 2001, unless a later date is indicated in the history note at the end of a section.

[20.7.4.5 NMAC - Rp, 20 NMAC 7.4.104, 1-26-01]

### **20.7.4.6 OBJECTIVE:**

The objective of this part is to implement the act.

[20.7.4.6 NMAC - Rp, 20 NMAC 7.4.105, 1-26-01; A, 11-15-06]

#### **20.7.4.7 DEFINITIONS:**

All terms used in this part shall have the following meanings:

**A.** "act" means the Utility Operators Certification Act, NMSA 1978, Sections 61-33-1 to 10;

**B.** "board" means the utility operators certification advisory board;

**C.** "certified operator" means a person who is certified by the department as being qualified to operate one of the classifications of public water supply systems or public wastewater facilities;

**D.** "collection system" means pipelines or conduits, pumping stations, force mains, and all other devices, appurtenances and facilities used for collecting and conducting waste to a point of treatment and disposal;

**E.** "commission" means the water quality control commission;

**F.** "department" means the New Mexico environment department;

**G.** "distribution system" means pipelines, appurtenances, devices and facilities which carry potable water under pressure to each consumer;

**H.** "domestic liquid waste" means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including but not limited to waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

**I.** "domestic liquid waste treatment unit" means any system that is designed to discharge less than two thousand gallons per day and that is subject to the rules promulgated by the environmental improvement board pursuant to Paragraph (3) of Subsection (A) of Section 74-1-8 NMSA 1978 or a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including septic tanks;

**J.** "education" means academic credit received attending any public or private primary, secondary or high school, approved vocational training courses in the water supply and wastewater field, college or university;

**K.** "experience" means actual work experience, full or part-time, as an operator in the fields of public water supply or public wastewater treatment; work experience in a related field may be accepted at the discretion of the department;

**L.** "operate" means performing any activity or function or making any process control or system integrity decision regarding water quality or water quantity that has the potential to affect the proper functioning of a public water supply system or public

wastewater facility or to affect human health, public welfare or the environment; the term "operate" does not include the operation of monitoring equipment from a distantly remote location;

**M.** "operator" means any person who operates a public water supply system or public wastewater facility;

**N.** "owner" means the person or persons who own(s) any part of a public water supply system or public wastewater facility;

**O.** "person" means any agency, department or instrumentality of the United States and any of its officers, agents or employees, the state or any agency, institution or political subdivision thereof, any public or private corporation, individual, partnership, association or other entity, and includes any officer or governing or managing body of any political subdivision or public or private corporation;

**P.** "population served" means actual or estimated maximum number of persons served by the public water supply system or public wastewater facility;

**Q.** "public wastewater facility" means a system of structures, equipment and processes designed to collect and treat domestic and industrial waste and dispose of the effluent, but does not include:

(1) any domestic liquid waste treatment unit;

(2) any industrial facility subject to an industrial pretreatment program regulated by the United States environmental protection agency under the requirement of the federal Clean Water Act of 1977; or

(3) any waste treatment system which is strictly limited to treating non-human, agricultural waste;

**R.** "public water supply system" means:

(1) a system for the provision through pipes or other constructed conveyances to the public of water for human consumption or domestic purposes if the system:

(a) has at least fifteen service connections; or

(b) regularly serves an average of at least twenty-five individuals at least sixty days of the year;

(2) any water supply source and any treatment, storage and distribution facilities under control of the operator of the system; and

**(3)** any collection device, including but not limited to wells, spring boxes, infiltration galleries or intake structures, and any treatment, storage, and distribution facilities under the control of the operator of such system and any collection device or pretreatment storage facilities not under such control which are used primarily in connection with such system;

**S.** "supervision" means the coordination, direction, oversight or inspection of the operation of a public water supply system or a public wastewater facility; the term "supervision" does not include the operation of monitoring equipment from a distantly remote location;

**T.** "training" means approved education or non-academic training in the fields of public water supply system or public wastewater facility operations;

**U.** "training credit" means the amount of credit earned by a participant in a training program; and

**V.** "treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.

[20.7.4.7 NMAC - Rp, 20 NMAC 7.4.108, 1-26-01; A, 10-17-01; A, 11-15-06]

#### **20.7.4.8 CONSTRUCTION:**

This part shall be liberally construed to carry out the purposes of the act. If any provision or application of this part is held invalid, the remainder or its application to other situations or persons shall not be affected.

[20.7.4.8 NMAC - Rp, 20 NMAC 7.4.106, 1-26-01; A, 11-15-06]

#### **20.7.4.9 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person from the obligation to comply with other applicable state and federal regulations.

[20.7.4.9 NMAC - Rp, 20 NMAC 7.4.107, 1-26-01]

#### **20.7.4.10 LEVELS OF CERTIFICATION FOR OPERATORS OF PUBLIC WATER SUPPLY SYSTEMS AND PUBLIC WASTEWATER FACILITIES:**

**A.** The levels of general certification for operators of public water supply systems from lowest to highest shall be:

- (1)** level 1 water supply (WS1);
- (2)** level 2 water supply (WS2);

- (3) level 3 water supply (WS3); and
- (4) level 4 water supply (WS4).

**B.** The levels of special certification for operators of public water supply systems from lowest to highest shall be:

- (1) small water (SW); and
- (2) small water advanced (SWA);

**C.** The levels of certification for water sample technicians at public water supply systems from lowest to highest shall be:

- (1) water sample technician 1 (WST1); and
- (2) water sample technician 2 (WST2).

**D.** The levels of certification for operators of distribution systems at public water supply systems from lowest to highest shall be:

- (1) distribution systems 1 (DS1);
- (2) distribution systems 2 (DS2); and
- (3) distribution systems 3 (DS3).

**E.** The levels of general certification for operators of public wastewater facilities from lowest to highest shall be:

- (1) level 1 wastewater (WW1);
- (2) level 2 wastewater (WW2);
- (3) level 3 wastewater (WW3); and
- (4) level 4 wastewater (WW4).

**F.** The levels of special certification for operators of public wastewater facilities from lowest to highest shall be:

- (1) small wastewater (SWW); and
- (2) small wastewater advanced (SWWA).

**G.** The levels of certification for wastewater laboratory technicians at public wastewater facilities from lowest to highest shall be:

- (1) wastewater laboratory technician 1 (WWLT1);
- (2) wastewater laboratory technician 2 (WWLT2); and
- (3) wastewater laboratory technician 3 (WWLT3).

**H.** The levels of certification for operators of collection systems at public wastewater facilities from lowest to highest shall be:

- (1) collection systems 1 (CS1); and
- (2) collection systems 2 (CS2).

[20.7.4.10 NMAC - Rp, 20 NMAC 7.4.109 - 110, 1-26-01; A, 11-15-06]

**20.7.4.11 CLASSIFICATION OF PUBLIC WATER SUPPLY SYSTEMS AND PUBLIC WASTEWATER FACILITIES:**

**A.** Public water supply systems and public wastewater facilities are classified based on: (1) the size and type of the system or facility; (2) the capacity of the system or facility in terms of size service area and number of users served; (3) the type and character of the water or wastewater to be treated; and (4) the physical conditions affecting the treatment plants, collection systems and distribution systems.

**B.** Public water supply systems and public wastewater facilities are classified in accordance with the requirements of 20.7.4.12 NMAC and 20.7.4.13 NMAC.

[20.7.4.11 NMAC - Rp, 20 NMAC 7.4.111, 1-26-01; A, 11-15-06]

**20.7.4.12 PUBLIC WATER SUPPLY SYSTEMS:**

**A.** In order to operate the various types of treatment processes at public water supply systems, the indicated level of certification shall be required:

Type of Treatment Process	Population Served				
	25 to 500	501 to 5,000	5,001 to 10,000	10,001 to 20,000	20,000+
Filtration (sand, gravity)	SWA	WS3	WS3	WS3	WS4
Coagulation, sedimentation, filtration	SWA	WS3	WS3	WS4	WS4
Chemical precipitation (Mn, Fe, softening)	SWA	WS3	WS3	WS4	WS4
Aeration	SW	WS2	WS3	WS3	WS4

Odor and taste control (activated carbon)	SW	WS2	WS3	WS3	WS4
Chemical addition (stabilization)	SW	WS2	WS2	WS3	WS4
Pressure filtration	SWA	WS2	WS2	WS3	WS4
Ion exchange (softening, defluoridation)	SWA	WS2	WS3	WS3	WS4
Chlorination	SW	WS2	WS2	WS3	WS4
Fluoridation	SW	WS2	WS2	WS3	WS4
Arsenic removal	SWA	WS3	WS3	WS3	WS4
Radionuclide removal	SWA	WS3	WS3	WS3	WS4
Special, such as desalinization	SWA	WS4	WS4	WS4	WS4
Production, ground water only	SW	WS1	WS2	WS3	WS4

**B.** In order to operate various types of distribution systems at public water supply systems, the indicated level of certification shall be required:

Type of Distribution Systems	Population Served				
	25 to 500	501 to 5,000	5,001 to 10,000	10,001 to 20,000	20,000+
Distribution of treated surface water	SW	DS2	DS2	DS2	DS3
Distribution of chlorinated groundwater	SW	DS2	DS2	DS2	DS3
Distribution of unchlorinated groundwater	SW	DS1	DS2	DS2	DS3

**C.** In order to perform the various types of water sampling at public water supply systems after January 1, 2008, the indicated level of certification shall be required:

Type of Water Sampling	Population Served				
	25 to 500	501 to 5,000	5,001 to 10,000	10,001 to 20,000	20,000+
Microbiology	SW or WST1	WST1	WST1	WST1	WST1
Chemical and Radiological	WST2	WST2	WST2	WST2	WST2

[20.7.4.12 NMAC - Rp, 20 NMAC 7.4.112, 1-26-01; A, 11-15-06]

### 20.7.4.13 PUBLIC WASTEWATER FACILITIES:

**A.** In order to operate the various types of treatment processes at public wastewater facilities, the indicated level of certification shall be required:

Type of Treatment Process	Population Served
---------------------------	-------------------

	25 to 500	501 to 5,000	5,001 to 10,000	10,001 to 20,000	20,000+
Raw wastewater lagoons	SWW	WW1	WW1	WW1	WW1
Aerated lagoons	SWW	WW2	WW2	WW2	WW2
Primary treatment	SWW	WW2	WW2	WW2	WW2
Primary treatment and oxidation ponds	SWW	WW2	WW2	WW2	WW2
Secondary treatment, trickling filter	SWW	WW2	WW3	WW3	WW4
Secondary treatment, aeration	SWWA	WW3	WW3	WW4	WW4
Physical-chemical treatment processes	SWWA	WW3	WW3	WW3	WW4
Advanced waste treatment process	SWWA	WW3	WW4	WW4	WW4
Phosphorous and nitrogen removal	SWWA	WW3	WW3	WW4	WW4

**B.** In order to operate collection systems at the various sizes of public wastewater facilities, the indicated level of certification shall be required:

Population Served	25 to 500	501 to 5,000	5,001 to 10,000	10,001 to 20,000	20,000+
Level of Certification	SWW	CS1	CS1	CS2	CS2

**C.** In order to perform wastewater analysis for regulatory compliance at public wastewater facilities after January 1, 2011, the indicated level of certification shall be required:

Level of Certification Needed	Type of Methodology Performed
WWLT1	Analyses involving colorimetry and commercially prepared reagents, including but not limited to Dissolved Oxygen (DO) and pH by probe, and commercially available test kits.

<p style="text-align: center;">WWLT2</p>	<p>WWLT1 plus analyses involving other specific ion electrodes, titration, gravimetry, microbiology, media and standards preparation, including but not limited to Biochemical Oxygen Demand (BOD), fecal coliform, E.coli, residuals (Total Suspended Solids (TSS), Total Volatile Solids (TVS), Volatile Suspended Solids (VSS), etc.), Total Residual Chlorine (TRC) by titration, and Dissolved Oxygen by the Winkler method.</p>
<p style="text-align: center;">WWLT3</p>	<p>WWLT1 and WWLT2 plus analyses involving digestion, distillation, spectrophotometry, chromatography, reagents and standards preparation, live organisms, including but not limited to nitrogen (Nitrate (NO<sub>3</sub>), Ammonium (NH<sub>4</sub>), Total Kjeldahl Nitrogen (TKN)), trace metals, anions, and whole effluent toxicity.</p>
<p>SWW, SWWA, WW1, WW2, WW3, WW4, WWLT1, WWLT2 or WWLT3</p>	<p>TRC by the N-diethyl-p-phenylene-diamine (DPD) method, pH, Temperature and DO by probe.</p>

[20.7.4.13 NMAC - Rp, 20 NMAC 7.4.113, 1-26-01; A, 11-15-06; A, 1-15-11]

**20.7.4.14 LESSER INCLUDED CERTIFICATIONS:**

**A.** An operator holding a SWA certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SW certification.

**B.** An operator holding a SWWA certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SWW certification.

**C.** An operator holding a WS1 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SW, WST1 and DS1 certification.

**D.** An operator holding a WS2 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SW, WS1, WST1, WST2, DS1 and DS2 certification.

**E.** An operator holding a WS3 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SW, SWA, WS1, WS2, WST1, WST2, DS1, DS2 and DS3 certification.

**F.** An operator holding a WS4 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SW, SWA, WS1, WS2, WS3, WST1, WST2, DS1, DS2 and DS3 certification.

**G.** An operator holding a WW1 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SWW and CS1 certification.

**H.** An operator holding a WW2 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SWW, WW1, WWLT1, CS1 and CS2 certification.

**I.** An operator holding a WW3 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SWW, SWWA, WW1, WW2, WWLT2, CS1 and CS2 certification.

**J.** An operator holding a WW4 certification is certified to perform any activity or function or make any process control or system integrity decision which requires a SWW, SWWA, WW1, WW2, WW3, WWLT2, CS1 and CS2 certification.

[20.7.4.14 NMAC - N, 11-15-06; A, 1-15-11]

#### **20.7.4.15 MINIMUM NUMBER OF CERTIFIED OPERATORS:**

**A.** A public wastewater facility or public water supply system shall provide the minimum number of certified operators needed to operate the system or facility to protect human health, public welfare or the environment.

**B.** If the department determines a public wastewater facility or public water supply system is in violation of Subsection A of this section, the department may determine the minimum number of certified operators needed for the public wastewater facility or public water supply system. The determination shall be made in writing and delivered by certified mail. Violation of the department determination shall be considered a violation of the rule.

**C.** In determining the minimum number of certified operators needed to operate a public wastewater facility or public water supply system in compliance with Subsection A of this section, the department shall consider the following criteria:

- (1) current compliance with applicable state and federal regulations;
- (2) historical compliance with applicable state and federal regulations;
- (3) actual discharge/production compared to design capacity;
- (4) availability of redundant facilities;
- (5) geographic area served by the public wastewater facility or public water supply system;
- (6) level of automation;
- (7) staffing plan;
- (8) capacity assessment findings;
- (9) sanitary survey deficiencies;
- (10) mechanical reliability; and
- (11) currency of federally required vulnerability assessments and risk management plans.

[20.7.4.15 NMAC - N, 2/2/09]

#### **20.7.4.16 CODE OF PROFESSIONAL CONDUCT:**

**A.** This code expresses in general terms the level of professional conduct expected of certified operators in the state of New Mexico. This code of professional conduct is intended to guide the actions of certified operators and depends upon the integrity of each certified operator to conduct themselves in a responsible and straightforward manner in operating public water supply systems and public wastewater facilities.

**B.** All certified operators are charged with understanding this code of professional conduct and are expected to be familiar with the provisions of these rules and the utility operator certification regulations. Failure to follow the code of professional conduct shall be considered gross incompetence by the department. The department shall, following notification of the certified operator, first seek the advisement of the utility operators certification advisory board prior to any application of enforcement made pursuant to this code of professional conduct.

**C. The certified operator shall:**

- (1)** protect the safety, health, and welfare of the public in the performance of the operator's duties;
- (2)** report to the proper authority or the department as necessary any conduct that would endanger the safety, health, and welfare of the public in regards to the operation of a public water supply system or public wastewater facility;
- (3)** submit objective and truthful information in all reports, statements, and testimony as required by state and federal law;
- (4)** conscientiously and proficiently operate and maintain public water supply systems and public wastewater facilities;
- (5)** act honestly, responsibly, ethically, and lawfully in a manner that enhances the reputation of the profession;
- (6)** avoid any conflict of interest that could influence the operator's professional judgment and promptly report any such conflict of interest to the operator's employer as necessary; and
- (7)** not falsify any academic or professional qualifications and not misrepresent such qualifications to the operator's employer, the department, or any member of the public.

[20.7.4.16 NMAC - N, 1-17-17]

**20.7.4.17-20.7.4.19 [RESERVED]**

**20.7.4.20 CERTIFICATION GENERAL PROVISIONS:**

**A.** It is unlawful to operate or allow the operation of a public water supply system or public wastewater facility unless the system or facility is operated by or under the supervision of a certified operator who meets or exceeds the appropriate level of certification required to operate the system or facility.

**B.** Separate certification is required for the operation of public water supply systems and public wastewater facilities.

**C.** The name(s) of the certified operator(s) employed by a public water supply system or public wastewater facility must be on file at all times with the department. A certified operator may be replaced with another certified operator of the required level at any time. The owner shall notify the department in writing of the name of the new certified operator within thirty days after the replacement of the certified operator.

D. The department may issue certifications restricted to distribution systems or collection systems.

[20.7.4.20 NMAC - Rp, 20 NMAC 7.4.200, 1-26-01; A, 11-15-06]

**20.7.4.21 REQUIREMENTS FOR APPLICATION FOR CERTIFICATION:**

A. Each applicant for certification as a certified operator shall:

(1) complete an application on forms furnished by the department; applications shall be submitted to the department not later than thirty days prior to the date of the examination;

(2) submit evidence that the applicant has reached the age of majority;

(3) pay a nonrefundable examination application fee, in advance, to the department; the examination application fee for certification as a SW, SWA, SWW, SWWA, WST1, WST2 and WWLT1 shall be \$25.00; the examination application fee for certification as a WS1, WS2, WS3, WS4, WW1, WW2, WW3, WW4, WWLT2, WWLT3, CS1, CS2, DS1, DS2 and DS3 shall be \$30.00;

(4) successfully meet the educational, experience and training requirements stipulated in 20.7.4.22 NMAC; all training programs must be approved by the department, and the department shall assign the number of training credits for each approved training program; and

(5) successfully pass the written examination for the level of certification being applied for.

B. Written examinations for certification shall be scheduled at such times and locations as the department deems appropriate. Written examinations shall be used in determining skill, knowledge, ability and judgment of the applicant. All written examinations will be graded and the applicants notified of the results. Examination papers will not be returned to the applicant, but may be reviewed by the applicant at the department.

[20.7.4.21 NMAC - Rp, 20 NMAC 7.4.201, 1-26-01; A, 11-15-06]

**20.7.4.22 MINIMUM REQUIREMENTS FOR CERTIFICATION:**

A. The minimum requirements for each level of certification are:

(1) SW, SWA, SWW, SWWA, WS1, WW1, WWLT1, DS1 and CS1 certification require high school graduation, or general equivalency diploma, one year of experience and successful completion of ten training credits;

**(2)** WS2, WW2, WWLT2, DS2 and CS2 certification require high school graduation, or general equivalency diploma, two years of experience and successful completion of thirty training credits;

**(3)** WS3, WW3, WWLT3 and DS3 certification require high school graduation, or general equivalency diploma, four years of experience and successful completion of fifty training credits;

**(4)** WS4 and WW4 certification require high school graduation, or general equivalency diploma, one year's experience, as appropriate, as a WS3 and WW3 certificate holder and successful completion of eighty training credits;

**(5)** WST1 certification requires high school graduation, or general equivalency diploma, and successful completion of five training credits;

**(6)** WST2 certification requires high school graduation, or general equivalency diploma, and successful completion of ten training credits.

**B. Substitutions.**

**(1)** In no case shall the actual experience be less than one year for any level except as in Subparagraph (d) of Paragraph (2) of Subsection B of this section.

**(2)** Education may be substituted for the basic requirements or used for training credits as follows. In no case may the same education serve both as a substitution for experience and as training credits except as provided in this section.

**(a)** One year of additional experience may be substituted for the high school graduation or general equivalency diploma requirement for all levels of certification except level 4.

**(b)** No more than one year (30 semester hours) of successfully completed college education in a non-related field may be substituted for an additional six months of the required experience.

**(c)** One year of an approved vocational school in the water and/or wastewater field may be substituted for only one additional year of the required experience.

**(d)** An associate's degree for a two-year program in an approved school in the water and/or wastewater field and six months of actual experience in that field (which may be accrued before, during, or after the school program) may be substituted for the requirements of any level up to and including level 2. An associate's degree for a two-year program in an approved school in the water and/or wastewater field and twelve months of actual experience in that field (which may be accrued before, during, or after the school program) may be substituted for the requirements of a level 3.

(e) Completion of at least three years of actual experience in the water and/or wastewater field plus high school diploma or equivalent, plus 15 semester hours of successfully completed college education directly related to the water or wastewater field may be substituted for any level up to and including level 3.

(f) A bachelor's degree for a major directly related to the water or wastewater field plus two years of actual experience in that field may be substituted for any level up to and including level 3.

(3) Full time water and wastewater laboratory experience may be substituted for operator experience in a respective field at a rate of 25 percent of the actual experience held.

[20.7.4.22 NMAC - Rp, 20 NMAC 7.4.202, 1-26-01; A, 11-15-06]

#### **20.7.4.23 TEMPORARY CERTIFICATION:**

A. If, after reasonable time and effort by an owner, a qualified operator cannot be employed, the system or facility may apply for temporary certification for the operator of a system or facility. In support of the application, the system or facility shall submit documentation demonstrating that it cannot employ a qualified operator and a schedule of compliance that includes the actions the system or facility will take to employ a certified operator, the date by which the system or facility will employ a certified operator, and a contingency plan that outlines the actions to be taken if the system's or facility's schedule fails to result in the employment of a certified operator.

B. A temporary certificate may be issued to an individual for a period not to exceed six months.

C. A temporary certificate may be extended to a maximum of 18 months if the operator is involved in a training program that will qualify the operator for the required level in that period.

D. An extension to the six-month temporary certification will require prior approval of a training program to ensure coverage of areas that are specific to the system, facility or individual's knowledge and skills.

[20.7.4.23 NMAC - Rp, 20 NMAC 7.4.203, 1-26-01; A, 10-17-01; A, 11-15-06]

#### **20.7.4.24 CERTIFICATION WITHOUT EXAMINATION:**

A. Certificates shall be issued without an examination to persons who, on July 1, 1993, were operators of a system or facility serving under 2,500 persons. Applications for certification under this subsection must have been made on or before December 1, 1993.

(1) Persons making application under this subsection must meet the basic requirements for certification outlined in 20.7.4.22 NMAC.

(2) Certificates issued under this subsection will be restricted to the particular system or facility for which the applicant is employed as it existed on July 1, 1993. Major changes in the type of treatment employed, or the size of the population served, that would significantly affect the operation of the system or facility shall cause any certificate issued under this subsection to become invalid. The limitations of any certificate issued under this subsection will be printed thereon.

(3) The department may deny any application for certification under this subsection if, in the opinion of the department, approval of the application could adversely affect the health and safety of the public or the environment.

(4) Application for certification under this subsection must be accompanied by a \$30.00 fee per certificate requested, payable to the department.

**B.** The department may issue certificates, at an equivalent level of certification, without examination to applicants who hold valid certificates or licenses issued by any state, territory, or foreign jurisdiction, provided that the requirements for issuance of such certificates or licenses are, in the opinion of the department, equal to or higher than those set forth in this part. Application for certification under this provision must be accompanied by a \$30.00 fee per certificate requested, payable to the department.

[20.7.4.24 NMAC - Rp, 20 NMAC 7.4.204, 1-26-01; A, 11-15-06]

#### **20.7.4.25 RENEWAL OF CERTIFICATES:**

**A.** All initial certifications shall expire on the last day of the certificate holder's birth month following the third anniversary of certification. All renewals shall be for three years. A renewal fee will be payable to the department for each renewal. Renewal fees shall be paid for each individual certification and shall be in accordance with the following fee schedule.

(1) The renewal fee for SW, SWA, SWW and SWWA certifications shall be \$20.00.

(2) The renewal fee for WS1, WS2, WW1, WW2, WST1, WST2, WWLT1, WWLT2, WWLT3, CS1, CS2, DS1 and DS2 certifications shall be \$25.00.

(3) The renewal fee for WS3, WW3, WS4, WW4 and DS3 certifications shall be \$30.00.

**B.** The department shall mail each holder of a certificate a renewal notice at least thirty days prior to the expiration date, mailed to his last address of record. Failure to

receive such notice shall not relieve the holder of his responsibility to apply for renewal prior to the expiration date.

**C.** Each certificate issued under 20.7.4.24 NMAC must be renewed at three-year intervals.

**D.** Renewal will require that each certificate holder be credited with having obtained thirty training credits in the three-year period preceding the date on which renewal application is due, except for renewals of WST1 certifications which require five hours of training credits and WST2 certifications which require ten hours of training credits. The thirty training credits must include at least ten training credits for approved training in the operation and maintenance of the same type of public water supply system or public wastewater facility as each certificate being renewed.

[20.7.4.25 NMAC - Rp, 20 NMAC 7.4.205, 1-26-01; A, 10-17-01; A, 11-15-06]

#### **20.7.4.26 LAPSED CERTIFICATES:**

**A.** Certificates, which have not been renewed in accordance with 20.7.4.25 NMAC, will be considered lapsed and invalid.

**B.** Lapsed certificates may be reinstated without penalty upon application within thirty days of the date of expiration. A lapsed certificate which has not been reinstated within the thirty-day period may be reinstated within one year of expiration date upon reapplication and payment of a \$10.00 per month penalty fee for each month or portion thereof beyond the expiration date. Reinstatement of lapsed certificate will also require satisfaction of all the renewal requirements of 20.7.4.25 NMAC.

**C.** If a lapsed certificate has not been reinstated within one year of its expiration date, re-examination will be required for reinstatement. All applicants for re-examination must meet the requirements of 20.7.4.21 and 20.7.4.22 NMAC of this part.

[20.7.4.26 NMAC - Rp, 20 NMAC 7.4.206, 1-26-01; A, 11-15-06]

#### **20.7.4.27 SUSPENSION AND REVOCATION:**

**A.** The department may suspend or revoke any or all certificate(s) held by a certified operator as provided for in Section 61-33-7 of the act.

**B.** In the event of a contemplated suspension or revocation of a certificate, the department shall notify the certificate holder by registered mail of the reason for such action. Within 20 days after receipt of the notice, the certificate holder may request in writing that a hearing be held by the department.

**C.** When the department contemplates the suspension or revocation of a certificate, the department shall serve upon the certificate holder a written notice containing a statement:

(1) that the department has sufficient evidence which, if not rebutted or explained, will justify the department in suspending or revoking the certificate;

(2) indicating the general nature of the evidence;

(3) that unless the certificate holder within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the department and containing a request for a hearing, the department will take the contemplated action; and

(4) calling the certificate holder's attention to their rights under the Uniform Licensing Act, NMSA 1978, Section 61-1-8.

**D.** If the certificate holder does not mail a request for a hearing within the time and in the manner required by this section, the department may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

**E.** If the certificate holder does mail a request for a hearing as required by this section, the department shall, within twenty days of receipt of such request, notify the certificate holder of the time and place of hearing, the name or names of the person or persons who shall conduct the hearing for the department and the statutes and regulations authorizing the department to take the contemplated action, which hearing shall be held not more than sixty nor less than fifteen days from the date of service of such notice.

**F.** Re-issuance of a revoked certificate shall be accomplished by reapplication as provided for in an original certificate. Any person whose certificate is revoked shall be ineligible for admission to any examination for certification for the entire period of revocation as set by the department.

**G.** A certificate may be suspended for a specified period of time to be determined by the department.

[20.7.4.27 NMAC - Rp, 20 NMAC 7.4.207, 1-26-01; A, 11-15-06]

#### **20.7.4.28 ELIGIBILITY FOR OPERATOR TRAINING GRANT FUNDS:**

Each applicant for operator training grant funds administered by the department shall.

**A.** Submit evidence satisfactory to the department that the recipient of the training:

(1) is a person who is a candidate for employment as a "certified operator" as defined under 20.7.4.7 NMAC of this part; or

(2) is a person in a supervisory role responsible for the management of a public water supply system or public wastewater facility; or

(3) is a person who is or will be involved in the instruction of operators.

**B.** Submit evidence satisfactory to the department that not less than ten percent of the training cost is provided by the employer of the utility operator; the cost of per diem and mileage may not be paid from grant funds but may be accounted in determining the training cost provided by the employer; and

**C.** Supply any other pertinent information deemed necessary by the department.

[20.7.4.28 NMAC - Rp, 20 NMAC 7.4.208, 1-26-01; A, 11-15-06]

#### **20.7.4.29 UTILITY OPERATORS CERTIFICATION ADVISORY BOARD:**

**A.** Pursuant to Section 61-33-4(G) of the act, a board shall be appointed by the commission to function with the commission to establish qualifications of operators, classify systems and facilities, adopt rules and advise the department on the administration of the act.

**B.** The commission shall properly notify the board of all matters brought before the commission to which the act is applicable.

**C.** The board shall consist of seven certified operators. The commission shall also appoint two certified operators to serve as alternates to board members in their absence. All alternates appointed prior to the effective date of this part will be allowed to serve out the remainder of their three-year terms.

**D.** Appointments to the board shall be for three-year terms. The commission shall appoint new board members at its first meeting of each fiscal year. The terms shall overlap so that no more than three terms shall expire in any one year.

**E.** At the first meeting of each fiscal year, the board shall elect from its membership a chairman, a vice chairman, and two members to sit as commission members on all matters to which the act is applicable.

**F.** A quorum shall consist of a least four members.

**G.** The duties of the board shall include:

(1) reviewing proposed rules, regulations and guidelines regarding the administration of the act for action by the commission including:

(a) the basis for classifying public water supply systems and public wastewater facilities;

(b) qualifications for the various classifications of operators;

(c) proposing criteria for the evaluation of the minimum number of certified operators needed to operate a public water supply system or public wastewater facility; and

(d) developing criteria for the classification of wastewater laboratory technicians based on the complexity of analytical work performed;

(2) reviewing proposed examinations for each level and type of certification;

(3) proposing criteria for the evaluation of applicant qualifications;

(4) reviewing applications for issuance of certificates by reciprocity or endorsement;

(5) proposing criteria for the evaluation of proposed training programs;

(6) making recommendations to the commission for replacement when a board vacancy occurs; and

(7) performing any other function in regard to the act as directed by the commission.

H. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. The commission may remove any member of the board for neglect of any duty required by law, for incompetence or for unprofessional conduct and shall remove any board member who violates any provision of the act. The commission shall fill any vacancies on the board.

[20.7.4.29 NMAC - Rp, 20 NMAC 7.4.209, 1-26-01; A, 11-15-06]

## **PART 5: WASTEWATER FACILITY CONSTRUCTION LOANS**

### **20.7.5.1 ISSUING AGENCY:**

Water Quality Control Commission.

[20.7.5.1 NMAC - Rp, 20.7.5.1 NMAC, 12/16/2015]

### **20.7.5.2 SCOPE:**

This part applies to financial assistance and actions pursuant to the Wastewater Facility Construction Loan Act.

[20.7.5.2 NMAC - Rp, 20.7.5.2 NMAC, 12/16/2015]

**20.7.5.3 STATUTORY AUTHORITY:**

Wastewater Facility Construction Loan Act, Sections 74-6A-1 to 15 NMSA 1978, as amended.

[20.7.5.3 NMAC - Rp, 20.7.5.3 NMAC, 12/16/2015]

**20.7.5.4 DURATION:**

Permanent.

[20.7.5.4 NMAC - Rp, 20.7.5.4 NMAC, 12/16/2015]

**20.7.5.5 EFFECTIVE DATE:**

December 16, 2015, unless a later date is cited at the end of a section.

[20.7.5.5 NMAC - Rp, 20.7.5.5 NMAC, 12/16/2015]

**20.7.5.6 OBJECTIVE:**

The objective of this part is to establish a program to provide low cost financial assistance to state agencies, local authorities, interstate agencies, and other qualified borrowers for the acquisition, construction, or modification of wastewater facilities or other eligible projects or activities pursuant to the act.

[20.7.5.6 NMAC - Rp, 20.7.5.6 NMAC, 12/16/2015; A, 09/29/2018]

**20.7.5.7 DEFINITIONS:**

As used in this part.

**A. "Act"** means the Wastewater Facility Construction Loan Act.

**B. "Administrative fee"** means a fee assessed and collected by the department from the qualified borrower on each loan and expressed as a percentage per year on the outstanding principal amount of the loan, payable by the borrower on the same date that principal and interest on the loan are due, for deposit in the clean water administrative fund.

**C. "Base rate"** means the highest loan interest rate.

**D. "Clean Water Act"** means the federal Clean Water Act of 1977 and its subsequent amendments or successor provisions.

**E. "Clean water state revolving loan administrative fund"** means a separate fund created outside the wastewater facility construction loan fund/clean water state revolving fund designated solely for the costs of administering the clean water state revolving loan fund, in accordance with the Clean Water Act. Money remaining in the fund at the end of any fiscal year shall not revert to the general fund but shall accrue to the loan administrative fund and shall be used explicitly for the purpose above.

**F. "Commission"** means the water quality control commission.

**G. "Department"** means the New Mexico environment department.

**H. "Eligible project"** means any project or activity that is eligible for funding assistance under Section 603(c) of the Clean Water Act, Section 1383 of Title 33 of the United States Code, as of January 1, 2018, including a wastewater facility project, a nonpoint source water pollution control project, and a watershed project that meet the criteria of the Clean Water Act.

**I. "Final loan agreement"** means an agreement executed by the qualified borrower and the department upon completion of the project in order to document the permanent financing of the final loan amount.

**J. "Final loan amount"** means the aggregate amount of the principal disbursed by the department to the qualified borrower during the construction of the eligible project, together with accrued and unpaid interest on the aggregate principal thereof.

**K. "Financial assistance"** means loans, combination loan/grants, the purchase or refinancing of existing state agency or local political subdivision obligations, loan guarantees, credit enhancement techniques to reduce interest on loans and bonds, bond insurance and bond guarantees or any combination of these purposes.

**L. "Force account construction"** means construction performed by the employees of a local authority rather than through a contractor.

**M. "Fund"** means the wastewater facility construction loan fund established in Section 74-6A-4 NMSA 1978 of the act.

**N. "Local authority"** means a municipality, intermunicipal agency, county, incorporated county, mutual domestic water consumers association as defined by the Sanitary Projects Act, sanitation district, water and sanitation district or any similar district, recognized Indian tribe, or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection.

**O. "Payment"** means a disbursement from the fund directly to the qualified borrower.

**P. "Priority list"** means the list of eligible projects ranked according to the priority system pursuant to the act.

**Q. "Priority system"** means the system approved by the commission for ranking eligible projects for which financial assistance applications have been received pursuant to the act.

**R. "Qualified borrower"** means a creditworthy borrower with an identified and verifiable repayment source that is eligible for funding pursuant to the Clean Water Act, as of January 1, 2018, including a state agency, an interstate agency, and a local authority.

**S. "State agency"** means an agency or department of the executive branch of government.

**T. "Wastewater facility"** means a publicly owned system for treating or disposing of sewage or wastes either by surface or underground methods, including any equipment, plant, treatment works, structure, machinery, apparatus or land in any combination, that is acquired, used, constructed or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes, or for the final disposal of residues resulting from the treatment of water or wastes, such as pumping and ventilating stations, facilities, plants and works, outfall sewers, interceptor sewers and collector sewers, and other real or personal property and appurtenances incidental to their use or operation.

[20.7.5.7 NMAC - Rp, 20.7.5.7 NMAC, 12/16/2015; A, 9/29/2018; A, 10/27/2020]

#### **20.7.5.8 CONSTRUCTION:**

This part shall be liberally construed to effectuate the purposes of the act. If any provision or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[20.7.5.8 NMAC - Rp, 20.7.5.8 NMAC, 12/16/2015]

#### **20.7.5.9 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person from the obligation to comply with other applicable state and federal regulations.

[20.7.5.9 NMAC - Rp, 20.7.5.9 NMAC, 12/16/2015]

#### **20.7.5.10 ELIGIBILITY REQUIREMENTS FOR FINANCIAL ASSISTANCE:**

**A.** Only qualified borrowers will be eligible for financial assistance from the fund.

**B.** The project must appear on the current priority list at the time of the financial assistance award.

**C.** To be eligible for financial assistance from the fund, qualified borrowers shall:

(1) meet the requirements of financial capability set by the department to assure sufficient revenue to operate and maintain the facility for its useful life, if applicable, and to repay the financial assistance;

(2) agree to operate and maintain the eligible project so that the project will function properly over its structural and material design life, if applicable;

(3) agree to maintain separate project accounts, to maintain project accounts properly in accordance with generally accepted accounting principles and to conduct an audit of the project's financial records;

(4) agree to provide a written assurance prior to construction, signed by an attorney, or other authorized representative, that the qualified borrower has or will acquire proper title, easements and rights-of-way to the property upon or through which the eligible project proposed for funding is to be constructed or extended;

(5) require the contractor of the eligible project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978 and its subsequent amendments and successor provisions;

(6) provide a written notice of project completion; and

(7) provide such information to the department as required in order to comply with the provisions of the Clean Water Act and state law.

**D.** Financial assistance shall be made only to qualified borrowers that establish one or more dedicated sources of revenue to repay the money received from the commission and to provide for operation, maintenance, and equipment replacement expenses.

[20.7.5.10 NMAC - Rp, 20.7.5.10 NMAC, 12/16/2015; A, 09/29/2018]

#### **20.7.5.11 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT:**

**A.** Applications for financial assistance shall be made by the qualified borrower on a form specified by the department.

**B.** Applicants for financial assistance shall provide the department with:

- (1) a description of the scope of work of the project;
- (2) a cost estimate of the project; and
- (3) a target date for initiation of construction.

**C.** The department will review the application for eligibility, and technical merits. The department will notify the qualified borrower of any inadequacies in the submittal. The qualified borrower may correct any inadequacies and resubmit the application.

**D.** Upon determination by the department that an application is eligible and complete, the application will be ranked utilizing the priority system and will be placed on the priority list.

[20.7.5.11 NMAC - Rp, 20.7.5.11 NMAC, 12/16/2015; A, 09/29/2018]

#### **20.7.5.12 PRIORITY SYSTEM AND PRIORITY LIST:**

**A.** Financial assistance shall only be made to qualified borrowers on the project priority list developed in accordance with the priority system as adopted by the commission.

**B.** The commission shall adopt a system for the ranking of projects for financial assistance.

**C.** The department shall prepare a priority list of applicants for financial assistance based on the priority system approved by the commission.

[20.7.5.12 NMAC - Rp, 20.7.5.12 NMAC, 12/16/2015; A, 09/29/2018]

#### **20.7.5.13 ELIGIBLE AND INELIGIBLE FINANCIAL ASSISTANCE ITEMS:**

**A.** Eligible items for financial assistance made from state-only funds include but are not limited to the costs of engineering reports, contracted engineering design, inspection of construction, special engineering services, start-up services, contracted construction, materials purchased or equipment leased for force account construction, land or acquisition of existing facilities. For financial assistance made from federal funds, eligible items are those identified pursuant to the Clean Water Act.

**B.** Financial assistance shall be made only to qualified borrowers that employ or contract with a New Mexico licensed professional engineer to provide and be responsible for engineering services on the project. Such services include, but are not limited to engineering reports, construction contract documents, supervision of construction, and start-up services.

**C.** Ineligible for financial assistance made with state-only funds items include:

- (1) the costs of water rights;
- (2) administrative costs;
- (3) fulfillment or partial fulfillment of requirements made of a subdivider by the provisions of the Land Subdivision Act or the New Mexico Subdivision Act;
- (4) force account construction; and
- (5) administrative fees.

[20.7.5.13 NMAC - Rp, 20.7.5.13 NMAC, 12/16/2015; A, 09/29/2018]

#### **20.7.5.14 ADMINISTRATION OF THE LOAN PROGRAM AND FUND:**

**A.** The loan program and fund is administered by the department as agent for the commission. Pursuant to Paragraph 10 of Subsection A of Section 74- 6A-9 NMSA 1978 of the act, the department shall develop new, and implement existing, policies, procedures and guidelines necessary and appropriate to implement the provisions of the act and the Clean Water Act.

**B.** The necessary administrative expenses required of the board, the commission, and the department to implement the provisions of the act will be appropriated from the fund.

**C.** The department may impose and collect a fee from each qualified borrower that receives financial assistance from the fund, which fee shall be deposited into the clean water state revolving loan administrative fund, and used solely for the costs of administering the fund as follows:

(1) an administrative fee may be assessed on all financial assistance provided after January 1, 1996, and will be assessed on the refinancing of financial assistance after October 1, 1993;

(2) if an administrative fee is assessed pursuant to Paragraph (1) of Subsection C of 20.7.5.14 NMAC above, the total administrative fee assessed shall not exceed five percent of the total loan amount; the fee will be assessed on the outstanding principal balance of the loan payable; these fees are due on the same dates the payment of principal and interest on the loans are due, and shall be charged to each borrower, unless waived from the requirement by the department; the department may determine, establish and revise from time to time, the precise amount of the administrative fee to be charged, based on the projected costs of administering the program and other revenue available to pay such costs; the administrative fee payments must be deposited in the clean water state revolving loan administrative fund as they are received; interest on the clean water state revolving loan administrative fund shall be transferred to the administrative fund as it is received; and

**(3)** an administrative fee of two percent of the unpaid principal balance of the refinanced loan will be assessed against the qualified borrower and shall be paid into the clean water state revolving loan administrative fund at the time of closing of the refinancing.

**D.** Financial assistance agreements will be prepared by the department and executed by the qualified borrower for the project which can be financed with available balances in the fund.

**E.** Repayment of the loan portion of the financial assistance shall begin no later than one year after completion of the project for which the loan was executed and shall be repaid in full no later than 30 years after completion of the project. All principal and interest on loan payments shall be deposited in the fund.

**F.** The interest rate for the loan portion of the financial assistance shall be the rate in effect when the loan agreement is executed. The interest rate shall not change during the term of the financial assistance unless refinanced in accordance with Subsection J. of 20.7.5.14 NMAC.

**G.** At the beginning of each state fiscal year, the commission may determine a base rate for the state fiscal year which is less than or greater than the current base rate.

**H.** Local authority interest rates and interest rate conditions shall be determined by the department and reported to the commission at the beginning of each state fiscal year.

**I.** The interest rate for a state agency shall be the lowest interest rate available above zero percent in Subsection H of Section 14 of 20.7.5 NMAC.

**J.** The interest rate for all other eligible borrowers will be the base rate at the time the loan agreement is executed.

**K.** A local authority may refinance the loan portion of the financial assistance if the local authority later qualifies for a reduced rate. The refinancing may only occur at or after the execution of a final loan agreement.

**L.** Financial assistance recipients shall comply with all applicable federal, state and local laws and regulations, including but not limited to:

- (1)** procurement;
- (2)** record keeping;
- (3)** accounting;
- (4)** audit and inspection;

- (5) occupational health and safety;
- (6) environmental review; and
- (7) non-discrimination.

**M.** In the event of default by the qualified borrower, the department as agent for the commission may enforce its rights by suit or mandamus or may utilize all other available remedies under state law.

[20.7.5.14 NMAC - Rp, 20.7.5.14 NMAC, 12/16/2015; A, 5/30/2017; A, 9/29/2018; A, 10/27/2020]

## **PART 6: WASTEWATER FACILITY CONSTRUCTION LOAN POLICIES AND GUIDELINES**

### **20.7.6.1 ISSUING AGENCY:**

New Mexico Environment Department.

[20.7.6.1 NMAC - Rp, 20.7.6.1 NMAC, 12/30/2015]

### **20.7.6.2 SCOPE:**

These policies, procedures and guidelines apply to all construction projects funded in-part from funds within the wastewater facilities construction loan fund.

[20.7.6.2 NMAC - Rp, 20.7.6.2 NMAC, 12/30/2015]

### **20.7.6.3 STATUTORY AUTHORITY:**

Department of Environment Act, NMSA 1978, 9-7A-6.F; Wastewater Facility Construction Loan Act, NMSA 1978, Sections 74-6A-1 to 15; and Water Quality Control Act, NMSA 1978, Sections 74-6-1 to 17.

[20.7.6.3 NMAC - Rp, 20.7.6.3 NMAC, 12/30/2015]

### **20.7.6.4 DURATION:**

Permanent.

[20.7.6.4 NMAC - Rp, 20.7.6.4 NMAC, 12/30/2015]

### **20.7.6.5 EFFECTIVE DATE:**

December 30, 2015, unless a later date is cited at the end of a section.

**A.** All references to HED 88-2 (EID) or to the New Mexico Wastewater Facility Construction Loan Fund Policies, Procedures and Guidelines in any other rule shall be construed as a reference to this part.

**B.** The amendment and replacement of HED 88-2 (EID) shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any financial assistance provided pursuant to HED 88-2 (EID).

[20.7.6.5 NMAC - Rp, 20.7.6.5 NMAC, 12/30/2015]

#### **20.7.6.6 OBJECTIVE:**

The objective of this part is to establish policies, procedures and guidelines in the administration of loans from the wastewater facility construction loan fund.

[20.7.6.6 NMAC - Rp, 20.7.6.6 NMAC, 12/30/2015]

#### **20.7.6.7 DEFINITIONS:**

As used in this part.

**A. "Administrative fee"** means a fee assessed and collected by the department from the state agency or qualified borrower on each loan with an interest greater than zero percent and expressed as a percentage per year on the outstanding principal amount of the loan, payable by the borrower on the same date that principal and interest on the loan are due, for deposit in the clean water administrative fund.

**B. "Applicant"** means a state agency or qualified borrower that meets the following criteria: (1) placement on the current fiscal year priority list, (2) financial capability to service a loan, to perform operation and maintenance, to maintain a replacement fund and debt service reserve fund, and (3) readiness to proceed.

**C. "Borrower"** means a state agency or qualified borrower whose application has been approved for eligibility and is ready to proceed to an interim loan agreement.

**D. "Commission" or "WQCC"** means the New Mexico water quality control commission.

**E. "Department" or "NMED"** means the New Mexico environment department.

**F. "Event of default"** means the borrower failed to make the complete annual payment of principal, plus interest and administrative fee when the same shall become due and payable, as identified in the repayment schedule of the final loan agreement.

**G. "Final loan agreement"** means a note issued by the borrower and the state upon completion of the project to document the permanent financing of the final loan amount in substantially the form as shown in the attachments.

**H. "Final loan amount"** means the aggregate amount of the principal disbursed by NMED to the borrower during the project, together with accrued interest on the aggregate principal thereof.

**I. "Force account"** means construction performed by the employees of a local authority rather than through a contractor.

**J. "Fund" or "SRF"** means the state water pollution control revolving fund pursuant to Title VI of the Clean Water Act.

**K. "Interim loan agreement"** means a note, in the form of a line-of-credit, issued by the borrower and the state at the beginning of the project in anticipation of the issuance of the final loan agreement upon completion of the project in substantially the form as shown in the attachments.

**L. "Loan issuance"** means execution of the final loan agreement and revised promissory note.

**M. "Local authority"** means any municipality, intermunicipal agency, county, incorporated county, water and sanitation district or any similar district, recognized Indian tribe, mutual domestic water consumers association as defined by the Sanitary Projects Act, or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection.

**N. "Operate and maintain"** means all necessary activities including replacement of equipment or appurtenances to ensure the dependable and economical function of a wastewater facility in accordance with its intended purpose.

**O. "Priority system"** means the system for ranking eligible projects for which loan applications have been received pursuant to the Wastewater Facility Construction Loan Act.

**P. "Priority list"** means the list of eligible projects ranked according to the priority system pursuant to the Wastewater Facility Construction Loan Act.

**Q. "Project"** means the planning, design, construction, repair, extension, improvement, alteration, or reconstruction of the wastewater facilities or other eligible projects as listed in the Clean Water Act by the borrower as described in the loan application.

**R. "Project completion"** means the date that the Department has procedurally determined that the project, phase, or segment is completed.

**S. "Project engineer"** means the NMED staff engineer assigned to the project.

**T. "Qualified Borrower"** means any credit worthy borrower with an identified and verifiable repayment source that is eligible for funding pursuant to the Clean Water Act.

**U. "State agency"** means an agency or department of the executive branch of government.

**V. "Wastewater facility"** means a publicly owned system for treating or disposing of sewage or wastes either by surface or underground methods, including any equipment, plant, treatment works, structure, machinery, apparatus or land in any combination, that is acquired, used, constructed or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes, or for the final disposal of residues resulting from the treatment of water or wastes, such as pumping stations, facilities, plants and works, outfall sewers, interceptor sewers and collector sewers and other real or personal property and appurtenances incidental to their use or operation. "Wastewater facility" also includes a nonpoint source water pollution control or Brownfield redevelopment project as eligible under the Clean Water Act.

[20.7.6.7 NMAC - Rp, 20.7.6.7 NMAC, 12/30/2015; A, 3/10/2020]

#### **20.7.6.8 BACKGROUND:**

The Department of Environment Act, Section 9-7A-6.D, NMSA 1978, provides authority to the secretary of environment to make and adopt reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its division. The authority for the New Mexico environment department to provide loans to eligible applicants for the construction of wastewater facilities is provided in Sections 74-6A-1 to 15 NMSA 1978, Wastewater Facility Construction Loan Act and in Sections 74-6-1 to 17 NMSA 1978, the New Mexico Water Quality Act. The water quality control commission adopted regulations pursuant to the Wastewater Facility Construction Loan Act which establish a program to provide financial assistance to state agencies, local authorities, interstate agencies, and other qualified borrowers for the acquisition, construction, or modification of wastewater facilities or other eligible projects or activities. Title VI of the Federal Clean Water Act, as amended, authorizes the U.S. environmental protection agency (EPA) to make capitalization grants to states for deposit in the wastewater facility construction loan fund (state revolving fund - SRF). "Final Initial Guidance - State Water Pollution Control Revolving Fund" was published by EPA on January 28, 1988, which represents EPA's approach to implementation of Title VI. EPA updated its approach to implementation of Title VI with the "Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act" published on January 6, 2015.

[20.7.6.8 NMAC - Rp, 20.7.6.8 NMAC, 12/30/2015; A, 3/10/2020]

#### **20.7.6.9 CONSTRUCTION:**

This part shall be liberally construed to carry out the purposes of the act. If any provision or application of this part is held invalid, the remainder or its application to other situations or persons shall not be affected.

[20.7.6.9 NMAC - Rp, 20.7.6.9 NMAC, 12/30/2015]

#### **20.7.6.10 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person from the obligation to comply with other applicable state and federal regulations.

[20.7.6.10 NMAC - Rp, 20.7.6.10 NMAC, 12/30/2015]

#### **20.7.6.11 GENERAL:**

**A.** Direct loans from the fund may be offered for up to one hundred percent of total eligible project costs under state and federal statutes and regulations, subject to availability of loan monies.

**B.** Two types of loans are available: planning/design loans and construction loans.

**(1)** Planning/design loans. The maximum repayment period is limited to five years from the date of the interim loan agreement. If the borrower receives a construction loan for the same project, the borrower will be provided the option of re-amortizing any remaining principal balance plus accrued interest and administrative fees on the planning/design loan upon completion of the construction project, or may make payments under both loans.

**(2)** Construction loans. The length of the loan repayment period will not exceed 30 years or the expected life of the project improvements, whichever is less. Loans of lesser amounts will receive a shorter repayment period depending upon the borrower's ability to service the debt in a reduced time period. The construction loan may include the cost of design and may precede the design phase of the project if the design period is relatively short and if a reasonable estimate of construction costs is available. Since the interim loan agreement is essentially a line-of-credit for planning, design, and construction of the project the borrower must agree to complete the appropriate planning requirements prior to proceeding to the design and construction phases of the project.

**C.** A long-term commitment for future funding of a phased or segmented project will not be made; although, partial or phased funding for a project (without a guarantee of future funding) may be offered when deemed necessary to meet state water quality and financial assistance objectives.

**D.** Monies in the fund shall be loaned to eligible applicants as soon as possible after the monies become available. The fund will be managed so that a reserve is held available. The amount of the reserve will be dependent on the total size of the fund, including both available and committed monies. This reserve may be used for administration of the fund, investment, and limited-purpose contingencies, including increases subject to federal and state statutes.

**E.** In the event project costs exceed the estimates in the interim loan agreement, the borrower may request that NMED consider an increase to the loan. Such request will be evaluated with respect to available uncommitted monies in the fund, financial risk of the request, and other criteria set by NMED. NMED may follow any procedure deemed appropriate under the circumstances, including renegotiation of the loan agreement in accordance with federal and state statutes.

**F.** In the event project costs are less than the estimates in the interim loan agreement, then the loan amount shall be adjusted downward by a corresponding amount at the time the final loan agreement is executed following completion of the project.

**G.** A loan shall be declared in default if the full payment is not received on the due date. Should a loan be declared in default, NMED may initiate legal action to collect past due amounts. NMED may also notify other state agencies and may take actions to preclude the borrower from receiving grant or other financial assistance from state agencies until all delinquent amounts due on the loan have been paid. In addition to these provisions, technical assistance will be provided to a borrower with a loan in default to help assess the problem and advise on corrective actions needed to bring the loan current. Should these efforts fail to produce results and the borrower fails to adhere to the prescribed payment schedule, NMED will dispatch an interdisciplinary team (representatives of the general counsel, state auditor, and local government division, as needed) to conduct a comprehensive assessment of the borrower, including, but not limited to, financial condition, management practices, fiscal capacity, economic circumstances, and violations of the terms and conditions of the legally binding final loan agreement. Upon the report of this team, NMED shall take whatever actions deemed appropriate, including court actions, to resolve the outstanding obligation.

**H.** NMED may waive or adjust any rule relative to the administration of the wastewater facility construction loan fund where it is deemed that the waiver or adjustment is in the best interest of the state and the community, and the waiver or adjustment does not violate any state or federal statute or regulation.

[20.7.6.11 NMAC - Rp, 20.7.6.11 NMAC, 12/30/2015; A, 3/10/2020]

#### **20.7.6.12 APPLICATION PROCEDURES FOR PRIORITY LIST PLACEMENT:**

**A.** The commission at 20.7.5.11 NMAC specifies loan program application procedures. Applicants for loans shall submit a complete loan application to NMED on a

form specified by NMED. Applications may be submitted at any time; although, generally an annual funding cycle is followed.

**B.** NMED shall review the applications for eligibility, technical merits, and rank the applications based on the project priority system described in 20.7.5.12 NMAC, following NMED procedures for priority system and priority list.

[20.7.6.12 NMAC - Rp, 20.7.6.12 NMAC, 12/30/2015; A, 3/10/2020]

### **20.7.6.13 PRIORITY SYSTEM AND PRIORITY LIST PROCEDURES:**

**A.** A project must be on the state priority list to receive a planning/design or construction loan. It is the policy of NMED to make loans to state agencies and qualified borrowers in order of priority on the current state priority list for loans to the extent reasonable considering the following:

- (1) willingness of an applicant to accept a loan;
- (2) financial capability of the applicant to service the loan, to perform operation and maintenance, and to maintain a debt coverage ratio as determined by NMED; and
- (3) readiness to proceed.

**B.** Procedures for developing and handling the annual priority system and priority list under the loan program generally follow existing procedures for the construction grants program which are briefly summarized here.

(1) A specific cap on an individual loan amount may be established by NMED each fiscal year so that the fund will be able to assist several communities each year. The cap may be set as a total of the loan funds available or as a specific dollar amount.

(2) This policy serves to maintain the flexibility of the fund each year by not excluding higher cost projects from participation, yet ensures that more than one worthwhile project will be funded each year.

(3) Fundable applicants will be notified by NMED following approval of the final priority list and a preplanning conference will be held with the applicant and its consulting engineer to identify the procedures and requirements which must be met prior to execution of an interim loan agreement.

[20.7.6.13 NMAC - Rp, 20.7.6.13 NMAC, 12/30/2015; A, 3/10/2020]

### **20.7.6.14 APPLICATION FOR FUNDABLE PROJECTS GUIDELINES - PROJECT PREPLANNING CONFERENCE:**

At NMED's request, a preplanning conference will be scheduled. The applicants' representatives and possibly the applicants' consulting engineers will meet with the NMED project engineers to discuss the project. Items that may be discussed are:

- A. review of SRF policies, procedures, and guidelines;
- B. enforceable requirements;
- C. eligibility of applicant;
- D. appropriate technology;
- E. user charges in relation to financial capability of the applicant being able to repay the loan;
- F. environmental impacts;
- G. procurement of A/E services;
- H. the importance of public participation; (citizen involvement will be an asset in the development of plans that reflect the needs and values of your community; informing the public early on can result in issues being resolved before delay and additional costs occur; citizen support is necessary for capital and user charge systems to fund a project); and
- I. project schedule.

[20.7.6.14 NMAC - Rp, 20.7.6.14 NMAC, 12/30/2015]

#### **20.7.6.15 GENERAL PROJECT ADMINISTRATIVE REQUIREMENTS:**

##### **A. Loan agreement.**

**(1)** An interim loan agreement will be prepared by NMED and executed by the borrower for the project which can be financed with available loan funds and which has completed requirements set by NMED pursuant to the Clean Water Act, as amended, and the New Mexico Wastewater Facility Construction Loan Act. Projects which are not ready to proceed to the interim loan agreement stage within six months of allocation of available loan funds may be bypassed by projects lower on the priority list which are ready to proceed.

**(2)** The interim loan agreement contains several conditions and certifications including:

**(a)** certification that the borrower is a legal entity with authority to execute a loan agreement by ordinance; certification that a resolution designating signatory authority has been passed;

**(b)** copies of all executed contracts, subcontracts, agreements, and related amendments entered into by the borrower prior to the interim loan agreement, but related to this project;

**(c)** request for proposals (RFP) documentation and an engineering agreement, or letter of certificate if employing staff engineers.

**B. Security interest.**

**(1)** Upon execution of an interim loan agreement with NMED for a construction project and before any proceeds of the loan are paid out to the borrower, the borrower shall execute a promissory note for the principal amount of the interim loan agreement plus interest and administrative fee on the unpaid balance at the appropriate rate per annum, and may transfer title to the property upon which the facilities are to be constructed to NMED. In lieu of, or in addition to, the transfer of title requirement, the borrower may transfer whatever interest it possesses in the property upon which facilities are to be constructed, to NMED. In either case, the value of such property or interest so transferred shall be at least equal to the amount of the loan. All such titles and interest transferred to NMED shall be secured by title insurance, if applicable, the cost of which shall be paid by the borrower. NMED shall be named as primary beneficiary of all such title insurance policies. If title insurance for the property is not applicable or is not reasonably available, as determined by NMED, then the borrower shall provide a title company's opinion on the abstract of title to the property up to the time the property was acquired by the borrower for use as a wastewater facility.

**(2)** Upon repayment of the loan, such interest or title shall be reconveyed to the borrower. Where the transfer of title or interest in the property would preclude the obtaining of federal grants, or where such transfer of title or interest is inappropriate or is prohibited by or would be in violation of existing grant-in-aid agreements, NMED may waive the requirements of transfer of title or transfer of any interest in the property, and substitute therefore such other security of sufficient value it deems necessary such as an irrevocable pledge of revenue covenant by the borrower.

**(3)** After the borrower transfers title or its interest in the property to NMED as security, the borrower shall:

**(a)** continue to insure the property;

**(b)** be liable for all taxes and assessments; and

**(c)** refrain from making major alterations that destroy the value of the security, unless NMED gives prior approval.

**C. Allowable and unallowable costs.**

**(1)** Allowable costs shall be limited to those costs which are necessary, reasonable, and directly related to the efficient achievement of the objectives of the project. Costs incurred by the borrower for work performed on the project prior to execution of the interim loan agreement, but which received NMED prior approval, may be considered as allowable costs. The borrower must justify all expenditures for which it requests a disbursement of loan funds according to accepted NMED criteria and procedures. NMED may withhold disbursement of funds and may reclaim improperly documented disbursements until the borrower provides sufficient justification.

**(2)** All unallowable costs, including but not limited to overhead charges, administrative expenses, indirect costs, and all costs of borrower's employed inspectors and noneligible construction costs shall be paid by the borrower. The administrative fee shall not be included as principal in the loans and therefore considered an unallowable cost.

**(3)** The borrower agrees that it will implement, in all respects, the project outlined in the interim loan agreement.

**(4)** The borrower agrees to make no change in the project description without first submitting a written request to NMED and obtaining NMED approval of the required change.

**D. Accounting.** Funds received by the borrower from NMED and those funds which are contributed by the borrower shall be deposited in separate bank accounts or in a separate, identifiable ledger account. In addition, the borrower shall establish and maintain accounting procedures which will ensure strict accountability for all funds received and disbursements made by the borrower in connection with the interim loan agreement. NMED shall be responsible for examining the borrower's audited financial statements in accordance with the most recent circular on audits of states, local governments and non-profit organizations as published by the U.S. office of management and budget.

**E. Records.** The borrower shall maintain books, records, documents, and other evidence sufficient to reflect properly all costs of whatever nature claimed to have been incurred for the performance of this interim loan agreement. Such books, records, documents, ledgers, and other evidence shall be preserved and made available to NMED, state auditor, U.S. governmental accounting office, and U.S.E.P.A. office of the inspector general during the loan agreement period and for a period of six years from date of final repayment. If upon termination of the interim loan agreement, questions exist concerning proper expenditure of funds, then the borrower shall preserve and make available all books, records, documents, ledgers and other evidence relating to the interim loan agreement until such questions are settled and the borrower has received written notification to that effect from NMED.

**F. Audit and inspection.** The project sites and borrower facilities which are in any part the subject of the loan agreement, and borrower records as defined elsewhere herein, shall be subject at all reasonable times to inspection and audit by NMED, state auditor, U.S. governmental accounting office, and U.S.E.P.A. office of the inspector general during the period of the loan agreement and for a period of six years following final payment hereunder. All subcontracts let by the borrower, the cost of which are included in the interim loan agreement, shall include the substance of this audit and inspection clause.

**G. Occupational health and safety.** The borrower covenants that it will take affirmative action to ensure that the project shall be conducted in conformance with federal and state laws and regulations relating to occupational health and safety. In addition, the borrower shall assure that any contract entered into by the borrower for the performance of work on this project shall contain language by which the contractor and the borrower agree that authorized representatives of NMED occupational health and safety bureau shall have free access to the project site, and shall not be impeded in any way from performance of their duties.

**H. Nondiscrimination.**

**(1)** During the performance of the interim loan agreement, the borrower shall not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, or national origin. The borrower shall take affirmative action to ensure nondiscrimination in employee recruitment advertising, hiring, upgrading, promotion, and selection for training (including apprenticeship).

**(2)** The borrower agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this clause. All solicitation or advertisement for employees placed by or on behalf of the borrower shall state that all qualified applicants will receive consideration without regard to race, color, age, religion, sex, sexual preference, or national origin. The borrower shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order 11246, dated September 24, 1965, and all relevant rules, regulations, and orders of the U.S. secretary of labor. The borrower shall include the provisions of the clause in all project subcontracts.

**I. Termination.** NMED shall have the right to terminate the interim loan agreement if at any time in the judgement of NMED, the terms of the interim loan agreement have been violated or the activities described in the project description are not progressing satisfactorily. The borrower may terminate the interim loan agreement with sufficient reason. In either case, NMED shall establish following negotiations with the borrower a repayment schedule for the funds disbursed to the borrower. Such termination must be in writing.

**J. Procurement.** Sections 13-1-28 through 13-1-199 NMSA 1978 of, The Procurement Code, imposes civil and criminal penalties for its violation. In addition, New

Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kick-backs.

[20.7.6.15 NMAC - Rp, 20.7.6.15 NMAC, 12/30/2015; A, 3/10/2020]

#### **20.7.6.16 PROJECT PLANNING GUIDELINES:**

**A.** Facilities planning consists of those necessary plans and studies that directly relate to treatment works or other eligible projects needed to comply with enforceable requirements of the Federal Clean Water Act and New Mexico Water Quality Act. Facilities planning will substantiate the need for the proposed facilities. It is a systematic evaluation of alternatives in regard to unique demographic, topographic, hydrologic, and institutional characteristics of the area that demonstrates that the selected alternative is cost effective in meeting the applicable effluent, groundwater, and surface water quality and public health requirements over the design life of the facility or other eligible project (while recognizing environmental and other nonmonetary considerations).

**B.** The most important outcome of the planning process is the selection of the best water pollution control alternative. The facilities plan (feasibility report or engineer's report) should include:

- (1)** A description of the proposed project and the complete system of which it is a part.
- (2)** A description of the best practicable water pollution control technology (BPWPCT).
- (3)** A cost-effective analysis of the project in meeting enforceable requirements over the design life of the project which includes a 30-year reserve capacity, if appropriate. Costs to be considered must include the present worth or equivalent annual value of all capital costs as well as operation and maintenance costs. Population forecasts should be consistent with the state needs survey.
- (4)** An evaluation of improved water quality attainable by upgrading the operation and maintenance ("O & M") and efficiency of existing facilities as an alternative to new construction.
- (5)** Cost information on total capital costs and annual O & M as well as estimated annual or monthly costs to residential and commercial users.
- (6)** A demonstration of the nonexistence or possible existence of excessive infiltration/inflow in an existing system.
- (7)** An adequate evaluation of the environmental impacts of alternatives.
- (8)** An evaluation of the water supply implications of the project.

(9) For the selected alternative, a concise description of relevant design parameters.

(10) A description of the proposed pretreatment program if applicable.

(11) A demonstration that the selected alternative is consistent with the applicable water quality management (WQM) plan.

(12) Demonstration that the borrower has the legal, institutional, managerial, and financial capability to ensure adequate construction and operation and maintenance of the treatment works throughout the service area. Financial capability to service this loan must also be demonstrated.

(13) Summary of public participation in the development of the facilities plan.

C. If any of the above information has been developed separately, it may be incorporated by reference rather than duplication.

[20.7.6.16 NMAC - Rp, 20.7.6.16 NMAC, 12/30/2015]

#### **20.7.6.17 INTERIM PAYMENTS:**

A. For satisfactory performance of all work and services required to be performed under the terms of the interim loan agreement, NMED shall reimburse the borrower its actual costs incurred. The borrower may submit requests for reimbursement as often as every month. NMED shall disburse funds to the borrower when NMED determines, in its sole discretion, that expenditures have been properly documented as provided for in general requirements for allowable and unallowable costs, accounting procedures, and record keeping. Copies of all pay request vouchers shall be submitted to NMED with request for payment. Copies of all requests shall be submitted on the appropriate form furnished by NMED and shall be accompanied by appropriate documentation to assure that those costs are correct and within the approved scope of work and attached budget form. Requests shall include expenditures to date by category.

B. NMED and the borrower will comply with the Retainage Act (Section 57-28-2 et. seq. NMSA 1978) if money is to be withheld during construction. The project will not be considered complete until the work as defined in the interim loan agreement has been fully performed and finally and unconditionally accepted by the borrower and NMED.

C. Interim payments will be made as the work progresses. Said payments will be based upon requests for payment prepared and certified by the borrower or the borrower's engineer to include value of work performed, materials on hand, and materials in place in accordance with the contract. Interim payments for engineering, inspection, legal services, or other approved services shall be made in accordance with the approved contracts or agreements.

**D.** Any portion of funds allocated to the project which remain unexpended after completion of the project shall revert to the wastewater facility construction loan fund.

**E.** The borrower shall furnish NMED with an estimated disbursement schedule at the beginning of the project.

[20.7.6.17 NMAC - Rp, 20.7.6.17 NMAC, 12/30/2015]

#### **20.7.6.18 FINAL PAYMENT:**

Upon completion of the project, final payment shall be made after final inspection has been conducted and the following have been provided, reviewed, and approved by NMED:

**A.** The borrower's certified request for payment prepared by the engineer and approved by the borrower.

**B.** A statement by the project engineer that work has been satisfactorily completed and the contractor has fulfilled all of the obligations required under the contract documents with the borrower, or if payment and materials performance bonds are "called," an acceptable close-out settlement to the borrower and contractors shall be submitted to NMED for review and approval.

**C.** Final engineering statement and recap of all engineering services, legal, administrative, and other eligible and ineligible expenses and a final request for disbursement.

**D.** Certification by the borrower that the labor standards contract provisions have been met.

**E.** Final project inspection report prepared by the engineer.

**F.** Record drawings and, if applicable, an operation and maintenance manual.

**G.** Final budget showing all funding sources utilized for costs incurred for the project by designated budget categories.

**H.** Written consent of the surety, if any, to final payment is prepared and submitted.

**I.** For projects which receive planning/design loans but do not proceed to the construction phase, completion of the project is defined as substantial completion of the project description in the interim loan agreement as determined by NMED.

[20.7.6.18 NMAC - Rp, 20.7.6.18 NMAC, 12/30/2015]

#### **20.7.6.19 PROJECT DESIGN REQUIREMENTS:**

Before beginning the design of the project, the following requirements must be completed and submitted by the borrower to NMED and approved by NMED:

**A. Engineering report/facilities plan, which will include:**

**(1)** When real property is to be acquired as part of the project and within the project period submit documentation of the acquisition, including legal description, the date the property was acquired, a certified copy of title to the property, and an appraisal report by a qualified appraiser.

**(2)** Cost effective analyses of project alternatives capable of meeting state and federal water quality and public health requirements.

**(3)** Consideration of present worth or equivalent annual value of all capital cost, operation, and replacement costs.

**(4)** Environmental information document (EID) in detail sufficient to determine categorical exclusion, finding of no significant impact (FONSI), or need for an environmental impact statement (EIS).

**(5)** Evidence of public participation.

**(6)** Information to demonstrate legal, managerial, and financial capability to properly operate and maintain the facility, maintain a repair and replacement reserve, and the ability to service this debt.

**B.** Proof of adequate property, liability, and fidelity insurance coverage for the project as shall be required by NMED. Fidelity insurance shall cover the borrower(s) employees who are responsible for handling loan monies.

**C.** Draft plan of operation which outlines staffing in compliance with the New Mexico Utility Operator Certification Act with start-up procedures that assure efficient operation and maintenance for the facilities.

**D.** Project schedule.

**E.** Proposed sewer use ordinance.

**F.** Proposed user charge system. The user charge system represents revenue for good operation and maintenance and replacement of worn-out equipment. One basis for the system is actual use which is measured in terms of water meter readings, measurement of sewer flow, etc. The rates are uniformly applied to each class (residential, commercial, or industrial) of user in proportions. If there is no existing user charge system, the first year rates should be based on the estimates of O & M costs and then adjusted annually thereafter to reflect actual O & M and replacement costs.

**G.** Number and name of NPDES permit and state groundwater permit, as applicable.

**H.** Sludge management plan which assures compliance with Sections 201 and 405 of the Clean Water Act, 40 CFR, Parts 35, 257 and 503, and New Mexico Water Quality Control Commission Groundwater Discharge Regulations 20.6.2 NMAC.

**I.** Design of the project shall be done by a consulting engineer who is registered in the state.

**(1)** Designs should adhere to sound construction practice using materials, methods, and equipment of proven dependability.

**(2)** Buildings shall be economical to operate and maintain and should be accessible to the handicapped.

**(3)** Design shall insure compliance with the NPDES permit or state groundwater discharge permit as appropriate.

**(4)** Safety shall be a prime consideration in design.

[20.7.6.19 NMAC - Rp, 20.7.6.19 NMAC, 12/30/2015]

#### **20.7.6.20 PROJECT CONSTRUCTION REQUIREMENTS:**

**A.** All plans and specifications and related addenda for the project must be submitted to NMED for review and approval before the project is advertised for sealed construction bids.

**B.** All work relating to easements, rights of way, other property rights, and financing provisions shall be completed prior to advertising for construction sealed bids.

**C.** Certified bid tabulation, recommendation of award, and evidence of full project financing should be submitted to NMED for review and approval prior to construction contract award.

**D.** Competitive bidding, in accordance with applicable state laws (including local wage determinations as provided for in Section 13-4-11 NMSA 1978), shall be used for awarding of contracts. Contracts shall be awarded to the responsible bidder who submits the lowest acceptable bid, or as provided for by state law.

**E.** Following NMED approval of the proposed award the borrower shall provide for each contract: (1) notice of award, (2) notice of preconstruction conference, (3) executed copies of previously approved contract form documents, and (4) notice to contractor to proceed. Performance, and payment bonds in the amount of one hundred percent of the project bid will be required of each contractor and copies of said

documents will be filed with NMED. A copy of bid bond (for five percent of the construction cost) for the selected contractor will be filed with NMED.

**F.** The contractor shall be required to submit a schedule for construction at the preconstruction conference for that contract.

**G.** The borrower shall submit all modifications to plans, specifications, and contract change orders to NMED's project engineer promptly for approval prior to implementation of such modification or change. NMED's decision shall be rendered promptly in writing. In cases necessitating immediate action, a verbal decision will be rendered by NMED and followed by a written notification.

**H.** The borrower shall arrange for the services of a qualified full-time resident project inspector, unless waived by NMED, during construction of the project. Borrower shall provide NMED with a summary of the inspector's qualifications and training to be approved by NMED prior to the preconstruction conference.

**I.** Notwithstanding those inspections performed by the borrower and its engineer, NMED shall have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project.

**J.** After completion of the project, the borrower shall obtain from its engineer as built drawings for the project and certify to NMED that such drawings have been received.

**K.** The borrower shall provide for NMED review and approval, unless waived by NMED, an operation and maintenance manual for the project prior to ninety percent construction completion. The operation and maintenance manual shall conform to NMED requirements.

**L.** If this assistance is awarded for construction of collection lines, the borrower shall assure NMED that the existing population will connect to the collection system within a reasonable time after project completion. This shall be accomplished by adoption and annual review of an ordinance and user charge system requiring such connection to the system.

[20.7.6.20 NMAC - Rp, 20.7.6.20 NMAC, 12/30/2015; A, 3/10/2020]

#### **20.7.6.21 FINAL LOAN AGREEMENT AND REPAYMENT POLICY:**

Upon completion of the planning/design or construction project and after final disbursement of principal to the borrower:

**A.** NMED and borrower shall execute a final loan agreement which details the final loan amount plus accrued interest and administrative fees due to the date of the final loan agreement.

**B.** NMED and borrower shall execute a revision to the promissory note and real estate mortgage (if applicable) which were recorded at the county seat at the time of the initial loan agreement. The revision shall reflect final loan amount, plus accrued interest and administrative fees due.

**C.** NMED shall prepare a repayment schedule for the borrower which details principal, plus accrued interest and administrative fees due. The schedule shall fully amortize the loan within 30 years of project completion. In some cases the amortization shall be less than 30 years. NMED shall address each loan on a case-by-case basis. The borrower may prepay the loan or any portion thereof at any time. The repayment period for a planning/design loan shall not exceed five years. The first annual repayment of principal, interest and administrative fees shall be due within one year after completion of the project.

**D.** For borrowers with planning/design loans who subsequently receive a construction loan and who choose to reamortize (roll-over) the planning/design loan, repayments for the planning/design loan may be postponed until construction of the project is completed, at which time the principal plus accrued interest and administrative fees for the planning/design loan will be rolled into the final loan agreement for the construction loan with one subsequent repayment schedule.

**E.** NMED shall annually prepare and send to the borrower a notice of payment due.

**F.** The borrower shall make a check for the full amount of the notice payable to Wastewater Facility Construction Loan Fund, Attention:

Chief, Construction Programs Bureau

New Mexico Environment Department

P.O. Box 5469

Santa Fe, New Mexico 87502-6110

and mail in time to insure delivery by due date.

**G.** In the event of late payment or default by the borrower, NMED shall have the option to declare the principal, interest accrued and administrative fee on, any outstanding indebtedness forthwith due and payable automatically without notice or demand of any kind, whereupon the same shall become forthwith due and payable; and NMED may take legal recourse to implement collection.

[20.7.6.21 NMAC - Rp, 20.7.6.21 NMAC, 12/30/2015; A, 3/10/2020]

## **PART 7: REVIEW PROCEDURES FOR WASTEWATER CONSTRUCTION LOANS**

**20.7.7.1 ISSUING AGENCY:**

New Mexico Environment Department.

[20.7.7.1 NMAC - Rp, 20.7.7.1 NMAC, 3/10/2020]

**20.7.7.2 SCOPE:**

These procedures apply to all construction or planning/design projects funded in-part from the Wastewater Facilities Construction Loan Fund which is derived from the federal capitalization grant except as provided in Section 11 of 20.7.7 NMAC.

[20.7.7.2 NMAC - Rp, 20.7.7.2 NMAC, 3/10/2020]

**20.7.7.3 STATUTORY AUTHORITY:**

Department of Environment Act, Subsection D of Section 9-7A-6 NMSA 1978; Wastewater Facility Construction Loan Act, Sections 74-6A-1 to 15 NMSA 1978; and Water Quality Act, NMSA 1978, Sections 74-6-1 to 17.

[20.7.7.3 NMAC - Rp, 20.7.7.3 NMAC, 3/10/2020]

**20.7.7.4 DURATION:**

Permanent.

[20.7.7.4 NMAC - Rp, 20.7.7.4 NMAC, 3/10/2020]

**20.7.7.5 EFFECTIVE DATE:**

March 10, 2020. This Part amends and replaces the Environmental Review Procedures for Projects Funded Through the Wastewater Facility Construction Loan Program, HED 88-3 (EID), filed September 22, 1988, as amended.

**A.** All references to HED 88-3 (EID) or to the Review Procedures for Projects Funded through the Wastewater Facility Construction Loan Program in any other rule shall be construed as a reference to this Part.

**B.** The amendment and replacement of HED 88-3 (EID) shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any financial assistance provided pursuant to HED 88-3 (EID).

[20.7.7.5 NMAC - Rp, 20.7.7.5 NMAC, 3/10/2020]

**20.7.7.6 OBJECTIVE:**

This Part establishes the New Mexico Environment Department's policy and procedures for the identification and analysis of the environmental impacts of construction of wastewater facilities funded in-part through loans from the Wastewater Facility Construction Loan Fund (which is New Mexico's SRF) and the preparation and processing of Environmental Impact Statements (EISs). This procedure shall be coordinated with and shall be consistent with NMED's environmental review responsibilities pursuant to the Governor's Executive Order 83-73, "State Clearinghouse Review Process."

[20.7.7.6 NMAC - Rp, 20.7.7.6 NMAC, 3/10/2020]

#### **20.7.7.7 DEFINITIONS:**

All terminology used in this Part will be consistent with the terms as defined in 40 CFR Part 1508 (the CEQ Regulations) except as provided in this Part.

**A. "Applicant"** means any state agency or other qualified borrower, which has filed an application for loan assistance from the SRF.

**B. "Environmental Information Document"** (EID) means any written analysis prepared by an applicant or contractor describing the environmental impacts of a proposed project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project;

**C. "Department" or "NMED"** means the New Mexico environment department.

**D. "environmental review"** means the process whereby an evaluation is undertaken by NMED to determine whether a proposed project may have a significant impact on the environment and therefore require the preparation of an Environmental Impact Statement (EIS);

**E. "Loan"** means a loan of funds by a written loan agreement from the SRF;

**F. "Planning/design loan"** means a loan which is issued for the purpose of preparation of a plan (including environmental review process) or preparation of design drawings and specifications for a potential construction project.

**G. "Project"** means a construction project which receives a loan for the purpose of building a publicly owned treatment works (POTW) or other eligible works.

**H. "Record of Decision"** (ROD) means a document prepared and issued by the NMED responsible official on the Environmental Impact Statement (EIS) which includes an identification of mitigation measures.

**I. "Responsible Official"** means the Secretary of the department who is authorized to fulfill the requirements of these procedures. The Chief of the Construction

Programs Bureau is delegated the day-to-day responsibilities for implementing these procedures.

**J. "SRF"** means the state revolving loan fund as established by the Wastewater Facility Construction Loan Act.

**K. "State agency"** means an agency or department of the New Mexico executive branch of government.

[20.7.7.7 NMAC - Rp, 20.7.7.7 NMAC, 3/10/2020]

#### **20.7.7.8 BACKGROUND:**

**A.** On June 10, 2014, the President signed into law the Water Resources Reform and Development Act of 2014. The U.S. Environmental Protection Agency (EPA) issued on September 18, 2014, Interpretive Guidance for Certain Amendments in the Water Resources Reform and Development Act to Titles I, II, V, and VI of the Federal Water Pollution Control Act (FWPCA). Section 5002 states the following: All CWSRF-funded projects involving the construction of treatment works, regardless of the source of the funding must undergo an environmental review. The [EPA] has consistently interpreted the statement "with assistance made available by a State water pollution control revolving fund authorized under this title" to mean that the specific requirement identified applies to all CWSRF-funded projects, not just equivalency projects. Consistent with this prior interpretation, any project that is considered a "treatment work" as defined in the FWPCA section 212, now incorporated in FWPCA Section 502(26), must comply with the FWPCA 511(c)(1) regardless of which eligibility it is funded under (see section 603(c)). A state may choose to apply its own "NEPA-like" state environmental review process for complying with the FWPCA 511(c)(1) provided that the elements in 40 CFR 35.3140(b)(1) through (5) are met.

**B.** The department, pursuant to Section 9-7A-6 NMSA 1978, revised and adopted the procedures as outlined at 40 CFR Part 6 - Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act of 1969 (NEPA).

**C.** NMED is authorized by Subsection A of Section 74-6A-4 NMSA 1978 of the Wastewater Facility Construction Loan Act to establish and administer a program to make loans to state agencies and other qualified borrowers for construction or modification of wastewater facilities. In carrying out this responsibility, the Secretary of the department has adopted policies, requirements, procedures, and guidelines for administration of the SRF which includes the primary responsibility for conducting environmental reviews and evaluations of SRF projects. Legal remedies available to the public to challenge environmental review determinations and enforcement pursuant to this procedure are provided by appeal by an aggrieved party(s) of the determination or action through administrative channels to higher authorities within NMED.

**D.** The New Mexico Water Quality Act, Sections 74-6-1 to 17 NMSA 1978, created the Water Quality Control Commission (WQCC) which is the state water pollution control agency for all purposes of the federal Clean Water Act, as amended. The WQCC may take all action necessary and appropriate to secure to New Mexico and its political subdivisions the benefits of the federal act. The Water Quality Act identifies legal remedies available to it and its constituent agencies (including NMED) in enforcement of its regulations, and legal remedies available to the public regarding implementation of programs covered by the Water Quality Act which includes the SRF.

[20.7.7.8 NMAC - Rp, 20.7.7.8 NMAC, 3/10/2020]

#### **20.7.7.9 CONSTRUCTION:**

This Part shall be liberally construed to carry out the purposes of the Act. If any provision or application of this Part is held invalid, the remainder or its application to other situations or persons shall not be affected.

[20.7.7.9 NMAC - Rp, 20.7.7.9 NMAC, 3/10/2020]

#### **20.7.7.10 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this Part does not relieve a person from the obligation to comply with other applicable state and federal regulations.

[20.7.7.10 NMAC - Rp, 20.7.7.10 NMAC, 3/10/2020]

#### **20.7.7.11 OVERVIEW:**

The process for conducting an environmental review of wastewater facility construction projects includes the following steps.

**A.** Consultation. The applicant is encouraged to consult with NMED early in project formulation or the facilities planning stage to determine whether a project is eligible for a categorical exclusion from the remaining substantive environmental review requirements of these procedures, to determine alternatives to the proposed project for evaluation, to identify potential environmental issues, and to determine the potential need for partitioning the environmental review process or the need for an Environmental Impact Statement (EIS).

**B.** Determining categorical exclusion eligibility. At the request of an applicant, NMED will determine if a project is eligible for a categorical exclusion in accordance with the submission of a loan application and other documents submitted to NMED to substantiate the request.

**C.** Documenting environmental information. If the project is determined to be ineligible for a categorical exclusion, or if no request for a categorical exclusion is made,

the potential applicant subsequently prepares an Environmental Information Document (EID) for the project.

**D.** In the event that the proposed action is of a limited nature, but does not qualify for a categorical exclusion, and that an EID had been approved previously by the EPA or NMED for wastewater facilities, the responsible official may determine to what extent updated information may suffice to provide the requisite environmental review of the project.

**E.** Assessing environmental impacts. NMED reviews the EID, prepares an environmental assessment (EA), and based upon an assessment of the environmental impacts of the proposed project NMED:

(1) Prepares and issues a Finding of No Significant Impact (FONSI); or

(2) Prepares or issues a Notice of Intent to prepare an original or supplemental EIS and Record of Decision (ROD).

**F.** Monitoring. The construction and post-construction operation and maintenance of the facilities are monitored to ensure implementation of mitigation measures identified in the FONSI or ROD.

[20.7.7.11 NMAC - Rp, 20.7.7.11 NMAC, 3/10/2020]

#### **20.7.7.12 CONSULTING DURING THE PRELIMINARY ENGINEERING PROCESS:**

The responsible official shall initiate the environmental review process early to identify environmental effects, avoid delays, and resolve conflicts. The environmental review process should be integrated throughout the preliminary engineering process. Potential applicants should consult with NMED early in the preliminary engineering process. The consultation should be conducted during the evaluation of project alternatives prior to the selection of a preferred alternative, to assist in resolving any identified environmental problems.

[20.7.7.12 NMAC - Rp, 20.7.7.12 NMAC, 3/10/2020]

#### **20.7.7.13 COORDINATION WITH OTHER ENVIRONMENTAL REVIEW AND CONSULTATION REQUIREMENTS:**

Pertinent laws, regulations, or executive orders should be included in a coordinated environmental review effort as outlined in the NMED Construction Programs Bureau State Environmental Review Process (SERP), EPA' general terms and conditions of the grant, and the EPA CWSRF guidance.

[20.7.7.13 NMAC - Rp, 20.7.7.13 NMAC, 3/10/2020]

#### **20.7.7.14 REVIEW OF COMPLETED PRELIMINARY ENGINEERING REPORTS:**

NMED shall review the completed preliminary engineering reports (PER) and EID in the development of alternatives and the selection of a preferred alternative. An adequate EID shall be an integral part of planning submitted to NMED. The EID shall be of sufficient scope to enable the responsible official to make determinations on requests for partitioning the environmental review process and for preparing an environmental assessment (EA).

[20.7.7.14 NMAC - Rp, 20.7.7.14 NMAC, 3/10/2020]

#### **20.7.7.15 ENVIRONMENTAL ASSESSMENT:**

The environmental assessment process shall cover all potentially significant environmental impacts. NMED personnel shall assess environmental impacts before PER approval. The EID shall address all elements in 40 CFR Part 6 and follow the SERP. In minimizing the adverse effects of the proposed action:

**A.** Structural and nonstructural measures, directly or indirectly related to the facilities plan, to mitigate or eliminate adverse effects on the human and natural environments shall be identified during the environmental review. Among other measures, structural provisions include changes in facility design, size, and location; nonstructural provisions include staging facilities, monitoring and enforcement of environmental regulations, and local commitments to develop and enforce land use regulations.

**B.** NMED shall not accept a PER, nor approve loan assistance for its implementation, if the applicant has not made, or agreed to make, changes in the project, in accordance with determinations made in a FONSI or the ROD for an EIS. NMED shall condition a loan or seek other ways to ensure that the applicant will comply with such environmental review determinations.

[20.7.7.15 NMAC - Rp, 20.7.7.15 NMAC, 3/10/2020]

#### **20.7.7.16 FONSI/EID DETERMINATION:**

The responsible official shall apply the criteria under Section 19 of 20.7.7 NMAC to the following:

**A.** A complete PER;

**B.** The EID; and

**C.** Other documentation deemed necessary by the responsible official adequate to make an EIS determination by NMED. Following an independent environmental review of the projects, the responsible official shall document in writing the reasons for his

determination to issue a FONSI or to prepare an EIS. The responsible official's determination to issue a FONSI or to prepare an EIS shall constitute final department action.

[20.7.7.16 NMAC - Rp, 20.7.7.16 NMAC, 3/10/2020]

#### **20.7.7.17 PARTITIONING THE ENVIRONMENTAL REVIEW PROCESS:**

**A. Purpose.** Under certain circumstances, the building of a component/portion of a wastewater treatment system may be justified in advance of completing all environmental review requirements for the remainder of the system(s). When there are overriding considerations of cost or impaired program effectiveness the responsible official may approve a loan for a discrete component of a complete wastewater treatment system(s). The process of partitioning the environmental review for the discrete component shall comply with the criteria and procedures described in subsection (B) of this section. In addition, all reasonable alternatives for the overall wastewater treatment works system(s), of which the component is a part, shall have been previously identified and each part of the environmental review for the remainder of the overall facilities plan shall comply with all requirements under Sections 14 and 15 of 20.7.7 NMAC.

**B. Criteria for partitioning.** The project component must:

- (1)** Immediately remedy a severe public health, water quality, or other environmental problem;
- (2)** Not foreclose any reasonable alternatives identified for the overall wastewater treatment works system(s);
- (3)** Not cause significant adverse direct or indirect environmental impacts including those which cannot be acceptably mitigated without completing the entire wastewater treatment system of which the component is a part; and
- (4)** Not be highly controversial.

**C. Request for partitioning.** The applicant's request for partitioning must contain the following:

- (1)** A description of the discrete component proposed for construction before completing the environmental review of the entire facilities plan;
- (2)** How the component meets the above criteria;
- (3)** The environmental information required by Sections 14 and 15 of 20.7.7 NMAC for the component; and

(4) Any preliminary information that may be important to NMED in an EA determination for the entire facilities plan.

D. Approval of requests for partitioning. The responsible official shall:

(1) Review the request for partitioning against all requirements of this procedure;

(2) If approvable, prepare and issue a FONSI;

(3) Include a loan condition prohibiting the building of additional or different components of the entire facilities plan for which the environmental review is not complete.

[20.7.7.17 NMAC - Rp, 20.7.7.17 NMAC, 3/10/2020]

#### **20.7.7.18 FINDING OF NO SIGNIFICANT IMPACT (FONSI) DETERMINATION:**

A. Criteria for producing and distributing a FONSI. If, after completion of the EA, NMED determines that an EIS will not be required, the responsible official shall issue a FONSI. The FONSI will be based on NMED independent review of the EID and any other environmental information deemed necessary by the responsible official, consistent with the requirements of Sections 14 and 15 of 20.7.7 NMAC. The FONSI shall list mitigation measures necessary to make the recommended alternative environmentally acceptable.

B. Proceeding with loan agreement.

(1) Once the issued FONSI becomes effective for the project, after a 30 day public comment period construction may proceed unless the responsible official determines that the project or environmental conditions have changed significantly from that which underwent environmental review.

(2) For an EID five or more years old, the responsible official shall re-evaluate the project, environmental conditions, and public views, and, prior to approval of loan agreement, either:

(a) Reaffirm - issue a public notice reaffirming the original environmental determination to proceed with the project without revising the EID;

(b) Supplement - require an update of the EID, issue and distribute a revised FONSI with the necessary public notice or

(c) Reassess - withdraw the FONSI and publish a notice of intent to produce an EIS, followed by the preparation, issuance, and distribution of the EIS and ROD.

### C. Revisions to the Project.

(1) Statement of Findings. If the project scope of work is revised after FONSI has been issued, but the revision is determined by NMED to be a minor revision, NMED shall issue a Statement of Findings (SOF) documenting the reason for the revision and its impact, if any, on the environment. The SOF shall be distributed to parties who previously indicated interest in the project environmental review process.

(2) Amendment. If the project scope of work is revised after a FONSI has been issued, but the revision is determined by NMED to be significant, NMED shall issue an amendment to the FONSI with proper public notification as identified in Section 23 of 20.7.7 NMAC and shall provide for a public meeting to discuss the amendment.

[20.7.7.18 NMAC - Rp, 20.7.7.18 NMAC, 3/10/2020]

#### **20.7.7.19 CRITERIA FOR INITIATING ENVIRONMENTAL IMPACT STATEMENTS:**

Conditions requiring an EIS. The responsible official shall assure that an EIS will be prepared and issued when it is determined that the proposed project will cause any of the following conditions to exist, or when:

**A.** The proposed action would result in a discharge of treated effluent from a new or modified existing facility into a body of water and the discharge is likely to have a significant effect on the quality of the receiving waters.

**B.** The proposed action is likely to directly, or through induced development, have significant adverse effect upon local ambient air quality or local ambient noise levels.

**C.** The proposed action is likely to have significant adverse effects on surface water reservoirs or navigation projects.

**D.** The proposed action would be inconsistent with state or local government, or federally-recognized Indian tribe approved land use plans or regulations, or federal land management plans.

**E.** The proposed action would be inconsistent with state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws and regulations for protection of the environment.

**F.** The proposed action is likely to significantly affect the environment through the release of radioactive hazardous or toxic substances, or biota.

**G.** The proposed action involves uncertain environmental effects or highly unique environmental risks that are likely to be significant.

**H.** The proposed action is likely to significantly affect national natural landmarks or any property on or eligible for the National Register of Historic Places.

**I.** The proposed action is likely to significantly affect environmentally important natural resources such as wetlands, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.

**J.** The proposed action in conjunction with related federal, state or local government, or federally-recognized Indian tribe projects is likely to produce significant cumulative impacts.

**K.** The proposed action is likely to significantly affect the pattern and type of land use (industrial, commercial, recreational, residential) or growth and distribution of population including altering the character of existing residential areas.

[20.7.7.19 NMAC - Rp, 20.7.7.19 NMAC, 3/10/2020]

#### **20.7.7.20 ENVIRONMENTAL IMPACT STATEMENT (EIS) PREPARATION:**

**A.** Steps in preparing the EIS. In addition to the other requirements specified in this procedure, the responsible official will conduct the following activities:

**(1)** Notice of intent. If a determination is made that an EIS will be required, the responsible official shall prepare and distribute a notice of intent.

**(2)** Scoping. As soon as possible, after the publication of the notice of intent, the responsible official will convene a meeting of affected federal, state, and local agencies, or affected Indian tribes, the applicant and other interested parties to determine the scope of the EIS. As part of the scoping meeting, NMED will, as a minimum:

**(a)** Determine the significance of issues for and the scope of those significant issues to be analyzed in depth in the EIS;

**(b)** Identify the preliminary range of alternatives to be considered;

**(c)** Identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;

**(d)** Discuss the method for EIS preparation and the public participation strategy;

**(e)** Identify consultation requirements of other environmental laws; and

(f) Determine the relationship between the EIS and the completion of the facilities plan and any necessary coordination arrangements between the preparers of both documents.

(3) Identifying and evaluating alternatives. Immediately following the scoping process, the responsible official shall commence the identification and evaluation of all potentially viable alternatives to adequately address the range of issues identified in the scoping process. Additional issues may be addressed, or others eliminated, during this process and the reasons documented as part of the EIS.

**B. Methods for preparing EIS.** After NMED determines the need for an EIS, it shall select one of the following methods for its preparation:

(1) By NMED contracting directly with a qualified consulting firm;

(2) By utilizing a third party method whereby the responsible official enters into "third party agreements" for the applicant to engage and pay for the services of a third party to prepare the EIS. Such agreement shall not be initiated unless both the applicant and the responsible official agree to its creation. A third party agreement will be established prior to the applicant's EID and eliminate the need for the document. In proceeding under the third party agreement, the responsible official shall carry out the following practices:

(a) In consultation with the applicant, choose the third party contractor and manage that contract;

(b) Select the consultant based on ability and absence of conflict of interest. Third party contractors shall execute a disclosure statement prepared by the responsible official signifying they have no financial or other conflicting interest in the outcome of the project; and

(c) Specify the information to be developed and supervise the gathering, analysis, and presentation of the information. The responsible official shall have sole authority for approval and modification of the statements, analyses, and conclusions included in the third party EIS.

[20.7.7.20 NMAC - Rp, 20.7.7.20 NMAC, 3/10/2020]

#### **20.7.7.21 THE ENVIRONMENTAL IMPACT STATEMENT (EIS) FORMAT:**

Preparers of EIS must conform with the requirements of 40 CFR, Part 1502, in writing the EIS. The format used for the EIS shall encourage good analysis and clear presentation of alternatives, including the proposed action, and their environmental, economic, and social impacts. The following standard format for EISs should be used unless the responsible official determines that there is a compelling reason to do otherwise:

- A. Cover Sheet;
- B. Executive Summary;
- C. Table of Contents;
- D. Purpose of and need for action;
- E. Alternatives including proposed action;
- F. Affected environment;
- G. Environmental consequences of the alternative;
- H. Coordination (includes list of agencies, organizations, and persons to whom copies of the EIS are sent);
- I. List of preparers;
- J. Index (commensurate with complexity of EIS);
- K. Appendices.

[20.7.7.21 NMAC - Rp, 20.7.7.21 NMAC, 3/10/2020]

**20.7.7.22 MONITORING FOR COMPLIANCE:**

**A. General.** The responsible official shall ensure adequate monitoring of mitigation measures and other loan conditions identified in the FONSI or ROD.

**B. Enforcement.** If the applicant fails to comply with loan conditions, the responsible official may consider applying the sanctions.

[20.7.7.22 NMAC - Rp, 20.7.7.22 NMAC, 3/10/2020]

**20.7.7.23 PUBLIC, FEDERAL AGENCY, AND OTHER STATE AGENCY INVOLVEMENT:**

**A.** NMED shall make diligent efforts to involve the public in the environmental review process consistent with program regulations and State Clearinghouse for Intergovernmental Review policies on public participation. The responsible official shall ensure that public notice is provided and shall ensure that public involvement is carried out following state policies and guidelines on public participation.

**B. General.** It is NMED's policy that certain public participation steps be achieved before NMED completes the environmental review process. At a minimum, potential

applicants shall conduct one public hearing prior to formal adoption of a facilities plan to discuss the proposed facilities plan and any needed mitigation measures.

**C.** Publication of notices of intent. As soon as practicable after a decision is rendered to issue a categorical exclusion or FONSI, or to prepare an EIS (but before the signing process), the responsible official shall send the notice of intent to interested and affected members of the public, and shall publish the notice of intent in a newspaper of general circulation in the community of the project.

**D.** The responsible official shall not take administrative action on the project for at least 30 calendar days after release of the notice of determination on the categorical exclusion or release of the FONSI to allow time for public response.

**E.** EIS. The responsible official shall follow, as applicable, procedures identified at 40 CFR, Part 6, Subpart B, for official filing requirements, availability of documents, commenting process, and supplements to the EIS.

**F.** Record of Decision. The responsible official shall disseminate the record of decision to those parties which commented on the draft or final EIS. One copy shall be submitted to EPA.

**G.** Scope. The responsible official may institute additional NEPA-related public participation procedures as are deemed necessary during the environmental review process.

[20.7.7.23 NMAC - Rp, 20.7.7.23 NMAC, 3/10/2020]

## **PART 8: COLONIAS PRIORITY RATING SYSTEM**

### **20.7.8.1 ISSUING AGENCY:**

Water Quality Control Commission.

[11/30/95; 20.7.8.1 NMAC – Rn, 20 NMAC 7.8.I.100, Recompiled 11/27/01]

### **20.7.8.2 SCOPE:**

This Part applies to local authorities seeking financial assistance to alleviate unsanitary wastewater conditions in the border area colonias in New Mexico.

[2/28/93; 11/30/95; 20.7.8.2 NMAC – Rn, 20 NMAC 7.8.I.101, Recompiled 11/27/01]

### **20.7.8.3 STATUTORY AUTHORITY:**

Water Quality Act, NMSA 1978, 74-6-4.A.

[11/30//95; 20.7.8.3 NMAC – Rn, 20 NMAC 7.8.I.102, Recompiled 11/27/01]

**20.7.8.4 DURATION:**

Permanent.

[11/30/95; 20.7.8.4 NMAC – Rn, 20 NMAC 7.8.I.103, Recompiled 11/27/01]

**20.7.8.5 EFFECTIVE DATE:**

November 30, 1995. This Part amends and replaces the Priority Rating System for Colonias Wastewater Construction Projects, WQCC 93-1, filed January 29, 1993, as amended.

A. All references to WQCC 93-1, or to the Priority Rating System for Colonias Wastewater Construction Projects in any other rule shall be construed as a reference to this Part.

B. The amendment and replacement of WQCC 93-1 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any financial assistance provided pursuant to WQCC 93-1.

[11/30/95; 20.7.8.5 NMAC – Rn, 20 NMAC 7.8.I.104, Recompiled 11/27/01]

**20.7.8.6 OBJECTIVE:**

The objective of this Part is to establish a rating system to provide financial assistance to local authorities for wastewater projects in colonias.

[2/28/93; 11/30/95 NMAC – Rn, 20 NMAC 7.8.I.105, Recompiled 11/27/01]

**20.7.8.7 DEFINITION:**

"Total nitrogen" means the sum of nitrate nitrogen, nitrite nitrogen, organic nitrogen, and total ammonia nitrogen.

[2/28/93; 20.7.8.7 NMAC – Rn, 20 NMAC 7.8.I.108, Recompiled 11/27/01]

**20.7.8.8-20.7.8.105 [RESERVED]**

**20.7.8.106 CONSTRUCTION:**

This Part shall be liberally construed to effectuate the purposes of the Act. If any provision or application of this Part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[2/28/93, 11/30/95; 20.7.8.106 NMAC – Rn, 20 NMAC 7.8.I.106, Recompiled 11/27/01]

**20.7.8.107 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this Part does not relieve a person from the obligation to comply with other applicable state and federal regulations.

[2/28/93; 11/30/95; 20.7.8.107 NMAC – Rn, 20 NMAC 7.8.I.107, Recompiled 11/27/01]

**20.7.8.108-20.7.8.199 [RESERVED]**

**20.7.8.200 SUBPART II FORMULA AND FACTORS:**

A. Formula: The basic formula is: priority rating number = S (P) + Q + W

B. Factors: The formula factors S, P, Q and W are:

(1) S = severity of pollution or public health factor;

(2) P= population factor;

(3) Q = water quality preservation factor;

(4) W = absence or presence of community water system factor.

C. Severity of Pollution or Public Health Factor(s): This factor ensures that limited construction funds are utilized first to reduce significant existing water pollution or public health problems that cannot be solved by adequate operation and maintenance (O&M). Assignment of values shall be done by the New Mexico Environment Department (NMED) using data from water quality studies conducted by NMED, review and verification of data from other sources including data on adequacy of O&M, or environmental surveys conducted by NMED. Only one value (the highest) shall be assigned to a project.

(1) Surface Water: Discharges to surface water shall be rated on the basis of their demonstrated impact on the quality of a receiving stream, lake, or impoundment. Values will be assigned according to compliance with numerical or general standards established for the receiving water in the latest edition of "State of New Mexico Standards for Interstate and Intrastate Stream" 20 NMAC 6.1 [20.6.1 NMAC]. The value shall be:

(a) 10- if the discharge is causing violation of two or more stream standards (other than fecal coliform);

(b) 8- if the discharge is causing violation of one stream standard (other than fecal coliform);

(c) 6- if the discharge is causing violation of the stream standard for fecal coliform only;

(d) 4- if the discharge is not in compliance with NPDES permit discharge parameters;

(e) 3- if the project consists primarily of construction of a wastewater treatment facility and none of the above conditions can be demonstrated;

(f) 2- if the project consists primarily of construction of an interceptor or lift station and none of the above conditions can be demonstrated;

(g) 1- if the project consists primarily of construction of a collection system and none of the above conditions can be demonstrated.

(2) Groundwater: Discharges onto or below the surface of the ground shall be rated on the basis of demonstrated groundwater contamination or violation of groundwater protection regulations. If inadequate well construction is identified as a significant contributing cause of a contamination problem, points will be assigned in this category only when modification of the wastewater treatment method is the most cost-effective solution. The value shall be:

(a) 12- if a total nitrogen (as N) concentration greater than 10 mg/l is demonstrated in a public water supply well where a municipal discharge is the probable cause of this condition;

(b) 10- if a total nitrogen (as N) concentration greater than 10 mg/l is demonstrated in 10% of the private water supply wells within the zone of influence of a municipal discharge where the municipal discharge is the probable cause of this condition. For this category, only wells used primarily as a domestic water supply will be considered;

(c) 8- if, in an area of groundwater contamination where the probable cause of this condition is on-site waste disposal systems, total nitrogen (as N) concentrations greater than 10 mg/l are present in a public water supply well or in more than 10% of the private water supply wells in the total unsewered portion of the project planning area. When this value is assigned to projects consisting primarily of new interceptor or collection systems, only the area and populace to be serviced by the proposed interceptor or collection system shall be considered in establishing severity of pollution or public health (S) and population (P) factors.

(d) 6- if there is existing or projected noncompliance as determined by the NMED with standards for groundwater as that established by Water Quality Control Commission Regulation, 20 NMAC 6.2.3103 [20.6.2 NMAC] and a municipal discharge or septic systems are the probable cause of this noncompliance. Projected noncompliance with Water Quality Control Commission Regulation, 20 NMAC 6.2.3103

[20.6.2 NMAC] should be demonstrated through the use of accepted predictive hydrologic models used in conjunction with on-site monitoring data.

(e) 3- if the project consists primarily of construction of a wastewater treatment facility and none of the above conditions can be demonstrated.

(f) 2- if the project consists primarily of construction of an interceptor or lift station and none of the above conditions can be demonstrated.

(g) 1- if the project consists primarily of construction of a collection system and none of the above conditions can be demonstrated.

D. Population Factor (P): This factor is a multiplier based on the estimated population, Bureau of Census figures projected to current calendar year, of the wastewater facilities planning area.

For a population estimate of:	The factor shall be:
Less than 500	1.5
500 - 999	2.0
1,000 - 4,999	3.0
5,000 - or over	3.5

E. Water Quality Preservation (O): This factor considers the need for preservation of those surface waters in New Mexico which are the most suitable for recreation and support of desirable aquatic life or for groundwater which has an existing concentration of 10,000 mg/l or less of total dissolved solid (TDS), for present and potential future use as domestic and agricultural water supply, and to protect those segments of surface waters which are gaining because of groundwater inflow. Values shall be assigned only to existing surface or groundwater discharges and only one value (the highest) shall be assigned to each project. Designated uses listed in Subpart 2 of the latest edition of the "State of New Mexico Standards for Interstate and Intrastate Stream" 20 NMAC 6.1 [20.6.1 NMAC] shall apply. The value shall be:

(1) 8- if the discharge is to a stream with designated beneficial uses of primary contact recreation or high quality cold water fishery or if there is a reservoir or permanent pool within 25 miles downstream of the discharge; or if the discharge is to groundwater which lies within 20 feet of the surface or which will be negatively impacted by the discharge as evaluated by the NMED;

(2) 6- if the discharge is to a stream with a designated beneficial use of cold water fishery; or if the discharge is to groundwater which lies within 40 feet of the surface;

(3) 4- if the discharge is to a stream with designated beneficial uses of marginal cold water fishery or warmwater fishery; of if the discharge is to groundwater which lies within 60 feet of the surface; or;

(4) 2- if the discharge is to a stream with designated beneficial uses of secondary contact recreation or limited warmwater fishery; or if the discharge is to groundwater which lies below 60 feet of the surface.

F. Absence or Presence of Community Water System Factor (W): This factor considers the risks associated with the community's dependency on on-site domestic water wells which would normally be at greater risk of being contaminated by on-site liquid waste disposal systems than community water supply systems. The value shall be:

(1) 4- absence of community water system; or

(2) 0- presence of community water system.

[2/28/93, 11/30/95; 20.7.8.200 NMAC – Rn, 20 NMAC 7.8.II.200, 201, 202, 203, 204, 205, Recompiled 11/27/01]

**20.7.8.206-20.7.8.299 [RESERVED]**

## **PART 9: COLONIAS WASTE WATER GRANT POLICIES**

### **20.7.9.1 ISSUING AGENCY:**

New Mexico Environment Department.

[11/30/95; 20.7.9.1 NMAC - Rn, 20 NMAC 7.9.I.100, Recompiled 11/27/01]

### **20.7.9.2 SCOPE:**

This Part applies to local authorities seeking financial assistance to alleviate unsanitary wastewater conditions in the border area colonias in New Mexico.

[2/28/93; 20.7.9.2 NMAC - Rn, 20 NMAC 7.9.I.101, Recompiled 11/27/01]

### **20.7.9.3 STATUTORY AUTHORITY:**

Water Quality Act, NMSA 1978, 74-6-4.

[2/28/93, 11/30/95; 20.7.9.3 NMAC - Rn, 20 NMAC 7.9.I.102, Recompiled 11/27/01]

### **20.7.9.4 DURATION:**

Permanent.

[11/30/95; 20.7.9.4 NMAC - Rn, 20 NMAC 7.9.I.103, Recompiled 11/27/01]

**20.7.9.5 EFFECTIVE DATE:**

November 30, 1995. This Part amends and replaces the Colonias Wastewater Construction Grant Program Policies and Procedures, NMED 93-1, filed January 29, 1993, as amended.

A. All references to NMED 93-1, or to the Colonias Wastewater Construction Grant Program Policies and Procedures in any other rule shall be construed as a reference to this Part.

B. The amendment and replacement of NMED 93-1 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any financial assistance provided pursuant to NMED 93-1.

[11/30/95; 20.7.9.5 NMAC - Rn, 20 NMAC 7.9.I.104, Recompiled 11/27/01]

**20.7.9.6 OBJECTIVE:**

The objective of this Part is to establish policies to administer the Colonias Wastewater Construction Grant Program including compliance with Federal "cross-cutting authorities such as the National Environmental Policy Act, Davis-Bacon Act, etc. The New Mexico legislature created the Water Quality Control Commission ("Commission") to take all action necessary and appropriate to secure to the state the benefit of the Clean Water Act. NMSA 1978, 74-6-3.E. NMSA 1978, 74-6-4 states that the Water Quality Control Commission "may accept and supervise the administration of loans and grants from the federal government and from other sources, public or private, which loans and grants shall not be expended for other than the purpose for which provided." The Commission is an unfunded agency of the state. The Commission has no budget or funds allocated to it, rather, it is administratively attached to, and receives staff support from, the Environment Department. NMSA 1978, 74-6-3.F and 9-7A-6.B. The Commission, therefore, exercises its independent functions while the Department provides budgeting, record-keeping, and related administrative functions for the commission. NMED is one of the Commission's constituent agencies. In 1983 and again in 1986, the Commission delegated to the NMED authority to administer the Wastewater Construction Grants Program.

[2/28/93, 11/30/95; 20.7.9.6 NMAC - Rn, 20 NMAC 7.9.I.105, Recompiled 11/27/01]

**20.7.9.7 DEFINITIONS:**

A. "Applicant" means a local authority designated as a colonias or acting on behalf of one or more colonias that meets the following criteria:

- (1) placement on the current fiscal year priority list;
- (2) financial capability to perform operation and maintenance and to maintain a replacement fund; and
- (3) readiness to proceed.

B. "Colonias" means an identifiable unincorporated community that:

- (1) is situated within 100 kilometers (approximately 62 miles) of the United States -- Mexico border;
- (2) is designated by the State or county in which it is located as a colonia;
- (3) is determined to be a colonia on the basis of objective criteria, including lack of adequate potable water supply, lack of adequate sewage systems and lack of decent, safe and sanitary housing, and
- (4) was in existence before November 28, 1990.

C. "Commission" or "WQCC" means the New Mexico Water Quality Control Commission.

D. "Department" or "NMED" means the New Mexico Environment Department.

E. "Force account" means that the local authority provides the materials, equipment, or labor necessary to design or construct the project.

F. "Local authority" means any colonia designated as a colonia by the county within which it is situated or county, district, cooperative, association, sanitation district acting on behalf of one or more colonia.

G. "Operate and maintain" means all necessary activities including replacement of equipment or appurtenances to assure the dependable and economical function of a wastewater facility in accordance with its intended purpose.

H. "Priority system" means the system for ranking colonias wastewater construction projects for which grant applications have been received.

I. "Project" means the planning, design, construction, repair, extension, improvement, alteration, or reconstruction of the wastewater facilities by the grantee as described in the grant agreement.

J. "Project completion" means the date that operation of the completed works are initiated or capable of being initiated, whichever is earlier. This also applies to individual phases or segments.

K. "Project engineer" means the NMED staff engineer assigned to the project.

L. "Wastewater facility" means a publicly owned system for treating and/or disposing of waste, either by surface or underground methods, and includes any equipment, plant, treatment works, structure, machinery, apparatus, land, or any combination thereof, which is acquired, used, constructed, or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation, or treatment of water or waste, or for the final disposal of residues resulting from the treatment of water or waste, and includes, but is not limited to: pumping and ventilating stations, facilities, plants and works, outfall sewer, interceptor sewers and collector sewers, and other real or personal property and appurtenances incident to their use or operation.

[1/29/93, 2/28/93, 11/30/95; 20.7.9.7 NMAC - Rn, 20 NMAC 7.9.I.108, Recompiled 11/27/01]

#### **20.7.9.8-20.7.9.105 [RESERVED]**

#### **20.7.9.106 CONSTRUCTION:**

This Part shall be liberally construed to effectuate the purposes of the Act. If any provision or application of this Part [20.7.9 NMAC] is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[11/30/95; 20.7.9.106 NMAC - Rn, 20 NMAC 7.9.I.106, Recompiled 11/27/01]

#### **20.7.9.107 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this Part [20.7.9 NMAC] does not relieve a person from the obligation to comply with other applicable state and federal regulations. [11/30/95; 20.7.9.107 NMAC - Rn, 20 NMAC 7.9.I.107, Recompiled 11/27/01]

#### **20.7.9.108 GENERAL POLICY DECLARATION:**

A. Grants from the program may be offered for up to 100% of the total eligible project costs under state and federal statutes and regulations, subject to availability of grant monies. Two types of grants are available: planning grants and design/construction grants.

(1) Planning grants are intended to enable the applicant to identify: if the project is feasible, the most cost effective collection and treatment process, and reasonable design and construction costs. Generally, a grant increase would be provided for the design and construction phase if funds are available.

(2) The design/construction grant may include the cost of planning and design and may precede the design phase of the project if the planning and design periods are relatively short and if a reasonable estimate of construction costs is available.

B. A long-term commitment for future funding of a phased or segmented project will not be made; although, partial or phased funding for a project (without a guarantee of future funding) may be offered when deemed necessary to meet state water quality and public health objectives.

C. Grant funds shall be awarded to eligible applicants as soon as possible after the monies become available. The program will be managed so that a contingency reserve is held available. The amount of the reserve will be dependent on both available and committed monies. This contingency reserve may be used for administration of the program, and limited-purpose contingencies, including grant increases subject to federal and state statutes.

D. In the event project costs exceed the estimates in the grant agreement, the Grantee may request that the NMED consider an increase to the grant. Such requests will be evaluated in respect to available uncommitted monies in the program, and other criteria set by the NMED. The NMED may follow any procedure deemed appropriate under the circumstances.

E. In the event project costs are less than the estimates in the grant agreement, then the grant amount shall be adjusted downward by a corresponding amount at the time the final project closeout is executed following completion of the project.

F. The NMED may waive or adjust any rule relative to the administration of the program where it is deemed that the waiver or adjustment is in the best interest of the State and the community, and the waiver or adjustment does not violate any state or Federal statute or regulation.

[2/28/93, 11/30/95; 20.7.9.108 NMAC - Rn 20 NMAC 7.9.I.109]

**20.7.9.109-20.7.9.199 [RESERVED]**

**20.7.9.200 PROCEDURES FOR PRIORITY LIST PLACEMENT:**

A. Application:

(1) Applicants for a grant shall submit a complete application to the NMED on a form specified by the NMED. Applications may be submitted at any time; although, generally an annual funding cycle is followed.

(2) The NMED shall review the applications for eligibility, technical merit and financial capability, and rank the applications based on the project priority system

approved by the Commission WQCC and following NMED procedures for priority system and priority list.

B. Priority System and Priority List Procedures: Procedures for developing and handling the priority system and priority list under the Colonias Wastewater Construction Grant Program generally following existing procedures for the EPA/NMED construction grants program and State loan program which are briefly summarized here.

(1) A project must be on the current federal fiscal year priority list in order to receive a planning or design/construction grant. It is the policy of NMED to make grants to applicants in order of priority on the priority list to the extent reasonable considering the following:

(a) Willingness of a community to accept a grant;

(b) Financial capability of the community to perform operation and maintenance and to maintain a replacement fund; and

(c) Readiness to proceed.

(2) A specific cap of \$1,000,000 on an individual grant amount is established by the NMED so that the program will be able to assist several applicants.

(3) This policy serves to maintain the flexibility of the program by not excluding higher cost projects from participation, yet ensures that several worthwhile projects will be funded.

(4) Fundable applicants will be notified by the NMED following approval of the final priority list and a preplanning conference will be held with the applicant and its consulting engineer to identify the procedures and requirements which must be met prior to execution of the grant agreement.

[2/28/93, 11/30/95; 20.7.9.200 NMAC - Rn, 20 NMAC 7.9.II.200 and 201, Recompiled 11/27/01]

**20.7.9.201-20.7.9.299 [RESERVED]**

**20.7.9.300 PROJECT AND ADMINISTRATIVE REQUIREMENTS:**

A. Preplanning Conference: At NMED or the applicant's request, a preplanning conference will be scheduled. The applicant's representatives and possibly the applicant's consulting engineer will meet with the NMED project engineers to discuss the project. Items that may be discussed are:

(1) Review of Colonias Grant Program procedures;

- (2) Enforceable requirements, water quality and public health concerns;
- (3) Eligibility of project components;
- (4) Procurement of A/E services;
- (5) Appropriate technology;
- (6) User charges in relation to financial capability of applicant being able to operate and maintain the facility;
- (7) Environmental impacts;
- (8) The importance of public participation; (Citizen involvement will be an asset in the development of plans that reflect the needs and value of your community. Informing the public early on can result in issues being resolved before delay and additional costs occur. Citizen support is necessary for capital and user charge systems to fund a project.) and
- (9) Project schedule.

B. Grant Agreement: A grant agreement will be prepared by the NMED and executed by the grantee for projects which can be financed with available grant funds and which have completed requirements set by the NMED. Projects which are not ready to proceed to the grant agreement stage within six months of allocation of available funds will be bypassed by projects lower on the priority list which are ready to proceed. The grant agreement contains several conditions and certifications including:

- (1) Certification that the Grantee is a legal entity with authority to execute a grant agreement by ordinance. Certification that a resolution designating signatory authority has been passed.
- (2) Copies of all executed contracts, subcontracts, agreements, and related amendments entered into by the grantee prior to the grant agreement, but related to this project.
- (3) Request for proposals (RFP) documentation and an engineering agreement, or letter of certificate if employing staff engineers.

C. Allowable and Unallowable Costs:

(1) Allowable costs shall be limited to those costs which are necessary, reasonable, and directly related to the efficient achievement of the objectives of the project. Costs incurred by the Grantee for work performed on the project prior to execution of the grant agreement, but which received NMED prior approval, may be considered as allowable costs. The Grantee must justify all expenditures for which it

requests a disbursement of grant funds according to accepted NMED criteria and procedures. NMED may withhold disbursement of funds and may reclaim improperly documented disbursements until the Grantee provides sufficient justification.

(2) All unallowable costs, including but not limited to overhead charges, indirect costs, and noneligible construction costs shall be paid by the Grantee from sources other than the Colonias Wastewater Construction Grant Program.

(3) The Grantee agrees that it will implement, in all respects, the project outlined in the grant agreement.

(4) The Grantee agrees to make no change in the project description without first submitting a written request to the NMED and obtaining the NMED approval of the required change.

D. Accounting: Funds received by the Grantee from the NMED and those funds which are contributed by the Grantee shall be deposited in separate bank accounts or in a separate, identifiable ledger account. In addition, the Grantee shall establish and maintain accounting procedures which will ensure strict accountability for all funds received and disbursements made by the Grantee in connection with the grant agreement. The NMED shall be responsible for examining the Grantee's accounting procedures for purposes of this agreement, and their adequacy in accordance with generally accepted government accounting standards. These standards are usually defined as those contained in the U.S. General Accounting Office (GAO) publication, "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions," dated 2/27/81.

E. Records: The Grantee shall maintain books, records, documents, and other evidence sufficient to reflect properly all costs of whatever nature claimed to have been incurred for the performance of this agreement. Such books, records, documents, ledgers, and other evidence shall be preserved and made available to the NMED, State Auditor, US Governmental Accounting Office, and USEPA Office of the Inspector General during the Grant agreement period and for a period of six (6) years from date of final payment. If upon termination of the grant agreement, questions exist concerning proper expenditure of funds, then the Grantee shall preserve and make available all books, records, documents, ledgers and other evidence relating to the grant agreement until such questions are settled and the Grantee has received written notification to that effect from NMED.

F. Audit and Inspection: The project sites and Grantee facilities which are in any part the subject of the grant agreement, and Grantee records as defined elsewhere herein, shall be subject at all reasonable times to inspection and audit by the NMED, State Auditor, US Governmental Accounting Office, and USEPA Office of the Inspector General during the period of the grant agreement and for a period of six (6) years following final payment hereunder. All subcontracts let by the Grantee, the cost of which

are included in the grant agreement, shall include the substance of this audit and inspection clause.

G. Occupation Health and Safety: The Grantee covenants that it will take affirmative action to ensure that the project shall be conducted in conformance with federal and state laws and regulations relating to occupational health and safety. In addition, the Grantee shall assure that any contract entered into by the Grantee for the performance of work on this project shall contain language by which the contractor and the Grantee agree that authorized representatives of the NMED Occupational Health and Safety Bureau shall have free access to the project site, and shall not be impeded in any way from performance of their duties.

H. Nondiscrimination:

(1) During the performance of the grant agreement, the Grantee shall not discriminate against any employee or applicant for employment because of race, color, age, religion, sex, handicap or national origin. The Grantee shall take affirmative action to ensure nondiscrimination in employee recruitment advertising, hiring, upgrading, promotion, and selection for training (including apprenticeship).

(2) The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this clause. All solicitation or advertisement for employees placed by or on behalf of the Grantee shall state that all qualified applicants will receive consideration without regard to race, color, age, religion, sex, handicap, or national origin. The Grantee shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order 11246, dated September 24, 1965, and all relevant rules, regulations, and orders of the U.S. Secretary of Labor. The Grantee shall include the provisions of the clause in all project subcontracts.

I. Termination: NMED shall have the right to terminate the grant agreement if at any time in the judgment of NMED the terms of the grant agreement have been violated or the activities described in the project description are not progressing satisfactorily. The Grantee may terminate the grant agreement with sufficient reason. Such termination must be in writing.

J. Procurement: The Procurement Code, NMSA 1978, Section 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities, and kick-backs. The Grantee shall comply with 40 CFR Part 31, Federal regulations governing procurement which include requirements for the participation of minority and women owned businesses (MBE/WBEs).

K. Environmental Review: The Grantee shall comply with the requirements of the National Environmental Policy Act as implemented by the Environmental Review Procedures adopted by NMED.

L. Davis-Bacon Act Wage Rates: Federal wage rates provisions pursuant to 29 CFR, Part 5 shall be paid by the Grantee for construction projects in conformance to the prevailing wage rates established for the locality by the U.S. Department of Labor under the Davis-Bacon Act.

M. Federal Cross-Cutting Authorities: Several cross-cutting federal laws and authorities apply, by their own terms, to all activities assisted with federal funds. Colonias Wastewater Construction Grant projects are funded by a USEPA grant to NMED and therefore must comply with these federal "cross-cutters", three of which are described in the paragraphs above.

[2/28/93, 11/30/95; 20.7.9.300 NMAC - Rn, 20 NMAC 7.9.III.300 through 312, Recompiled 11/27/01]

**20.7.9.301-20.7.9.399 [RESERVED]**

**20.7.9.400 PAYMENT REQUIREMENTS:**

A. Interim Payments:

(1) For satisfactory performance of all work and services required to be performed under the terms of the grant agreement, NMED shall reimburse the Grantee its actual costs incurred. The Grantee may submit requests for reimbursement as often as every month. NMED shall disburse funds to the Grantee when NMED determines, in its sole discretion, that expenditures have been properly documented, as provided for in the general requirements for allowable and unallowable costs, accounting procedures, and record keeping. Copies of all pay request vouchers shall be submitted to the NMED with request for payment. Two copies of all requests shall be submitted on the appropriate form furnished by NMED and shall be accompanied by appropriate documentation to assure that those costs are correct and within the approved scope of work and attached budget form. Requests shall include expenditures to date by category.

(2) Unless good cause exists which would justify a higher amount, the NMED shall withhold five percent of payments due and owing a contractor from the Grantee until fifty percent of the contract has been billed. Unless good cause exists, the NMED shall not withhold any additional retainage from billings after fifty percent of the contract has been billed by the Grantee and approved by the NMED.

(3) Such retainage shall be held by NMED pending its final project inspection and acceptance, which shall be performed promptly and the results of which convey to the Grantee in writing. The project will not be considered complete until the work as defined in the grant agreement and the State approved plans and specifications has been fully performed and finally and unconditionally accepted by the Grantee and NMED.

(4) Interim payments will be made as the work progresses. Said payments will be based upon requests for payment prepared and certified by the Grantee or the Grantee's engineer to include value of work performed, materials on hand, and materials in place in accordance with the contract. Interim payments for engineering, inspection, legal services, or other approved services shall be made in accordance with the approved contracts or agreements.

(5) Any portion of funds paid by NMED to the Grantee which remain unexpended after completion of the project shall revert to Colonias Wastewater Construction Grant Program.

(6) The Grantee shall furnish the NMED with an estimated disbursement schedule at the beginning of the project.

B. Final Payment: Upon completion of the project, final payment shall be made after final inspection has been conducted and the following have been provided, reviewed, and approved by the NMED:

(1) The Grantee's certified request for payment prepared by the engineer and approved by the NMED.

(2) A statement by the project engineer that work has been satisfactorily completed and the contractor has fulfilled all of the obligations required under the contract documents with the Grantee, or if payment and materials performance bonds are "called," an acceptable close-out settlement to the Grantee and contractors shall be submitted to the NMED for review and approval.

(3) Final engineering statement and recap of all engineering services, legal, administrative, and other eligible and ineligible expenses and final request for disbursement.

(4) Certification by the Grantee that the labor standards contract provisions have been met.

(5) Final project inspection report prepared by the engineer.

(6) Record drawings and, if applicable, an operation and maintenance manual.

(7) Final budget showing all funding sources utilized for costs incurred for the project by designated budget categories.

(8) Written consent of the surety, if any, to final payment is prepared and submitted.

(9) For projects which receive planning grants but do not proceed to the design/construction phase, completion of the project is defined as substantial completion of the project description in the Grant agreement as determined by the NMED.

(10) The final payment to the consultant will be made after the one year performance period has ended and the granted has provided project performance certification.

[2/28/93, 11/30/95; 20.7.9.300 NMAC - Rn, 20 NMAC 7.9.III.400 and 401, Recompiled 11/27/01]

**20.7.9.402-20.7.9.499 [RESERVED]**

**20.7.9.500 PROJECT PLANNING GUIDELINES, DESIGN REQUIREMENTS AND CONSTRUCTION REQUIREMENTS:**

A. Planning Guidelines:

(1) Facilities planning consists of those necessary plans and studies that directly relate to the collection system and treatment works needed to comply with the Federal Clean Water Act and New Mexico Water Quality Act. Facilities planning will substantiate the need for the proposed facilities. It is a systematic evaluation of alternatives in regard to unique demographic, topographic, hydrologic, and institutional characteristics of the area that demonstrates that the selected alternative is cost effective in meeting the applicable effluent, groundwater and surface water quality, and public health requirements over the design life of the facility (while recognizing environmental and other nonmonetary considerations).

(2) The selection of the best wastewater and sludge management alternative is the most important outcome of the planning process.

(3) The facilities plan (feasibility report or engineer's report) should include:

(a) A description of the proposed project and the complete system of which it is a part.

(b) A cost-effective analysis of the project in providing wastewater services to meet existing Colonias residents' wastewater needs. Costs to be considered must include the present worth or equivalent annual value of all capital costs as well as operation and maintenance costs. Population forecasts should be consistent with county or state planning assessments.

(c) Cost information on total capital costs and annual O&M as well as estimated annual or monthly costs to residential and commercial users.

(d) An adequate evaluation of the environmental impacts of alternatives.

(e) For the selected alternative, a concise description that details:

(i) Relevant design parameters;

(ii) Estimated capital construction cost and operation and maintenance costs identifying sources of funds and local share; and

(iii) Cost impact on users.

(f) Demonstration that the Grantee has the legal, institutional, managerial, and financial capability to ensure adequate construction and operation and maintenance of the treatment works throughout the service area.

(g) Summary of public participation in the development of the facilities plan.

(4) If any of the above information has been developed separately, it may be incorporated by reference rather than duplication.

#### B. Design Requirements:

(1) Before beginning the design of the project, the following requirements must be completed and submitted by the Grantee to the NMED and approved by the NMED.

(a) Engineering Report/Facilities Plan: When real property is to be acquired as part of the project and within the project period submit documentation of the acquisition, including legal description, the date the property was acquired, a certified copy of title to the property, and an appraisal report by a qualified appraiser.

(b) Proof of adequate property, liability, and fidelity insurance coverage to the project as shall be required by NMED. Fidelity insurance shall be for Grantee employees who are responsible for handling grant monies.

(c) Draft plan of operation which outlines staffing in compliance with the New Mexico Utility Operator Certification Act with start-up procedures that assure efficient operation and maintenance for the facilities.

(d) Project schedule.

(e) Proposed sewer use ordinance.

(f) Proposed User Charge System: The user charge system represents revenue for good operation and maintenance and replacement of worn-cut equipment (O M & R). One basis for the system is actual use which is measured in terms of water

meter readings, measurement of sewer flow, etc. The rates are uniformly applied to each class (residential, commercial, or industrial) of user in proportions. If there is no existing user charge system, the first year rates should be based on the estimates of O&M costs and then adjusted annually thereafter to reflect actual O&M and replacement costs.

(g) Number and name of NPDES permit and/or state groundwater permit.

(h) Sludge management plan which assures compliance with 40 CFR Parts 257 and 503, and New Mexico Water Quality Control Commission Groundwater Discharge Regulations 20 NMAC 6.2. Process Design Manual -- Land Application of Sludge (EPA-625/1-83-016) & EPA BGM77 may be referenced in the development of the plan.

(2) Design of the project shall be done by a consulting engineer who is registered in New Mexico.

(a) Designs should adhere to sound construction practice using materials, methods, and equipment of proven dependability.

(b) Buildings shall be economical to operate and maintain and should be assessable to the handicapped.

(c) Designs shall insure nonviolation of the NPDES permit or state groundwater discharge permit as appropriate.

(d) Safety shall be a prime consideration in design.

### C. Construction Requirements:

(1) All plans and specifications and related addenda for the project must be submitted to NMED for review and approval before the project is advertised for sealed construction bids.

(2) All work relating to easements, rights-of-way, other property rights, and financing provisions shall be completed prior to advertising for construction sealed bids.

(3) Certified bid tabulation, recommendation of award, and evidence of full project financing should be submitted to NMED for review and approval prior to construction contract award.

(4) Competitive bidding, in accordance with 40 CFR Part 31 and applicable state laws (including local wage determinations as provided for in NMSA 1978, 13-4-11), shall be used for awarding of contracts. Contracts shall be awarded to the responsive and responsible bidder who submits the lowest acceptable bid, or as provided for by 40 CFR Part 31.

(5) Following NMED approval of the proposed award the Grantee shall provide for each contract: 1) notice of award, 2) notice of preconstruction conference, 3) executed copies of previously approved contract form documents, and 4) notice to contractor to proceed. Performance, and payment bonds in the amount of 100 percent of the project bid will be required of each contractor and copies of said documents will be filed with NMED. A copy of bid bond (for 5% of the construction cost) for the selected contractor will be filed with the NMED.

(6) The contractor shall be required to submit a schedule for construction at the preconstruction conference for that contract.

(7) The Grantee shall submit all modifications to plans, specifications, and contract change orders to NMED's project engineer promptly for approval prior to implementation of such modification or change. The NMED's decision shall be rendered promptly in writing. In cases necessitating immediate action, a verbal decision will be rendered by NMED and followed by a written notification.

(8) The Grantee shall arrange for the services of a qualified resident project inspector, unless waived by NMED, during construction of the project. The Grantee shall provide NMED with a summary of the inspector's qualifications and training to be approved by NMED prior to the preconstruction conference.

(9) Notwithstanding those inspections performed by the Grantee and its engineer, NMED shall have the right to examine all installations comprising the project, including materials delivered and stored on site for use on the Project.

(10) After completion of the project, the Grantee shall obtain from its engineer and provide NMED record drawings for the project.

(11) The Grantee shall provide for NMED review and approval, unless waived by NMED, an operation and maintenance manual for the project prior to 90% construction completion. The operation and maintenance manual shall conform to NMED requirements.

(12) If this assistance is awarded for construction of collection lines, the Grantee shall assure NMED that the existing population will connect to the collection system within a reasonable time after project completion. This shall be accomplished by adoption and annual review of an ordinance and user charge system requiring such connection to the system.

(13) On the date one year after the completion of construction and initial operation of the project, the Grantee shall certify to NMED whether or not the project meets the project performance standards. If the Grantee cannot certify that the project meets such project performance standards, any failure to meet such project performance standards shall be corrected in a timely manner, to allow such affirmative certification, at other than Federal expense.

[2/28/93, 11/30/95; 20.7.9.500 NMAC - Rn, 20 NMAC 7.9.V.500 to 502, Recompiled 11/27/01]

**20.7.9.503-20.7.9.599 [RESERVED]**

**PART 10: DRINKING WATER**

**20.7.10.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.7.10.1 NMAC - Rp 20 NMAC 7.1.I.1, 12/04/2002]

**20.7.10.2 SCOPE:**

All persons who own or operate a public water system or for sections 200 and 201, any persons constructing a public water system project. This part shall apply to each public water system, unless the public water system meets all of the following conditions: (a) it consists of only distribution and storage facilities (and does not have any collection and treatment facilities); (b) it obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply; (c) it does not sell water to any person; and (d) it is not a carrier which conveys passengers in interstate commerce.

[20.7.10.2 NMAC - Rp 20 NMAC 7.1.I.2, 12/04/2002; A, 01/06/2013]

**20.7.10.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 74-1-6, 74-1-8, 74-1-10, 74-1-13 and 74-1-13.1.

[20.7.10.3 NMAC - Rp 20 NMAC 7.1.I.3, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

**20.7.10.4 DURATION:**

Permanent.

[20.7.10.4 NMAC - Rp 20 NMAC 7.1.I.4, 12/04/2002]

**20.7.10.5 EFFECTIVE DATE:**

December 4, 2002, except where a later effective date is indicated in the history note at the end of a section.

[20.7.10.5 NMAC - Rp 20 NMAC 7.1.I.5, 12/04/2002; A, 04/16/2007]

**20.7.10.6 OBJECTIVE:**

The objective of Part 10 of Chapter 7 is to establish regulations for public water systems.

[20.7.10.6 NMAC - Rp 20 NMAC 7.1.1.6, 12/04/2002]

#### **20.7.10.7 DEFINITIONS:**

In addition to any other terms defined in 40 CFR Parts 141 and 143, the following terms, as used in this part shall have the following meanings.

**A.** "Definitions that begin with the letter "A." "Appurtenance" or "Appurtenances" means machinery, appliances, structures and other parts of the main structure necessary to allow the main structure to operate as intended, but not considered part of the main structure.

**B.** "Definitions that begin with the letter "B."

(1) "Bag filters" has the meaning defined in 40 CFR Part 141.

(2) "Best available technology" or "BAT" has the meaning defined in 40 CFR Part 141.

(3) "Bureau" means the drinking water bureau of the New Mexico environment department.

"CFR" means the code of federal regulations.

**C.** "Definitions that begin with the letter "C."

(1) "Cartridge filters" has the meaning defined in 40 CFR Part 141.

(2) "CFR" means the code of federal regulations.

(3) "Challenge test" means a study conducted to determine the removal efficiency (i.e., log removal value (LRV)) of a membrane material for a particular organism, particulate, or surrogate.

(4) "Community water system" has the meaning defined in 40 CFR Part 141.

(5) "Consecutive systems" has the meaning defined in 40 CFR Part 141.

(6) "Contaminant" has the meaning defined in 40 CFR Part 141.

(7) "Cross-connection" means any unprotected actual or potential connection or structural arrangement between a public water system and any other source or

system through which it is possible to introduce into any part of the public water system any contaminant or non-potable substance.

(8) "CT" or "CT<sub>calc</sub>" has the meaning defined in 40 CFR Part 141 and under the definition of inactivation ratio.

**D.** "Definitions that begin with the letter "D."

(1) "Department" means the New Mexico environment department.

(2) "Direct integrity test" has the meaning defined in 40 CFR Part 141.

(3) "Disinfectant" has the meaning defined in 40 CFR Part 141.

(4) "Disinfectant contact time ("T" in CT calculations)" has the meaning defined in 40 CFR Part 141.

(5) "Disinfection" has the meaning defined in 40 CFR Part 141.

**E.** "Definitions that begin with the letter "E." **[RESERVED]**

**F.** "Definitions that begin with the letter "F."

(1) "Filtration" has the meaning defined in 40 CFR Part 141.

(2) "Finished water" has the meaning defined in 40 CFR Part 141.

**G.** "Definitions that begin with the letter "G."

(1) "Ground water under the direct influence of surface water (GWUDI)" has the meaning defined in 40 CFR Part 141.

(2) "Guidance document" means any manual or other document developed or adopted by the department for determining generally acceptable standards for construction and operation of public water systems.

**H.** "Definitions that begin with the letter "H." "Human consumption " means drinking, bathing, showering, cooking dishwashing, and maintaining oral hygiene. The term "bathing" means use of the water for personal hygiene purposes. The term "bathing" does not refer to situations such as (1) swimming in an open canal or (2) incidental, casual contact with water from an open canal in connection with outdoor activities such as agricultural work, canal maintenance, or lawn and garden care.

**I.** "Definitions that begin with the letter "I." "Inactivation ratio" with respect to viruses means the ratio that quantifies inactivation of viruses. The sum of the virus inactivation ratios, or total virus inactivation ratio shown as  $\Sigma(\text{CT}_{\text{calc}})/(\text{CT}_{99.99})$ . "CT or CT<sub>calc</sub>" is the

product of "residual disinfectant concentration" (C) in mg/l determined before or after the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T." If a public water system applies disinfectants at more than one point prior to the first customer, it must determine the total percent inactivation or "total inactivation ratio." In determining the total inactivation ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s). "CT<sub>99.99</sub>" is the CT value required for 99.99 percent (4-log) inactivation of viruses. CT<sub>99.99</sub> for a variety of disinfectants and conditions appears in Tables D-7, D-9, D-11, D-13 and D-14 in the EPA Handbook for Optimizing Water Treatment Plant Performance Using the Composite Correction Program.

**J.** "Definitions that begin with the letter "J." **[RESERVED]**

**K.** "Definitions that begin with the letter "K." **[RESERVED]**

**L.** "Definitions that begin with the letter "L." **[RESERVED]**

**M.** "Definitions that begin with the letter "M."

(1) "Maximum contaminant level" has the meaning defined in 40 CFR Part 141.

(2) "Membrane filtration" has the meaning defined in 40 CFR Part 141.

(3) "Modified" or "modification" means a change, installation, addition, rehabilitation, or construction of a component of an existing public water system to substantially increase or decrease the system's capability to draw or supply water. For the purposes of this part, "modification" does not include routine maintenance.

**N.** "Definitions that begin with the letter "N."

(1) "Non-community water system" has the meaning defined in 40 CFR Part 141.

(2) "Non-public water source" means a water source that is not regulated as a public water source.

(3) "Non-public water system" means a water system that does not meet the definition of a public water system as defined in 40 CFR Part 141.

(4) "Non-transient non-community water system or NTNCWS" has the meaning defined in 40 CFR Part 141.

**O.** "Definitions that begin with the letter "O." **[RESERVED]**

**P. "Definitions that begin with the letter "P."**

(1) "Performance demonstration" means documentation that proves the efficacy of a treatment technology.

(2) "Person" has the meaning defined in 40 CFR Part 141.

(3) "Pilot study" means a specific type of performance demonstration in which the efficacy of a treatment system is tested by using a full scale model of the treatment system.

(4) "Plans and specifications" means the technical design drawings and precise standards of performance for construction work, materials and manufactured products certified by a registered professional engineer on behalf of the owner or operator of a public water system.

(5) "Point-of-entry treatment device (POE)" has the meaning defined in 40 CFR Part 141.

(6) "Point-of-use treatment device (POU)" has the meaning defined in 40 CFR Part 141.

(7) "Public water system project" or "project" means the construction of a new public water system, modification to an existing public water system, or conversion of a non-public water system to a public water system.

**Q. "Definitions that begin with the letter "Q." [RESERVED]**

**R. "Definitions that begin with the letter "R."**

(1) "Record drawings" means drawings that show detail or work as originally planned plus modifications and deviations to reflect actual construction, certified by a registered professional engineer on behalf of the owner or operator of a public water system.

(2) "Registered professional engineer " means a professional engineer registered in the state of New Mexico.

(3) "Regulated contaminant" means a contaminant for which an action level, maximum contaminant level or treatment technique is provided in 40 CFR Part 141.

(4) "Residual disinfectant concentration ("C" in CT calculations)" has the meaning defined in 40 CFR Part 141 and under the definition of inactivation ratio.

(5) "Routine maintenance" means activities associated with regularly scheduled and general upkeep of a building, equipment, machine, plant, appurtenance,

or system against normal wear and tear, including but not limited to those activities set forth in Subsection B of 20.7.10.200 NMAC.

**S.** "Definitions that begin with the letter "S."

(1) "Sample tap" means a device (e.g. sillcocks, storage tank hatches, sampling stations etc.) where access, pressure, and volume can be controlled to the extent that the sample collected is representative of the water quality.

(2) "Sanitary survey" means an onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water. Pursuant to 40 CFR Part 141, a sanitary survey evaluates at least eight components: source; treatment; distribution system; finished water storage; pump facilities and controls; monitoring and reporting and data verification; system management and operation; and operator compliance with state requirements.

(3) "Secondary contaminant" means a contaminant listed in 40 CFR Part 143.

(4) "Secretary" means the secretary of the department, or an authorized representative.

(5) "Service connection" in addition to the meaning given in 40 CFR Part 141, means a pipe, hose, appurtenance, constructed conveyance or any other temporary or permanent connection between a public water system and a user. Service connection, as used in the definition of a public water system, does not include a connection to a system that delivers by constructed conveyance other than a pipe if: (1) the water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses); (2) the department determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or (3) the department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.

(6) "State" means the New Mexico environment department when used in 40 CFR Part 141 and 40 CFR Part 143 in lieu of the meaning set forth in 40 CFR Part 141 and 40 CFR Part 143.

(7) "State act" means the Environmental Improvement Act, NMSA 1978, Section 74-1-1 et seq.

(8) "Storage facility" means a compartment used to accumulate the product water from a water treatment unit so that sufficient quantity, pressure, or both are available for intermittent periods of higher flow-rate water use.

(9) "Subpart H systems" has the meaning defined in 40 CFR Part 141.

(10) "Supplier of water" has the meaning defined in 40 CFR Part 141.

(11) "Surface water" has the meaning defined in 40 CFR Part 141.

**T.** "Definitions that begin with the letter "T." "Transient non-community water system or TWS" has the meaning defined in 40 CFR Part 141.

**U.** "Definitions that begin with the letter "U." "USEPA" means the United States environmental protection agency.

**V.** "Definitions that begin with the letter "V." **[RESERVED]**

**W.** "Definitions that begin with the letter "W." "Water hauler" means a person in the business of transporting by vehicle water intended for human consumption to at least 15 service connections or who regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

**X.** "Definitions that begin with the letter "X." **[RESERVED]**

**Y.** "Definitions that begin with the letter "Y." **[RESERVED]**

**Z.** "Definitions that begin with the letter "Z." **[RESERVED]**

[20.7.10.7 NMAC - Rp 20 NMAC 7.1.I.103, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

#### **20.7.10.8 SUBMITTALS TO THE DEPARTMENT:**

The submittal to the department of any application, notification, or other information required in this part shall be accomplished by submitting the required documents to the drinking water bureau within the department, unless otherwise specified.

[20.7.10.8 NMAC - N, 01/06/2013]

#### **20.7.10.9 DOCUMENTATION REQUIRED FOR POPULATION DETERMINATION:**

**A.** Owners or operators of community water systems shall document, and make available to the department upon request, a determination of the population served by the water system. The residential portion of the population shall be calculated by multiplying the number of service connections by the average household size in the county where the service connections are located. The most recent census conducted

by the U.S. census bureau shall be the source of the average household size data. Water haulers shall document, and make available to the department upon request, the number of residential accounts using water for human consumption.

**B.** Owners or operators of nontransient non-community water systems and transient non-community water system shall document, and make available to the department upon request, a determination of the population served (e.g., number of employees, number of students, restaurant seating capacity, number of patrons, etc.)

**C.** Owners or operators of water systems may present written documentation to the department for consideration of a population determination that differs from that described in Subsection A or B of this section.

**D.** The department will document, in writing, approval or disapproval of any population determination that differs from the population determination described in Subsections A or B of this section.

**E.** Owners or operators of public water systems shall make the information required in this section available to the department upon request within 45 days of the request.

[20.7.10.9 NMAC - N, 01/06/2013]

#### **20.7.10.10-20.7.10.99 [RESERVED]**

#### **20.7.10.100 ADOPTION OF 40 CFR PART 141:**

**A.** Except as otherwise provided in this section, the regulations of the USEPA set forth at 40 CFR Part 141 as amended from time to time, are hereby incorporated by reference into this part.

**B.** The term "state" means the New Mexico environment department when used in 40 CFR Part 141, in lieu of the meaning set forth in 40 CFR Part 141.

[20.7.10.100 NMAC - N, 12/04/2002; A, 04/16/2007; A, 10/15/2008; A, 10/28/2010; A, 01/06/2013]

#### **20.7.10.101 ADOPTION OF 40 CFR PART 143:**

**A.** Except as otherwise provided, the regulations of the USEPA set forth at 40 CFR Part 143 as amended from time to time, are hereby incorporated by reference into this part.

**B.** The term "state" means the New Mexico environment department when used in 40 CFR Part 143, in lieu of the meaning set forth in 40 CFR Part 143.

[20.7.10.101 NMAC - N, 12/04/2002; A, 04/16/2007; A, 10/15/2008; A, 01/06/2013]

#### **20.7.10.102 GUIDANCE DOCUMENTS:**

**A.** *Recommended standards for water works* ("10 States Standards"), Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, P.O. Box 7126, Albany, New York 12224.

**B.** Devices listed in the American society of sanitary engineering seal authorization booklet, American society of sanitary engineering, 901 Canterbury Road, Suite A, Westlake, OH 44145.

**C.** *Cross connection control manual*, USEPA, Washington D.C., 20460.

[20.7.10.102 NMAC - N, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

#### **20.7.10.103 AVAILABILITY OF REGULATIONS AND MATERIALS INCORPORATED BY REFERENCE:**

Regulations, materials incorporated by reference into this part and guidance documents are available for inspection at the New Mexico Environment Department Drinking Water Bureau, 525 Camino de Los Marquez, Suite 4, Santa Fe, New Mexico 87501.

[20.7.10.103 NMAC - Rp 20 NMAC 7.1.XIII.1306, 12/04/2002; A, 04/16/2007]

#### **20.7.10.104 REFERENCES:**

The current editions of the following materials, including all future editions and amendments form a part of this rule to the extent referenced.

**A.** *Disinfecting water mains, AWWA standard*, (ANSI/AWWA C651), American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

**B.** *Disinfection of water-storage facilities, AWWA standard*, (ANSI/AWWA C652), American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

**C.** *Disinfection of water treatment plants, AWWA standard*, (ANSI/AWWA C653), American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

**D.** *Disinfection of wells, AWWA standard*, (ANSI/ AWWA C654), American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

**E.** *Drinking water laboratory certification program guidance manual*, New Mexico Environment Department, Drinking Water Bureau, 525 Camino de los Marquez, Suite 4, Santa Fe, New Mexico 87501.

**F.** *Drinking water laboratory certification program guidance manual appendix A - certification application*, New Mexico Environment Department, Drinking Water Bureau, 525 Camino de los Marquez, Suite 4, Santa Fe, New Mexico 87501.

**G.** *Recommended standards for water facilities*, New Mexico Environment Department, Construction Programs Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

**H.** NSF/ANSI Standard 60 - *drinking water treatment chemicals - health effects*, NSF International P.O. Box 130140, Ann Arbor, MI 48113-0140.

**I.** NSF/ANSI Standard 61 - *drinking water system components - health effects*, NSF International P.O. Box 130140, Ann Arbor, MI 48113-0140.

**J.** NSF product and service listings, NSF/ANSI 60 - *drinking water treatment chemicals - health effects*, [http://nsf.org/business/search\\_listings/](http://nsf.org/business/search_listings/).

**K.** NSF product and service listings, NSF/ANSI 61 - *drinking water system components - health effects*, [http://nsf.org/business/search\\_listings/](http://nsf.org/business/search_listings/).

**L.** NSF product and service listings, NSF/ANSI 44, 53, 58, 62 - *drinking water treatment units: - health effects*, [http://nsf.org/business/search\\_listings/](http://nsf.org/business/search_listings/)

**M.** NSF product and service listings, NSF/ANSI 14, 24- *plumbing system components*, [http://nsf.org/business/search\\_listings/](http://nsf.org/business/search_listings/)

**N.** Devices listed in the American society of sanitary engineering "*prevention rather than cure*" seal authorization booklet, American society of sanitary engineering, 901 Cantebury Road, Suite A, Westlake, OH 44145.

**O.** *Handbook for optimizing water treatment plant performance using the composite correction program*, EPA/625/6-91/027, U.S. EPA/NSCEP, P.O. Box 42419, Cincinnati, OH 45242-041.

**P.** *EPA membrane filtration guidance manual*, EPA 815-R-06-009 November 2005, 26 West Martin Luther King Dr., Cincinnati, OH 45268.

**Q.** *Environmental technology verification (ETV) program information and guidance for vendors*, Drinking Water Systems (DWS) center February 2004, NSF International, 789 N. Dixboro Road, Ann Arbor, Michigan 48105.

**R.** *Source water assessment & protection program report of a New Mexico water utility, July 2004 (template for ground water)*, New Mexico environment department, drinking water bureau, 525 Camino de los Marquez, Suite 4, Santa Fe, New Mexico 87501.

**S.** *Source water assessment & protection program report of a New Mexico water utility, February 2004 (template for surface water)*, New Mexico environment department, drinking water bureau, 525 Camino de los Marquez, Suite 4, Santa Fe, New Mexico 87501.

**T.** *New Mexico Environment Department Drinking Water Bureau Application for Ground Water Rule 4-log Certification*, New Mexico environment department, drinking water bureau, 525 Camino de los Marquez, Suite 4, Santa Fe, New Mexico 87501.

[20.7.10.104 NMAC - N, 01/06/2013]

**20.7.10.105-20.7.10.199 [RESERVED]**

**20.7.10.200 PUBLIC WATER SYSTEM PROJECTS:**

**A.** Any person undertaking a public water system project shall submit an application to the department and shall not use the new or modified facility to produce, treat, store or distribute water for human consumption until the department has approved the application in writing except that:

(1) a person conducting the activities under Subsection B of this section need not submit an application or obtain department approval; and

(2) a person undertaking a water projects under Subsection C of this section must submit an application but may undertake the project without written approval from the department; the department will respond to each application within the period specified in Subsection K of Section 201 of this part.

**B.** The following activities are considered on-going operation and routine maintenance procedures. These activities are not considered public water system projects. There is no requirement to notify or seek approval of the department for these activities:

(1) pipeline leak repair;

(2) replacement of existing deteriorated pipeline, or addition of distribution pipeline, if such replacements or additions, or both, total less than 1,000 feet in any 60 calendar day period;

(3) entry into a drinking water storage facility for the purposes of cleaning and maintenance;

(4) the replacement of chemical feed pumps and associated appurtenances;

(5) the replacement of electrical or mechanical equipment in an existing public water supply system; and

(6) the replacement of equipment or pipeline appurtenances with the same type, size and rated capacity (fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders and booster pumps including deep well pumps).

**C.** Any person proposing to undertake the following public water system projects must give the department written notice by submitting an application; department approval is not required:

(1) a modification that involves only the replacement or construction of more than 1,000 feet of distribution lines, or of appurtenances, pump stations, or pressure regulating facilities for which the public water system employs, either by contract or direct employment, a registered professional engineer who is responsible for the project; or

(2) installation of a hypochlorination system, including an on-site hypochlorination generation system, in a public water system under the following conditions:

(a) water is supplied by ground water that is not under the direct influence of surface water;

(b) the owner or operator of the system employs, by contract or direct employment, a water operator certified in New Mexico at the level required in the Utility Operator Certification Regulations, 20.7.4 NMAC; and

(c) the certified operator is responsible for the project and certifies the inactivation ratio achieved by the hypochlorination system; the water system operator shall calculate the inactivation ratio and document the calculation on a form provided by the department.

**D.** In order to expedite future public water system projects, a public water system with the legal authority to adopt construction plans, details, and specifications by ordinance or resolution may submit a master design plan to the department for approval. Such plan must at a minimum contain:

(1) identification of existing system components and service area;

(2) a complete set of plans, details, and specifications for any component or facility to be eligible for a consideration under this section; and

(3) written verification that the plans, details, and specifications have been adopted by ordinance or resolution in such a manner as to require their use in all associated projects.

**E.** The approval requirement in Subsection A of Section 201 of this part is satisfied when a transmission, storage, or distribution project is proposed for implementation that

is certified to be in conformance with a master design plan previously approved by the department. For a project to be considered under this subsection, the owner or operator of the system must submit in lieu of the application materials in Section 201 of this part, a written summary of the project and certification that the project will be installed in accordance with the approved drawings and specifications, signed by a registered professional engineer who is responsible for the design, development, or maintenance of the public water system. A project request under this subsection shall include all of the documentation listed in this subsection.

[20.7.10.200 NMAC - Rp 20 NMAC 7.1.V.501 and 502, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

#### **20.7.10.201 APPLICATIONS FOR PUBLIC WATER SYSTEM PROJECT APPROVAL:**

**A.** Any person proposing to undertake a public water system project for which an application is required under Section 200 of this part shall complete, sign and submit an application to the department as described in this section.

**B.** The application shall be made on forms furnished by the department. Applications for projects that require department approval shall include:

(1) one set of complete plans and specifications for the project; the plans and specifications must be prepared under the direct supervision of and sealed by a registered professional engineer;

(2) an engineering design summary which shall include engineering information that sets forth the basis of the project design;

(3) a plan to disinfect the system and sample for the presence of bacterial contamination following completion of the project and prior to providing water to the public; the criteria used by the department to review the adequacy of the plan shall include the current standards of the American water works association for disinfecting water mains, wells, water-storage facilities and water treatment plants; and

(4) any other relevant information requested by the department in order to determine compliance with this part.

**C.** For a project involving the construction of a new public water system or conversion of an existing water system to a public water system, an applicant proposing to undertake a public water system project shall submit, in addition to the materials set forth in Subsection B of this section documents demonstrating that the public water system has sufficient technical, managerial and financial capacity, such as a certified operator, testing equipment required to meet regulatory treatment techniques, ownership accountability, staffing and organization, revenue sufficiency, and credit worthiness and fiscal management.

**D.** For a project involving a storage facility or distribution facility, the applicant shall submit an application to the department no less than 30 days prior to advertising the public water system project for bid; or if the project is not advertised for bid prior to commencement of construction. In addition to the materials set forth in Subsection B and Subsection C of this section the application shall include:

- (1) a description of an adequate foundation for each storage facility; and
- (2) plans and specifications showing hydrants or blow-offs to provide for complete flushing or cleaning of the newly constructed facility if existing flushing appurtenances are insufficient.

**E.** For a project that involves construction of a new water source or conversion of an existing non-public source to a public source, in addition to the materials set forth in Subsection B and Subsection C, of this section the application shall include:

- (1) the appropriate state engineer office permit;
- (2) analytical results for regulated contaminants and secondary contaminants sampling prior to commencement of construction; this section requires sampling for those regulated contaminants and secondary contaminants that are monitored at the source or at the entry point(s).

**F.** For a project involving a ground water source that is not under the direct influence of surface water, the applicant shall submit an application to the department no less than 30 days: prior to advertising the public water system project for bid; or if the project is not advertised for bid prior to commencement of construction.

(1) In addition to the requirements in Subsection E of this section, a project involving a new ground water source that is not under the direct influence of surface water must include an inventory of existing and planned facilities and land uses that are actual or potential sources of contaminants of concern located within 1,000 feet of a water source.

(2) At a minimum, potential sources of contamination and land uses in Appendix K of the NMED *source water assessment and protection program report of a New Mexico water utility, July 2004 (template for ground water)* must be considered.

**G.** For a project involving a 40 CFR Part 141 Subpart H source, including an existing non-public surface water source or a non-public ground water under the direct influence of surface water source that is converted to a public 40 CFR Part 141 Subpart H source, the applicant shall submit:

- (1) an application to the department no less than 60 days: prior to advertising the public water system project for bid; or if the project is not advertised for bid prior to commencement of construction; and

(2) an inventory of existing and planned facilities and land uses that are actual or potential sources of contaminants of concern, located within the delineation specified in *source water assessment and protection program report of a New Mexico water utility, February 2004 (template for surface water)* New Mexico environment department, drinking water bureau.

**H.** For a project using a best available technology identified in 40 CFR Part 141 for treatment of chemical, radiological or microbiological contaminants, except for *Cryptosporidium*, the application shall be submitted to the department no less than 45 days; prior to advertising the public water system project for bid; or if the project is not advertised for bid prior to commencement of construction. Treatment using a point-of-entry treatment device (POE) or a point-of-use treatment device (POU) will be considered only for treatment of chemical contaminants, except nitrate, nitrite and chlorine dioxide, within systems serving not more than 100 service connections.

**I.** For a project involving treatment of *Cryptosporidium* or a project involving treatment of chemical, radiological or microbiological contaminants that uses a technology other than those identified in 40 CFR 141 as a best available technology, the applicant shall submit an application to the department no less than 120 days: prior to advertising the public water system project for bid; or, prior to commencement of construction. The application shall include a performance demonstration. A pilot study submitted as a performance demonstration shall have been conducted by a field testing organization in accordance with Subsection J of this section.

(1) The following requirements apply to each surface water project involving treatment for *Cryptosporidium*:

(a) The application shall include a test protocol to demonstrate the performance of *Cryptosporidium* treatment meeting the requirements of the Long Term 2 Enhanced Surface Water Treatment rule, 40 CFR Part 141 Section 715 (microbial toolbox options for meeting *Cryptosporidium* treatment requirements).

(b) For a project involving treatment of *Cryptosporidium* using bag filters or cartridge filters or membrane filtration, the application shall also include a challenge test demonstrating performance, pursuant to 40 CFR Section 141.719(a)(2) through (a)(10) or (b)(2) as applicable.

(c) For a project involving treatment of *Cryptosporidium* using membrane filtration, pursuant to 40 CFR Section 141.719(b)(3), the application shall include documentation of the log removal that can be verified by a direct integrity test in addition to the challenge required in Paragraph (2) of Subsection I of Section 201 of this part.

(d) If the project will be conducted by a public water system that serves at least 10,000 people:

(i) turbidity shall be measured;

(ii) a surface water microscopic particulate analysis (MPA) shall be conducted; and

(iii) removal efficiencies for *E. coli* (analyzed by an enumeration method) and *Cryptosporidium* shall be determined; and

(iv) plant detention time shall be factored into the sample collection.

(e) If the project will be conducted by a public water system that serves fewer than 10,000 people:

(i) removal efficiencies for *E. coli* shall be determined (*E. coli* shall be analyzed by an enumeration method); and

(ii) plant detention time shall be factored into the sample collection.

(2) For all contaminants other than *Cryptosporidium*, the application shall include a test protocol developed by the "USEPA environmental technology verification program" for demonstrating treatment performance of chemical, radiological or microbiological contaminants. The department will also consider other test protocols.

**J.** A pilot study submitted pursuant to Subsection I of Section 201 of this part must be or must have been conducted by a field testing organization or person with the following qualifications:

(1) a registered professional engineer with experience in conducting drinking water pilot studies who will oversee field testing operations; or

(2) experience in conducting drinking water pilot studies for a state or an organization conforming to the requirements of that state; or

(3) experience in preparing and executing a project-specific QA/QC plan (i.e., a quality assurance project plan (QAPP)) for a drinking water treatment project or pilot study under the direction of the USEPA, water research foundation, national water research institute or other relevant organization.

**K.** Incomplete applications will not be reviewed. The applicant will be notified within 15 days of the need to submit a complete application. The department shall either approve an application, approve an application subject to conditions, or deny an application, and shall notify the applicant of such determination. The department shall not condition or in any manner require as part of an approval that the applicant use a specific process or type of equipment.

(1) For a project involving a storage facility, or for a project involving a distribution facility, the department shall notify the applicant of the determination within 30 days after receipt of the complete application.

(2) For a project involving ground water sources that are not under the direct influence of surface water, the department shall notify the applicant of the determination within 30 days after receipt of the complete application.

(3) For a project involving a surface water source or ground water under the direct influence of surface water, the department shall notify the applicant of the determination within 60 days after receipt of the complete application.

(4) For a project using a best available technology identified in 40 CFR Part 141 for treatment of a chemical, radiological or microbiological contaminant, except for *Cryptosporidium*, the department shall notify the applicant of the determination within 45 days after receipt of the complete application.

(5) For a project involving treatment of *Cryptosporidium* or for a project involving treatment of a chemical, radiological or microbiological contaminant that use a technology other than those identified in 40 CFR Part 141 as a best available technology, the department shall notify the applicant of the determination within 120 days after receipt of the complete application.

**L.** If, in the judgment of the department, exigent circumstances warrant a waiver of the requirement for approval of an application prior to construction, the department may permit a prospective applicant to commence construction of a public water system project upon receipt of written permission from the department. The owner or operator of the public water system must submit an application within 30 days of receipt of the permission.

**M.** The department may deny an application for a public water system project, in whole or in part, if the department determines that:

(1) any maximum contaminant level (MCL) or treatment technique set forth at 40 CFR Part 141 will not be met after completion of the project;

(2) any other requirement of 20.7.10 NMAC will not be met after completion of the project;

(3) the design of the project is inconsistent with generally acceptable standards for construction of public water systems and their components including, but not limited to, *the recommended standards for water facilities, construction programs bureau*, New Mexico environment department;

(4) the design of the project will not meet project goals;

(5) the public water system does not demonstrate sufficient technical, managerial or financial capacity;

(6) an existing or planned source of actual or potential contamination may adversely impact a water source proposed to be utilized by the system; to make this determination, the department may require the applicant to submit to the department analyses relating to hydrogeological, soil or ground water conditions at the site, and information regarding proposed technology or installation methods that may be employed to prevent or mitigate the impact of the contaminant source on the water source; or

(7) a regulated contaminant or disinfectant will be injected into the source (e.g., chlorine pellet drop system).

**N.** The department's approval of an application is limited to the sanitary features of design and other features of public health significance. The department's approval of an application does not imply a guarantee of any type for the constructed project nor does it relieve the applicant from the responsibility for the overall integrity of the project, the adequacy of the project's design, or from the responsibility of complying with any of the provisions of this part or other applicable state and federal laws or regulations.

**O.** The department is not responsible for increased costs resulting from defects in the plans, design drawings and specifications or any other contract documents.

**P.** The applicant shall notify the department in writing when work on the public water system project is initiated. The department may inspect the project during construction and at completion to ensure compliance with the approved plans and specifications.

**Q.** If a public water system project receives approval from the department but does not commence construction within one year after the date of department approval, the supplier of water must submit a new application to the department.

**R.** Any deviations from approved plans or specifications affecting capacity, operating units, the functioning of water treatment processes, or the quality of water to be delivered, shall be reported to the department in writing. If deemed appropriate, the department may require that revised plans and specifications be submitted for review. Revised plans or specifications shall be submitted to the department in time to permit the review and approval of such plans or specifications before any construction work, which will be affected by such changes, is begun. In the event that this requirement would result in construction delays, verbal approval by the department may be given followed by written review within 30 days. The applicant must submit a copy of the completed change order to the department as soon as possible for review, final approval and filing.

**S.** Staff from the department, after reasonable notice and presentation of credentials, may make visits to the work site to assure compliance with these rules. In the event deficiencies are noted, the applicant will be notified in writing of any deficiency. All deficiencies must be resolved prior to the start-up of the system or component of the system.

**T.** The department shall be notified when a public water supply system project, or well-defined phase thereof, is at or near completion. This notification shall consist of:

(1) for a project requiring department approval, a written statement from a registered professional engineer or a representative of the water system that all conditions of project approval were accomplished;

(2) evidence of proper flushing and disinfection in accordance with the appropriate ANSI/AWWA standard, including bacteriological sampling results;

(3) other water quality data where appropriate;

(4) all other documentation which may have been required during the plan review process;

(5) confirmation that the water system owner has been provided with an operation and maintenance manual for the new facility, where appropriate; and

(6) when the project includes construction of a new source or incorporation of an existing source into a public water supply system, documents filed with the state engineer office, including the well log and proof of completion of well for ground water sources, and a proof of completion of works for surface water sources.

**U.** For a project requiring department approval, the supplier of water shall submit record drawings and certification of project completion in an electronic format acceptable to the department within 120 days after completion of the project.

[20.7.10.201 NMAC - Rp 20 NMAC 7.1.I.109 and 20 NMAC 7.1.V.502, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

**20.7.10.202 APPLICATION FOR WATER HAULERS THAT ARE NOT OWNED OR OPERATED BY ANOTHER PUBLIC WATER SYSTEM:**

**A.** This section applies to each water hauler that is not owned or operated by a public water system. This section does not apply to the transport of bottled water regulated pursuant to 21 CFR Part 165.

**B.** Any person proposing to commence a water hauling operation for human consumption under this section shall complete, sign and submit an application to the department no later than 30 days prior to entering a service contract for delivering water for human consumption. The water hauler shall not produce, withdraw, store, transport or deliver water for human consumption until the department has approved the application in writing.

**C.** The application shall be made on form(s) furnished by the department and shall include:

(1) evidence that the water tank and other delivery components are approved for contact with water for human consumption;

(2) a declaration that the water tank and other water delivery components have never come into contact with a non-potable or non-food grade product, or a declaration listing any such products and evidence that the tank has been sufficiently reconditioned to enable hauling of potable water;

(3) a contract with a public water system authorizing receipt of water or other documentation demonstrating that the water to be hauled will come from a drinking water system that is included in the safe drinking water information system (SDWIS) inventory;

(4) a description of water hauling operation including the procedures for obtaining, storing, treatment of and delivery of water; and

(5) a disinfection plan for routine and seasonal disinfection of each tank.

[20.7.10.202 NMAC - N, 01/06/2013]

#### **20.7.10.203-20.7.10.299 [RESERVED]**

#### **20.7.10.300 COMPLIANCE; EMERGENCY POWERS:**

**A.** No public water system shall supply drinking water to the public unless the system is operated and maintained in compliance with this part.

**B.** Powers of the secretary.

(1) The secretary may take any action necessary to protect the health of persons who are or may be served by a public water system, including but not limited to issuing orders, assessing penalties or commencing a civil action for appropriate relief:

(a) if the public water system fails to meet any requirement of this part;

(b) upon receiving information that a contaminant, whether or not listed in 40 CFR Part 141, Subparts B and G, is present in or likely to enter the public water system, that the presence of such contaminant may present an imminent and substantial endangerment to the health of persons served by the system, and that appropriate local authorities have not acted to protect the health of such persons; or

(c) in response to a civil emergency involving public drinking water; the secretary's response shall be coordinated, when appropriate, with other state emergency response and relief efforts.

(2) If the secretary determines that treatment of water is necessary for a public water system to achieve concentrations no greater than the maximum contaminant levels set forth at 40 CFR Part 141, Subparts B and G, such treatment shall be continuously maintained until the public water system can demonstrate to the secretary that such treatment is no longer necessary.

[20.7.10.300 NMAC - Rp 20 NMAC 7.1.II.201, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

#### **20.7.10.301-20.7.10.399 [RESERVED]**

#### **20.7.10.400 GENERAL OPERATING REQUIREMENTS:**

**A. Protection of public water systems during maintenance or replacement of electrical or mechanical equipment.** The owner or operator of a public water system shall prevent contamination of the water in the system while undergoing maintenance or replacement of electrical or mechanical equipment.

**B. Security and protection of a public water system.** Any part or component of a public water system including but not limited to spring junction boxes, well houses, storage reservoirs, collection devices, pump facilities, and treatment facilities shall be constructed, operated and maintained to prevent:

- (1) unauthorized entry to the water supply;
- (2) flooding of the water supply; and
- (3) contamination of, the water supply.

**C. Protection of a public water system well.** A ground water supply well serving a public water system shall have a sanitary seal installed at the wellhead to protect against entry of storm water and other non-potable fluids or foreign materials and against access by insects, rodents, birds or other vermin. All vents installed in the well casing shall be protected against entrance of foreign material and flooding. If the well is completed in a subsurface vault, the casing shall extend above the potential flooding height. All cracks, joints or other openings at the wellhead and all penetrations to the casing at or near the ground surface shall be tightly sealed with an impermeable material.

**D. Finished water storage facilities.** A finished water storage facility shall be protected from flooding or infiltration of raw or non-potable water and from entry by birds, insects, rodents or other vermin. Overflow pipes and vents shall be screened with a corrosion-resistant material or be fitted with an acceptable flap valve. Access hatches or openings that are below the maximum operating water level shall be fitted with a watertight cover or appropriate seal or gasket. Roof hatches or other openings above the maximum operating water level shall be fitted with a watertight cover, appropriate

seal or gasket, or framed above the surface of the tank at the opening. Framed hatches must be fitted with a solid cover that overlaps the framed opening and extends down around the frame. All framed hatches must restrict the entry of vermin or water.

**E. Notice to the department.** If the safety precautions or preventive measures required to be employed under this section fail to protect the public water system from unauthorized entry or contamination, or if the water supply is endangered for any reason, the supplier of water shall immediately notify the department and take appropriate action to protect the supply.

**F. Disinfection following the completion of a public water system project requiring department approval.** Any part or component of a public water system that has undergone construction or modification requiring department approval shall be flushed, disinfected and sampled for the presence of bacterial contaminants upon completion of the project and prior to providing water to the public. Disinfection and sampling shall be conducted in accordance with a plan submitted to and approved by the department pursuant to Paragraph (3) of Subsection B of 20.7.10.201 NMAC.

**G. Disinfection following construction, modification or repair not requiring department approval.** Any part or component of a public water system that has undergone repair, construction or modification not requiring department approval shall be flushed, disinfected and sampled in accordance with the current editions of the *standards for disinfecting water mains*, American water works association; *standards for disinfection of wells*, American water works association; *standards for disinfection of water-storage facilities*, American water works association; and *standards for disinfection of water treatment plants*, American water works association.

**H. Disinfection of seasonally operated facilities.** A public water system that operates on a seasonal basis shall be flushed and disinfected following the non-use period and shall conduct special sampling to demonstrate the absence of bacterial contaminants in the system prior to providing drinking water to the public. During the public water system's non-use period, the public water system shall be maintained to prevent unauthorized entry to, and contamination of, the water supply.

**I. Maintenance and disinfection of storage structures.** All materials used to re-coat or repair the interior of water storage structures must be suitable for potable water contact. After the interior of a storage structure has undergone maintenance or re-coating, the storage structure must be flushed and disinfected pursuant to Subsection G of this section.

**J. Prohibition of iodine as a disinfectant.** No public water system shall use iodine as a disinfectant.

**K. Standards for additives, materials and equipment - direct additives.** Each product added directly to water during production or treatment, including treatment in storage and distribution, shall conform to American national standards institute (ANSI)

or national sanitation foundation international (NSF) Standard 60. Products covered by this subsection may include but are not limited to:

- (1) coagulation and flocculation chemicals;
- (2) chemicals for corrosion and scale control;
- (3) chemicals for softening, precipitation, sequestering, and pH adjustment;
- (4) disinfection and oxidation chemicals;
- (5) chemicals for fluoridation, defluoridation, algae control, and dechlorination;
- (6) dyes and tracers;
- (7) antifreezes, antifoamers, regenerants, and separation process scale inhibitors and cleaners;
- (8) water well drilling and rehabilitation aids; and
- (9) well pump lubricants and well sealants.

**L. Standards for additives, materials and equipment - indirect additives.**

Except as identified in Subsections N and O, a material or product that comes into contact with water or water treatment chemical shall conform to ANSI/NSF Standard 61. Products and materials covered by this subsection may include but are not limited to:

- (1) process media, such as carbon and sand;
- (2) joining and sealing materials, such as solvents, cements, welding materials, and gaskets;
- (3) mechanical plumbing devices;
- (4) pipes and related products, such as pipe and fittings;
- (5) mechanical devices used in treatment, transmission, or distribution systems such as tanks, valves, chlorinators, and separation membranes; and
- (6) protective (barrier) materials such as coatings.

**M. Standards for additives, materials and equipment - certification.** The appearance on the product or product package of a seal of a certifying entity that is accredited by the ANSI/NSF to provide the certification or inclusion of the product in the NSF product and service listings shall be considered as proof that a product conforms to the requirement of this section.

**N. Standards for additives, materials and equipment - alternative certification.**

In those instances where a chemical, additive or drinking water system component that comes into contact with drinking water is essential to the design, construction or operation of the drinking water system and has not been certified by the ANSI/NSF, the operator may utilize the alternatives given in this subsection:

(1) a water system owner or operator may submit evidence that a chemical not included in ANSI/NSF Standard 60, such as EPI-DMA polyamines, anhydrous monosodium phosphate, permanganates other than potassium permanganate and sodium fluorosilicate, meets standards consistent with NSF Standard 60;

(2) a water system owner or operator may submit evidence that a system is made entirely of components certified under ANSI/NSF Standard 61; or

(3) a water system owner or operator may submit evidence that a component meets standards consistent with ANSI/NSF Standard 61.

**O. Standards for additives, materials and equipment - exemptions.** The following materials and products are exempt from the requirement to conform to ANSI/NSF Standard 61.

(1) an uncoated concrete structure, tank or treatment basin that is constructed onsite if the structure, tank, or basin is not normally coated or sealed and the construction materials used in the concrete are consistent with Subsection N;

(2) an earthen reservoir or canal located upstream of water treatment; and

(3) a water treatment plant that is comprised of components that comply with Subsections L or N.

**P. Cross-connections.** Cross-connections to a public water system or within a public water system shall be prohibited, unless the public water system is protected by a method acceptable to the department using either a device listed in the American society of sanitary engineering "*prevention rather than cure*" seal authorization booklet or a device acceptable to the department to prevent the back flow of water.

**Q. Operator certification.** Public water systems shall comply with the utility operator certification requirements in the Utility Operator Certification Act, NMSA 1978, 61-33-1 et seq. as amended, and in regulations and program requirements adopted pursuant to the Safe Drinking Water Act.

[20.7.10.400 NMAC - Rp 20 NMAC 7.1.II.208, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

**20.7.10.401 GENERAL OPERATING REQUIREMENTS FOR WATER HAULERS:**

**A.** This section applies to each water hauler.

**B.** A water hauler subject to this section shall obtain for delivery disinfected water only from public water systems that are part of the department safe drinking water information system (SDWIS) inventory and do not pose an acute health threat based on violation of a maximum contaminant level or treatment technique.

**C.** A water hauler subject to this section shall:

(1) disinfect each tank, before filling the tank for delivery, if it has not been used more than eight consecutive days;

(2) disinfect each tank after every three months of continuous operation;

(3) measure and record the disinfectant residual at the same time and place water is obtained from the public water system and immediately prior to when the water is delivered to the customer;

(4) maintain a record of the date and time that each water hauling truck is disinfected;

(5) for those water haulers that are owned or operated by a public water system, comply with the sampling requirements applicable to consecutive systems in accordance with Subsection E of Section 500 of this part; and

(6) make each vehicle used for water hauling available for inspection by the department; at the time of the inspection the tank shall be empty and have a hatch or other opening to facilitate internal inspection.

**D.** A water hauler subject to this section shall use only water tanks with the following features:

(1) Hatches or openings must have water tight covers.

(2) The tank drain must allow for complete draining of the tank.

(3) All hoses and other dispensing units must be equipped with water tight caps.

[20.7.10.401 NMAC - N, 01/06/2013]

**20.7.10.402-20.7.10.499 [RESERVED]**

**20.7.10.500 MONITORING REQUIREMENTS:**

**A.** Pursuant to NMSA 1978, 74-1-13.1, the department shall test non-transient non-community water systems for arsenic, fluoride and radionuclides. The reporting and public notification requirements for non-transient non-community water systems for these contaminants shall be identical to those for community water systems as set forth in 40 CFR Subpart Q.

**B.** Each supplier of water shall begin routine sampling in accordance with 40 CFR Part 141 within 90 days after providing water for human consumption.

**C.** All public water systems shall conduct sampling at the rates set forth in 40 CFR Part 141, Subpart C, except that non-transient non-community systems shall conduct coliform sampling at the same rates as like-sized community water systems in 40 CFR 141.21(a)(2) and except that consecutive systems shall sample as required in Subsection E of Section 500 of this part. The department may order a supplier of water, when necessary, to conduct more frequent sampling than is required under 40 CFR Part 141.

**D.** The department may order a public water system that uses two or more water sources to collect special purpose samples directly from the water sources, in addition to routine samples from sampling points as required under 40 CFR Part 141.

**E.** Consecutive systems shall collect samples for those contaminants for which monitoring is required in the distribution system. This includes measurement of disinfectant residuals and collection of samples for total coliform, lead and copper, and disinfection byproducts.

**F.** All public water systems must have sample taps to collect water representative of each applicable facility at sampling points required under 40 CFR Part 141.

**G.** For systems subject to triggered monitoring under 40 CFR Part 141 ground water rule: for each total coliform positive sample collected from the distribution system, at least one ground water source sample must be collected from each ground water source that was in use at the time the total coliform-positive sample was collected.

[20.7.10.500 NMAC - Rp 20 NMAC 7.1.III.301, 12/04/2002; A, 04/16/2007; A, 01/06/2013]

#### **20.7.10.501 [RESERVED]**

[20.7.10.501 NMAC - Rp 20 NMAC 7.1.III.309, 12/04/2002; Repealed, 01/06/2013]

#### **20.7.10.502 VALIDATION OF ANALYTICAL DATA OR CONDITIONS:**

The department may take any action it deems necessary to validate the results of a sample taken pursuant to this part. Data that the department determines to be invalid shall not be used to determine compliance with this part.

[20.7.10.502 NMAC - Rp 20 NMAC 7.1.III.311, 12/04/2002]

**20.7.10.503 DEPARTMENT MONITORING AND SAMPLING:**

Nothing in this part shall be construed to preclude the department from taking samples or from using the results from such samples to determine compliance with this part or in an enforcement proceeding for violation of this part.

[20.7.10.503 NMAC - Rp 20 NMAC 7.1.III.312, 12/04/2002]

**20.7.10.504 INSPECTIONS, INVESTIGATIONS AND SANITARY SURVEYS:**

**A.** The secretary may, upon the presentation of proper credentials and after receiving consent from the supplier of water, enter at reasonable times upon or through the premises of any public water system to conduct a sanitary survey, inspection or investigation and during such survey, inspection or investigation:

- (1) have access to and copy, at reasonable times, any records required to be kept pursuant to this part;
- (2) inspect or review any monitoring equipment or methods required under this part;
- (3) sample or otherwise test the water supplied by such system; and
- (4) have access to a public water system facility for visual inspection.

**B.** If permission to enter a public water system to conduct a sanitary survey, inspection or investigation in accordance with Subsection A of this section is denied, the secretary may apply to a court of competent jurisdiction for an order allowing for such entry.

**C.** To aid the secretary in conducting sanitary surveys, inspections or investigations pursuant to this part, the supplier of water or his duly authorized representative shall, prior to the commencement of such inspection or investigation, be given the opportunity to accompany the inspector upon or through the premises of the public water system.

[20.7.10.504 NMAC - Rp 20 NMAC 7.1.I.108, 12/04/2002; A, 01/06/2013]

**20.7.10.505 SUBPART H SYSTEM REPORTING:**

In addition to complying with any other reporting requirements in 40 CFR Part 141, operators of public water systems shall submit the following reports electronically on forms furnished by the department, if applicable:

- A.** monthly operating reports required of 40 CFR 141 Subpart H systems; and

**B.** for systems that use membrane filtration, a direct integrity test required of 40 CFR Part 141 Subpart W.

[20.7.10.505 NMAC - N, 01/06/2013]

**20.7.10.506-20.7.10.599 [RESERVED]**

**20.7.10.600 PUBLIC NOTIFICATION:**

**A.** Non-transient non-community water systems that exceed the MCL for arsenic or radionuclides set forth at 40 CFR sections 141.11, 141.62 and 141.66 or exceed one-half the MCL for fluoride set forth at 40 CFR section 141.62 shall comply with the public notification requirements set forth at 40 CFR Subpart Q.

**B.** A supplier of water shall notify persons served by the public water system to boil water used for drinking or culinary purposes if routine coliform samples indicate the presence of bacterial contamination which would not otherwise trigger the public notice requirements set forth at 40 CFR Subpart Q but which, in the judgment of the department, poses a threat to public health and safety. If the supplier of water fails to provide notice on its own, or at the direction of the department, the department may directly notify the persons served by the system.

**C.** If the safety of a water supply is endangered for any reason, the supplier of water shall notify persons served by the public water system of appropriate action to protect themselves against any waterborne hazards. If the supplier of water fails to take such action on its own, or at the direction of the department, the department may directly notify the persons served by the system.

[20.7.10.600 NMAC - Rp 20 NMAC 7.1.IV.402, 12/04/2002; A, 04/16/2007]

**20.7.10.601-20.7.10.699 [RESERVED]**

**20.7.10.700 SEVERABILITY:**

The provisions of this part shall be severable, and if any section, subsection, paragraph, subparagraph, sentence, clause, subclause or item of this part, or the applicability thereof to any person or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, and the application thereof, but shall be confined in its operation to the section, subsection, paragraph, subparagraph, sentence, clause, subclause or item thereof, or to the person or circumstance directly involved in the controversy in which such judgment shall have been rendered.

[20.7.10.700 NMAC - Rp 20 NMAC 7.1.XIII.1301, 12/04/2002]

**20.7.10.701 SAVING CLAUSE:**

Repeal of 20 NMAC 7.10 shall not affect any administrative or judicial enforcement action pending on the effective date of this part.

[20.7.10.701 NMAC - Rp 20 NMAC 7.1.XIII.1305, 12/04/2002]

**20.7.10.702 CONSTRUCTION:**

This part shall be liberally construed to effectuate the purpose of the state act.

[20.7.10.702 NMAC - Rp 20 NMAC 7.1.XIII.1303, 12/04/2002]

**20.7.10.703 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person from the obligation to comply with other applicable state and federal regulations.

[20.7.10.703 NMAC - Rp 20 NMAC .1.XIII.1302, 12/04/2002]

**20.7.10.704 EFFECT OF STAY OR INVALIDATION OF INCORPORATED FEDERAL STANDARDS:**

If any federal standard or regulation incorporated by reference in this part is stayed, invalidated or otherwise rendered unenforceable, in whole or in part, by action of a federal court or USEPA, such incorporated federal standard or regulation shall be enforceable by the department only to the extent it is enforceable by USEPA.

[20.7.10.704 NMAC - N, 12/04/2002]

**PART 11: LIQUID WASTE TREATMENT AND DISPOSAL FEES**

**20.7.11.1 ISSUING AGENCY:**

Environmental Improvement Board.

[20.7.11.1 NMAC - Rp, 20.7.11.1 NMAC, 7/1/2020]

**20.7.11.2 SCOPE:**

All persons required under 20.7.3 NMAC to obtain a:

- A. Permit;
- B. Modification to a permit;
- C. Registration;

D. Septage pump truck registration;

E. Certificate of qualification for:

- (1) Homeowner certification,
- (2) Third-party evaluator certification,
- (3) Maintenance service provider certification,
- (4) Septage pumper certification, or
- (5) Installer specialist certification

F. Septic Tank Certification; or

G. Re-inspection.

[20.7.11.2 NMAC - Rp, 20.7.11.2 NMAC, 7/1/2020]

**20.7.11.3 STATUTORY AUTHORITY:**

Environmental Improvement Act, Section 74-1-1 through 74 -1-10 NMSA 1978.

[20.7.11.3 NMAC - Rp, 20.7.11.3 NMAC, 7/1/2020]

**20.7.11.4 DURATION:**

Permanent.

[20.7.11.4 NMAC - Rp, 20.7.11.4 NMAC, 7/1/2020]

**20.7.11.5 EFFECTIVE DATE:**

July 1, 2020, unless a later date is cited at the end of a section.

[20.7.11.5 NMAC - Rp, 20.7.11.5 NMAC, 7/1/2020]

**20.7.11.6 OBJECTIVE:**

The objective of this rule is to provide for liquid waste treatment and disposal fees for the administration of the state liquid waste regulations. The purpose of the state liquid waste treatment and disposal program is to protect the health and welfare of present and future citizens of New Mexico by providing for the prevention and abatement of public health hazards and surface and ground water contamination from on-site liquid waste disposal practices.

[20.7.11.6 NMAC - Rp, 20.7.11.6 NMAC, 7/1/2020]

#### **20.7.11.7 DEFINITIONS:**

**A.** Unless otherwise defined in this part, the words and phrases used in this part have the same meanings as in 20.7.3.7 NMAC, Liquid Waste Disposal.

**B.** As used in this part:

**(1)** "**advanced treatment**" means any process of wastewater treatment that removes a greater amount of contaminants than is accomplished through primary treatment. Advanced treatment may include physical or chemical processes;

**(2)** "**advanced treatment system**" means a method or technology implemented to achieve advanced treatment;

**(3)** "**alternative disposal**" means any approved, on-site liquid waste disposal method used in lieu of, including modifications to, a conventional disposal method;

**(4)** "**alternative disposal system**" means a method or technology implemented to achieve alternative disposal;

**(5)** "**alternative system**" means any on-site liquid waste system utilizing a method of liquid waste treatment and disposal used in lieu of a conventional system, including modifications that are recognized and allowed by Liquid Waste Disposal and Treatment, 20.7.3 NMAC (9/1/13 as amended through 9/15/14).

**(6)** "**commercial unit**" means a structure that is not a residential unit but which has sewage producing fixtures such as sinks, baths, showers, toilets, urinals, dish- and clothes-washers, or floor drains for receiving liquid waste including but not limited to uses included in Subsection Q of 20.7.3.201 NMAC, Table 201.1;

**(7)** "**conventional system**" means an on-site liquid waste system consisting of a septic tank or a subsurface soil absorption system with gravity distribution of the effluent constructed in accordance with the standards set forth in 20.7.3 NMAC including privies, holding tanks and vaults;

**(8)** "**gpd**" means gallons-per-day;

**(9)** "**hazard to public health**" means the indicated presence in water or soil of biological, chemical, or other contaminants under such conditions that could adversely impact human health, including without limitation, surfacing liquid waste, damage to a domestic water supply source, presence of a cesspool or an open tank, or exposure of liquid waste or septage in a manner that allows possible transmission of disease;

(10) **"large system"** means any liquid waste treatment or disposal system that receives, or is designed to receive, more than 2,000 gpd but not more than 5,000 gpd;

(11) **"notice of non-approval"** means notification that inspection of a permitted liquid waste system is not in compliance with 20.7.3 NMAC;

(12) **"on-site liquid waste system"** means a liquid waste system, or part thereof, serving a dwelling, establishment, or group, and using a liquid waste treatment unit designed to receive liquid waste followed by either a soil treatment or other type of disposal system; on-site liquid waste systems include enclosed systems and privies but do not include systems or facilities designed to receive or treat mine or mill tailings or wastes;

(13) **"septic tank"** means liquid waste treatment units designed to provide primary treatment and anaerobic treatment prior to disposal;

(14) **"small system"** means any liquid waste treatment and disposal system that receives, or is designed to receive, no more than 2,000 gpd.

[20.7.11.7 NMAC - Rp, 20.7.11.7 NMAC, 7/1/2020]

#### **20.7.11.8 PERMIT FEES:**

Payment of permit fees are due prior to the issuance of a permit meeting all the requirements of 20.7.3 NMAC.

**A. Fees for permits to register, construct, or modify a conventional system of a specified design flow.** The fee for a system designed for:

- (1) zero gpd up to 1,000 gpd is \$225.00;
- (2) 1,001 gpd up to 2,000 gpd is \$325.00;
- (3) 2,001 gpd up to 5,000 gpd is \$500.00;

**B. Fees for permits to register, construct or modify an alternative system or advanced treatment system of a specified design flow.** The fee for a system designed for:

- (1) zero gpd up to 1,000 gpd is \$450.00;
- (2) 1,001 gpd up to 2,000 gpd is \$550.00;
- (3) 2,001 gpd up to 5,000 gpd is \$750.00;

**C. Annual operating permit renewal fees:**

(1) The annual operating permit renewal fee for:

(a) an alternative system or advanced treatment system is \$50.00;

(b) a holding tank system or, a split flow system with a holding tank, excluding alternative systems and advanced treatment systems is \$30.00.

**D. Application of annual operating permit fees:** The annual operating permit fees will apply to the following:

(1) alternative disposal systems, advanced treatment systems, and holding tank systems installed after the effective date of this rule;

(2) alternative disposal systems, advanced treatment systems, and holding tank systems modified after the effective date of this rule; and

(3) alternative disposal systems, advanced treatment systems, and holding tank systems subject to transfer of ownership after the effective date of this rule.

**E. Term of annual operating permits and renewals; non-transferability:**

(1) Annual operating permits are issued upon final approval of the most recent permit to register, construct, or modify an alternative system or advanced treatment system, a holding tank system, or a split flow system with a holding tank. Annual operating permits are granted for a period of 12 consecutive months from the date of issuance and expire on the last day of the anniversary month in which the operating permit was issued.

(2) Annual operating permit renewals are due 12 months after the system owner is granted permission to operate the system and are issued for a period of 12 consecutive months from the date of issuance and expire on the last day of the anniversary month in which the operating permit was issued or renewed.

(3) Annual Operating permits and their renewals will be issued upon all appropriate fees being paid and demonstration that the system meets all applicable requirements of 20.7.3 NMAC. A property owner that fails to renew their annual operating permit in a timely manner may be subject to enforcement action by the department.

(4) Annual operating permits are non-transferrable.

[20.7.11.8 NMAC - Rp, 20.7.11.8 NMAC, 7/1/2020]

**20.7.11.9 QUALIFICATION CERTIFICATE FEES:**

If a qualification certificate is requested as provided for in 20.7.3.904 NMAC, a fee as indicated in subsections A through F of this section shall be submitted upon issuance of the qualification certificate in addition to any associated permit fee required in 20.7.11 NMAC. The fee for a qualification certificate for:

- A. a qualified homeowner is \$170.00;
- B. a third-party evaluator is \$50.00;
- C. a maintenance service provider is \$50.00;
- D. a septage pumper is \$30.00;
- E. an installer specialist is \$150.00;
- F. renewal for an installer specialist is \$75.00

[20.7.11.9 NMAC - N, 7/1/2020]

**20.7.11.10 SEPTAGE PUMPING TRUCK ANNUAL REGISTRATION FEE:**

Effective July 1, 2021, the annual fee for registration of a septage pumping truck is \$30.00.

[20.7.11.10 NMAC - N, 7/1/2020]

**20.7.11.11 PROPERTY TRANSFER REPORT FILING FEE:**

The fee for filing a property transfer report is \$50.00.

[20.7.11.11 NMAC - N, 7/1/2020]

**20.7.11.12 SEPTIC TANK MANUFACTURER CERTIFICATION FEE:**

The annual fee for the certification/re-certification of septic tank designs as required in 20.7.3 NMAC is \$150.00.

[20.7.11.12 NMAC - Rp, 20.7.11.9 NMAC, 7/1/2020]

**20.7.11.13 RE-INSPECTION FEE:**

If a site inspection results in an issuance of a notice of non-approval, a fee of \$125.00 shall be assessed for the re-inspection of the system. The re-inspection fee shall be remitted to the department prior to a subsequent inspection being conducted.

[20.7.11.13 NMAC - Rp, 20.7.11.10 NMAC, 7/1/2020]

#### **20.7.11.14 UNPERMITTED SYSTEM INSPECTION FEE:**

If a property owner requests that the department conduct an unpermitted system inspection, the fee is \$250.00.

[20.7.11.14 NMAC – N, 7/1/2020]

#### **20.7.11.15 VARIANCE FEE:**

If a variance is requested as provided for in 20.7.3 NMAC, a fee of \$100.00 for small systems and \$250.00 for large systems shall be submitted upon issuance of the variance in addition to the permit fee required in 20.7.11.8 NMAC above.

[20.7.11.15 NMAC - Rp, 20.7.11.11 NMAC, 7/1/2020]

#### **20.7.11.16 PAYMENT OF FEES:**

**A.** The department shall not issue a permit, variance or tank design certification until payment is received by the department. The fees required in this part are non-refundable.

**B.** All fees shall be remitted to the department, payable to the environment department liquid waste fund. All fees collected pursuant to this part shall be transmitted to the state treasurer for deposit in the liquid waste fund.

[20.7.11.16 NMAC - Rp, 20.7.11.12 NMAC, 7/1/2020]

#### **20.7.11.17 LIQUID WASTE DISPOSAL SYSTEM ASSISTANCE FUND:**

Pursuant to Section 74-1-15.1 NMSA 1978, the liquid waste disposal system assistance fund will be funded annually with \$40.00 from each permit issued pursuant to subsections A and B of Section 8 of this part, up to a maximum of \$200,000.00. Money from the fund will be used for the sole purpose of assisting indigent individuals or households that qualify for funding to accomplish one of the following purposes where there is a real or potential negative impact to public health or water quality from on-site liquid waste disposal system effluent:

**A.** to pay for a liquid waste disposal system to replace a cesspool or other failed or improper on-site liquid waste disposal system;

**B.** to purchase, install, or maintain an advanced treatment system as required by the Environmental Improvement Act or regulations issued pursuant to that act;

**C.** to pay for the decommissioning and removal of a cesspool or other failed or improper on-site liquid waste disposal system; or

**D.** to pay for all or a portion of the connection fees in order to connect an individual or household to a centralized wastewater collection and treatment system.

[20.7.11.17 NMAC - N, 7/1/2020]

**20.7.11.18 APPLICABILITY:**

**A.** The requirement for payment of the permit application fee shall apply only to those applications received on or after the effective date of this part.

**B.** The annual tank certification fee shall apply on or after the effective date of this part. The annual fee shall be received by the department no later than January 1 of each year.

**C.** The requirements concerning payment of a re-inspection fee shall apply only to those re-inspections occurring on or after the effective date of this part.

[20.7.11.18 NMAC - Rp, 20.7.11.13 NMAC, 7/1/2020]

**20.7.11.19 PERIODIC REVIEW:**

In order for the environmental improvement board to fulfill its obligation to establish onsite liquid system fees in accordance with Paragraph 3 of Subsection A of Section 74-1-8 NMSA 1978, the department shall provide information by January 15th of each year to the environmental improvement board as follows:

**A.** liquid waste fund revenues for the previous fiscal year;

**B.** liquid waste fund expenditures for the previous fiscal year:

(1) personal services and benefits;

(2) contracts;

(3) other costs;

(4) indirect;

**C.** external audit report for the previous fiscal year;

**D.** current fiscal year budget for field operations bureau approved by the department of finance and administration and the legislative finance committee;

**E.** report on contiguous states' fees:

(1) for Arizona, Oklahoma and Texas: report of state program fee schedules (although some Texas counties have their own fee schedules);

(2) Colorado and Utah: report of fee schedule for each county or health district;

F. performance measures report for previous fiscal year;

G. copy of liquid waste annual strategic plan;

H. copy of training plan, if any, for the upcoming year.

[20.7.11.19 NMAC - Rp, 20.7.11.14 NMAC, 7/1/2020]

#### **20.7.11.20 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person of the obligation to comply with other applicable state and federal regulations.

[20.7.11.20 NMAC - Rp, 20.7.11.15 NMAC, 7/1/2020]

#### **20.7.11.21 CONSTRUCTION:**

This part shall be liberally construed to implement the purpose of the act.

[20.7.11.21 NMAC - Rp, 20.7.11.16 NMAC, 7/1/2020]

#### **20.7.11.22 SEVERABILITY:**

If any provision or application of this part is held invalid, the remainder shall not be affected.

[20.7.11.22 NMAC - Rp, 20.7.11.17 NMAC, 7/1/2020]

# **CHAPTER 8: NUISANCE ABATEMENT**

## **PART 1: GENERAL PROVISIONS [RESERVED]**

## **PART 2: MOSQUITO ABATEMENT AND CONTROL**

### **20.8.2.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[11/30/95; Recompiled 11/27/01]

### **20.8.2.2 SCOPE:**

All persons having ownership of or control over any property upon which water may collect.

[11/30/95; Recompiled 11/27/01]

### **20.8.2.3 STATUTORY AUTHORITY:**

Section 74-1-8 NMSA 1978.

[11/30/95; Recompiled 11/27/01]

### **20.8.2.4 DURATION:**

Permanent.

[11/30/95; Recompiled 11/27/01]

### **20.8.2.5 EFFECTIVE DATE:**

November 30, 1995 [unless a later date is cited at the end of a section].

[11/30/95; Recompiled 11/27/01]

### **20.8.2.6 OBJECTIVE:**

To prevent or control the occurrence of mosquitoes that are a nuisance or are capable of transmitting disease to man or domestic animals.

[9/22/72; 11/30/95; Recompiled 11/27/01]

### **20.8.2.7 DEFINITIONS:**

As used in this part [now 20.8.2 NMAC]:

A. "abatement" means the control or elimination of mosquitoes by elimination of their breeding sources or by poisoning, spraying, or the use of biological and environmental controls, or any other method approved by the department;

B. "collection of water" includes any collection of water contained in ditches, borrow pits, pools, crop fields, ponds, streams, excavations, holes, depressions, open cesspools, privy vaults, fountains, cisterns, tanks, shallow wells, troughs, sewage oxidation ponds and lagoons, barrels, urns, cans, boxes, bottles, tubes, buckets, roof gutters, tanks of flush closets, reservoirs, vessels, receptacles of any kind, or other containers or devices which may hold water;

C. "department" means the New Mexico environment department;

D. "mosquito" means any arthropod belonging to the class insects, order diptera, family culicidae, subfamily culicinae;

E. "mosquito larvae" means the immature aquatic stages of mosquitoes occurring between the egg and pupal stages;

F. "mosquito pupae" means the aquatic stages between the larval and adult stages of mosquitoes; and

G. "person" means any individual, partnership, firm, public or private corporation, trust, estate, company, society, political subdivision or agency, or any other legal entity or their legal representatives, agents or assigns.

[9/22/72; 11/30/95; Recompiled 11/27/01]

#### **20.8.2.8-20.8.2.106 [RESERVED]**

#### **20.8.2.107 PROHIBITED ACTS:**

No person shall create or maintain any collection of water in or on which mosquitoes breed or are likely to breed unless approved methods of abatement are employed as specified by the department. The presence of mosquito larvae or mosquito pupae, or both, in collections of water shall constitute conclusive evidence that mosquitoes are breeding there.

[9/22/72; 11/30/95; Recompiled 11/27/01]

#### **20.8.2.108 APPROVED METHODS OF ABATEMENT:**

Approved methods of mosquito abatement may consist of one or more of the following procedures:

- A. eliminate collections of water by filling or draining;
- B. free collections of water of all vegetative growth, floating debris and other obstruction;
- C. clean premises by disposal, removal or destruction of the cans, boxes, broken or empty bottles, vehicles, tires and similar articles likely to hold water;
- D. empty collections of water every four (4) days;
- E. stock collections of water with mosquito-destroying fish;
- F. screen collections of water with corrosion resistant netting of at least 16 meshes to the inch each way, or with other material which will effectually prevent the ingress and egress of mosquitoes;
- G. treat collections of water with chemicals approved by the department; or
- H. any other method approved by the department.

[9/22/72; 11/30/95; Recompiled 11/27/01]

**20.8.2.109 SEVERABILITY:**

If any provision of application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[11/30/95; Recompiled 11/27/01]

**20.8.2.110 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This part shall be construed as amending and superseding the Regulations Governing Mosquito Abatement and Control, EIB 72-1, filed August 23, 1972. All references to the regulations governing mosquito abatement and control in any other rule shall be construed as a reference to this part.

[11/30/95; Recompiled 11/27/01]

**20.8.2.111 SAVING CLAUSE:**

Super-session of the regulations governing mosquito abatement and control shall not affect any administrative or judicial enforcement action pending on the effective date of this part.

[11/30/95; Recompiled 11/27/01]

### **20.8.2.112 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person from the obligation to comply with other applicable state and federal regulations.

[11/30/95; Recompiled 11/27/01]

## **CHAPTER 9: SOLID WASTE**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: SOLID WASTE MANAGEMENT GENERAL REQUIREMENTS**

#### **20.9.2.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.9.2.1 NMAC - Rp, 20 NMAC 9.1.1.001, 08/02/07]

#### **20.9.2.2 SCOPE:**

This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.

[20.9.2.2 NMAC - Rp, 20 NMAC 9.1.1.002, 08/02/07]

#### **20.9.2.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.2.3 NMAC - Rp, 20 NMAC 9.1.1.003, 08/02/07]

#### **20.9.2.4 DURATION:**

Permanent.

[20.9.2.4 NMAC - Rp, 20 NMAC 9.1.1.004, 08/02/07]

#### **20.9.2.5 EFFECTIVE DATE:**

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.2.5 NMAC - Rp, 20 NMAC 9.1.1.005, 08/02/07]

#### **20.9.2.6 OBJECTIVE:**

The objective of Part 2 of Chapter 9 is to establish regulations in the following areas of solid waste management:

- A. general requirements;
- B. requirements for public entities;
- C. prohibited acts and exceptions;
- D. entry by the department; and
- E. procedures for exemptions, specific approvals, waivers for small municipal landfills and variances.

[20.9.2.6 NMAC - Rp, 20 NMAC 9.1.1.006, 08/02/07]

#### **20.9.2.7 DEFINITIONS:**

Whenever a term used in 20.9.2 - 20.9.10 NMAC is defined in the Solid Waste Act, the term shall have the meaning given in the Solid Waste Act, unless otherwise defined in this part.

- A. Terms starting with the letter 'A' are defined as follows.
  - (1) "Act" means the Solid Waste Act, NMSA 1978, Sections 74-9-1, et seq.
  - (2) "Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with 20.9.6 NMAC.
  - (3) "Active portion" means that part of a facility that has received or is receiving wastes and that has not been closed in accordance with 20.9.6 NMAC.
  - (4) "Air curtain incinerator" means an incineration facility used for burning yard refuse that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs, controls emission of the combustion products, is not designed to burn more than ten tons of yard refuse per hour, and has obtained an air quality permit or registration.
  - (5) "Airport" means public use airports open to the public without prior permission and without restrictions within the physical capacities of available facilities, but does not include aero-club airports operated on a military installation.

(6) "Alluvial fan" means a low, outspread, relatively flat to gentle sloping mass of loose sediment, shaped like an open fan or a segment of a cone, deposited by a stream at a place where it issues from a narrow mountain valley upon a plain or broad valley.

(7) "Antineoplastic drug" means cancer chemotherapy drugs previously called cytotoxics or anti-cancer drugs that have the ability to kill or stop growth in living cells.

(8) "Aquifer" means a geologic formation, group of formations, or portions of a formation capable of yielding ground water to wells or springs. The uppermost aquifer is the aquifer nearest the natural ground surface including lower aquifers that are hydraulically interconnected with this aquifer.

(9) "Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the landfill unit, because of natural or man-induced events, results in the down slope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, solifluction, block sliding, and rock fall.

(10) "Asbestos waste" means a solid waste that contains more than 1 percent asbestos:

(a) "friable asbestos material" means any material containing more than 1 percent asbestos, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure;

(b) "category I non-friable asbestos containing material" means asbestos containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos;

(c) "category II non-friable asbestos containing material" means any material, excluding category I non-friable asbestos containing material, containing more than one percent asbestos, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand; and

(d) "regulated asbestos waste" means friable asbestos material; category I non-friable asbestos containing material that has become friable; category I non-friable asbestos containing material that will be or has been subjected to sanding, grinding, cutting or abrading; or category II non-friable asbestos containing material that has a high probability of becoming or has become broken, crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of excavation, renovation, demolition, storage, transportation, or while exposed during disposal operations.

(11) "Ash" means the ash that results from the incineration or transformation of solid waste at a power generating facility or solid waste facility and includes both fly ash and bottom ash, and ash from the incineration of densified-refuse-derived fuel and refuse-derived fuel, but does not include residue from structure fires, fireplaces, air curtain incinerators, or small animal crematoria or ash generated by the combustion of yard waste for energy production, or fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion.

B. Terms starting with the letter 'B' are defined as follows.

(1) "Background" means, for purposes of 20.9.2 - 20.9.10 NMAC, the amount of ground water contaminants naturally occurring from undisturbed geologic sources or level of water contamination that the owner or operator establishes is from a source other than the responsible person's facility. This definition shall not prevent the secretary from requiring abatement of commingled plumes of pollution, shall not prevent the owner or operator from seeking contribution or other legal or equitable relief from other persons, and shall not preclude the secretary from exercising enforcement authority under any applicable statute, regulation or common law.

(2) "Biologicals" means preparations made from living organisms or their products, including vaccines, cultures, or other biological products intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining to these activities.

(3) "Biological conversion" means, as a form of transformation, the conversion of organic waste materials into an energy source by an aerobic or anaerobic process other than composting.

C. Terms starting with the letter 'C' are defined as follows.

(1) "Cell" means a confined area engineered for the disposal of solid waste.

(2) "Certified operator" means any individual who meets the experience and training requirements of 20.9.7 NMAC, has successfully completed the testing requirement of the department, and has been issued a New Mexico certificate.

(3) "Change in ownership" means the sale or other transfer of a partner's interest in a partnership, a change in controlling interest of a partnership, corporation, limited liability company or limited liability partnership or the sale or other transfer of a sole proprietorship.

(4) "Clean fill" means broken concrete, brick, rock, stone, glass, reclaimed asphalt pavement, or soil that is uncontaminated, meaning the fill has not been mixed with any waste other than the foregoing and has not been subjected to any known spill or release of chemical contaminants, including petroleum product, nor treated to remediate such contamination; reinforcement materials which are an integral part, such as rebar, may be included as clean fill; clean fill must be free of other solid waste, to include land clearing debris, construction and demolition debris, municipal solid waste, radioactive waste, hazardous waste or special waste.

(5) "Closed cell" means a cell at finished grade which has been covered with intermediate cover or final cover.

(6) "Collection center" means a facility managed for the collection and accumulation of solid waste with an operational rate of less than 240 cubic yards per day monthly average and that serves the general public.

(7) "Commercial hauler" means any person transporting solid waste for hire by whatever means for the purpose of transferring, processing, storing or disposing of the solid waste in a solid waste facility, except that the term does not include an individual transporting solid waste generated on his residential or business premises for the purpose of disposing of it in a solid waste facility.

(8) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing activities, excluding household and industrial solid wastes.

(9) "Commission" means the New Mexico water quality control commission.

(10) "Commission regulations" means the regulations of the New Mexico water quality control commission, including 20.6.1 NMAC and 20.6.2 NMAC.

(11) "Community" for purposes of preparation of a community impact assessment, means an area of human habitation within a four mile radius around a proposed landfill, transformation facility or existing landfill that is proposing a lateral or vertical expansion.

(12) "Compost" means organic material that has undergone a controlled process of biological decomposition and pathogen reduction, and has been stabilized to a degree that the final product is potentially beneficial to plant growth and can be used as a soil amendment, growing medium amendment or other similar uses. Compost does not include final product that contains sewage sludge that fails to meet the requirements of 40 CFR 503.

(13) "Composting" means the process by which biological decomposition of organic material is carried out under controlled conditions. The process stabilizes the

organic fraction into a material which can be easily and safely stored, handled and used in an environmentally acceptable manner.

(14) "Composting facility" means a facility, other than a transformation facility, that is capable of providing biological stabilization of organic material.

(15) "Construction and demolition landfill" means a landfill that receives only construction and demolition debris in quantities equal to or less than 50 tons per day monthly average. Any landfill that receives more than 50 tons per day monthly average of construction and demolition debris waste in any month is defined as a municipal landfill.

(16) "Cooperative association" means a refuse disposal district created pursuant to the Refuse Disposal Act, NMSA 1978, Sections 4-52-1 through 4-52-15, or a sanitation district created pursuant to the Water and Sanitation District Act, NMSA 1978, Sections 73-21-1 through 73-21-54, a special district created pursuant to the Special District Procedures Act, NMSA 1978, Sections 4-53-1 through 4-53-11, a solid waste authority created pursuant to the Solid Waste Authority Act, NMSA 1978, Sections 74-10-1 through 74-10-100, or other such association created pursuant to the Joint Powers Act, NMSA 1978, Sections 11-1-1 through 11-1-7.

D. Terms starting with the letter 'D' are defined as follows.

(1) "Dangerous drug" also known as a "prescription drug" means a drug other than a controlled substance enumerated in schedule I of the Controlled Substance Act, that because of potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use (directions under which the layman can use a drug or device safely and for the purposes for which intended) cannot be prepared.

(2) "Department" means the New Mexico environment department.

(3) "Discharge" means spilling, leaking, pumping, pouring, emitting, emptying, or dumping into water or in a location and manner where there is a reasonable probability that the discharged substance will reach surface or ground water.

(4) "Disease vectors" means any rodents, flies, mosquitoes, or other animals and insects, capable of transmitting disease to humans.

(5) "Displacement of a fault" means the relative movement of any two sides of a fault fracture measured in any direction.

(6) "Dispose or disposal" means causing, allowing, or maintaining the abandonment, discharge, deposit, placement, injection, dumping, burning, spilling, or leaking of any solid waste into or on any land or water.

(7) "Distillation" means a process by which components in a chemical mixture are purified or separated by the application and removal of heat and the separation is achieved by the redistribution of the components between the liquid and vapor phase as they approach equilibrium within the distillation unit.

(8) "Drug" means articles:

(a) recognized as drugs in any official compendium or supplement thereto, designated from time to time by the New Mexico board of pharmacy for the use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(b) intended for use in the diagnosis, cure mitigation, treatment or prevention of disease in humans or other animals;

(c) other than food, intended to affect the structure or any function of the body of humans or other animals; or

(d) intended for use as a component of any articles specified in Paragraphs (1), (2), (3) or (4) of Subsection N of 16.19.8.7 NMAC.

(9) "Drug enforcement administration" means the drug enforcement administration of the United States department of justice.

E. Terms starting with the letter 'E' are defined as follows.

(1) "Economically stressed household" means a household that reports at or less than 150 percent of the poverty level as set forth in the most recent federal department of health and human services poverty guidelines for a family of four.

(2) "Environmental justice" is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

F. Terms starting with the letter 'F' are defined as follows.

(1) "Fault" means a fracture or a zone of fractures in lithified rock or unconsolidated sediments along which material on one side has been displaced with respect to that on the other side.

(2) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters that are inundated by the 100 year flood. The 100 year flood has a one percent chance of recurring in any given year or a flood of magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

G. Terms starting with the letter 'G' are defined as follows.

(1) "Gasification" means a thermal process for the generation of combustible gas from a solid waste material.

(2) "Generator" means any person, whose act or process produces solid waste or whose act first causes solid waste to become subject to regulation.

(3) "Geosynthetic" means the generic classification of all synthetic materials used in geotechnical applications, including the following classifications:

(a) "geocomposite" means a manufactured material using geotextiles, geogrids, geomembranes, or combinations thereof, in a laminated or composite form;

(b) "geogrid" means a deformed or non-deformed netlike polymeric material used to provide reinforcement to soil slopes;

(c) "geomembrane" means an essentially impermeable membrane used as an integral part of an engineered structure or system designed to limit the movement of liquid or gas in the system;

(d) "geonet" means a type of a geogrid that allows planar flow of liquids and serves as a drainage system;

(e) "geosynthetic clay liner (GCL)" means a layer of sodium bentonite which is held between or on carrier layers of geotextiles or a geomembrane; and

(f) "geotextile" means any permeable textile used as an integral part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into drainage systems, to provide planar flow for drainage, or to serve as a cushion to protect geomembranes, or to provide structural support.

(4) "Ground water" means interstitial water which occurs in the earth's saturated zone and which is capable of entering a well in sufficient amounts to be utilized as a water supply.

(5) "Ground water scientist" means a scientist or engineer who has received a baccalaureate or post graduate degree in the natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certifications or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground water monitoring, contaminant fate and transport, and corrective action.

H. Terms starting with the letter 'H' are defined as follows.

- (1) "Hauler" means any person transporting solid waste.
- (2) "Hazardous constituent" means any constituent listed in 40 CFR 258 Appendix I or II or Subsection A of 20.6.2.3103 NMAC, and any potential toxic pollutant listed in 20.6.2.7 NMAC.
- (3) "Hazardous waste" means a hazardous waste as defined in 40 CFR 261.3.
- (4) "Hot waste" means any waste which is on fire or smoldering when delivered to the solid waste facility.
- (5) "Household pharmaceutical waste" means solid waste consisting of unused or expired drugs or dangerous drugs.
- (6) "Household waste" means any solid waste including garbage and trash, derived from households including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas.

I. Terms starting with the letter 'I' are defined as follows.

- (1) "Impact" means a present or future effect on the environment or the health of residents of a community.
- (2) "Incineration" means the reduction of combustible solid wastes by burning in an enclosed device under conditions of controlled airflow and temperature.
- (3) "Incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down solid waste, including, but not limited to, rotary kiln, fluidized bed, and liquid injection incinerators, but does not include air curtain incinerators or small animal crematoria.
- (4) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals, plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment, and water treatment. This term does not include mining waste or commercial solid waste.

(5) "Infectious waste" means a solid waste that carries a probable risk of transmitting disease to humans or animals, and includes the following which shall be considered infectious waste:

(a) cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stock of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines except for residue in emptied containers; and culture dishes, assemblies and devices used to conduct diagnostic tests or to transfer, inoculate, and mix cultures;

(b) human pathological wastes, including tissues, organs, and body parts that are removed during surgery, autopsy, other medical procedures, or laboratory procedures, but not including hair, or nails;

(c) human and body fluid waste, including:

(i) liquid waste human blood;

(ii) blood products;

(iii) items with human blood (caking, flaking, saturated or dripping);

(iv) items with human blood, including serum, plasma, and other blood components, which were used or intended for use in patient care, specimen testing, or the development of biological products or pharmaceuticals;

(v) intravenous bags that have been used for blood transfusions;

(vi) items, including dialysate, that have been in contact with the blood of patients undergoing hemodialysis at hospitals or independent treatment centers;

(vii) items contaminated by body fluids from persons at trauma scenes, during surgery, autopsy, other medical procedures, or laboratory procedures;

(viii) specimens of blood products, and their containers; and

(ix) other potentially infectious materials as defined by the U.S. department of labor occupational safety and health administration at 29 CFR 1910.1030(b), including the following body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(d) contaminated animal carcasses, body parts, blood, blood products, secretions, excretions, and bedding of animals that were known to have been exposed to zoonotic infectious agents or non-zoonotic human pathogens, including during research (including research in veterinary schools and hospitals), production of biologicals, or testing of pharmaceuticals;

(e) biological wastes and waste contaminated with bloody excretions, exudates, or secretions from:

(i) humans who are isolated to protect others from rare diseases such as viral hemorrhagic fevers (Ebola, Lassa, Marburg) or other emerging infectious diseases whose biological wastes and waste contaminated with bloody excretions, exudates, or secretions are deemed infectious waste as described by advisory agencies such as the center for disease control (CDC);

(ii) isolated animals known or suspected to be infected with rare diseases such as bovine spongiform encephalopathy (BSE) or other emerging infectious diseases identified by an advisory agency;

(f) discarded sharps, used or unused (unless in original packaging), generated at a facility, that have, or are likely to have, come in contact with infectious agents while involved in human or animal patient care, treatment, or research, including hypodermic needles, syringes (with the attached needle), Pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, culture dishes, suture needles, slides, cover slips, and other broken or unbroken glass or plasticware, unless properly treated or otherwise specifically exempted;

(g) infectious waste does not include:

(i) wastes generated in a household (except for infectious wastes generated by home health care professionals);

(ii) human corpses, remains, and anatomical parts that are intended for interment or incineration as specified in Paragraphs (4) and (5) of Subsection E of 20.9.8.13 NMAC, or are donated and used for scientific or medical education, research, or treatment;

(iii) etiological agents being transported for purposes other than waste processing or disposal pursuant to the requirements of the United States department of transportation (49 CFR 171.1-190) and the New Mexico department of transportation and other applicable shipping requirements;

(iv) reusable or recyclable containers or other non-disposable materials, if they are cleaned and disinfected by a method approved by the secretary pursuant to NMSA 1978 74-9-3 P, or if there has been no direct contact between the surface of the container and materials identified as "infectious waste;"

(v) soiled diapers that do not contain materials identified as infectious waste;

(vi) body excretions such as feces and secretions such as nasal discharges, saliva, sputum, sweat, tears, urine, and vomitus unless visibly contaminated with blood or waste from a person or animal as described in Subparagraph (e) of Paragraph (5) of Subsection I of 20.9.2.7 NMAC; or

(vii) used or unused syringes that have not come into contact with human blood or other bodily fluids or infectious agents and do not have a needle attached.

J. Terms starting with the letter 'J'. **[RESERVED]**

K. Terms starting with the letter 'K'. **[RESERVED]**

L. Terms starting with the letter 'L' are defined as follows.

(1) "Landfill" means a solid waste facility that receives solid waste for disposal and includes the following categories and classifications:

(a) "category 1 landfill" means a landfill that closed between April 11, 1974 and May 14, 1989;

(b) "category 2 landfill" means a landfill that stopped receiving waste between May 14, 1989, and October 9, 1993

(c) "category 3 landfill" means a landfill that began operations before October 9, 1993 and continued to operate after October 9, 1993;

(d) "category 4 landfill" means a landfill that began operations after October 9, 1993;

(e) "category 5 landfill" means a landfill that began operations after the effective date of these rules;

(f) "municipal landfill";

(g) "construction and demolition landfill";

(h) "special waste landfill"; and

(i) "monofill."

(2) "Lateral expansion" means a horizontal expansion of the permitted waste boundaries of a landfill.

(3) "Law enforcement household pharmaceutical take-back program" means a service or limited-duration event sponsored by a law enforcement agency, state, municipality, county or cooperative association that collects and properly disposes of household pharmaceutical waste for which the presence of law enforcement personnel is required.

(4) "Law enforcement pharmaceutical incinerator" means a stationary or mobile incinerator that meets the requirements of the solid waste rules, is owned or operated by a law enforcement agency and is used to destroy household pharmaceutical waste collected during a law enforcement household pharmaceutical take-back program.

(5) "Leachate" means the liquid that has passed through, or emerged from solid waste and contains soluble, suspended, or miscible materials removed from that solid waste.

(6) "Lift" means an accumulation of solid waste which is compacted into a cell and over which compacted cover is placed.

(7) "Liner" means a continuous layer constructed of natural or man-made materials beneath and on the sides of a surface impoundment, landfill, or landfill cell that restricts the downward and lateral movement of solid waste, gases or leachate.

(8) "Liquid waste" means any waste material that is determined to contain free liquids, defined by the Paint Filter Liquids Test, described in "Test Methods for Evaluating Solid Waste" referenced in Paragraph (5) of Subsection C of 20.9.8.11 NMAC.

(9) "Lithified earth material" means all rock, including metamorphic, igneous, and sedimentary.

(10) "Locked facility" means any solid waste facility which has permanently stopped receiving solid waste, but has not yet met the requirements of 20.9.6 NMAC.

(11) "Lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees C and atmospheric pressure.

M. Terms starting with the letter 'M' are defined as follows.

(1) "Manure" means an agricultural waste composed of excreta of animals, residual bedding materials, or other materials that have been used for sanitary or feeding purposes for such animals.

(2) "Maximum contaminant level" (MCL) means, the level that has been promulgated under Section 1412 of the Safe Drinking Water Act ( 42 U.S.C. Sections 300f, et seq.) at 40 CFR Part 141.

(3) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration as depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(4) "Modify" means:

(a) to change material terms or any conditions of a permit, including:

(i) types of solid waste included in the permit;

(ii) except as provided in Items (v) and (vi) of Subparagraph (b) of Paragraph (4) of this subsection, to change pollution control systems or water, soil, or gas monitoring programs from those permitted;

(iii) any change in the fundamental design or method of operation of a solid waste facility from that permitted;

(iv) any lateral or vertical expansion beyond permitted waste boundaries;

(v) any change in the facility boundary; or

(vi) any change in the approved process or method for the treatment of infectious waste; but

(b) "modify" does not include:

(i) routine maintenance, repair, or replacement;

(ii) an increase in the disposal rate or process rate, if such increase does not exceed the design capacity of the solid waste facility;

(iii) a change in the hours of operation, unless such hours are specified in a permit condition;

(iv) a change in the operating plan that is not the subject of a permit condition;

(v) substitution, addition, or elimination of a construction material or operational process that provides equivalent or greater environmental protection than

the permitted design or process, if specifically approved in writing by the secretary under 20.9.2.13 NMAC;

(vi) installation of a gas collection and control system required by 40 CFR Part 60, Subparts Cc and WWW or 20.9.4.16 NMAC and 20.9.5.9 NMAC;

(vii) a permit transfer approved pursuant to 20.9.3.23 NMAC;

(viii) any approval granted under the provisions of 20.9.2.13;

(ix) temporary changes allowed by the secretary under Subsection C of 20.9.5.8 NMAC when there is an imminent danger to public health, welfare, or the environment;

(x) changes to comply with an order of the secretary approving or withdrawing approval of an infectious waste treatment method under Paragraph (4) of Subsection F of 20.9.8.13 NMAC and Subsection G of 20.9.8.13 NMAC;

(xi) changes to implement a remedy selected by the secretary under 20.9.9.16 NMAC;

(xii) changes to implement interim measures ordered by the secretary under Subsection F of 20.9.9.15 NMAC; or

(xiii) addition of a type of solid waste (except for a special waste) if the type is within the definition of construction and demolition debris, and there will be no adverse effect on health and the environment, unless the permit or 20.9.2 - 20.9.10 NMAC specifically excludes the type of waste.

(5) "Monofill" means a landfill or cell that receives only scrap tires or only asbestos waste.

(6) "Mulch" means a protective covering spread and left upon the ground to reduce evaporation, maintain even soil temperature, prevent erosion, or control weeds.

(7) "Municipal landfill" means a discrete area of land or an excavation that receives municipal solid waste and that is not a land application unit, surface impoundment, injection well or waste pile as these terms are defined in 40 CFR 257.2; "municipal landfill" may include a landfill that is designed to receive other types of RCRA Subtitle D waste such as construction and demolition debris, conditionally exempt small quantity generator waste, industrial solid waste, and special wastes as defined in Paragraph (13) of Subsection S of this section.

(8) "Municipal solid waste" means household solid waste, commercial solid waste, and industrial solid waste or petroleum contaminated soils that are not a special waste.

N. Terms starting with the letter 'N'. **[RESERVED]**

O. Terms starting with the letter 'O' are defined as follows.

(1) "Open burning" means the combustion of solid waste without:

(a) control of combustion air to maintain adequate temperature for efficient combustion;

(b) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) control of the emission of the combustion products.

(2) "Operator" means the person(s) responsible for the overall operation of all or any portion of a solid waste facility.

(3) "Owner" means the person(s) who owns all or part of a solid waste facility.

P. Terms starting with the letter 'P' are defined as follows.

(1) "Permitted waste boundary" means the outside boundary of the proposed cells over the expected life of a landfill as specified in the permit or registration.

(2) "Person" means any individual, partnership, company, corporation, firm, association, trust, estate, state or federal agency, government instrumentality or agency, institution, county, city, town, village, or municipal authority, or other legal entity however organized.

(3) "Petroleum waste" means those liquids and sludges that are accumulated as a result of exploration or production activities regulated under the New Mexico Oil and Gas Act.

(4) "Pharmacist" means a person duly licensed by the New Mexico board of pharmacy to engage in the practice of pharmacy pursuant to the Pharmacy Act, NMSA 1978, Section 61-11-1.

(5) "Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a landfill.

(6) "Practical quantitation limit" or "PQL" means the lowest concentration of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy under routine laboratory operating conditions.

(7) "Processing" means techniques to change the physical, chemical, biological, or pathological character or composition of solid waste, but does not include composting, transformation, grinding or chipping of yard refuse, compaction, or incineration.

(8) "Processing facility" means a facility where processing of solid waste occurs.

(9) "Putrescible" means organic material subject to decomposition by microorganisms.

(10) "Pyrolysis" means the process whereby solid waste is thermally decomposed in an oxygen-deficient atmosphere.

Q. Terms starting with the letter 'Q' are defined as follows. "Quasi-judicial proceeding" means a public hearing held after notice reasonably calculated to reach people interested in the subject matter of the proceeding that affords all people with a significant interest in the proceeding (parties) an opportunity to present their views as well as to cross-examine other parties. Other interested individuals also have an opportunity to state their views. Testimony is taken under oath or affirmation and is included in a record of proceedings. The planning and zoning commission or the governing body of the local government is required to make its decision based upon the testimony and evidence contained in the record of the hearing. The proceeding must consider whether the facility at issue would result in a disproportionate effect on the health or environment of a particular socioeconomic group or in an unreasonable concentration of regulated facilities.

R. Terms starting with the letter 'R' are defined as follows.

(1) "Radioactive waste" means:

(a) high-level radioactive waste or spent nuclear fuel as defined in Section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

(b) transuranic waste as defined in Section 11(ee) of the Atomic Energy Act of 1954, 42 U.S.C. 2014(ee);

(c) waste source material as defined in Section 11(z) of the Atomic Energy Act of 1954, 42 U.S.C. 2014(z);

(d) waste special nuclear material as defined in Section 11(aa) of the Atomic Energy Act of 1954, 42 U.S.C. 2014(aa);

(e) waste by-product material as defined in Section 11e of the Atomic Energy Act of 1954, 42 U.S.C. 2014(e);

(f) material the nuclear regulatory commission, consistent with existing law, classifies as low level radioactive waste; and

(g) waste radioactive material that requires licensure in accordance with the New Mexico radiation protection rules, 20.3.3 NMAC.

(2) "RCRA" means the federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq., as amended.

(3) "Recyclable materials" means materials that would otherwise become solid waste if not recycled and that can be collected, separated, processed, reclaimed or composted and placed in use in the form of raw materials, products or densified-refuse-derived fuels.

(4) "Recycling" means any process by which recyclable materials are collected, separated, processed, reclaimed or composted and reused or returned to use in the form of raw materials or products.

(5) "Recycling facility" means a facility that collects, transfers, or processes recyclable materials for recycling, but does not include a composting facility.

(6) "Regulated facility" means a facility that is:

(a) a solid waste facility permitted to construct, operate, or close pursuant to the Solid Waste Act, NMSA 1978, Sections 74-9-1, et. seq. and 20.9.2 - 20.9.10 NMAC, or pursuant to the laws or regulations of a neighboring state;

(b) a hazardous waste facility authorized to operate pursuant to interim status or permitted to construct, operate, or close pursuant to the Hazardous Waste Act, NMSA 1978, Sections 74-4-1, et. seq. and the New Mexico hazardous waste management rules, 20.4.1 NMAC, or pursuant to the laws or regulations of a neighboring state, including all units or areas subject to corrective action requirements under the facility permit or order;

(c) a site listed on the National Priorities List pursuant 42 U.S.C. 9605 or a federal facility required to take response or remedial action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, et. seq.;

(d) a facility that has, or is required to obtain a Title V air quality permit, 42 U.S.C. 7661 et seq. and 20.7.2.70 NMAC.

(7) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste facility.

(8) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a solid waste facility.

S. Terms starting with the letter 'S' are defined as follows.

(1) "Saturated zone" means that part of the earth's crust in which all voids are filled with water.

(2) "Scavenging" means the uncontrolled removal of solid waste from a solid waste facility.

(3) "Secretary" means the secretary of the New Mexico environment department or her or his designee.

(4) "Seismic impact zone" means an area with a 10 percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in 250 years.

(5) "Septage" means the residual wastes and water periodically pumped from a liquid waste treatment unit or from a holding tank, as defined in 20.7.3.7 NMAC.

(6) "Sewage sludge" means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes domestic septage, scum or solids removed in primary, secondary, or advanced wastewater treatment processes, and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(7) "Sludge" means any solid, semi-solid, or liquid waste generated by a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, or air pollution control facility, but does not include treated effluent from a waste water treatment plant.

(8) "Small animal crematoria" means a multi-chambered facility designed for the purpose of cremating dead animals and animal parts with a charging capacity of less than five tons per day.

(9) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, construction, demolition and agricultural operations and from community activities, but does not include:

(a) drilling fluids, produced waters and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy, except for waste that has been authorized for disposal at a solid waste facility under provisions of 19.15.9.712 NMAC and has been delivered to a solid waste facility permitted to receive such waste;

(b) fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion;

(c) waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore, coal, copper, molybdenum and other ores and minerals;

(d) agricultural waste, including, but not limited to, manures and crop residues converted to beneficial value added products such as energy products or building materials or returned to the soil as fertilizer or soil conditioner;

(e) cement kiln dust waste;

(f) sand and gravel;

(g) solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, 33 U.S.C. Section 1342;

(h) source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. Sections 2011, et seq., as amended;

(i) densified-refuse-derived fuel;

(j) any material regulated by Subtitle C or Subtitle I of RCRA (except petroleum contaminated soils);

(k) substances other than asbestos regulated by the federal Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq., as amended;

(l) radioactive waste;

(m) whole or processed scrap tires that are stored or used in compliance with provisions of the New Mexico Tire Recycling rule, 20.9.20 NMAC, and applicable law;

(n) any recyclable material in transit or temporary storage;

(o) compost; or

(p) materials, other than those that are regulated as hazardous, toxic or special waste, that are retained as evidence in a criminal proceeding and that are required to be destroyed or managed in accordance with a court or administrative order.

(10) "Solid waste disposal area" means an area where solid waste has been disposed and includes all landfills, and areas where more than 120 cubic yards of solid waste have been disposed but does not include landfills and areas identified as solid waste management units in a hazardous waste facility permit or administrative order.

(11) "Solid waste facility" means any public or private system, facility, location, improvements on the land, structures or other appurtenances or methods used for processing, transformation, or disposal of solid waste, including landfill disposal facilities, transfer stations, resource recovery facilities, incinerators and other similar facilities not specified. Solid waste facility does not include:

(a) equipment or processing methods approved by order of the secretary to render infectious waste generated on site non-infectious;

(b) a facility that is permitted pursuant to the provisions of the Hazardous Waste Act, NMSA 1978, Sections 74-4-1 through 74-4-14, as amended;

(c) a facility fueled by a densified-refuse-derived fuel as long as that facility accepts no other solid waste;

(d) a recycling facility that accepts only source separated recyclable materials;

(e) that portion of a facility that refurbishes or re-sells used clothing, furniture or appliances for reuse;

(f) commercial scrap metal or auto salvage operations;

(g) a composting facility that accepts only source separated compostable materials;

(h) manufacturing facilities that use recyclable material in production of a new product;

(i) facilities designed and operated to dispose of sewage sludge on land, such as land application or land injection;

(j) landfarming of petroleum contaminated soils unless within a landfill, where "landfarming" is the remediation of petroleum contaminated soils on the land surface;

(k) any facility or location where clean fill material is accepted, stockpiled, or used, if the facility or location would not otherwise be classified as a solid waste facility;

(l) collection centers;

(m) a facility that uses tire-derived fuel for the purpose of extracting its stored energy; or

(n) air curtain incinerators.

(12) "Source separation" means the separation of recyclable or compostable materials from solid waste at the point of generation by the generator.

(13) "Special waste" means solid waste that has unique handling, transportation, or disposal requirements to assure protection of the environment and the public health, welfare and safety, including:

(a) treated formerly characteristic hazardous wastes (TFCH);

(b) packing house and killing plant offal;

(c) regulated asbestos waste;

(d) ash, except ash produced by a law enforcement pharmaceutical incinerator from the incineration of household pharmaceutical waste;

(e) infectious waste;

(f) sludge, except; sludge that is land applied under 40 CFR Part 503 as intermediate or final cover at a landfill and meets the requirements of Subpart B of 40 CFR Part 503;

(g) industrial solid waste that, unless specially handled or disposed, may harm the environment or endanger the public health or safety;

(h) spill of a chemical substance or commercial product that, unless specially handled or disposed, may harm the environment or endanger the public health or safety; and

(i) petroleum contaminated soils, that have a sum of benzene, toluene, ethylbenzene, and xylene isomer concentrations of greater than 50 mg/kg, or benzene individually greater than 10 mg/kg, or a total petroleum hydrocarbon concentration of greater than 100 mg/kg.

(14) "Special waste landfill" means a landfill that receives one or more types of special wastes as defined in Paragraph 13 of Subsection S of this section.

(15) "Stabilized" means, for composting, that the biological decomposition of the wastes has ceased or diminished to a level such that decomposition no longer poses a health, odor, or safety hazard and does not violate any provisions of these or other applicable rules.

(16) "Storage" means the accumulation of solid waste for the purpose of transfer, processing or disposal.

(17) "Structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, gas collection and control systems, and any other component used in the construction or operation of the landfill that is necessary for protection of public health, welfare and the environment.

T. Terms starting with the letter 'T' are defined as follows.

(1) "Tire-derived fuel" means a fuel product derived from scrap tires that is suitable for efficient combustion.

(2) "Transfer" means the handling and storage of solid waste for reshipment, resale, or disposal, or for waste reduction or resource conservation.

(3) "Transfer station" means a facility managed for the collection and accumulation of solid waste with an operational rate of greater than 240 cubic yards per day monthly average.

(4) "Transformation facility" means a facility used for the transformation of solid waste, but does not include air curtain incinerators or small animal crematoria, and law enforcement pharmaceutical incinerators.

U. Terms starting with the letter 'U' are defined as follows. "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Examples of unstable areas are poor foundation conditions, areas susceptible to mass movements, and Karst terrain areas where Karst topography, with its characteristic surface and subterranean features, is developed as a result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in Karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

V. Terms starting with the letter 'V' are defined as follows.

(1) "Vadose zone" means earth material below the land surface and above ground water, or in between bodies of ground water.

(2) "Vertical expansion" means an upward or downward expansion of the permitted waste boundaries of a landfill.

(3) "Vulnerable area" means an area within a four mile radius from the geographic center of a facility or proposed facility, and:

(a) has a percentage of economically stressed households greater than the state percentage based on the most recent actual census bureau data within any square mile within the four mile radius surrounding the facility or proposed facility; and

(b) where the New Mexico portion has a population of 50 people or more within any square mile within the four mile radius; and

(c) has within it 3 or more regulated facilities not including the applicant's facility.

W. Terms starting with the letter 'W' are defined as follows.

(1) "Waste management unit boundary" means a vertical surface located at the hydraulically down gradient limit of the landfill. This vertical surface extends down into the uppermost aquifer.

(2) "Watercourse" means any river, creek, arroyo, canyon, draw, or wash, or any other channel having definite banks and beds, with visible evidence of continuous or intermittent flow of water.

(3) "Water table" means that surface in unconfined ground water at which the pressure is atmospheric; defined by the levels at which water stands in wells that penetrate the water just far enough to hold standing water.

(4) "Well" means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

(5) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(6) "White goods" means large household appliances (such as ovens, washers, dryers, freezers, water heaters and refrigerators) that have been discarded for disposal or recycling.

X. Terms starting with the letter 'X'. **[RESERVED]**

Y. Terms starting with the letter 'Y'. **[RESERVED]**

Z. Terms starting with the letter 'Z'. **[RESERVED]**

[20.9.2.7 NMAC - Rp, 20 NMAC 9.1.I.105, 08/02/07; A, 07/30/11]

### **20.9.2.8 GENERAL REQUIREMENTS:**

A. Any person who hauls solid waste or recyclable materials or provides solid waste or recyclable collection services shall only haul to a permitted or registered facility, and shall use vehicles that have covers or enclosures to prevent the solid waste or recyclable materials from blowing from the vehicle during collection and transportation, and that are cleaned at such times and in such manner as to prevent offensive odors and unsightliness, and that use devices to retain or control free liquids.

B. Any person who generates solid waste shall store the solid waste in suitable storage containers for the solid waste, unless the solid waste is construction and demolition debris, yard refuse, or white goods. Storage containers shall prevent insect and rodent harborage and shall be kept covered and reasonably clean. Outside containers shall also prevent blowing litter, be leak-proof and shall:

(1) if manually handled by a commercial or municipal hauler, be of sufficient size and weight bearing capacity to be safely handled without presenting undue risk of harm to human health or the environment, with safe, usable handles, or shall be bags that are not filled to an extent that they rupture with normal handling; or

(2) if mechanically handled, be compatible with collection vehicles.

C. Any person who stores solid waste, recyclable materials, yard refuse or white goods shall store such materials in a manner that prevents blowing litter, insect and rodent harborage and does not create a public nuisance or public health hazard.

D. Any person who generates, stores, processes, transports or disposes of solid waste shall do so in a manner that does not create a public nuisance.

E. All notifications to the department required by 20.9.2 - 20.9.10 NMAC shall be directed to the bureau chief of the solid waste bureau.

F. Soil, water, and special waste testing methods used to demonstrate compliance with the Solid Waste Act or 20.9.2 - 20.9.10 NMAC shall conform with permit requirements or otherwise be specifically approved by the department prior to use.

G. Any person who excavates a closed cell or solid waste disposal area in response to an emergency situation shall notify the department of such excavation within 48 hours.

H. Any person who accepts, stockpiles, or uses clean fill material shall:

(1) manage the material in a manner that does not create a public nuisance or potential safety hazard, or adversely impact the environment;

(2) not place the material in a watercourse or wetland unless appropriate permits are obtained; and

(3) cover the material with two feet of clean earth within 30 days after being deposited, unless the clean fill material is clean soil, or unless a longer period or alternative material or depth is specifically approved by the department.

[20.9.2.8 NMAC - Rp, 20 NMAC 9.1.1.106, 08/02/07]

#### **20.9.2.9 REQUIREMENTS FOR PUBLIC ENTITIES:**

A. Any municipality with a population greater than 3,000 shall provide solid waste collection services at least once weekly or as often as otherwise necessary to comply with the requirements of 20.9.2 - 20.9.10 NMAC.

B. The state, and each municipality, county, or cooperative association shall provide a means to dispose of solid waste generated within its respective jurisdiction that has been approved by the secretary and complies with 20.9.2 - 20.9.10 NMAC.

C. The state, municipality, county, or cooperative association may contract with any person for the collection, transportation, recycling, or disposal of solid waste. Contracting for the collection, transportation, recycling, or disposal of solid waste does not relieve the state, municipality, county or cooperative association of the responsibility for compliance with 20.9.2 - 20.9.10 NMAC.

[20.9.2.9 NMAC - Rp, 20 NMAC 9.1.1.106, 08/02/07]

#### **20.9.2.10 PROHIBITED ACTS:**

A. In addition to the prohibited acts identified in Section 74-9-31(A) and Section 74-13-4(J), and subject to the exemptions in Section 74-9-31(B) of the Solid Waste Act, no person shall:

(1) store, process, or dispose of solid waste except by means approved by the secretary and in accordance with board rules;

(2) dispose of any solid waste in this state in a manner that the person knows or should know will harm the environment or endangers the public health, welfare or safety;

(3) dispose of any solid waste in a place other than a solid waste facility that meets the requirements of 20.9.2 - 20.9.10 NMAC;

(4) dispose of any solid waste, including special waste, in a solid waste facility when that facility's permit does not authorize the disposal of the particular type of solid waste in that facility;

(5) construct, operate, modify or close a solid waste facility unless the facility has approval under 20.9.2 - 20.9.10 NMAC from the department for the described action;

(6) modify permit conditions or modify a solid waste facility unless the facility has applied for and received permission from the secretary for the modification pursuant to 20.1.4 NMAC Permit Procedures - Environment Department;

(7) dispose of petroleum waste, sludge which that does not meet the analytical criteria of 20.9.8.16 NMAC, septage, domestic sewage, or treated domestic sewage at any solid waste facility;

(8) dispose of hazardous wastes which are subject to regulation under Subtitle C of the Resource Conservation and Recovery Act, 42 USC 6901 et seq, at any solid waste facility, unless the facility is permitted for the disposal of hazardous wastes;

(9) dispose of liquid waste at any landfill unless:

(a) the liquid waste is household waste other than septic waste and is in a small container similar in size to that normally found in household waste and the container is designed to hold liquids for use other than storage;

(b) the liquid waste is leachate or landfill gas condensate generated on-site which is recirculated in accordance with applicable laws and rules; or

(c) the liquid waste is managed in accordance with an approval issued by the secretary;

(d) the use of uncontaminated water for dust control or to improve vegetation on a final or intermediate cover is not considered disposal;

(10) process, recycle, transfer, transform, or dispose of radioactive waste in a solid waste facility;

(11) dispose of lead-acid batteries at any landfill or incinerator;

(12) dispose of any infectious waste in a landfill;

(13) dispose of any material regulated under the federal Toxic Substances Control Act, 15 U.S.C. Sections 2601-2692, except in a solid waste facility, registered facility or operation authorized to accept such waste;

(14) allow open burning at a solid waste facility;

(15) excavate or trench a closed cell or solid waste disposal area without written approval by the department and a determination whether an excavation plan will be required, unless in response to an emergency situation; excavation and trenching do not include excavations or trenches of less than 120 cubic yards or exploratory borings for the purpose of waste characterization, site investigation or mapping, nor does it include removal of waste for routine maintenance on gas collection and control and venting systems;

(16) violate a term or condition of a closure and post-closure care plan, a registration, or conditions contained in an approval of the department under 20.9.2.17 NMAC;

(17) allow liquid extraction from sludge at a solid waste facility unless authorized by permit; or

(18) process, transfer, store, dispose, or allow the disposal of special waste at a collection center;

(19) dispose at a solid waste facility any type of non-hazardous material that is excluded from the definition of solid waste, unless permitted to do so, except that a landfill may dispose of non-hazardous excluded waste listed under the following subparagraphs of Paragraph (9) of Subsection S of 20.9.2.7 NMAC unless prohibited from doing so in its permit; Subparagraphs (d) (agricultural), (f) (sand and gravel), (i) (densified refuse derived fuel), (m) (scrap tires), (n) (recyclable materials), (o) (compost), and (p) (materials, other than those that are regulated as hazardous, toxic or special waste, that are retained as evidence in a criminal proceeding and that are required to be destroyed or managed in accordance with a court or administrative order, and ash derived from such materials).

B. Any person who generates, stores, processes, transports or disposes of solid waste shall take reasonable measures to determine the characteristics of the waste being handled to assure that no prohibited act is being performed.

C. A Subtitle C facility authorized to accept special waste for disposal may accept solid waste if allowed under its permit.

D. Nothing in this section shall prohibit a person for whom a drug or dangerous drug has been dispensed in accordance with a valid prescription from transferring the drug or dangerous drug to a law enforcement agency that collects, stores, transports, or disposes of drugs or dangerous drugs pursuant to a program in compliance with applicable state or federal law or a law enforcement household pharmaceutical take-back program that complies with the solid waste rules.

E. Household pharmaceutical waste collected through a law enforcement household pharmaceutical take-back program may only be disposed of or incinerated in accordance with the solid waste rules.

[20.9.2.10 NMAC - Rp, 20 NMAC 9.1.I.107, 08/02/07; A, 07/30/11]

#### **20.9.2.11 EXCEPTIONS:**

20.9.2 - 20-9-10 NMAC does not apply to:

A. disposal of solid waste by a homeowner, residential lessee or tenant, or agricultural enterprise, on the property she or he owns, rents or leases, if the waste was generated on that property, and the disposal by the homeowner, residential lessee or tenant, or agricultural enterprise of the solid waste does not harm the environment or endanger the public health, welfare or safety and does not violate any provision of 20.9.2 - 20.9.10 NMAC;

B. on-site disposal of domestic solid waste generated by a person residing and occupying that same property only if that property is located in a place where it is not feasible, as determined by the department, to dispose of the solid waste in a permitted solid waste facility and the disposal of the solid waste does not harm the environment or endanger the public health, welfare or safety and does not violate any provision of 20.9.2 - 20.9.10 NMAC; or

C. disposal of construction and demolition debris or yard refuse by a person in possession of property if the material was generated on the property and if the disposal of the solid waste does not violate any provision of 20.9.2 - 20.9.10 NMAC.

[20.9.2.11 NMAC - Rp, 20 NMAC 9.1.I.108, 08/02/07]

#### **20.9.2.12 SOLID WASTE FACILITIES; ENTRY BY DEPARTMENT; AVAILABILITY OF RECORDS TO DEPARTMENT:**

The secretary or any authorized representative, employee or agent of the department may enter, inspect, monitor, sample, or obtain records of a solid waste facility, or commercial hauler as provided in Section 74-9-33 of the Solid Waste Act.

[20.9.2.12 NMAC - Rp, 20 NMAC 9.1.I.111, 08/02/07]

[(Facilities, entry by the department and availability of records was formerly in 20 NMAC 9.1.I.111; recordkeeping was moved to 20.9.5.16 NMAC)]

#### **20.9.2.13 SPECIFIC APPROVALS:**

A. Where a specific approval or authorization for an alternative time period, test method or other requirement is allowed under 20.9.2 - 20.9.10 NMAC, the following procedures apply.

(1) The owner or operator shall submit a written request to the department seeking the specific approval or authorization and indicate the regulatory provision allowing the approval or authorization. If the requested approval is for a background ground water quality determination, the request shall include all sample results, approved practical quantitation limits, and a detailed explanation supporting the requested levels. If the request is for an alternative time period, test method or other requirement under 20.9.2 - 20.9.10 NMAC, the request shall explain why the proposed alternative is at least as protective of the public health, safety and welfare as the requirement for which an alternative is requested. In addition, the request shall provide any technical information required in the section allowing the specific approval. The department may request further information prior to acting on the request.

(2) The department shall approve, approve with terms and conditions, or deny the request in writing.

(3) Any affected person who is dissatisfied with action taken by the department on a request for a specific approval or authorization may appeal to the secretary. The request must be made in writing to the secretary within fifteen (15) days after notice of the department's action has been issued. Unless an appeal is received by the secretary within fifteen (15) days after notice to the applicant of the department's action the decision of the department shall be final.

B. If an appeal is received within the fifteen (15) day time limit, the secretary shall hold a hearing within fifteen (15) days after receipt of the request, unless extended for good cause. The secretary shall notify the person who requested the hearing of the date, time and place of the hearing by certified mail.

C. In the appeal hearing, the burden of proof is on the person who requested the hearing.

D. Appeal hearings shall be held at a place designated by the secretary. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

E. Upon request the hearing shall be recorded or transcribed by a court reporter. The person who requests the recording or transcription shall pay recording or transcription costs. A request for recording or transcription shall be made at least 5 working days prior to the hearing.

F. In appeal hearings, the rules governing civil procedure and evidence in district court do not apply. Hearings shall be conducted so that all relevant views, arguments

and testimony are amply and fairly presented without undue repetition. The secretary shall allow department staff and the hearing requestor to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits, and to cross-examine persons who testify. All testimony shall be taken under oath. At the end of the hearing, the secretary or his designee shall decide and announce if the hearing record will remain open and for how long and for what reason it will be left open.

G. Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the department. The secretary's decision shall be by written order within fifteen (15) days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice. Appeals from the secretary's final decision are by Rule 1-075 NMRA.

[20.9.2.13 NMAC - N, 08/02/07]

#### **20.9.2.14 WAIVERS FOR SMALL MUNICIPAL LANDFILLS:**

A. Owners or operators of new or existing municipal landfills that dispose of less than 20 tons of solid waste daily, based on an annual average, and do not accept any special waste other than regulated asbestos, may apply in the permit application or for a specific approval for a waiver from the design requirements of 20.9.4.13 - 20.9.4.15 NMAC and ground water monitoring requirements in 20.9.9.8 - 20.9.9.11 NMAC. To obtain a waiver, the owner or operator must demonstrate that:

(1) the groundwater protection standards for constituents listed or referenced in 20.9.9.20 NMAC will not be exceeded in the uppermost aquifer, and, for an existing landfill, there is no groundwater contamination attributable to the landfill;

(2) the community has no practicable waste management alternative; and

(3) the landfill is located in an area that receives, on average, 25 inches or less annual precipitation.

B. If a waiver is granted under this section, then the secretary may require the owner or operator to submit a ground water monitoring system plan and ground water monitoring plan for approval, and to conduct periodic ground water and vadose zone monitoring, at any time during the active life or post-closure period to demonstrate the landfill is not contaminating ground water. The secretary may also require a ground water monitoring system plan and a ground water monitoring plan to be submitted in the application. If ground water contamination from the landfill is detected after a waiver has been granted under this section, the waiver is revoked and the requirements of 20.9.4.13 - 20.9.4.15 NMAC and 20.9.9.8 - 20.9.9.11 NMAC shall thereafter apply.

[20.9.2.14 NMAC - Rp, 20 NMAC 9.1.I.110, 08/02/07]

### **20.9.2.15 VARIANCES:**

A. Any person seeking a variance from any requirements of 20.9.2 - 20.9.10 NMAC shall do so in accordance with Permit Procedures - Environment Department, 20.1.4 NMAC.

B. Variance petitions shall be accompanied by proof of public notice as in accordance with the Solid Waste Act and with Permit Procedures - Environment Department, 20.1.4 NMAC. The public notice shall:

- (1) contain the name of the owner and operator of the solid waste facility;
- (2) address and telephone number at which interested persons may obtain further information;
- (3) briefly describe for what the variance is being sought and the proposed alternative;
- (4) state the time period for which the variance is sought;
- (5) be provided by certified mail to the owners of record, as shown by the most recent property tax schedule and tax exempt entities of record, of all properties:
  - (a) within one hundred feet of the property on which the facility is located if the facility is in a class A or H class county or a municipality with a population of more than 2,500 persons; or
  - (b) within one-half mile of the property on which the facility is located in a county or municipality other than those specified in Subparagraph (a) of Paragraph (5) of Subsection B of this section;
- (6) be provided by certified mail to all municipalities and counties within a 10 mile radius of the property on which the facility is located;
- (7) be published once in a newspaper of general circulation in each county in which the property on which the facility is located; this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, and when appropriate shall be printed in both English and Spanish; and
- (8) be posted in at least four publicly accessible and conspicuous places, including the existing facility entrance on the property on which the facility is located.

C. The secretary shall deny the variance petition unless the petitioner establishes evidence that:

(1) application of the regulation would result in an arbitrary and unreasonable taking of the applicant's property or would impose an undue economic burden upon any lawful business, occupation or activity; and

(2) granting the variance will not result in any condition injurious to public health, safety or welfare or the environment.

D. No variance shall be granted until the secretary has considered the relative interests of the applicant, other owners of property likely to be affected, and the general public.

E. Variance or renewal of a variance shall be granted for time periods and under conditions consistent with reasons for the variance but within the following limitations:

(1) if the variance is granted on the grounds that there are no practicable means known or available for the adequate prevention of degradation of the environment or the risk to the public health, safety or welfare, it shall continue only until the necessary means for the prevention of the degradation or risk become known and available;

(2) if the variance is granted on the grounds that it is justified to relieve or prevent hardship of a kind other than that provided for in Paragraph (1) of this subsection, it shall not be granted for more than one year.

F. Any variance granted by the secretary shall be reviewed for consistency with existing federal regulations.

[20.9.2.15 NMAC - Rp, 20 NMAC 9.1.X.1001, 08/02/07]

#### **20.9.2.16 EXEMPTIONS:**

A. Any person seeking an exemption pursuant to NMSA 1978, Section 74-9-32 shall do so by filing a written petition with the board, and serving a copy of the petition to the secretary. The petition shall be reviewed in accordance with Adjudicatory Procedures - Environmental Improvement Board, 20.1.2 NMAC.

B. A petition for exemption shall:

(1) state each provision of the Solid Waste Act or 20.9.2 - 20.9.10 NMAC from which exemption is sought;

(2) cite, and have attached as exhibits, each provision of applicable federal or state law the petitioner alleges that imposes as stringent or more stringent requirements than those imposed by the Solid Waste Act or 20.9.2 - 20.9.10 NMAC;

(3) be signed by the petitioner or the petitioner's representative; and

(4) contain proof of public notice in accordance with the Solid Waste Act's requirements for applications for solid waste facility permits.

C. Each petition filed with the board for an exemption shall include proof that the applicant has provided notice of the filing of the petition to the public and other affected individuals and entities. The notice shall be:

(1) provided by certified mail to the owners of record, as shown by the most recent property tax schedule and tax exempt entities of record, of all properties:

(a) within one hundred feet of the property on which the facility is located or proposed to be located if the facility is or will be in a class A or H county or a municipality with a population of more than 2,500 persons; or

(b) within one-half mile of the property on which the facility is located or proposed to be located if the facility is or will be in a county or municipality other than those specified in Subparagraph (a) of this paragraph;

(2) provided by certified mail to all municipalities, counties, and tribal governments in which the facility is or will be located and to all municipalities, counties, and tribal governments within a ten mile radius of the property on which the facility is proposed to be constructed, operated or closed;

(3) published once in a newspaper of general circulation in each county in which the property in which the facility is proposed to be constructed, operated or closed is located; this notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper calculated to give the general public the most effective notice and, when appropriate, shall be printed in both English and Spanish; and

(4) posted in at least four publicly accessible and conspicuous places, including the proposed or existing facility entrance on the property on which the facility is or is proposed to be located.

[20.9.2.16 NMAC - Rp, 20 NMAC 9.1.X.1002, 08/02/07]

#### **20.9.2.17 SEVERABILITY:**

If any provision or application of 20.9.2 - 20.9.10 NMAC is held invalid by a court of competent jurisdiction, the remainder, or its application to other situations or persons, shall not be affected.

[20.9.2.17 NMAC - Rp, 20 NMAC 9.1.X.1003, 08/02/07]

#### **20.9.2.18 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with 20.9.2 - 20.9.10 NMAC does not relieve a person of the obligation to comply with other applicable local, state and federal laws.

[20.9.2.18 NMAC - Rp, 20 NMAC 9.1.X.1004, 08/02/07]

**20.9.2.19 SAVINGS CLAUSE:**

20.9.2 - 20.9.10 NMAC does not apply to pending litigation or affect violations of prior, effective regulations, permits, registrations, closure and post-closure care plans.

[20.9.2.19 NMAC - Rp, 20 NMAC 9.1.X.1005, 08/02/07]

**20.9.2.20 INTERPRETATION:**

20.9.2 - 20.9.10 NMAC shall be liberally construed to carry out its purpose.

[20.9.2.20 NMAC - Rp, 20 NMAC 9.1.X.1006, 08/02/07]

**20.9.2.21 CONTINUING EFFECT OF PRIOR ACTIONS; EXCEPTIONS:**

A. All permits and certificates of registration issued, and all closure and post-closure care plans approved, pursuant to previous regulations shall remain in effect until they expire or they are suspended, revoked, or otherwise modified.

B. Landfills that were in operation prior to May 14, 1989 may continue to operate without a permit until final action is taken upon a permit application or closure plan. Such landfills are not allowed to construct or operate a lateral expansion until permitted to do so.

C. If a permit application, permit renewal application, permit modification application, closure plan, or registration application has been submitted to the department prior to the effective date of this part, the relevant sections of permit application, permit renewal application, permit modification application, closure plan or registration application requirements under 20 NMAC 9.1.201 - 208, 210, 212, 213, and 501-505 shall remain in effect for that application or closure plan. However, all other requirements of 20.9.2 - 20.9.10 NMAC shall apply.

[20.9.2.21 NMAC, Rp, 20 NMAC 9.1.X.1008, 08/02/07]

**20.9.2.22 DOCUMENTS:**

Copies of all documents cited in 20.9.2 - 20.9.10 NMAC may be viewed at the department's Solid Waste Bureau, 1190 St. Francis Drive, Santa Fe, New Mexico.

[20.9.2.22 NMAC - Rp, 20 NMAC 9.1.X.1009, 08/02/07]

## **PART 3: SOLID WASTE FACILITY PERMITS AND REGISTRATIONS**

### **20.9.3.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.9.3.1 NMAC - Rp, 20 NMAC 9.1.1.001, 08/02/07]

### **20.9.3.2 SCOPE:**

This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.

[20.9.3.2 NMAC - Rp, 20 NMAC 9.1.1.002, 08/02/07]

### **20.9.3.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.3.3 NMAC - Rp, 20 NMAC 9.1.1.003, 08/02/07]

### **20.9.3.4 DURATION:**

Permanent.

[20.9.3.4 NMAC - Rp, 20 NMAC 9.1.1.004, 08/02/07]

### **20.9.3.5 EFFECTIVE DATE:**

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.3.5 NMAC - Rp, 20 NMAC 9.1.1.005, 08/02/07]

### **20.9.3.6 OBJECTIVE:**

The objective of Part 3 of Chapter 9 is to establish regulations in the following areas of solid waste management:

- A. solid waste facility permits;
- B. permitting procedures, application review, issuance, denial and revocation;
- C. permit modification, transfer, renewal and expiration;

D. registration of composting and recycling facilities, collection centers and air curtain incinerators;

E. nuisance abatement plans;

F. commercial hauler registrations;

G. registration of haulers of special waste; and

H. fee schedules.

[20.9.3.6 NMAC - Rp, 20 NMAC 9.1.1.0016, 08/02/07]

### **20.9.3.7 DEFINITIONS:**

**[RESERVED]**

[See 20.9.2.7 NMAC for Definitions.]

### **20.9.3.8 PERMIT APPLICATION REQUIREMENTS:**

A. Any person seeking to construct, operate, modify or close a solid waste facility shall first obtain a permit.

B. Any person who owns or operates an existing solid waste facility for which a permit application has not been submitted shall submit a permit application within one year of the effective date of this part. If the facility is a landfill that seeks to close rather than continue to operate, the owner or operator shall submit a plan for closure and post closure care for approval within one year of the effective date of this part. The closure and post closure care plan shall meet the requirements of 20.9.6 NMAC.

C. Any person seeking a permit to construct, operate or modify a solid waste facility shall file an application, which shall:

(1) contain all information required by the Solid Waste Act and 20.9.2 - 20.9.10 NMAC;

(2) comply with Permit Procedures - Environment Department, 20.1.4 NMAC;

(3) contain information required by Section 74-9-21 of the Solid Waste Act, and if applicable, disclosure statements shall be on forms provided by the department;

(4) provide site information including:

(a) the name and address of the applicant, property owner, and solid waste facility owner and operator;

(b) total acreage, legal description and maps of the proposed facility site, including land use and zoning of the site and adjacent properties;

(c) a description of the facility's water source and its location;

(d) a description of the prevailing winds, including a wind rose diagram;

(e) a demonstration of compliance with the siting criteria in 20.9.4.9-12 NMAC;

(f) facility plans and drawings of the existing or proposed facility, with corresponding elevations and contours, signed and sealed by a professional engineer registered in New Mexico; and

(g) the latitude and longitude of the geographical center of the existing or proposed facility (as approved by the department) in NAD-83 or equivalent;

(5) contain a plan for compliance with 20.9.4.17 NMAC, if appropriate;

(6) contain an operating plan for compliance with operational criteria, including

(a) the means for controlling access to the facility and controlling and mitigating odors and litter;

(b) a listing and description of the number, type and size of equipment to be used at the proposed solid waste facility for processing, recovering, diversion of recyclables, transforming or disposing of solid wastes;

(c) a description of the proposed solid waste facility, including:

(i) the anticipated origin, composition and weight or volume of solid waste and other materials that are projected to be received at the facility;

(ii) the processes to be used at the facility;

(iii) the daily operational methodology of the proposed process;

(iv) the loading rate, the expected life of the facility; and

(v) the design capacity through the expected life of the facility and through the permit life of the facility;

(d) a plan for an alternative waste handling or disposal system during periods when the proposed solid waste facility is not in operation, including procedures to be followed in case of equipment breakdown; procedures may include the use of standby

equipment, extension of operating hours and contractual agreements for diversion of waste to other facilities;

- (e) the anticipated start-up date of the facility;
- (f) the planned operating hours of the proposed facility;
- (g) the plans for transportation to and from the facility including:
  - (i) the size and approximate number of vehicles that will deliver waste to the facility daily;
  - (ii) the anticipated routes that will be used by waste vehicles and the suitability of roads and bridges involved;
  - (iii) measures for controlling litter, dust and noise caused by traffic;
  - (iv) other predicted impacts of traffic to and from the facility; and
  - (v) plans, if any, for diverting solid waste from the waste stream; and
- (h) a plan for complying with record keeping requirements in 20.9.5.16 NMAC as applicable;
- (7) contain an emergency contingency plan that meets the requirements of 20.9.5.15 NMAC;
- (8) contain a closure and post-closure care plan in compliance with 20.9.6 NMAC;
- (9) demonstrate the ability to comply with any applicable special waste requirements in 20.9.8 NMAC;
- (10) contain a proposed ground water monitoring system plan in compliance with 20.9.9 NMAC, including, if site assessment bore holes are drilled to obtain data, a certification that the holes were plugged or sealed in accordance with the New Mexico office of state engineer's requirements for plugging or sealing of test holes, or will be converted to monitoring wells as part of the ground water monitoring system;
- (11) include a cost estimate in accordance with the requirements of 20.9.10 NMAC, in a format as specified by the department; and
- (12) contain any other information required by the secretary.

D. Any person seeking an initial permit for a landfill or a transformation facility, or for a permit modification of a landfill resulting in a lateral or vertical expansion, excluding an

on-site scrap tire monofill, shall first submit to the secretary the information that is necessary for the secretary to determine if the proposed site is in a vulnerable area. If the secretary determines that the site or the proposed site is in a vulnerable area, and the applicant is proposing to site the facility, or expand the facility, in an area that has not been designated for the proposed use as the result of a land-use zoning process conducted by the local government that requires a quasi-judicial public hearing, with the opportunity for public participation, the applicant shall follow the following procedures.

(1) Prior to filing the application, the applicant shall give notice to the public of its proposed plans, and of the procedures allowing residents to file comments on the proposal with the department. This notice shall contain the following.

(a) For a proposed new facility, the name and location of the proposed facility, a description of the proposed facility, a description of any transportation routes to be used to and from the proposed facility and expected hours of operation, contact information stating where a person may obtain further information from the applicant, contact information for the environment department solid waste bureau, and procedures for filing comments on the proposal with the department. The notice shall be approved by the department prior to publication. The notice shall also give notice of a community meeting for the purpose of informing the surrounding community of the plans for the proposed facility, and for taking comments and questions. The meeting shall not be held less than 30 days following publication of the notice.

(b) For a proposed permit modification of a landfill resulting in a lateral or vertical expansion, the name and location of the facility, a description of the proposed modification, a description in any changes in operation resulting from the modification, contact information stating where a person may obtain further information from the applicant, contact information for the environment department solid waste bureau, and procedures for filing comments with the department. The notice shall be approved by the department prior to publication. The notice shall also give notice of a community meeting for the purpose of informing the surrounding community of the plans for the proposed facility. The community meeting shall not be held less than 30 days following publication of the notice.

(2) Community residents shall have 60 days following the community meeting to submit comments to the department. If the secretary determines that there is significant community opposition to the proposed landfill; transformation facility; or permit modification resulting in a lateral or vertical expansion, excluding on-site scrap tire monofill, then the secretary shall require that the applicant prepare a community impact assessment. If a community impact assessment is required, the applicant shall give notice of a scoping meeting, pre-assessment meeting and opportunity for comment on the resulting community impact assessment. The applicant can either provide combined notice or separate notices of each event. At the scoping meeting, the public shall be given the opportunity to identify specific concerns regarding the proposed facility or modification, and the applicant will advise the public that the issues listed below will be addressed in a community impact assessment. The public will be asked if

additional issues should be included in the scope of the assessment, if existing issues need additional consideration, and if the community impact assessment should be produced in a language in addition to English. The secretary may order that the assessment be produced in a language in addition to English based on, but not limited to expressions of interest at the scoping meeting. After the applicant incorporates public input from the scoping meeting, the applicant shall hold a pre-assessment meeting to describe the final scope of the study to the public. The public shall be given opportunities to make comments and raise questions at this meeting. Before completion of the community impact assessment, a draft assessment shall be issued and made available to the public for comment. The public shall be allowed to submit comments on the assessment to the applicant for a period of 30 days following the issuance of the draft assessment. The applicant shall consider the comments and modify the community impact assessment as appropriate. The applicant shall file the community impact assessment, all written comments, and the applicant's resolution of the comments with its application. The community impact assessment shall contain an executive summary that is in English and, if appropriate, in any other predominant language of the community, and in plain language so it can be understood by the residents of the community. At a minimum the community impact assessment will address, to the extent New Mexico residents are affected, the following issues in the four mile radius around the proposed facility or existing facility that is proposing a horizontal or vertical expansion:

(a) description of:

- (i) purpose and need for the project;
- (ii) site location and description;
- (iii) land use;
- (iv) known existing and documented proposed regulated facilities within the vulnerable area;
- (v) other existing development and documented planned development in the vulnerable area;
- (vi) historic and cultural resources;
- (vii) visual and scenic resources; and
- (viii) climatology, meteorology, and air quality, including odors and dust;

(b) socioeconomic profile and environmental justice:

- (i) population, demographic profile, education, age and language; and

- (ii) occupational profile and household income;

- (c) noise;

- (d) litter;

- (e) transportation;

- (i) local roads and highways;

- (ii) railroads;

- (iii) other transportation issues;

- (iv) access to facility;

- (v) air quality, including odors and dust;

- (vi) noise; and

- (viii) traffic;

- (f) public and occupational health and safety issues;

- (g) positive and negative socioeconomic impacts:

- (i) local employment;

- (ii) community services;

- (iii) revenue to local funds;

- (iv) property values;

- (v) property taxes;

- (vi) cost effective disposal of community solid waste; and

- (vii) other quality of life concerns raised at public meetings;

- (h) cumulative and individual impacts of the proposed facility, other existing development and other planned development submitted to a local government within the vulnerable area, to:

- (i) land use in the area;

- (ii) historical and cultural resources;
  - (iii) visual and scenic resources;
  - (iv) air quality, including odors and dust;
  - (v) socioeconomics and environmental justice, including population, demographic profile, education, age, language, occupational profile and household income;
  - (vi) transportation;
  - (vii) unavoidable adverse environmental impacts; and
  - (viii) analysis of short-term, intermediate term and long term effects of the proposed facility;
- (i) summary of reasonable mitigation measures proposed to address the facility's contribution to any expected adverse impacts; these measures may include but are not limited to:
- (i) historical and cultural resources impact mitigation measures;
  - (ii) visual and scenic resource impact mitigation measures;
  - (iii) air quality impact mitigation measures, including for odors and dust;
  - (iv) socioeconomic and environmental justice impacts mitigation measures;
  - (v) noise impact mitigation measures;
  - (vi) transportation impact mitigation measures; and
  - (vii) public and occupational health impacts mitigation measures; and
- (j) consultation, coordination and public involvement:
- (i) agencies and local governments consulted;
  - (ii) public involvement;
  - (iii) responsive summary; and
  - (iv) comments.

E. If the proposed landfill, transformation facility or landfill modification resulting in a lateral or vertical expansion is proposed in a vulnerable area, or is not sited in an area that has been designated for the proposed use as the result of a land-use zoning process conducted by the local government that requires a quasi-judicial public hearing, with the opportunity of public participation, the applicant shall demonstrate that, within the state of New Mexico, granting the permit or permit modification will not result in a disproportionate effect on the health and environment of a particular socioeconomic group in the vulnerable area.

F. If the proposed initial landfill or transformation facility permit, or landfill modification resulting in a lateral or vertical expansion is not in a vulnerable area, or is sited in an area that has been designated for the proposed use as the result of a land-use zoning process conducted by the local government that requires a quasi-judicial public hearing, with the opportunity for public participation, the applicant is not required to prepare a community impact assessment.

G. Each permit application filed with the secretary shall include proof that the applicant has provided notice of the filing of the application and any community impact assessment scoping meetings, pre-assessment meetings or other notifications required by 20.9.2 - 20.9.10 NMAC, and unless otherwise specified by 20.9.2 - 20.9.10 NMAC, to the public and other affected individuals and entities. The notice shall:

(1) be provided by certified mail to the owners of record, as shown by the most recent property tax schedule, and tax exempt entities of record, of all properties:

(a) within one hundred feet of the property on which the facility is located or proposed to be located if the facility is or will be in a class A or class H county or a municipality with a population of more than two thousand five hundred (2,500) persons; or

(b) within one-half mile of the property on which the facility is located or proposed to be located if the facility is or will be in a class B county or municipality with a population of 2,500 or less;

(2) be provided by certified mail to all municipalities and counties in which the facility is or will be located and to the governing body of any county, municipality, Indian tribe or pueblo when the boundary of the territory of the county, municipality, Indian tribe or pueblo is within ten miles of the property on which the facility is proposed to be constructed, operated or closed;

(3) be provided to all parties and interested participants of record for a permit modification or renewal;

(4) be published once in a newspaper of general circulation in each county where the facility is proposed to be constructed, operated or closed; this notice shall appear in either the classified or legal advertisements section of the newspaper and at

one other place in the newspaper calculated to give the general public the most effective notice; notice also shall be provided to residents of each community that is or will be affected significantly by the existing or proposed solid waste facility at least once in one or more other media in a manner that effectively reaches a substantial number of members of each community, and where printed shall be printed in both English and Spanish;

(5) be posted in at least eight publicly accessible and conspicuous places, including the proposed or existing entrance to the property on which the facility is or is proposed to be located; and

(6) include the following:

(a) name, address, and telephone number of the applicant and contact person;

(b) the anticipated start-up date of the facility or modification, and planned hours of operation;

(c) a description of the facility, including the general process, location, size, quantity, rate, and type of waste to be handled and a description of any proposed modification;

(d) the anticipated origin of the waste; and

(e) a statement that comments regarding the application should be provided to the applicant and the department.

H. Notices shall be submitted to the department for approval prior to publication, service and posting. The applicant shall submit a certificate from an American translators association certified translator showing that English versions have been accurately translated into Spanish.

[20.9.3.8 NMAC - Rp, 20 NMAC.9.1.II.201, 08/02/07]

### **20.9.3.9 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR MUNICIPAL, MONOFILL OR SPECIAL WASTE LANDFILL FACILITIES:**

A. Prior to the submission of a permit application or an application for a modification resulting in a lateral or vertical expansion for a municipal, monofill or special waste landfill, the applicant shall:

(1) meet with department representatives to discuss the proposed facility or modification; and

(2) submit a site assessment boring plan for departmental approval, including a demonstration that the installation of any monitoring well will comply with 20.9.9.9 NMAC:

(a) an applicant for approval of a site assessment boring plan shall submit a notice of intent to the secretary at least 14 days prior to the installation or decommissioning of any borings; and

(b) borings may be converted into piezometers or ground water monitoring wells provided they are constructed in accordance with 20.9.9.9 NMAC, and the conversion is consistent with the ground water monitoring plan and system plan approved by the department.

B. Any person seeking a permit for a municipal or special waste landfill shall submit the following information in addition to that required under 20.9.3.8 NMAC:

(1) a schedule of filling and methods of compaction of solid waste;

(2) a soil balance calculation and types and sources of daily, intermediate and final cover;

(3) site plans and cross-sections of the facility, drawn to scale, indicating the location of any:

(a) ground water monitoring wells and landfill gas monitoring points;

(b) materials recovery operation(s);

(c) borrow and fill areas;

(d) fire protection equipment;

(e) barriers for concealing the site from public view and noise abatement;

(f) surface drainage;

(g) water supply, including lines, tanks and wells;

(h) buildings, roads, utilities, storage ponds, fences and other site improvements;

(i) electric power transmission and distribution lines, pipelines, railroads, water, gas, oil wells, and public and private roads within 300 feet of the facility; and

(j) access roads to and within the landfill, including description, slopes, grades, length, load limits and points of entrance and exit;

(4) a topographic map of the site at a scale of 1"=200 feet, with a contour interval of two feet or less where relief is less than 50 feet; and five feet or less where relief exceeds 50 feet, with property boundaries of the landfill indicated;

(5) the most recent full size United States geological survey topographic map of the area, showing the waste facility boundary and existing utilities and structures within 500 feet of the boundary of the facility site;

(6) if available, the most recent federal emergency management agency 100-year frequency floodplain map, and if not available, the applicant shall otherwise demonstrate the site is not located in a 100-year frequency floodplain;

(7) a description of site geology and hydrology including:

(a) characterization of the uppermost aquifer including depth, estimated thickness, estimated sustainable yield, water quality (including all constituents referenced in Subsection A of 20.9.9.20 NMAC, flow direction, gradient and velocity unless the application includes a petition for suspension of ground water monitoring requirements in accordance with Subsection C of 20.9.9.8 NMAC;

(b) characterization of the geology, including:

(i) the results of the site assessment borings conducted in accordance with the approved boring plan;

(ii) a site plan showing the location, surface elevation and total depth of each boring;

(iii) lithologic log results of each boring, drawn to a scale of 1"=10' (except that borings of greater than 200 feet may be drawn to a scale of 1"=20'), graphically depicting the soil and/or rock strata penetrated and describing each layer; a) if soil: color, degree of compaction, moisture content, and any additional information necessary for an adequate description and visual classification of each stratum based on the unified soils classification system; and b) if rock: a detailed lithologic description, including rock type, degree of induration, presence of fractures, fissility, porosity (including vugs), and any other information necessary for an adequate description; the descriptions shall be certified by a qualified ground water scientist who shall be on-site at all times during drilling operations (all field notes of the ground water scientist shall be made available upon request of the department); and

(iv) if ground water was encountered, the initial depth it was encountered shall be indicated on the lithologic log;

(8) a demonstration that run-off from the landfill will not discharge contaminants in violation of the New Mexico Water Quality Act, commission regulations

or standards, or the Federal Clean Water Act, including an analysis of proposed run-on and run-off flow and control systems;

(9) a groundwater monitoring plan in conformance with 20.9.9.10 NMAC;

(10) plans and specifications for ground water monitoring systems in accordance with 20.9.9.9 NMAC;

(11) plans and specifications for liner and leachate collection systems in accordance with 20.9.4.13 NMAC and 20.9.4.15 NMAC;

(12) plans and specifications for landfill gas monitoring and management programs in accordance with 20.9.4.16 NMAC; and

(13) provide proof the applicant has notified the federal aviation administration and the affected airport if the facility is to be located within six miles of an airport used by the public and that the federal aviation administration does not object to the site being operated as a solid waste facility.

C. Applicants shall include disposal management plans for all types of special waste proposed to be disposed at the landfill. Such disposal management plans shall include, at a minimum:

(1) a description of methods to identify the various special wastes, including the use of test parameters in 20.9.8.11 NMAC;

(2) disposition procedures for incoming special wastes;

(3) procedures for notifying the department in the event wastes either fail the tests listed in 20.9.8.11 NMAC or prove not to be one of the listed special wastes;

(4) the tracking system to be used to:

(a) compile and record the amounts and types of wastes received;

(b) identify the area or disposal coordinates where the waste was placed in the disposal cell; and

(c) complete the manifest requirements of 20.9.8.19 NMAC;

(5) emergency and mitigation measures in case of a spill or leak; and

(6) a description of procedures to meet applicable requirements in 20.9.8.12-17 NMAC.

D. Applicants shall identify any types of material not within the definition of solid waste that the owner or operator seeks to dispose.

[20.9.3.9 NMAC - Rp, 20 NMAC 9.1.II.202, 08/02/07]

**20.9.3.10 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR CONSTRUCTION AND DEMOLITION LANDFILLS:**

Any person seeking a permit for a construction and demolition landfill shall submit the following information in addition to that required under 20.9.3.8 NMAC:

A. site plans and cross-sections of the proposed facility, drawn to scale, indicating the location of:

- (1) the tipping areas;
  - (2) fencing and gates;
  - (3) entrances, exits and access roads;
  - (4) locations of buildings within 500 feet of the facility;
  - (5) public water supply wells and private wells within 1000 feet of the facility;
- and,
- (6) borrow and fill areas;

B. frequency of construction and demolition debris disposal; and

C. if recycling operations are conducted, the method of diversion and storage of the recyclable materials, the frequency of collection for reuse from the facility, method of transport, and destination; the recycling operation shall comply with 20.9.3.29 NMAC.

[20.9.3.10 NMAC - Rp, 20 NMAC 9.1.II.203, 08/02/07]

**20.9.3.11 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR PROCESSING FACILITIES AND FOR RECYCLING FACILITIES THAT ACCEPT SOLID WASTE THAT ACCOMPANIES THE RECYCLABLE MATERIAL:**

A. Any person seeking a permit for a processing facility or for a recycling facility that accepts solid waste shall submit the following information in addition to that required under 20.9.3.8 NMAC:

- (1) a description of the survey and analysis process used to determine the characteristics of all solid waste expected to be accepted or processed;

(2) plans and elevations, drawn to scale, of all structures used for processing, storage, alternate storage, and disposal of waste materials;

(3) a process description of the sampling capability and locations designed into the facility so the process stream can be safely sampled and analyzed;

(4) a description of the methods to be employed for the containment or removal of residues and spills in a manner that protects the public health, welfare, safety and the environment; and

(5) an operation and maintenance manual that addresses all of the operating requirements.

B. Any person seeking a permit for a processing facility that will process special waste shall, in addition to the requirements of this section, submit the following additional information:

(1) the proposed location and method for storage or processing of liquid or solid residues and end products produced by operation of the facility;

(2) the process for separation, storage and disposal of waste generated by the process, including the temporary storage of wastes;

(3) the minimum and maximum volumes of the types of material or solid waste to be stored prior to processing or disposal, and the minimum and maximum time that material or waste will be stored;

(4) facility plans and elevations, drawn to scale, and specifications including:

(a) equipment layout;

(b) the most recent full size United States geological survey topographic map of the area, showing the waste facility boundary, the property boundary, and existing utilities and structures within 500 feet of the property boundary;

(c) the location of electric power transmission and distribution lines, pipelines, railroads and public and private roads within 300 feet of the proposed facility;

(d) the processing unit, with loading area and residue removal;

(e) all conveyors, ramps and other devices used to move material through the facility;

(f) control room and equipment; and

(g) pollution control equipment;

- (5) an operations and maintenance manual that includes:
  - (a) current policies and procedures;
  - (b) the operating requirements for the various stages of processing; and
  - (c) all information that would enable supervisory and operating personnel, and persons evaluating the operation of the facility, to determine the sequence of operation, plans, diagrams, policies, procedures and legal requirements which must be followed for orderly and successful operations;
- (6) a description of the facility operation which includes:
  - (a) a sequential description of the major components used for the processing of the solid waste starting from its delivery at the facility and continuing through the treatment and loading operations;
  - (b) procedures for facility start-up, and scheduled and unscheduled shut downs;
  - (c) a description of potential safety hazards and methods of control, including, but not limited to, arrangements to detect explosion potential and equipment installed to minimize the impact of explosion; and
  - (d) a description of personnel safety equipment and protective gear, including, but not limited to, showers, eye wash, fire extinguishers, hoses, hard hats, safety goggles, hearing protection, and proposed personnel hygiene facilities;
- (7) an operations plan that includes all plant systems complete with process flow and instrumentation diagrams and heat and material balances; and
- (8) residue testing methods and procedures.

[20.9.3.11 NMAC - Rp, 20 NMAC 9.1.II.204 NMAC, 08/02/07]

**20.9.3.12 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR TRANSFORMATION FACILITIES:**

A. Any person seeking a permit for a transformation facility shall submit the following information in addition to that required under 20.9.3.8 NMAC:

- (1) the composition of the waste to be received at the facility;
- (2) the method to be used to convert the waste into a feedstock for the transformation process, including material separation and recovery systems;

(3) if the transformation process is other than biological, a characterization of the feedstock used as the design basis of the facility that shows:

(a) composition by material type; and

(b) physical and chemical properties, including moisture content, ash content, and higher heating value;

(4) if the transformation is by means of a biological process, a characterization of the feedstock used as the design basis of the facility that shows:

(a) composition by material type;

(b) physical and chemical properties, including moisture content and percent organic and inorganic matter;

(c) process efficiency, as measured by conversion of volatile solids; and

(d) end products or residue;

(5) the proposed location and method for disposal, storage or processing of liquid or solid residues and end products produced by operation of the facility;

(6) the process for separation, storage and disposal of waste generated by the process, including the temporary storage of bulky wastes;

(7) the minimum and maximum volumes of the types of material or solid waste to be stored prior to sale, reuse or disposal, and the minimum and maximum time that material or waste will be stored;

(8) facility plans and elevations, drawn to scale, and specifications including:

(a) equipment layout;

(b) the most recent full size United States geological survey topographic map of the area, showing the waste facility boundary, the property boundary, and existing utilities and structures within 500 feet of the property boundary;

(c) the location of electric power transmission and distribution lines, pipelines, railroads and public and private roads within 300 feet of the proposed facility;

(d) the transformation unit, with feed area and residue removal;

(e) all conveyors, ramps and other devices used to move material the facility;

(f) control room and equipment; and

(g) pollution control equipment;

(9) an operations and maintenance manual that includes:

(a) current policies and procedures;

(b) the operating requirements for the various stages of transformation; and

(c) all information that would enable supervisory and operating personnel, and persons evaluating the operation of the facility, to determine the sequence of operation, plans, diagrams, policies, procedures and legal requirements which must be followed for orderly and successful operations;

(10) a description of the facility operation which includes:

(a) a sequential description of the major components used for the treatment of the solid waste starting from its delivery at the facility and continuing through the residue and ash treatment and loading operations;

(b) procedures for facility start-up, and scheduled and unscheduled shut downs;

(c) a description of potential safety hazards and methods of control, including, but not limited to, arrangements to detect explosion potential and equipment installed to minimize the impact of explosion; and

(d) a description of personnel safety equipment and protective gear, including, but not limited to, showers, eye wash, fire extinguishers, hoses, hard hats, safety goggles, hearing protection, and proposed personnel hygiene facilities;

(11) an operations plan that includes all plant systems complete with process flow and instrumentation diagrams and heat and material balances; and

(12) residue testing methods and procedures.

B. The design and operation of the transformation facility shall conform to all applicable codes and standards including, but not limited to, the American society of testing materials, the American national standards institute, the American society of mechanical engineers, the American concrete institute, and the uniform building code, most recent edition, as well as the building code requirements in the city, county, or municipality in which the facility is to be located.

C. Within 30 days of permit issuance, the permittee shall submit to the department a comprehensive project schedule that indicates each major design, procurement, construction, and start-up activity in a properly sequenced and coordinated fashion.

Progress reports shall be submitted at least once a month indicating major activities accomplished and percentage of work completed.

[20.9.3.12 NMAC - Rp, 20 NMAC 9.1.II.205 NMAC, 08/02/07]

**20.9.3.13 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR SOLID WASTE FACILITIES THAT ACCEPT SPECIAL WASTE:**

Any person seeking a permit to accept special waste at a solid waste facility shall submit the following information in addition to that required under 20.9.3.8 NMAC:

A. a list of the types of wastes to be accepted and the anticipated sources of such wastes;

B. the anticipated amount and frequency of receipt of the wastes, including the anticipated amount of each type of special waste expected to be accepted over the life of the permit;

C. a description of the method of handling, including, but not limited to, disposal, processing, or transformation;

D. a general disposal management plan, in accordance with 20.9.8 NMAC, for each type of special wastes proposed to be accepted at the facility; and

E. emergency and mitigation measures in case of a spill or leak.

[20.9.3.13 NMAC - Rp, 20 NMAC 9.1.II.206 NMAC, 08/02/07]

**20.9.3.14 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR COMPOSTING FACILITIES THAT ACCEPT SOLID WASTE:**

Any person seeking a permit for a composting facility that accepts solid waste shall submit the following information in addition to the information required by 20.9.3.8 NMAC.

A. Operating plans for the facility, including, but not limited to, the origin, expected composition and weight or volume of materials to be composted, the process, the loading rate, the proposed capacity of the facility, proposed size and operational rate, and the expected disposition rate of the compost from the facility.

B. The composition and weight or volume of the non-compostable solid waste to be received at the facility.

C. The process or method used to separate the non-compostable solid waste from the compostable material.

D. The disposal path for the non-compostable solid waste.

E. A characterization of the feedstock used as the design basis of the composting facility shall be included showing:

- (1) composition by material type;
- (2) physical and chemical properties including moisture content and percent organic and inorganic matter; and
- (3) process efficiency as measured by conversion of volatile solids.

F. A description of methods used to assure that rodents and other animals will be kept from the facility.

G. For composting facilities that accept sewage sludge, a plan showing testing methods and procedures for compliance with 40 CFR 503 and 20.6.2 NMAC.

H. A demonstration that a groundwater discharge permit has been applied for, if applicable.

[20.9.3.14 NMAC - Rp, 20 NMAC 9.1.II.207 NMAC, 08/02/07]

#### **20.9.3.15 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR TRANSFER STATIONS:**

A. Any person seeking a permit for a transfer station shall submit the following information in addition to that required by 20.9.3.8 NMAC:

B. plans and elevations, drawn to scale, of all structures proposed to be used for handling and storage of solid waste and diversion of recyclables;

C. a site plan of the proposed facility, drawn to scale, indicating the location of:

- (1) storage, loading and unloading areas;
- (2) fencing and gates;
- (3) entrances, exits, and access roads; and
- (4) area map showing locations of structures within 100 feet of the facility boundary;

D. methods of collection, treatment, or disposal of waste water from the facility;

E. the frequency of solid waste and recyclables deposit and pick-up from the facility, method of transport, and destination;

F. specific operational procedures, including traffic patterns and procedures for handling recyclables, household hazardous waste, white goods, bulky items, tires, yard refuse, and used oil; and

G. a demonstration that the facility will be capable of handling the predicted waste stream.

[20.9.3.15 NMAC - Rp, 20 NMAC 9.1.II.208 NMAC, 08/02/07]

#### **20.9.3.16 PERMITTING PROCEDURES:**

A. The permitting procedures in 20.9.3.8 - 20.9.3.25 NMAC supplement the permitting requirements in the Solid Waste Act and Permitting Procedures - Environment Department, 20.1.4 NMAC.

B. A permit shall be issued only after a public hearing as required by NMSA 1978 Section 74-9-24 A of the Solid Waste Act. If a public hearing is held for a permit application, modification, renewal, or petition, the applicant shall pay one-half the actual cost of:

(1) court reporting services, including the cost to provide a copy of the transcript to the department;

(2) any translation or interpretation services; and

(3) providing the facility where the public hearing is held, including any security and ancillary costs.

C. The department shall submit an invoice to the applicant for payment. Payment shall be made before action on a permit will be finalized. A public entity may seek a waiver of payment for its share of hearing costs if it demonstrates to the secretary that payment would impose a financial hardship to the entity.

[20.9.3.16 NMAC - Rp, 20 NMAC 9.1.II.212 NMAC, 08/02/07]

#### **20.9.3.17 PERMIT APPLICATION REVIEW:**

A. The applicant shall submit three copies of the initial permit application for approval. Upon receipt of an application for a permit, the department shall review the application to determine if additional information is necessary or shall determine the application administratively complete. The department shall issue a notice of administrative completeness or a notice that additional information is necessary within 120 days after receipt of the application and within 90 days of any subsequent

responses to requests for further information. The secretary may extend the time for good cause.

B. In the event the department requests additional information, the applicant shall submit any information requested within 120 days of receipt of the first request, and 90 days of receipt of subsequent requests, or the application may be denied without prejudice. The secretary may extend the response time for good cause, and set up an alternative permit review schedule. When submitting the information in response to a request for additional information, the applicant shall submit three copies. If the permit application is not administratively complete after two requests for additional information, the secretary may deny the permit application without prejudice. This subsection is not intended to limit informal informational exchanges during the permit review period or prior to submission of an application. Denial of a renewal application under this subsection does not automatically terminate the existing permit of a facility.

C. Within 14 days after the application is deemed administratively complete, the applicant shall submit to the department:

(1) six complete new copies of the application; and

(2) an updated list of all property owners as specified in Subsection G of 20.9.3.8 NMAC; the list must be date stamped and signed by the appropriate county agent, or certified as accurate by the applicant as of the date the application is deemed complete.

D. Acceptance of the application as administratively complete allows the permit application to be processed according to the permitting procedures. Acceptance of the application as administratively complete is not an indication that the department supports the permit without conditions or that it will be approved.

[20.9.3.17 NMAC - Rp, 20 NMAC 9.1.II.212 NMAC, 08/02/07]

### **20.9.3.18 PERMIT ISSUANCE:**

A. The secretary shall issue a permit if the applicant demonstrates that the requirements of 20.9.2 - 20.9.10 NMAC and the Solid Waste Act are met and that neither a hazard to public health, welfare or the environment nor undue risk to property will result.

B. The secretary shall consider the information in the community impact assessment and any demonstrations made pursuant to Subsection E of 20.9.3.8 NMAC, together with other information in the record, in any decisions to issue, issue with conditions or deny the permit.

C. The terms and conditions of the permit or permit modification shall be specifically identified by the secretary.

D. Multiple contiguous facilities may be permitted under one solid waste facility permit provided each facility meets the applicable requirements of 20.9.2 - 20.9.10 NMAC and the Solid Waste Act.

[20.9.3.18 NMAC - Rp, 20 NMAC 9.1.II.212 NMAC, 08/02/07]

**20.9.3.19 PERMIT DENIAL OR REVOCATION:**

A. In addition to the causes for denial or revocation listed in Subsections A and B of 74-9-24 of the Solid Waste Act and 20.9.3.18 NMAC, the secretary may deny or revoke a permit during its term for:

(1) a material violation of any term or condition of the permit, any requirement of 20.9.2 - 20.9.10 NMAC, or any requirement of the Solid Waste Act by the owner or operator, after taking into consideration the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors;

(2) failure of the applicant in the application or during the permit issuance process to disclose fully all material facts;

(3) misrepresentation by the owner or operator of any material facts at any time;

(4) a determination that the permitted activity endangers public health, welfare or the environment;

(5) failure of the owner or operator to demonstrate the knowledge and ability to operate a facility in accordance with 20.9.2 - 20.9.10 NMAC; and

(6) a history of non-compliance by the owner or operator with environmental regulations or statutes at another facility.

B. A permit shall be revoked in accordance with the procedures set forth in Adjudicatory Procedures - Environment Department, 20.1.5 NMAC. Construction, modification and operation, if any, shall cease upon the effective date of the revocation.

[20.9.3.19 NMAC - Rp, 20 NMAC 9.1.II.212 NMAC, 08/02/07]

**20.9.3.20 EFFECT OF PERMIT:**

A. Any terms or conditions of the permit shall be enforceable to the same extent as a regulation of the board.

B. The existence of a permit issued under 20.9.2 - 20.9.10 NMAC shall not constitute a defense to a violation of 20.9.2 - 20.9.10 NMAC or the Solid Waste Act.

[20.9.3.20 NMAC - Rp, 20 NMAC 9.1.II.212 NMAC, 08/02/07]

**20.9.3.21 PERMITTED FACILITIES - DUTIES PRIOR TO OPERATION:**

A. At least 14 days prior to the start of solid waste facility construction, the owner or operator shall provide the department with a major milestone schedule.

B. After a permit is granted for a solid waste facility or for the expansion of a solid waste facility, and at least 14 days prior to disposal, processing, or transforming of any solid waste at the solid waste facility or expansion, the owner or operator shall:

(1) provide to the department a written notice of construction completion with "as built" construction drawings signed and sealed by a registered professional engineer; and

(2) for landfills, provide the department a quality assurance/quality control report, certified by a registered professional engineer licensed in New Mexico and experienced in liner installation, for construction of the liner and leachate collection system.

C. The owner and operator shall prohibit the disposal, processing, or transformation of solid waste at a new or modified portion of a solid waste facility until the department has either inspected the solid waste facility or modified portion and determined that the site has been developed in accordance with the permit or permit modification, 20.9.2 - 20.9.10 NMAC and the Solid Waste Act, or the department fails to inspect the solid waste facility within 30 calendar days of receipt of written notice of construction completion and any quality assurance/quality control report or engineer's certification that the facility or modification has been constructed in accordance with the permit or permit modification, 20.9.2 - 20.9.10 NMAC and the Solid Waste Act, and that a quality assurance/quality control report is being prepared.

D. The owner and operator shall prohibit the disposal, processing, or transformation of solid waste at a new or modified portion of a solid waste facility until the owner or operator has secured financial assurance and has submitted appropriate documentation to the department prior to the initial receipt of waste at a new or modified portion of a solid waste facility.

[20.9.3.21 NMAC - N, 08/02/07]

**20.9.3.22 PERMIT OR FACILITY MODIFICATION:**

A. Any owner or operator of a solid waste facility who seeks to modify such facility or permit conditions shall obtain a permit modification prior to making any modifications. A permit modification shall not extend the initial term of any permit.

B. An application for a modification shall demonstrate compliance with the portions of 20.9.2 - 20.9.10 NMAC that pertain to such a modification.

C. The secretary may initiate the modification of permit conditions or require modification of the facility if:

(1) changes occur after permit issuance which justify permit conditions that are different from or are not included in the existing permit;

(2) the secretary has received information that was not in the record at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance;

(3) the standards or regulations on which the permit was based have changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) the secretary determines good cause exists for modification, such as an act of God, strike, flood, or materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable remedy.

D. All permit modifications, whether initiated by the owner or operator or by the secretary, shall be subject to Permit Procedures - Environment Department, 20.1.4 NMAC and permitting procedures in this part.

[20.9.3.22 NMAC - Rp, 20 NMAC 9.1.II.210 NMAC, 08/02/07]

### **20.9.3.23 TRANSFER OF PERMITS AND CHANGE IN PERMIT APPLICANT:**

A. A change in ownership of a permitted entity requires a permit transfer and shall be allowed according to the following procedure.

(1) Where a permitted entity undergoes a change in ownership, but the permitted entity remains the same, the new owner shall, within 30 days after the change submit the following:

(a) a description of the change in ownership;

(b) the date of the change in ownership;

(c) a statement that the current financial assurance will remain in effect, or a new proposed financial assurance to meet the requirements of 20.9.10 NMAC;

(d) information required by Section 74-9-21 of the Solid Waste Act, and if applicable, disclosure statements shall be submitted for the new owner on forms provided by the department;

(e) a statement whether the new owner has been convicted of a felony or other crime within 10 years immediately preceding the date of the transfer, and if so details of the crime and conviction;

(f) a statement whether the new owner has been fined within the past 5 years for alleged violations of any environmental laws of this state, any other state or the United States, and if so, details of any allegations, settlements or compliance orders;

(g) proof of public notice of the change in ownership; and

(h) any other information required by the secretary.

(2) The permittee shall provide public notice of the ownership change by publishing once in a newspaper of general circulation in the county where the facility is located, and shall indicate in the public notice that the department will accept public comment on the ownership change for a period of 30 days after the date of publication.

(3) The existing financial assurance required by 20.9.10 NMAC shall remain in effect until the secretary has approved any new proposed financial assurance submitted by the new owner.

B. A change in the permittee requires a permit transfer and shall be allowed according to the following procedure.

(1) Where the person owning the permit seeks to transfer the permit to a new person to be named as permittee, the existing owner and the proposed new owner shall file an application with the department requesting transfer of the permit. The application shall contain the following information:

(a) a description of the proposed change of permittee;

(b) an explanation of whether the change in permittee will have any effect on the operations;

(c) a new proposed financial assurance to meet the requirements of 20.9.10 NMAC;

(d) information required by Section 74-9-21 of the Solid Waste Act, and if applicable, disclosure statements shall be submitted for the new proposed permittee on forms provided by the department;

(e) a statement whether the new owner has been convicted of a felony or other crime within 10 years immediately preceding the date of the transfer, and if so, details of the crime and conviction;

(f) a statement whether the new owner has been fined within the past five years for alleged violations of any environmental laws of this state, any other state or the United States, and if so, details of any allegations, settlements or compliance orders;

(g) proof of public notice of the proposed change in permittee; and

(h) any other information required by the secretary;

(2) The permittee shall provide public notice of a proposed permit transfer by publishing once in a newspaper of general circulation in the county where the facility is located, and shall indicate in the public notice that the department will accept public comment on the permit transfer for a period of 30 days after the date of publication.

(3) The existing financial assurance required by 20.9.10 NMAC shall remain in effect until the secretary has approved any new proposed financial assurance submitted by the proposed new permittee.

C. If a permit applicant changes ownership or seeks to transfer the application to a new proposed permittee, the applicant and transferee shall follow the procedures in this section. If the application has already been deemed complete, the application shall be re-noticed and re-submitted.

[20.9.3.23 NMAC - Rp, 20 NMAC 9.1.II.211 NMAC, 08/02/07]

#### **20.9.3.24 PERMIT REVIEW:**

No later than 60 days before a permit review is required by Section 74-9-24 of the Solid Waste Act, the owner or operator shall submit to the department a complete description of the following:

A. facility operations;

B. compliance history;

C. environmental monitoring results, releases, and any remediation;

D. changes in information from the disclosure forms;

E. any other technical requirements requested by the secretary;

F. financial assurance;

G. any behavior or incidents of the nature described in Subsection B of 74-9-24 of the Solid Waste Act; and

H. proof of public notice of the review provided in accordance with Section 74-9-22 of the Solid Waste Act and 20.9.2 - 20.9.19 NMAC.

[20.9.3.24 NMAC - Rp, 20 NMAC 9.1.II.212, 08/02/07]

**20.9.3.25 PERMIT RENEWAL:**

A. To renew a permit, the owner or operator of a solid waste facility shall file a permit renewal application no later than 12 months prior to the expiration date of the facility permit. A permit renewal application shall include a complete description of the following:

- (1) facility operations;
- (2) compliance history;
- (3) environmental monitoring results, releases, and any remediation;
- (4) changes in information from the most recent disclosure forms filed with the department;
- (5) any other technical requirements requested by the secretary;
- (6) financial assurance;
- (7) any behavior or incidents of the nature described in Subsection B of 74-9-24 of the Solid Waste Act;
- (8) compliance demonstrations under Subsection A of 20.9.4.9 NMAC; and
- (9) proof of public notice of the renewal application provided in accordance with Section 74-9-22 of the Solid Waste Act.

B. A solid waste facility may continue to operate under the terms and conditions of the existing permit until the renewal permit is issued or denied provided that:

- (1) the owner and operator are in compliance with the existing permit, 20.9.2 - 20.9.10 NMAC, the Solid Waste Act, and any federal regulations which apply;
- (2) a permit renewal application was submitted in a timely fashion in accordance with this section; and
- (3) the owner or operator submits any requested additional information by the deadline(s) specified by the secretary.

C. The secretary may establish new deadlines for the permit renewal application if the application is denied under 20.9.3.17 NMAC. The secretary may issue an order for the revocation of the existing permit if the provisions in Subsection B of 20.9.3.17 NMAC are not met.

[20.9.3.25 NMAC - Rp, 20 NMAC 9.1.II.212, 08/02/07]

**20.9.3.26 PERMIT EXPIRATION; AUTOMATIC CLOSURE:**

A. A permit shall automatically expire when the secretary verifies that the closure and any post-closure care plan, including corrective action, have been completed.

B. If a permitted facility begins operation, and thereafter suspends operation in full for at least five years, authorization to accept waste is suspended and closure activities shall begin.

[20.9.3.26 NMAC - Rp, 20 NMAC 9.1.II.212, 08/02/07]

**20.9.3.27 REGISTRATION OF RECYCLING AND COMPOSTING FACILITIES THAT ACCEPT ONLY SOURCE SEPARATED RECYCLABLE OR COMPOSTABLE MATERIALS, COLLECTION CENTERS AND AIR CURTAIN INCINERATORS AND LAW ENFORCEMENT PHARMACEUTICAL INCINERATORS:**

A. The owner or operator of the following facilities shall file an application for a registration at least 30 days prior to any operations and every five years thereafter. Existing facilities of the type listed below shall apply for a registration at least 30 days prior to the expiration of their existing permit or registration, or within two years after the effective date of these regulations, whichever occurs first. Facilities covered by this section that do not timely file a complete application for registration are hereby deemed unpermitted solid waste facilities, and the owner or operator may be subject to penalties, permit requirements and nuisance abatement orders. Facilities required to register are:

- (1) recycling facilities that accept only source separated recyclable materials;
- (2) composting facilities that accept only source separated compostable materials;
- (3) collection centers;
- (4) small animal crematoria;
- (5) air curtain incinerators; and
- (6) law enforcement pharmaceutical incinerators.

B. Registration is not required for a recycling facility that accepts only source separated recyclable materials and accepts the recyclables for less than seven days in any calendar year.

C. Registration is not required for collection facilities that are part of a commercial hauler operation, that have an operational rate of less than 240 cubic yards per day monthly average, and that do not serve the general public, but such facilities shall be included in the registration of the commercial hauler under Paragraph (10) of Subsection A of 20.9.3.31 NMAC.

D. Any person who is required to register under this section with the department shall provide the following information:

(1) the name, address, and telephone number of the business, owner, operator and contact person;

(2) the anticipated start up date (unless it is an existing operation);

(3) a legal description, and map of the proposed facility site, including land use and zoning of the site and surrounding area, including setbacks;

(4) a description of means that will be used to prevent the facility from becoming a public nuisance, including:

(a) signs to indicate the location of the site, the hours of operation, emergency telephone numbers, delivery instructions, and that fires and scavenging are prohibited;

(b) storage containers that are leak-proof and manufactured of non-biodegradable material;

(c) means to control litter and prevent and extinguish fires;

(d) conducting any recycling operations in a safe and sanitary manner;

(e) storing any recyclable materials in a manner that does not create a nuisance, harbor vectors, or create a public health hazard;

(f) providing sufficient unloading areas to meet peak demands;

(g) for collection centers, providing separate storage areas for bulky wastes, such as brush, white goods, appliances and scrap tires, and removing the bulky wastes at a frequency approved in the registration;

(h) for collection centers, confining unloading of solid waste to as small an area as possible;

(i) for collection centers, removal of solid waste from the center at the end of the operating day unless otherwise approved in the registration;

(j) a means of controlling access to the facility;

(k) a means of controlling and mitigating noise and odors;

(l) operating plans for the facility, including, but not limited to, the origin, expected composition and weight or volume of materials to be composted or recycled or incinerated, the process, loading rate, proposed capacity, size and operational rate, and the expected disposition rate of the recyclables, compost, ash or waste from the facility;

(m) for composting facilities that accept sewage sludge, a plan showing testing methods and procedures for compliance with 40 CFR 503 and 20.6.2 NMAC;

(n) for composting facilities, a demonstration that a groundwater discharge permit has been applied for, if applicable;

(o) for air curtain incinerators, a copy of the air quality permit, registration or notice of intent filed with the air quality bureau;

(p) for air curtain incinerators, a designation of the intended recipient of ash waste; and

(q) any additional information requested by the secretary.

E. The owner or operator shall comply with the terms of its approved registration.

F. A violation of the terms of an approved registration may be deemed to be a public nuisance or the facility may be deemed to be an unpermitted solid waste facility subject to enforcement orders under the Solid Waste Act.

G. The owner or operator of a facility required to be registered under this section shall update its registration to reflect any material change in its operations.

H. The owner or operator of a recycling facility, composting facility, collection center, small animal crematorium, an air curtain incinerator, or a law enforcement pharmaceutical incinerator shall not create a public nuisance. Failure to comply with the terms of the registration may be deemed a public nuisance. If the secretary determines, based on the information submitted with the registration or based upon any other information that the facility will be or has become a public nuisance, or that a facility covered by this section is in violation of the Solid Waste Act or 20.9.2 - 20.9.10 NMAC, the secretary may deny the registration, issue an order requiring the owner or operator to abate the public nuisance, or may issue any other order pursuant to the Solid Waste Act or 20.9.2 - 20.9.10 NMAC, or any combination thereof. The owner or operator or other affected person may appeal the secretary's order by filing a request for hearing

within 30 days of the date of the secretary's order. The appeal shall be conducted in accordance with the procedures in 20.1.5 NMAC, Adjudicatory Procedures- Environment Department.

I. The owner or operator of every recycling facility and composting facility shall have a certified operator or representative present at all times while the facility is being operated.

J. The owner or operator of a recycling facility or composting facility that accepts only source separated recyclable or compostable material shall submit an annual report to the department within 45 days from the end of each calendar year, describing the operations of the past year. The reports must be certified as true and accurate by the owner or operator and shall include:

- (1) the type and weight or volume of recyclable material received during the year;
- (2) the type and weight or volume of recyclable material sold or otherwise disposed off site during the year;
- (3) final disposition of material sold or otherwise disposed off-site; and
- (4) any other information requested by the secretary.

K. The owner or operator of a recycling facility, composting facility or collection center that conducts a tire recycling operation shall comply with the applicable operating procedures required by 20.9.20 NMAC.

L. The owners or operators of law enforcement pharmaceutical incinerators shall utilize one of the following types of incinerators:

- (1) a high temperature incinerator such as cement kilns (furnaces that operate in the range of 1000° C - 2000° C) used for the destruction of hazardous waste;
- (2) a two-chamber incinerator that operates at a minimum temperature of 850° C, with a combustion time of at least two seconds in the second chamber; or
- (3) an alternative incinerator at least as protective as any of the incinerators as described in paragraphs (1) and (2) of this subsection and approved by the department.

M. The owners and operators of law enforcement pharmaceutical incinerators shall retain on file incinerator specifications, including an operation and maintenance manual, temperatures reached, controls, retention time, pollution control equipment, maintenance requirements, and process efficiency.

N. The owners and operators of law enforcement pharmaceutical incinerators shall retain on file a plan that addresses the storage, transport, and disposal of the incinerator ash and encapsulated pharmaceutical waste. Owners and operators of law enforcement pharmaceutical incinerators may store ash for up to 12 months before disposal.

O. The design and operation of a law enforcement pharmaceutical incinerator shall conform to all applicable codes and standards including, but not limited to, the American national standards institute, local zoning, and the building code requirements for the city, county or municipality in which the facility is located.

P. Plastic containers, infectious waste, and syringes and needles shall not be burned in a law enforcement pharmaceutical incinerator.

Q. The owners and operators of law enforcement pharmaceutical incinerators shall submit a summary describing the household pharmaceutical waste collections to the department within 7 calendar days of a limited-duration event or 45 days from the end of each calendar year for an on-going program. The reports shall include:

(1) the weight or volume of household pharmaceutical wastes received during the limited-duration event or program year;

(2) the weight or volume of household pharmaceutical wastes received during the limited-duration event or program year by disposal method, including incineration or disposal at a permitted landfill, processing facility or hazardous waste facility, and the weight or volume of ash generated and disposed of; and

(3) final disposal destinations of any household pharmaceutical wastes and ash disposed of off-site.

[20.9.3.27 NMAC - Rp, 20 NMAC 9.1.II.213, 08/02/07; A, 07/30/11]

**20.9.3.28 ADDITIONAL REGISTRATION REQUIREMENTS FOR COMPOSTING FACILITIES THAT ACCEPT GREATER THAN 25 TONS PER DAY COMPOSTABLE MATERIAL OR GREATER THAN 5 TONS PER DAY OF MATERIAL THAT WOULD OTHERWISE BECOME SPECIAL WASTE:**

A. Any person operating or proposing to operate a composting facility that accepts greater than 25 tons per day annual average compostable material or greater than 5 tons per day annual average of material that would otherwise become special waste (e.g. sludge, offal, petroleum contaminated soils), shall submit the following information in addition to that contained in 20.9.3.27 NMAC:

(1) site plans and cross-sections of the proposed facility, drawn to scale, indicating the location of buildings, access roads, entrances and exits, drainage, material storage and treatment areas, utilities, fences and other site improvements;

- (2) the composition of the waste to be received at the facility;
- (3) the method to be used to convert the waste into a feedstock for the composting process, including material separation and recovery systems;
- (4) a characterization of the feedstock used as the design basis of the facility which describes:
  - (a) composition by material type;
  - (b) physical and chemical properties including:
    - (i) moisture content; and
    - (ii) percent organic and inorganic matter; and
    - (iii) process efficiency as measured by conversion of volatile solids;
  - (5) a description of the composting process to be used, including:
    - (a) the method of measuring, shredding, and mixing materials;
    - (b) temperature monitoring equipment and the location of all temperature and any other type of monitoring points, and the frequency of monitoring;
    - (c) the method of moisture control, including moisture quantity, source, monitoring and frequency of monitoring;
    - (d) a description of any proposed additive material, including its quantity, quality, and frequency of use;
    - (e) special precautions or procedures for operation during high wind, heavy rain, snow and freezing conditions;
    - (f) estimated composting time duration;
    - (g) for windrow systems, the windrow construction, including width, length, and height;
    - (h) the method and frequency of aeration; and
    - (i) for in-vessel composting systems, a process flow diagram of the entire process, including all major equipment and flow streams;
- (6) a general description of the ultimate use for the finished compost and method for removal from the site;

(7) for composting facilities accepting sewage sludge, a plan for compliance with 40 CFR Part 503, including, but not limited to, reporting, composting methods and times, and testing methods and frequencies; and

(8) a demonstration that the ground water will be protected and will comply with all applicable ground water protection standards, including those specified in 20.6.2 NMAC.

B. The owner operator of a composting facility that is designed to or does accept more than 5 tons per day annual average of material that would otherwise be special waste or more than 25 tons annual average of total compostable material per day shall submit a nuisance abatement plan detailing how it will comply with Subsection E of 20.9.3.28 NMAC if so ordered.

C. The owner operator of a composting facility that is designed to or does accept more than 5 tons per day annual average of material that would otherwise be special waste or more than 25 tons annual average of total compostable material per day shall submit a financial assurance mechanism in compliance with 20.9.10.1- 20.9.10.13 NMAC, in order to assure sufficient funds in the event that the secretary requires abatement of a nuisance at the facility. The financial assurance mechanism must be approved by the secretary prior to the operation of the facility.

D. The owner or operator of a composting facility that is designed to or does accept more than 5 tons per day annual average of sludge or more than 25 tons of total compostable material per day annual average shall keep records sufficient to demonstrate that its inventory of compostable material or end product does not exceed the inventory used for purposes of estimating the cost of abatement of a nuisance pursuant to Paragraph (2) of Subsection A of 20.9.10.9 NMAC. If the records are insufficient to make this demonstration, or the records are not produced at the request of the department, storage of the materials are hereby deemed illegal disposal of solid waste and the facility is hereby deemed to be an unpermitted solid waste facility and the owner or operator may be subject to penalties, permitting requirements and nuisance abatement orders.

E. Owners and operators of composting facilities that accept greater than 25 tons per day annual average of compostable material or greater than 5 tons per day of what would otherwise be special waste shall comply with the following requirements when ordered by the secretary for the purpose of abating nuisance:

- (1) cleanup and disposal of all compostable material;
- (2) cleanup and disposal of all end product from the composting facility; and
- (3) cleanup and disposal of all fugitive trash, solid waste, or other materials creating a nuisance at the facility.

[20.9.3.28 NMAC - N, 08/02/07; A, 07/30/11]

**20.9.3.29 ADDITIONAL REQUIREMENTS FOR RECYCLING FACILITIES THAT DO NOT ACCEPT SOLID WASTE:**

A. A recycling facility that does not accept solid waste shall include, in its registration application filed pursuant to 20.9.3.27 NMAC, a plan for disposal of solid wastes that are unavoidably collected.

B. A recycling facility that does not accept solid waste shall keep records sufficient to demonstrate the following:

(1) that it takes reasonable measures to assure that it accepts only source separated recyclable materials and solid wastes are not accepted;

(2) that after an initial accumulation period, the quantity of recyclable materials that were recycled during each successive calendar year was at least 75 percent of the quantity of recyclable materials in inventory; the accumulation period is to be based on a three year rolling average of the facility's stock of the recyclable material at the end of the previous calendar year; and

(3) that the inventory of recyclable materials or end product does not exceed the inventory used for purposes of estimating the cost of abatement of a nuisance pursuant to Paragraph (2) of Subsection A of 20.9.10.9 NMAC.

C. If the operating procedures and records are insufficient to make the demonstrations in Subsection B of this section, or the records are not produced at the request of the department, storage of the materials are hereby deemed illegal disposal of solid waste and the facility is hereby deemed an unpermitted solid waste facility and the owner or operator may be subject to penalties, permitting requirements and nuisance abatement orders.

D. The owner operator of a recycling facility that is designed to or does accept more than 25 tons per day annual average per calendar year of recyclable material shall submit a nuisance abatement plan detailing how it will comply with Subsection G of 20.9.3.29 NMAC if so ordered.

E. The owner operator of a recycling facility that is designed to or does accept more than 25 tons per day annual average per calendar year of recyclable material shall submit a financial assurance mechanism in compliance with 20.9.10.9-13 NMAC, in order to assure sufficient funds in the event that the secretary requires abatement of a nuisance at the facility. The financial assurance mechanism must be approved by the secretary prior to the operation of the facility.

F. The owner or operator of a recycling facility that is designed to or does accept more than 25 tons per day annual average of recyclable material shall have a certified operator or representative present at all times while the facility is operational.

G. Owners and operators of recycling facilities that accept greater than 25 tons per day annual average of recyclable materials shall comply with the following requirements when ordered by the secretary for the purpose of abating nuisance:

- (1) cleanup and disposal of all recyclable material;
- (2) cleanup and disposal of all end product from the recycling facility; and
- (3) cleanup and disposal of all fugitive trash, solid waste, or other materials creating a nuisance at the facility.

[20.9.3.29 NMAC - N, 08/02/07; A, 07/30/11]

### **20.9.3.30 PERMIT BY RULE REQUIREMENTS FOR LAW ENFORCEMENT HOUSEHOLD PHARMACEUTICAL TAKE-BACK PROGRAMS:**

A. Any law enforcement household pharmaceutical take-back program that collects, stores, processes, transports or disposes of household pharmaceutical waste must comply with the following requirements:

- (1) the law enforcement household pharmaceutical take-back program must maintain a registration with the New Mexico board of pharmacy;
- (2) antineoplastic drugs should be handled, segregated and disposed of as hazardous waste under 40 CFR 261, Subparts C and D, and not as solid waste;
- (3) Resource Conservation and Recovery Act (RCRA) P and U-listed hazardous pharmaceutical wastes, and D-list chemicals that cause a waste to exhibit toxicity characteristics when present above the maximum concentration level (e.g., arsenic D004, barium D005) should be disposed of at a permitted hazardous waste disposal facility, and not as solid wastes;
- (4) collected household pharmaceutical waste shall not be disposed of by placing in drains, toilets, storm water drains, surface waters, on the ground, or in an unpermitted solid waste landfill;
- (5) household pharmaceutical waste may not be incinerated within the state with other waste materials, construction and demolition debris, or special wastes;
- (6) law enforcement household pharmaceutical waste collection events must retain an operating plan on file that contains the following:

(a) a description of how household pharmaceutical waste will be disposed of using a method found in Paragraph (7) of Subsection A of 20.9.3.30 NMAC;

(b) a description of the specific screening and acceptance criteria that ensure that only authorized household pharmaceutical waste is accepted and disposed of;

(c) the hours of operation and dates of law enforcement household pharmaceutical take-back program collection events, and details of any drop-box programs using secure bins outside the normal hour of operation;

(d) procedures for response to emergency situations, including equipment break downs, to ensure that stored household pharmaceutical waste, ash and encapsulated household pharmaceutical waste will be removed from the facility in a timely manner to avoid nuisances or hazards; and

(e) a hazard communication, health and safety plan for law enforcement household pharmaceutical take-back program personnel that includes safety procedures and the proper use of personal protective equipment;

(7) collected household pharmaceutical waste may only be disposed of in the approved methods listed below:

(a) at a registered high-temperature incinerator (furnaces that operate in the range of 1000°C - 2000°C) used for the destruction of hazardous waste, such as cement kilns;

(b) at a permitted infectious or medical waste processing facility;

(c) at a registered two-chamber incinerator that operates at a minimum temperature of 850° C, with a combustion time of at least two seconds in the second chamber;

(d) at a permitted landfill after the household pharmaceutical waste has been encapsulated in a plastic drum filled with a hardening medium such as PPC cement or a cement/lime mixture;

(e) at a transformation facility permitted to accept pharmaceutical waste; or

(f) an alternate disposal method at least as protective as any of the methods described in subparagraphs (a) through (e) of this paragraph and approved by the department.

B. The department must be notified both orally and in writing within 24 hours of an occurrence of a spill, fire, flood, explosion or similar incident at a law enforcement household pharmaceutical take-back program collection event.

[20.9.3.30 NMAC - N, 08/02/07; 20.9.3.30 NMAC - Repealed, 07/30/11; 20.9.3.30 NMAC - N, 07/30/11]

**20.9.3.31 REGISTRATION OF COMMERCIAL HAULERS AND HAULERS OF SPECIAL WASTE:**

A. Commercial haulers of solid waste and any haulers that transport special waste shall register with the department 30 days prior to beginning operations and every five years thereafter, and shall submit the following information:

(1) the name, address, and telephone number of the operation for which registration is sought, and the name, address, telephone number, date of birth, driver's license number, and social security number of the owner and operator, unless the owner and operator are public entities or are a publicly held corporation that has on file and in effect with the federal securities and exchange commission a registration statement required under 15 U.S.C. Section 77e (c);

(2) the anticipated start up date, hours of operation, and days of collection;

(3) a list of types of storage containers required for residences, commercial, institutional and industrial establishments to be served;

(4) location of vehicle maintenance yard;

(5) certification that drivers, trailers and vehicles are, and will continue to be, properly licensed or registered;

(6) means of controlling and mitigating odors;

(7) the transport distance from the nearest and farthest points of collection to the solid waste facility where the waste will be disposed;

(8) any transfer requirements;

(9) location of transfer station(s) to be used, if any;

(10) the name and location of any storage or collection or solid waste disposal facility to be used, and including;

(a) the size and type of all storage and collection facilities to be used; and

(b) methods use to mitigate odor and litter from any storage and collection facilities to be used;

(11) an outline of proposed training for drivers and crew to be able to differentiate between hazardous waste, special waste and other solid waste;

(12) certification that the waste identification training program will be implemented;

(13) a statement whether any of the owners or operators have been fined for violation of any environmental laws of any state or the United States (for owners or operators that are public entities or publicly held corporations, this statement may be limited to fines for violations within the last 5 years and within the state of New Mexico);

(14) a statement whether any of the owners or operators have had any permit or registration revoked or permanently suspended for cause under the environmental laws of any state or the United States (for owners or operators that are public entities or publicly held corporations, this statement may be limited to revocations or suspensions within the last 5 years and within the state of New Mexico); and

(15) if applicable, proof that a current valid warrant has been issued by the New Mexico public regulation commission, or in the case of a public entity hauling special waste, proof of financial responsibility.

B. All haulers that transport special waste, in addition to the requirements of Subsection A of this section, shall:

- (1) register with the department on a form provided by the department;
- (2) submit the exact locations and permit number(s) of solid waste facilities to be used;
- (3) submit a contingency plan to address potential emergency situations to the department for approval; and
- (4) submit a list of contents of clean-up kits to be carried in each vehicle used for hauling.

C. Commercial waste haulers registered prior to the effective date of these regulations shall register pursuant to this section within two years after the effective date of these regulations.

[20.9.3.31 NMAC - Rp, 20 NMAC 9.1.II.214, 08/02/07]

### **20.9.3.32 COMMERCIAL HAULER REGISTRATION PROCEDURES:**

A. The registration procedures in 20.9.3.31-36 NMAC apply to commercial haulers of solid waste.

B. Upon receipt of an application for registration, the department shall review the application to determine if additional information is necessary or shall deem the

application complete. If the department determines that additional information is necessary, it shall notify the applicant in writing;

C. Within 60 days of receipt of a request for additional information regarding any commercial hauler registration application, the owner or operator shall submit the information requested by the department, or the secretary may deny the registration application without prejudice.

[20.9.3.32 NMAC - N, 08/02/07]

### **20.9.3.33 COMMERCIAL HAULER REGISTRATION ISSUANCE:**

A. Within 30 days after an application for a commercial hauler registration is deemed complete, the secretary shall issue the registration, issue the registration with terms and conditions, or deny the registration.

B. The secretary shall issue a registration if the owner or operator demonstrates that the requirements of 20.9.2 - 20.9.10 NMAC and the Solid Waste Act are met and that neither a hazard to public health, welfare or the environment nor undue risk to property will result.

C. The terms and conditions of a registration shall be specifically identified by the secretary.

[20.9.3.33 NMAC - N, 08/02/07]

### **20.9.3.34 REGISTRATION DENIAL, REVOCATION, OR SUSPENSION:**

A. The secretary may deny, revoke, or suspend a commercial hauler registration on the basis of information in the application or evidence in the administrative record, or both, after taking into consideration the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors.

B. Causes for denying, revoking, or suspending a registration include a finding that the applicant or owner or operator has:

(1) knowingly misrepresented a material fact in the application, or at any time after issuance of the registration;

(2) refused to disclose or failed to disclose the information required under the provisions of 20.9.2 - 20.9.10 NMAC or the Solid Waste Act;

(3) exhibited a history of willful disregard for the environmental laws of any state or the United States;

(4) had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States; or

(5) violated a term or condition of the registration, any requirement of 20.9.2 - 20.9.10 NMAC, or any requirement of the Solid Waste Act.

C. If the department recommends denial of a commercial hauler registration, notice shall be provided to the applicant by registered mail. The applicant may request a hearing on the registration denial by filing a written request for hearing with the hearing clerk within 30 days of receipt of the notice. A request for hearing shall be treated as a hearing determination and the hearing conducted pursuant to 20.1.4 NMAC. If no request for hearing is filed within 30 days of receipt of the notice, the recommended denial shall become a final action of the secretary.

D. A commercial hauler registration may be revoked or suspended in accordance with the procedures set forth in 20.1.5 NMAC, Adjudicatory Procedures - Environment Department. Construction, modification and interim operation, if any, shall cease upon the effective date of the revocation or suspension.

[20.9.3.34 NMAC - N, 08/02/07]

#### **20.9.3.35 EFFECT OF REGISTRATION:**

A. Any terms or conditions of the registration shall be enforceable to the same extent as a regulation of the board.

B. The existence of a registration issued under 20.9.2 - 20.9.10 NMAC shall not constitute a defense to a violation of 20.9.2 - 20.9.10 NMAC or the Solid Waste Act.

[20.9.3.35 NMAC - N, 08/02/07]

#### **20.9.3.36 REGISTRATION RENEWAL:**

A. A commercial hauler shall renew its registration every five years. To renew a registration, the commercial hauler shall file a complete renewal application no later than 30 days prior to the expiration date of the registration. A registration renewal application shall include the same information required in 20.9.3.31 NMAC, and in addition provide a complete description of its compliance history and any other information requested by the secretary.

B. A registered commercial hauler may continue to operate under the terms and conditions of the existing registration until the registration renewal is issued or denied provided that:

(1) the owner and operator are in compliance with the existing registration, 20.9.2 - 20.9.10 NMAC, and any applicable federal regulations;

(2) a complete renewal application was submitted in a timely fashion in accordance with this section; and

(3) the owner or operator adequately submits any requested additional information by the deadline specified by the secretary.

[20.9.3.36 NMAC - N, 08/02/07]

#### **20.9.3.37 REGISTRATION EXPIRATION:**

A. A commercial hauler registration shall expire five years from the date of issuance of the registration.

B. A commercial hauler registration shall terminate upon any change of owners or operators of the registered commercial hauler, and the new owner or operator shall obtain a new registration prior to operation.

[20.9.3.37 NMAC - N, 08/02/07]

#### **20.9.3.38 CONFIDENTIALITY OF INFORMATION:**

A. Permit applicants, owners or operators, or commercial haulers who submit information to the department may claim such information as confidential. Any claim of confidentiality must be asserted at the time of submittal.

B. To claim confidentiality of information in a submittal, the submitter must clearly mark each page in the document on which the submitter claims there is confidential information, and submit to the department a written description of the basis for the claim of confidentiality at the time of submission. The department shall review the claim of confidentiality based on the written submittal and determine whether the information may be maintained as confidential pursuant to the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1, et seq. If the department determines that information in a submittal is confidential, the department may require submission of redacted copies of the submittal for the public record.

C. If no claim of confidentiality is made at the time of submission, any such claims are deemed waived and the department may make the information available to the public without further notice.

D. Information that is determined by the department to be confidential may be disclosed to officers, employees, or authorized representatives of the United States concerned with implementing RCRA, or when relevant in any proceedings under the Solid Waste Act or this chapter.

[20.9.3.38 NMAC - N, 08/02/07]

### **20.9.3.39 FEE SCHEDULE:**

A. Fees are required from applicants for all permit applications, modifications, and applications for permit renewals. Fees shall be paid by the applicant at the time of application and are non-refundable. Fees for individual facility types shall be cumulative if more than one type is included in the permit application.

B. For a municipal or special waste landfill which receives, based on the projected operational rate:

(1) 20 tons or less of waste per day, annual average, the permit application fee shall be \$6,000;

(2) more than 20 tons of waste per day, annual average, the permit application fee shall be \$10,000;

(3) special waste, in addition to the facility permit application fee, an additional \$1000 per type of special waste, up to \$10,000 shall be paid.

C. For a construction and demolition landfill, the permit application fee shall be \$5,000.

D. For a processing facility, the permit application fee shall be \$5,000.

E. For a transformation facility, the permit application fee shall be \$10,000.

F. For a transfer station, the permit application fee shall be \$5,000.

G. For a recycling facility or composting facility that accepts solid waste, the permit application fee shall be \$2,000.

H. For a commercial hauler registration, the registration fee shall be \$100 if the hauler registers two trucks or fewer and hauls no special waste, and shall be \$300 if the hauler registers three trucks or more or hauls any special waste.

I. Fees for permit modifications shall be half of the stated permit application fee for that type facility.

J. Fees for permit renewals shall be the same as for new facilities.

K. The fee for resubmittal of an application that has been denied without prejudice shall be half of the stated permit application fee for that type of facility.

L. Fees shall be paid by check or money order, payable to "New Mexico Environment Department."

[20.9.3.39 NMAC - Rp, 20 NMAC 9.1.XI.1108, 08/02/07]

## **PART 4: SOLID WASTE AND REGISTERED FACILITY MAXIMUM SIZE, SITING CRITERIA, AND DESIGN CRITERIA**

### **20.9.4.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.9.4.1 NMAC - Rp, 20 NMAC 9.1.I.001, 08/02/07]

### **20.9.4.2 SCOPE:**

This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.

[20.9.4.2 NMAC - Rp, 20 NMAC 9.1.I.002, 08/02/07]

### **20.9.4.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.4.3 NMAC - Rp, 20 NMAC 9.1.I.003, 08/02/07]

### **20.9.4.4 DURATION:**

Permanent.

[20.9.4.4 NMAC - Rp, 20 NMAC 9.1.I.004, 08/02/07]

### **20.9.4.5 EFFECTIVE DATE:**

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.4.5 NMAC - Rp, 20 NMAC 9.1.I.005, 08/02/07]

### **20.9.4.6 OBJECTIVE:**

The objective of Part 4 of Chapter 9 is to establish regulations governing solid waste and registered facility size, siting criteria and design criteria.

[20.9.4.6 NMAC - Rp, 20 NMAC 9.1.I.006, 08/02/07]

### **20.9.4.7 DEFINITIONS:**

**[RESERVED]**

[See 20.9.2.7 NMAC for Definitions.]

**20.9.4.8 MAXIMUM SIZE:**

The secretary shall not issue a permit for any solid waste facility larger than 500 acres.

[20.9.4.8 NMAC - Rp, 20 NMAC 9.1.III.301, 08/02/07]

**20.9.4.9 SITING CRITERIA FOR MUNICIPAL, OR SPECIAL WASTE, CONSTRUCTION AND DEMOLITION LANDFILLS, AND MONOFILLS:**

A. No municipal, construction and demolition, or special waste landfill or monofill shall be located where, on the date of the first public notice as required in 20.9.3 NMAC, any portion of the proposed disposal area is:

(1) in a floodplain, within 500 feet of a wetlands, or within 200 feet of a watercourse unless the watercourse has been altered pursuant to an approval from the army corps of engineers or other appropriate authority;

(2) where the top of the uppermost aquifer will be closer than 100 feet to the bottom of the fill, or for construction and demolition landfills that do not accept more than 25 tons per day annual average, where the top of the uppermost aquifer will be closer than 50 feet to the bottom of the fill;

(3) where new, abandoned, or exploration subsurface mines registered with the New Mexico department of energy, minerals and natural resources a may pose a risk of subsidence or instability;

(4) within 200 feet of a fault that has had a displacement within Holocene time (i.e., the past 11,000 years), unless the owner or operator demonstrates to the secretary that an alternative setback of less than 200 feet will prevent damage to the structural integrity of the facility and will be protective of public health, welfare and the environment;

(5) within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, NMSA 1978, Sections 18-6-1 to 18-6-23 and the Prehistoric and Historic Sites Preservation Act, NMSA 1978, Sections 18-8-1 to 18-8-8;

(6) within 1,000 feet of a public water supply well or a private drinking water supply well with a sustainable yield of 100 gallons per minute or more, unless, in the case of registered unpermitted landfills, the well was constructed after the landfill began operations;

(7) within 350 feet of a public water supply well or private well with a maximum sustainable yield of less than 100 gallons per minute, unless the well was constructed after the landfill began operations or the well was installed by the landfill owner or operator for operational use;

(8) within the distance to airports set by the federal aviation administration unless the landfill owner or operator demonstrates that the federal aviation administration does not object to construction and operation of the landfill at the proposed site;

(9) within 50 feet of the facility property boundaries nor within 500 feet of a permanent residence, school, hospital, institution or church, or unless, in the case of registered unpermitted landfills, the permanent residence, school, hospital, institution or place of worship was constructed after the landfill began operations;

(10) in an active alluvial fan (i.e., areas being currently aggraded by either permanent or intermittent streams;

(11) within areas that will result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in either 50 CFR Part 17 or by the New Mexico department of game and fish in its most recent biennial review;

(12) within seismic impact zones, unless the owner or operator demonstrates that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site; or

(13) within an unstable area, unless the owner or operator demonstrates that engineering measures have been incorporated into the landfill design to ensure that the integrity of the structural components of the landfill will not be disrupted.

B. Category 3 landfills that cannot make the demonstration specified in Paragraph (1) of Subsection A of this section pertaining to floodplains or Paragraph (8) of Subsection A of this section pertaining to airports, or Paragraph (13) of Subsection A of this section, pertaining to unstable areas, shall close in accordance with the closure and post-closure provisions in 20.9.6 NMAC.

[20.9.4.9 NMAC - Rp, 20 NMAC 9.1.III.302, 08/02/07]

#### **20.9.4.10 SITING CRITERIA FOR COMPOSTING FACILITIES THAT ACCEPT SOLID WASTE:**

No composting facility that accepts solid waste shall be located:

A. in a floodplain, within 500 feet of a wetland, or within 200 feet of a watercourse, unless the watercourse has been altered pursuant to an approval from the army corps of engineers or other appropriate authority; or

B. within 500 feet of any permanent residence, school, hospital, institution or place of worship in existence at the time the permit application for the facility is filed.

[20.9.4.10 NMAC - Rp, 20 NMAC 9.1.III.304, 08/02/07]

#### **20.9.4.11 SITING CRITERIA FOR TRANSFORMATION FACILITIES:**

A. No transformation facility shall be located:

(1) in a floodplain, within 500 feet of a wetland, or within 200 feet of a watercourse unless the watercourse has been altered pursuant to an approval from the army corps of engineers or other appropriate authority;

(2) where new, abandoned or exploration subsurface mines may pose a risk of subsidence, instability, or ground water contamination;

(3) within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, NMSA 1978, Sections 18-6-1 to 18-6-23 and the Prehistoric and Historic Sites Preservation Act, NMSA 1978, Sections 18-8-1 to 18-8-8;

(4) within 150 feet of the facility property boundaries; nor

(5) within an unstable area, unless the owner or operator demonstrates that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted.

B. No transformation facility having a throughput capacity of less than 1,000 pounds per hour shall be located within one mile of any residence, institution, school, place of worship, hospital or other transformation facility in existence on the date the initial permit application is filed with the department.

C. No transformation facility having a throughput capacity of 1,000 pounds per hour or greater shall be located within three miles of any residence, institution, school, place of worship, hospital or other transformation facility in existence on the date the initial permit application is filed with the department.

[20.9.4.11 NMAC - Rp, 20 NMAC 9.1.III.305, 08/02//07]

#### **20.9.4.12 SITING CRITERIA FOR TRANSFER STATIONS AND PROCESSING FACILITIES:**

No transfer station or processing facility initially permitted after the effective date of these regulations shall be located in the following areas:

A. a floodplain, a watercourse, or a wetland, except:

(1) a transfer station property boundary may extend into or cross a floodplain, watercourse, or wetland if those areas will not be impacted by structures or activities of the facility; and

(2) engineering structures designed to prevent impacts to or from a floodplain, watercourse, or wetland may be constructed subject to prior approval of the secretary;

B. within 250 feet of a permanent residence, institution, school, place of worship, or hospital, that existed at the time the transfer station permit application was submitted, unless the applicant demonstrates that a shorter distance of no less than 50 feet has been affirmatively approved by the local government;

C. within an unstable area, except where the owner or operator demonstrates that engineering measures have been incorporated into the facility design to ensure that the integrity of the structural components of the facility will not be disrupted or unless otherwise approved by the secretary; or

D. within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, NMSA 1978, Sections 18-6-1 to 18-6-23 and the Prehistoric and Historic Sites Preservation Act, NMSA 1978, Sections 18-8-1 to 18-8-8.

[20.9.4.12 NMAC - N, 08/02/07]

#### **20.9.4.13 DESIGN CRITERIA FOR MUNICIPAL LANDFILLS, SPECIAL WASTE LANDFILLS AND MONOFILLS:**

A. Except as specified in 20.9.2.14 NMAC and Subsection C of this section, all new municipal and special waste landfills and lateral expansions to existing municipal and special waste landfills shall provide a containment layer beneath the solid waste which is constructed:

(1) with a composite liner consisting of two components;

(a) the upper component shall consist of a minimum 30-mil flexible or a 60-mil high density polyethylene (HDPE) geomembrane liner or equivalent material; the geomembrane component shall be installed in direct and uniform contact with the lower component; and

(b) the lower component shall consist of a geosynthetic clay liner (GCL) or a minimum 24-inch thick layer of compacted soil having a saturated hydraulic conductivity

of no more than  $1 \times 10^{-7}$  centimeters per second (cm/sec) throughout its thickness; the soil must be free of particles greater than one inch in any dimension; or

(2) with an alternative liner in accordance with a design, which provides protection equivalent to the composite liner defined in Paragraph (1) of this subsection.

B. When approving an alternative liner design under this section, the secretary shall consider at least the following factors:

- (1) the climatic factors of the area; and
- (2) the volume and physical and chemical characteristics of the leachate.

C. Asbestos waste monofills and scrap tire monofills may be exempted from the design criteria in this section if the owner or operator demonstrates to the secretary in the permit application that the waste will not generate leachate which poses a threat to ground water quality, but shall still comply with Subparagraph (h) of Paragraph (1) of Subsection A of 20.9.6.9 NMAC.

D. Scrap tire monofills shall be designed with trenches not to exceed a maximum depth of 15 feet, a maximum width of 50 feet, and a maximum length of 100 feet. A distance of 40 feet shall be maintained between trenches. Trenches shall be filled to original grade.

E. The design and construction of all liners shall conform to the following criteria:

(1) general requirements:

(a) all liners must be able to withstand the projected loading stresses and disturbances from overlying waste, waste cover materials, and equipment operation;

(b) all liners shall incorporate a leachate collection system that meets the requirements of 20.9.4.15 NMAC; and

(c) all liners must be constructed with a minimum two percent slope to promote positive drainage and facilitate leachate collection;

(2) requirements for geosynthetic components:

(a) geosynthetic components of a liner system must be compatible with the waste to be contained; they must be able to resist chemical attack from the waste or leachate; this shall be demonstrated by means of manufacturer's test reports, or laboratory analyses;

(b) any geosynthetic materials installed on slopes greater than 25 percent, or on any slope where waste is projected to be more than 100 feet deep, must be

designed to withstand the calculated tensile forces acting upon the geosynthetic materials; the design must consider the maximum friction angle of the geosynthetic with regard to any soil-geosynthetic or geosynthetic-geosynthetic interface and must ensure that overall slope stability is maintained; and

(c) field seams in geosynthetic material shall be oriented parallel to the line of maximum slope (i.e., oriented along, not across the slope); the number of field seams in corners and irregular shaped areas shall be minimized; there shall be no horizontal seam within five feet of the toe of the slope;

(3) requirements for the soil component of all liners:

(a) the bottom geosynthetic layer, shall be placed on a prepared subgrade consisting of, at a minimum, of a 6-inch layer of in-situ soil or select fill compacted to 90 percent standard Proctor density;

(b) the surface of the soil upon which a geosynthetic liner will be installed must be free of stones greater than 1/2-inch in any dimension, organic matter, local irregularities, protrusions, loose soil, and any abrupt changes in grade that could damage the geosynthetic liner; and

(c) the soil component of the composite liner defined in Subparagraph (b) of Paragraph (1) of Subsection A of this section shall be compacted to a minimum of 90 percent standard Proctor density and shall have the following physical characteristics unless otherwise specifically approved by the department:

(i) plasticity index greater than 10 percent;

(ii) liquid limit between 25 percent and 50 percent;

(iii) portion of material passing the No. 200 sieve (0.074 mm and less fraction) greater than 40 percent (by weight); and

(iv) clay content greater than 18 percent (by weight);

(4) all liners shall have a top protective cover of at least two feet of granular soil or other material specifically approved by the department; the protective cover shall, in addition to providing physical protection for the liner, facilitate the collection of leachate in the leachate collection system; materials used to construct the protective cover must ensure the hydraulic leachate head on the liner does not exceeds one foot; the soil material shall be free of any organic matter and have the following physical characteristics unless otherwise specifically approved by the secretary:

(a) portion of material passing the No. 200 sieve (0.074 mm and less fraction) no greater than 5 percent by weight; and

(b) uniformity coefficient (Cu) less than 6 where Cu is defined as D60/D10.

[20.9.4.13 NMAC - Rp, 20 NMAC 9.1.III.306, 08/02/07]

**20.9.4.14 TESTING AND QUALITY CONTROL FOR LINERS AND FINAL COVERS:**

A. All testing of geosynthetic and soil materials shall be performed in accordance with applicable American society of testing materials (ASTM) standards.

B. The construction and installation of all liners and final covers shall be done in accordance with a quality control plan approved in the permit. All testing and evaluation of liners shall be certified by a professional engineer licensed in New Mexico and experienced in liner installation, and shall be completed prior to the placement of the protective cover. All field testing of liners and final covers shall be the responsibility of an individual experienced in liner or cover installation and soils or geotextile engineering, as appropriate. The quality control plan shall:

- (1) define the procedures required for obtaining samples and testing and reporting the test results for the installation of the liner and final cover;
- (2) describe and illustrate to operating personnel all necessary procedures for maintaining the integrity of the liner, leachate collection systems, and final cover;
- (3) for the soil component, prescribe the following minimum frequency of testing for the soil component of all liners and final covers, unless otherwise specifically approved by the department:

(a) soil from the borrow source shall be tested as follows:

- (i) grain size shall be tested once every 1,000 cubic yards;
- (ii) Atterberg limits shall be tested once every 5,000 cubic yards;
- (iii) Proctor compaction moisture-density curve conformance shall be tested once every 5,000 cubic yards; and
- (iv) laboratory permeability shall be tested once every 5,000 cubic yards; and

(b) during construction of the liner or cover, the soil shall be tested as follows:

- (i) density and moisture content tested by nuclear densiometer shall be tested four times per acre per lift;

(ii) laboratory or in-situ permeability shall be tested once per 2 acres and laboratory samples shall be undisturbed or recompact to the site-specific field conditions; and

(iii) total thickness (by survey) shall be tested once per acre (on grid);

(4) for the protective cover component of liners, when used to facilitate leachate drainage, prescribe the following minimum frequency of testing of the granular drainage layer, unless specifically approved by the department:

(a) grain size of the soil shall be tested once every 1,500 cubic yards; and

(b) total thickness of the drainage layer shall be tested five times per acre;  
and

(5) for the geomembrane component of all liners and final covers as defined in Subsection A of 20.9.4.13 NMAC and Subsection A of 20.9.6.9 NMAC, all testing, both shop and field, shall be as recommended by the manufacturer unless otherwise specifically approved by the department; the minimum frequency of taking seam samples for destructive testing shall be one per 500 feet of seam length, with a portion of each test sample tested in the field and another in the laboratory; seam samples shall be tested for peel adhesion and bonded seam strength; non-destructive testing shall be performed for all seams, seam repairs, and liner repairs.

[20.9.4.14 NMAC - Rp, 20 NMAC 9.1.III.307, 08/02/07]

#### **20.9.4.15 LEACHATE COLLECTION SYSTEMS FOR LANDFILLS:**

A. Except as specified in 20.9.2.14 NMAC and Subsection C of 20.9.4.13 NMAC, all new municipal and special waste landfills and lateral expansions shall include a leachate collection system, which shall be designed by a professional engineer licensed to practice in New Mexico, and which shall incorporate a piping collection network comprised of perforated pipe having a minimum diameter of 6 inches and a minimum wall thickness of schedule 80 PVC or equivalent and shall be designed and constructed to:

(1) maintain less than a one-foot depth of leachate on the liner;

(2) maintain a minimum of two percent slope throughout the system, within the lined landfill cell; an alternate slope may be specifically approved by the secretary for leachate conveyance piping outside the disposal cell footprint;

(3) withstand chemical attack from waste and leachate; and

(4) withstand the loads, stresses, and disturbances from overlying waste, waste cover materials, and equipment operation.

B. Any geosynthetic materials such as geonets and geotextiles, if used as components of the leachate collection system, must have a hydraulic conductivity, transmissivity and chemical and physical qualities that will not be adversely affected by waste placement, equipment, operation, or leachate generation. These geosynthetics, if used and operating in conjunction with the soil protective cover for the liner as described in Paragraph (4) of Subsection E of 20.9.4.13 NMAC, must have a hydraulic conductivity and transmissivity designed to ensure the hydraulic head on the liner never exceeds one foot.

C. A written leachate management plan shall be submitted for approval by the secretary. The plan shall describe anticipated amounts of leachate, duration of generation and final disposal options for the leachate and shall include:

- (1) a description of the means of analysis; and
- (2) a description of the type of treatment and proposed disposal method.

D. Leachate storage and collection ponds shall be designed to meet the requirements of 20.9.4.13 NMAC. A pond may be designed to maintain greater than one foot of leachate, provided it is equipped with a double, composite liner as specified in 20.9.4.13 NMAC, or an alternative design providing equivalent protection and approved in the permit.

[20.9.4.15 NMAC - Rp, 20 NMAC 9.1.III.308, 08/02/07]

#### **20.9.4.16 LANDFILL GAS CONTROL SYSTEMS:**

A. Owners and operators of landfills who install a landfill gas control system in order to conform with the requirements of Subsection B of 20.9.5.9 NMAC shall submit a description of the physical and chemical characteristics of expected condensates or residues that are generated and a plan for their disposal. The disposal plan shall be submitted with a permit application or as a request for a specific approval. In addition, if the gas control system is not subject to the Air Quality Control Act, NMSA Sections 74-2-1, et seq., the owner or operator shall include the following information in its submission:

(1) the design of the system, indicating the location and design of vents, barriers, collection piping and manifolds and other control measures that will be installed; and

(2) if gas recovery is proposed, the design of the proposed gas recovery system and the major on-site components of the system including storage, transportation, processing, treatment or disposal measures required in the management of the generated gases, condensates or other residues.

B. If a gas processing system is proposed, it shall be designed:

(1) so that it will not interfere with activities on the site or required control measures; and

(2) so that it will not create a nuisance, endanger or cause harm to persons or property.

C. If a gas disposal system is proposed, it shall be designed:

(1) so that it will not interfere with activities on the site or required control measures;

(2) so that it will not create a nuisance, endanger or cause harm to persons or property; and

(3) with active forced ventilation, using vents located at least one foot above the landfill surface at the location of each gas vent.

[20.9.4.16 NMAC - Rp, 20 NMAC 9.1.III.309, 08/02/07]

#### **20.9.4.17 RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS:**

A. The secretary may issue a research, development, and demonstration permit in conjunction with a new solid waste facility permit for a municipal or special waste landfill, or as a permit modification for an already permitted municipal or special waste landfill, under the following conditions:

(1) the owner or operator proposes to utilize innovative and new methods which vary from either or both of the following criteria:

(a) the run-on control systems required by Subsection E of 20.9.5.9 NMAC; and

(b) if sludge is used, the liquids restrictions in Paragraph (9) of Subsection A of 20.9.2.10 NMAC and 20.9.8.16 NMAC;

(2) the landfill has a leachate collection system designed and constructed to maintain less than a one foot depth of leachate on the liner; and

(3) the landfill is not operating under an exemption set forth in 20.9.2.14 NMAC.

B. The following requirements shall apply to any landfill that is issued a research, development, and demonstration permit under Subsection A of this section:

(1) the liquids to be used at the landfill shall be pre-approved by the department in accordance with Paragraph (9) of Subsection A of 20.9.2.10 NMAC and 20.9.8.16 NMAC;

(2) the landfill shall install a landfill gas collection and control system in accordance with emission control requirements as specified in 40 CFR Part 60; and

(3) the fluids to be used at the landfill shall be pre-approved by the department.

C. The secretary may issue a research, development, and demonstration permit for a permitted landfill for which the owner or operator proposes to utilize innovative and new methods which vary from the final cover criteria of Subparagraphs (b) and (c) of Paragraph (1) of Subsection A of 20.9.6.9 NMAC or Subparagraph (a) of Paragraph (2) of Subsection A of 20.9.6.9 NMAC provided the landfill owner or operator demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of ground water or surface water, or cause leachate depth on the liner to exceed one foot.

D. Any permit issued under Subsection C of this section shall include terms and conditions at least as protective as the criteria for municipal solid waste landfills to assure protection of human health and the environment. Such permits shall:

(1) provide for the construction and operation of such facilities as necessary, for not longer than two and one-half years, unless renewed as provided in Subsection F of this section;

(2) provide that the landfill must receive only those types and quantities of municipal solid waste and non-hazardous wastes which the secretary deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(3) include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the secretary with respect to the operation of the facility;

(4) require the owner or operator of a landfill permitted under this section to submit an annual report to the secretary showing whether and to what extent the site is progressing in attaining project goals; the report shall also include a summary of all monitoring and testing results, as well as any other operating information specified by the secretary in the permit; and

(5) require compliance with all criteria in 20.9.2 - 20.9.10 NMAC, except as permitted under this section.

E. The secretary may order an immediate termination of all operations at the facility allowed under this section or other corrective measures at any time the secretary determines that imminent danger exists to human health or the environment. The owner or operator may appeal the secretary's order by filing a request for hearing within 30 days of the date of the secretary's order. The appeal shall be conducted in accordance with the procedures in 20.1.5 NMAC, Adjudicatory Procedures - Environment Department.

F. Any permit issued under this section shall not exceed two and one-half years and each renewal of a permit shall not exceed two and one-half years.

(1) The total term for a permit for a project including renewals shall not exceed twelve years.

(2) During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and any other information requested by the secretary.

[20.9.4.17 NMAC - N, 08/02/07]

## **PART 5: SOLID WASTE FACILITY AND COMMERCIAL HAULERS OPERATING REQUIREMENTS**

### **20.9.5.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.9.5.1 NMAC - Rp, 20 NMAC 9.1.I.001, 8/2/2007]

### **20.9.5.2 SCOPE:**

This part applies to the transportation, storage, transfer, processing, transformation, and disposal of solid waste.

[20.9.5.2 NMAC - Rp, 20 NMAC 9.1.I.002, 8/2/2007]

### **20.9.5.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.5.3 NMAC - Rp, 20 NMAC 9.1.I.003, 8/2/2007]

### **20.9.5.4 DURATION:**

Permanent.

[20.9.5.4 NMAC - Rp, 20 NMAC 9.1.1.004, 8/2/2007]

**20.9.5.5 EFFECTIVE DATE:**

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.5.5 NMAC - Rp, 20 NMAC 9.1.1.005, 8/2/2007]

**20.9.5.6 OBJECTIVE:**

The objective of Part 5 of Chapter 9 is to establish regulations governing operating requirements for solid waste facilities and commercial haulers.

[20.9.5.6 NMAC - Rp, 20 NMAC 9.1.1.006, 8/2/2007]

**20.9.5.7 DEFINITIONS:**

[RESERVED]

[See 20.9.2.7 NMAC for Definitions.]

**20.9.5.8 GENERAL OPERATING REQUIREMENTS FOR ALL SOLID WASTE FACILITIES:**

A. Owners and operators of each solid waste facility shall:

- (1) operate the facility in a manner that does not cause a public nuisance or create a potential hazard to public health, welfare or the environment;
- (2) control and mitigate odor and litter; and
- (3) post signs to indicate the location of the site, the hours of operation, emergency telephone numbers, disposal instructions, and that fires and scavenging are prohibited.

B. Owners and operators of a solid waste facility shall:

- (1) have a certified operator or representative present at all times while the facility is operational;
- (2) implement a plan approved by the secretary to inspect loads to detect and prevent the disposal of unauthorized waste, including:
  - (a) inspection frequency;

- (b) inspection personnel;
  - (c) method of inspection; and
  - (d) a training program for the facility employees in the identification of unauthorized waste, including hazardous waste, hot waste, and PCB's;
- (3) maintain a written operating record in compliance with 20.9.5.16 NMAC;
  - (4) notify the department both orally and in writing within 24 hours of an occurrence of a spill, fire, flood, explosion, mass movement of waste, or similar event;
  - (5) upon discovery of the receipt of unauthorized waste:
    - (a) notify the department, the hauler, and the generator in writing within 48 hours;
    - (b) restrict the area from public access and from facility personnel; and
    - (c) assure proper cleanup, transport and disposal of the waste;
  - (6) ensure that copies of contingency plans are readily accessible to employees on duty; and
  - (7) train employees when hired and at least annually thereafter on when and how to implement contingency plans and document in the operating record that such training has been conducted.

C. The secretary may order temporary changes in operation or facility design in emergency situations when the secretary determines there is an imminent danger to public health, welfare or the environment.

D. If recyclable materials such as used oil, antifreeze, paint, or similar materials are diverted from the waste stream at a solid waste facility, the materials shall be stored for no longer than twelve months and shall be maintained in a covered area, not exposed to the weather, with secondary containment.

[20.9.5.8 NMAC - Rp, 20 NMAC 9.1.IV.401, 8/2/2007]

#### **20.9.5.9 ADDITIONAL MUNICIPAL, SPECIAL WASTE, AND MONOFILL LANDFILL OPERATING REQUIREMENTS:**

All municipal and special waste landfill owners and operators shall:

- A. utilize the principles of sanitary engineering to:

- (1) confine the working face to the smallest practical area;
- (2) compact the solid waste to the smallest practical volume; and
- (3) minimize exposure of landfill employees and the public to animal carcasses and offal, and immediately cover such wastes when they are received;

B. prevent the generation and lateral migration of methane such that:

(1) the concentration of methane generated by the facility does not exceed 25 percent of the lower explosive limit (LEL) for methane in facility structures (excluding gas control or recovery system components); and

(2) the concentration of methane does not exceed the LEL at the facility property boundary;

C. implement a routine methane monitoring program to ensure that the requirements of Paragraphs (1) and (2) of Subsection B of this section are met;

(1) the type and frequency of monitoring shall be determined based on the following conditions:

(a) soil conditions;

(b) the hydrogeologic conditions surrounding the facility;

(c) the hydraulic conditions surrounding the facility; and

(d) the location of facility structures and property lines;

(2) the minimum frequency of monitoring shall be quarterly, except that landfills that receive less than 20 tons per day annual average, or closed prior to October 9, 1993, or monofills may be permitted for less frequent monitoring, provided on-site measurements indicate methane levels are consistently less than 25 percent of the LEL for methane; and

(3) if methane gas levels exceed the limits specified in Paragraphs (1) and (2) of Subsection B of this section, the owner or operator shall:

(a) immediately take all necessary steps to ensure protection of public health, welfare and the environment and notify the secretary;

(b) within seven days of detection, record the methane levels detected and a description of the steps taken to protect public health, welfare and the environment; and

(c) within 60 days of detection, implement a remediation plan approved by the secretary for the methane releases, and notify the secretary that the plan has been implemented; the plan shall describe the nature and extent of the problem and proposed remedy;

D. prevent unauthorized access by the public and entry by large animals to the active portion of the landfill through the use of fences, gates, locks, or other means;

E. control run-on water onto the site and run-off water from the site, such that:

(1) the run-on control system shall prevent flow onto the active portion of the landfill during the peak discharge from a 24-hour, 25-year storm;

(2) the run-off control system from the active portion of the landfill collects and controls at least the water volume resulting from a 24-hour, 25-year storm; and

(3) run-off from the active portion of the landfill shall not be allowed to discharge any pollutant to the waters of the state or United States that violates any requirements of the New Mexico Water Quality Act, commission regulations and standards or the federal Clean Water Act;

F. prohibit scavenging;

G. provide adequate means to prevent and extinguish fires;

H. direct the deposit of hot waste at a specific location at the facility which is remote from the operating area; the hot waste shall be immediately spread out for cooling and extinguished if on fire; the hot waste shall not be mixed with the regular solid waste stream until it reaches a temperature that will not support combustion;

I. provide and maintain access roads at the facility site, such that traffic can enter and exit the site safely, will flow smoothly, and will not be interrupted by inclement weather;

J. provide sufficient unloading areas to meet demands of peak periods;

K. measure leachate head on the liner and sump pump as necessary, and except as otherwise allowed in Paragraph (9) of Subsection A of 20.9.2.10 NMAC, 20.9.2.14 NMAC and Subsection C of 20.9.4.13 NMAC, collect and treat leachate by a method approved by the secretary and maintain records on a quarterly basis of leachate generation and treatment;

L. control litter, disease vectors, dust and odors;

M. notify the department prior to installing exploratory borings for the purpose of waste characterization or mapping or removing waste for routine maintenance on gas

collection and control or venting systems, unless the event involves less than 120 cubic yards of solid waste;

N. cover the active face with a six-inch layer of earth or specifically approved alternate daily cover at the conclusion of each day's operation or more often as conditions may dictate, except that for landfills that receive less than 20 tons of waste per day annual average or monofills, the permit may allow alternate frequencies to the daily cover requirements; when permitting a reduced frequency, the secretary shall:

- (1) consider the unique characteristics of small communities;
- (2) consider climatic and hydrogeologic conditions;
- (3) consider measures to prevent vector harborage and animal intrusion; and
- (4) determine that the approved frequency will be protective of human health and the environment;

O. provide intermediate cover which shall be:

- (1) at least one foot thick, or other specifically approved thickness;
- (2) placed on all areas of a landfill that have not received waste for 60 days or longer, or have not reached final elevation;
- (3) stabilized with vegetation or other specifically approved method on any areas that have been inactive for more than two years; and
- (4) constructed and maintained to prevent erosion and infiltration; and

P. if diversion of recyclable materials is conducted:

- (1) perform the diversion in a sanitary manner, with storage confined to an area remote from the operating area of the landfill, and in a manner which does not interfere with or delay the operation of the landfill or create a nuisance, litter problem, vector harborage, or public health hazard;
- (2) remove all recyclable materials from the facility in a timely manner such that the area does not become a permanent storage area; and
- (3) store recyclables in such a manner that the area is clean, materials are separated by type, and the potential for contamination is minimized;

Q. owners or operators of municipal or special waste landfills permitted after the effective date of these regulations to accept 25,000 tons per year or more, shall, prior to commencing operations, install scales at the landfill and weigh incoming waste;

R. owners or operators of municipal or special waste landfills permitted or registered before the effective date of these regulations to accept 25,000 tons per year or more, shall no later than five years after the effective date of these regulations, install scales at the landfill and weigh incoming waste;

S. owners and operators of scrap tire monofills shall accept no solid waste for disposal other than baled scrap tires;

T. a landfill permitted as a special waste landfill may accept municipal waste and construction and demolition waste if approved in its permit.

[20.9.5.9 NMAC - Rp, 20.9.1.IV.402 NMAC, 8/2/2007]

#### **20.9.5.10 ADDITIONAL CONSTRUCTION AND DEMOLITION LANDFILL OPERATING REQUIREMENTS:**

All construction and demolition landfill owners and operators shall:

A. minimize the on-site population of disease vectors through the periodic application of cover material or other techniques as appropriate so as to protect public health, welfare and the environment;

B. apply and compact soil or apply other suitable material over disposed construction and demolition debris at the end of each operating day or at such frequencies and in such a manner as to reduce the risk of fire and impede vectors' access to the waste;

C. prevent the generation and lateral migration of methane such that:

(1) the concentration of methane generated by the facility does not exceed 25 percent of the lower explosive limit (LEL) for methane in facility structures (excluding gas control or recovery system components); and

(2) the concentration of methane does not exceed the LEL at the property boundary; and

D. limit public access so as to not expose the public to potential health and safety hazards at the facility.

[20.9.5.10 NMAC - Rp, 20 NMAC 9.1.IV.403, 8/2/2007]

#### **20.9.5.11 ADDITIONAL TRANSFER STATION OPERATING REQUIREMENTS:**

Owners and operators of transfer stations shall:

A. accept special wastes only when specifically authorized to do so by a permit;

B. use containers for storage of solid waste that are leak-proof and manufactured of non-biodegradable material;

C. provide adequate means to control litter and prevent and extinguish fires;

D. conduct any recycling operations in a safe and sanitary manner, confined to an area remote from the tipping area, and in a manner that does not interfere with transfer operations;

E. store recyclable materials in a manner that does not create a nuisance, harbor vectors, or create a public health hazard, and remove recyclable materials in a timely manner;

F. provide sufficient unloading areas to meet demands of peak periods;

G. provide adequate off-street parking facilities for transfer vehicles;

H. not park collection or transfer vehicles containing putrescible materials on public streets or roads except under emergency conditions;

I. remove solid waste from the station at the end of the operating day unless otherwise approved in the permit; and

J. provide separate storage areas for bulky wastes, such as brush, white goods, appliances, and scrap tires, and remove the bulky wastes at a frequency approved in the permit.

[20.9.5.11 NMAC - Rp, 20 NMAC 9.1.IV.404, 8/2/2007]

#### **20.9.5.12 ADDITIONAL TRANSFORMATION FACILITY OPERATION OPERATING REQUIREMENTS:**

Owners and operators of transformation facilities shall:

A. control dust in the unloading and charging areas in such a manner as to prevent explosions and fugitive dust emissions;

B. maintain appropriate fire-fighting equipment in the charging and storage areas and elsewhere as needed;

C. conduct any recycling operations in a sanitary manner, which does not interfere with transformation operations and remove all recyclable materials, in a timely manner or store them so as not to create a nuisance, vector harborage, or public health hazard;

D. provide sufficient unloading areas to meet demands of peak periods;

E. provide sufficient training for all new employees so that equipment may be operated according to design specifications, and conduct review training annually;

F. prominently post key operational procedures;

G. store any special wastes generated by the transformation facility in covered buildings, in covered leak-proof containers, or in tanks, which shall be labeled with a description of the contents and the date the wastes were placed in storage;

H. provide audible signals to alert operating personnel of critical operating unit malfunctions;

I. provide sampling points of each process stream that do not interfere with normal facility operation;

J. if a facility is permitted to handle special wastes, provide separate areas for storage while the special wastes await processing or transport;

K. store special wastes in a manner to assure that they are protected from weather elements and fire and to assure that incompatible wastes are kept separate; and

L. establish an ash testing program prior to start-up of the transformation facility; representative samples of both fly ash and bottom ash shall be tested in accordance with 20.9.8.11 NMAC; test methods, the number of tests, detection limits, and parameters to be tested shall be approved in the permit or registration; frequency of testing shall be one sample per month taken within 5 days of the beginning of the month, unless an alternate test frequency is specifically approved by the department based on a demonstration that the ash is homogenous.

[20.9.5.12 NMAC - Rp, 20 NMAC 9.1.IV.405, 8/2/2007]

### **20.9.5.13 ADDITIONAL OPERATING REQUIREMENTS FOR RECYCLING FACILITIES THAT ACCEPT SOLID WASTE AND PROCESSING FACILITIES:**

Owners and operators of recycling facilities that accept solid waste and processing facilities shall:

A. prominently post key operational procedures;

B. store any special wastes:

(1) in separate, clearly marked areas;

(2) in covered buildings; and

(3) in covered leak-proof containers, or in tanks labeled with a description of the contents and the date the wastes were placed in storage;

C. provide audible signals to alert operating personnel of critical operating unit malfunctions;

D. provide sampling points of each process stream that do not interfere with normal facility operation;

E. provide for periodic wash-down or other cleanup of the facility and dispose of any waste waters in accordance with all applicable state and federal regulations;

F. store waste residues by means that prevent the material and containers from falling, leaking, blowing, and exposure to the weather;

G. store all materials that are physically or chemically incompatible in separate areas;

H. provide storage capacity for any special waste by-products generated during the initial start-up characterization period;

I. store any material containers that have the potential of discharging any oils, polychlorinated biphenyls (PCB's), battery acid, battery alkalines, or other liquids in a restricted area identified by signs on a covered, substance-compatible, bermed containment pad; and

J. include a schedule and contacts for removal of stored wastes in the operations and maintenance manual.

[20.9.5.13 NMAC - Rp, 20 NMAC 9.1.IV.406, 8/2/2007]

#### **20.9.5.14 COMMERCIAL HAULER OPERATING REQUIREMENTS:**

A. Commercial haulers shall:

(1) collect and transport waste so as to prevent environmental, safety, and public health or welfare hazards and nuisances;

(2) utilize equipment that is designed, constructed and operated so as to be leak-proof and protective of human health and safety and the environment;

(3) cover or enclose the waste to prevent littering during transportation;

(4) keep collection and transportation equipment in a clean condition through the use of sufficient washings and cleanouts;

(5) only transport waste to a facility that is permitted or registered under 20.9.2 - 20.9.10 NMAC or that is authorized by another government; provided that this is not to be construed to limit initial sorting of solid waste on site;

(6) immediately clean up any solid waste spilled during collection or hauling operations;

(7) conspicuously label all solid waste collection vehicles with the company, municipality, or county department name;

(8) conspicuously label all solid waste collection vehicles with the environment department registration number;

(9) take reasonable measures to assure that unauthorized wastes are not accepted; and

(10) if hauling special waste, carry a contingency plan and clean-up kit as approved pursuant to Paragraphs (3) and (4) of Subsection B of 20.9.3.31 NMAC.

B. Commercial haulers shall provide prior notification to the department, in writing, of any major changes in collection operations or disposal facility being used. A major change includes an addition of a type of waste, a change in ownership, a change in location and a change in the disposal facility being used. In the case of emergency, where prior notice cannot be given, written notice shall be given within 48 hours after the change.

C. All infectious waste commercial haulers shall comply with the following transportation requirements:

(1) infectious waste shall not be transported in the same vehicle with other waste unless the infectious waste is contained in a separate, fully enclosed leak-proof container within the vehicle compartment, unless all of the waste has been treated as infectious waste in accordance with 20.9.8.13 NMAC;

(2) employers of persons loading or unloading containers of infectious waste shall assure that employees wear appropriate personal protective equipment and shall conform with 29 CFR 1910.132 and shall have available for inspection a certification that the required workplace hazard assessment has been performed;

(3) surfaces of transport vehicles contaminated by infectious waste shall be decontaminated;

(4) vehicles transporting infectious waste shall be identified on each side of the vehicle with the name or trademark of the commercial hauler, the environment department registration number, and a biohazard symbol;

(5) each vehicle or container used for shipping infectious waste shall be so designed and constructed, and its contents limited so that under conditions normally incident to transportation, there shall be no releases of infectious waste to the environment;

(6) any vehicle or container used for shipping infectious waste shall be free from leaks, and all discharge openings shall be securely closed during transportation;

(7) no person shall transport infectious waste into the state for treatment, storage, or disposal unless the waste is packaged, contained, labeled and transported in the manner required by 20.9.8.13 NMAC;

(8) all generator storage containers shall be labeled with the generator's name, the city of origin, and date of collection;

(9) periods of storage and transportation of infectious waste by commercial haulers shall be limited to seven days prior to disposal or treatment unless the waste is refrigerated at or below 45 degrees fahrenheit; the total period of storage and transportation shall not exceed 45 days unless specifically approved by the secretary; and

(10) all accidents, spills, releases, or other similar incidents with the potential to adversely impact public health or welfare or the environment shall be immediately reported to the New Mexico emergency response center.

D. Commercial haulers shall maintain an operating record documenting activities for at least the preceding three year period. The operating record shall include:

- (1) type and weight or volume of solid waste hauled;
- (2) state, county, and municipality in which the solid waste originated; and
- (3) solid waste facilities utilized.

[20.9.5.14 NMAC - Rp, 20 NMAC 9.1.IV.408, 8/2/2007]

#### **20.9.5.15 CONTINGENCY PLAN FOR EMERGENCIES:**

A. 20.9.5.15 NMAC applies to owners and operators of all solid waste facilities except as otherwise provided.

B. The owner or operator shall maintain a current contingency plan at each solid waste facility. The contingency plan shall be designed to minimize hazards to public health, welfare or the environment from fires, explosions, or any release of contaminants or hazardous constituents to air, soil, surface water or ground water.

C. A copy of the contingency plan shall be kept at the facility and copies shall be provided to the emergency response authority of the local emergency management center.

D. The provisions of the contingency plan shall be carried out immediately whenever there is a fire, explosion, or release of contaminants or hazardous constituents which could pose an immediate or imminent threat to public health, welfare or the environment.

E. The contingency plan shall be amended immediately, if necessary, whenever:

- (1) the facility permit is renewed or modified;
- (2) the plan fails in an emergency;
- (3) the facility's design, operations, maintenance, or other circumstances change in a way that increases the potential for fires, explosions, or releases of hazardous constituents, or necessitate changes to the planned emergency response;
- (4) the list of emergency coordinators changes; or
- (5) the list of emergency equipment changes.

F. The contingency plan for emergencies shall, if applicable:

- (1) describe the actions facility personnel should take in response to fires, explosions, or releases of contaminants or hazardous constituents to air, soil, surface water, or ground water;
- (2) describe arrangements with local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services;
- (3) list the name(s) and telephone numbers of the emergency coordinator(s); if more than one person is listed, one must be named as the primary emergency coordinator;
- (4) include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems and decontamination equipment), along with the location, physical description, and a summary of the capabilities of each item;
- (5) include an evacuation plan for facility personnel which describes signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes in cases where the primary routes could be blocked by fire or releases of wastes;

(6) include an evaluation of potential contaminants, potential media contaminated, and procedures for investigation, containment, and correction or remediation;

(7) indicate when the contingency plan must be amended;

(8) instruct the emergency coordinator or his designee, in case of an imminent or actual emergency situation, to immediately:

(a) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(b) notify appropriate state and local agencies with designated response roles if their assistance is needed;

(9) instruct the emergency coordinator, whenever there is a release, fire, or explosion, to as quickly as possible identify the nature, source, amount, and extent of any release by means of observation, review of facility records or manifests, or if necessary, by chemical analysis;

(10) instruct the emergency coordinator to assess possible hazards to public health, welfare or the environment that may result from the release, fire, or explosion;

(11) instruct the emergency coordinator to provide for monitoring for leaks, pressure buildup, gas generation or rupture in valves, pipes, or equipment, if appropriate;

(12) instruct the emergency coordinator to provide for appropriate treatment, storage, or disposal of recovered waste, or any other material that results from a release, fire, or explosion at a facility, after the emergency situation is under control; and

(13) instruct the emergency coordinator to ensure that waste which may be incompatible with the released material is not treated, stored, or disposed until cleanup procedures are complete.

[20.9.5.15 NMAC - Rp, 20 NMAC 9.1.VIII.811, 8/2/2007]

#### **20.9.5.16 RECORD KEEPING AND ANNUAL REPORTS:**

A. Owners and operators of solid waste facilities shall make and maintain an operating record during the active life of the facility, for each day that operations, monitoring, or closure occurs, including:

(1) the type (including special waste) and weight or volume of each load of solid waste received;

- (2) the country (if other than the United States), state, county, and municipality in which the solid waste originated (i.e. the origin);
- (3) the business name of any commercial hauler of solid waste for each load of the solid waste if it can be reasonably obtained;
- (4) type and weight or volume of non-solid waste materials, as referenced in Paragraph (9) of Subsection S of 20.9.2.7 NMAC, received;
- (5) a record of load inspections, including:
  - (a) date and time of inspection;
  - (b) business name of the commercial hauler and driver name;
  - (c) vehicle license number and description;
  - (d) origin of the waste; and
  - (e) any pertinent observations made during the inspection;
- (6) a description of solid waste or special waste handling problems or emergency disposal activities;
- (7) a record of deviations from the approved design or operational plans;
- (8) for a transfer station, the origin of and destination of the solid waste if transported out of state;
- (9) all monitoring and testing results;
- (10) plans for operations, contingencies, detection and identification of unauthorized waste, and any other plans required by 20.9.2 - 20.9.10 NMAC;
- (11) documentation of the implementation of required plans;
- (12) copies of special waste manifests required under 20.9.8.19 NMAC;
- (13) copies of certificates of processing, transformation, or disposal of special wastes required under 20.9.8.13 NMAC;
- (14) financial assurance information, including a copy of the current standby trust document, current estimates for closure, post-closure care, phase I and phase II assessments and a copy of the financial assurance mechanism being utilized;

(15) a complete and current copy of the facility permit, final order issuing the permit, and any approvals granted by the secretary under 20.9.2 - 20.9.10 NMAC;

(16) a daily log of construction activities; and

(17) for landfills, any demonstration made to the secretary under Paragraphs (12) and (13) of Subsection A of 20.9.4.9 NMAC regarding seismic impact areas and unstable areas.

B. A copy of the operating record for the current month and the previous twelve months, at a minimum, shall be kept on site, unless the facility no longer accepts solid waste, after which time it shall be kept in a place where it can be made available to the department.

C. Owners and operators of solid waste facilities shall make and maintain an operating record during the post-closure period of the facility for each day that monitoring, corrective action, or other post-closure activity occurs, including:

(1) a record of any deviations from the approved post-closure care plan;

(2) all monitoring and testing results;

(3) documentation of the implementation of required plans and any exceptions to those plans;

(4) financial assurance information, including current estimates for closure, post-closure care, phase I and phase II assessments and a copy of the financial assurance mechanism being utilized;

(5) a complete and current copy of the facility permit, final order issuing the permit, and any approvals granted by the secretary under 20.9.2 - 20.9.10 NMAC; and

(6) any other information specifically required by the secretary.

D. Owners or operators of solid waste facilities shall submit an annual report to the department for each facility or operation, within 45 days from the end of each calendar year, describing the operations of the past year. The reports must be certified as true and accurate by the owner or operator and shall include:

(1) the type and weight or volume of waste materials received each month and the country (if other than the U.S.), state, county, and municipality in which the waste originated;

(2) the type and weight or volume of solid waste received from each commercial hauler that delivered waste to the facility;

(3) for a landfill, a description of the capacity used in the previous year and the remaining capacity;

(4) for a landfill, a description of the acreage used for disposal, the acreage seeded, the acreage where vegetation is permanently established and a description of the progress in implementing the closure plan;

(5) the weight or volume of each type of special waste received at the solid waste facility in the previous year;

(6) a summary of all monitoring results (not including the results required under 20.9.9.10 NMAC);

(7) written notice to the secretary if any change in operation has occurred that will reduce the active life of the facility by 25 percent or more;

(8) type and weight or volume of materials recycled during the year;

(9) final disposition of materials not stored or recycled;

(10) amount of leachate generated and treated or recirculated;

(11) an annual financial assurance certification on forms supplied by the department;

(12) the latitude and longitude of the geographical center of the existing or proposed facility (as approved by the department) in NAD-83 or equivalent; and

(13) any other information requested by the secretary.

E. All records and plans required by 20.9.2 - 20.9.10 NMAC shall be furnished upon request and made available at all reasonable times for inspection by the secretary.

F. Operating records and copies of annual reports for solid waste facilities shall be retained by the owner or operator through the post-closure period.

[20.9.5.16 NMAC - Rp, 20 NMAC 9.1.I.109, 8/2/2007]

## **PART 6: SOLID WASTE FACILITY AND COMPOSTING FACILITY CLOSURE AND POST-CLOSURE REQUIREMENTS**

### **20.9.6.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.9.6.1 NMAC - Rp, 20 NMAC 9.1.I.001, 8/2/2007]

**20.9.6.2 SCOPE:**

This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.

[20.9.6.2 NMAC - Rp, 20 NMAC 9.1.1.002, 8/2/2007]

**20.9.6.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.6.3 NMAC - Rp, 20 NMAC 9.1.1.003, 8/2/2007]

**20.9.6.4 DURATION:**

Permanent.

[20.9.6.4 NMAC - Rp, 20 NMAC 9.1.1.004, 8/2/2007]

**20.9.6.5 EFFECTIVE DATE:**

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.6.5 NMAC - Rp, 20 NMAC 9.1.1.005, 8/2/2007]

**20.9.6.6 OBJECTIVE:**

The objective of Part 6 of Chapter 9 is to establish regulations governing closure and post-closure care of solid waste facilities.

[20.9.6.6 NMAC - Rp, 20 NMAC 9.1.1.006, 8/2/2007]

**20.9.6.7 DEFINITIONS:**

[RESERVED]

[See 20.9.2.7 NMAC for Definitions.]

**20.9.6.8 GENERAL REQUIREMENTS FOR CLOSURE AND POST CLOSURE CARE:**

A. Closure and post-closure care plans are required of all solid waste facilities that operated on or after May 14, 1989. The owner or operator of a solid waste facility that has closed but not submitted a closure and post-closure care plan shall submit such a

plan within 180 days of the effective date of these regulations. The submitted plan shall meet the requirements of 20.9.6 NMAC.

B. The owner or operator of the solid waste facility shall prepare a written closure and post-closure care plan that describes the steps necessary for closure and post-closure care of the solid waste facility and any anticipated future uses of the property following closure.

C. Closure and post-closure care plans are required in the application for a permit or permit modification. One initial copy of the plan and two copies of the completed plan shall be submitted to the department.

D. The owner or operator of the solid waste facility shall notify the secretary in writing of the intent to close at least 90 days before closure occurs and shall notify the secretary in writing within 14 days after becoming a locked facility.

E. Closure and post-closure care plans for new solid waste facilities and modifications to existing facilities shall be approved as part of the facility permit.

F. All closure and post-closure care plans shall be approved by the secretary and may be subject to conditions.

G. Closure and post-closure care plans for existing non-permitted landfills that seek to close rather than continue to operate, shall be submitted for approval by the secretary within one year after the effective date of this part. The closure and post-closure care plan shall meet the requirements of 20.9.6 NMAC. After determining that the plan is complete, the secretary shall provide public notice of the plan in a newspaper of general circulation in the county where the facility is located. A non-adjudicatory hearing will be held if significant public interest warrants it. Approved closure and post-closure plans for unpermitted category 2 and 3 landfills shall be enforceable as a permit or regulation for purposes of 20.9.2 - 20.9.10 NMAC and the Solid Waste Act. Any landfill that operates after the effective date of these regulations shall have a closure and post-closure care plan approved as part of the permit, or shall seek approval of a closure and post-closure care plan.

H. Responses to the secretary's requests for additional information concerning a proposed closure and post-closure care plan shall be made within 90 days of receipt of such a request. The secretary may extend the response time for good cause.

I. Post-closure inspection and maintenance shall not be required of the facility if the owner or operator demonstrates to the secretary that all solid waste has been removed, requirements of the closure plan have been met, and following the removal of such wastes, a demonstration is made that the soil and ground water have not been contaminated.

J. All landfills, regardless of category, except construction and demolition debris landfills, which close after October 9, 1991, shall comply with the final cover requirements contained in 20.9.6.9 NMAC in addition to other closure requirements in effect at the time of closure.

K. The length of the post-closure care period may be decreased by the secretary if the owner or operator demonstrates that the reduced period is sufficient to protect public health, welfare, and the environment, or it may be increased by the secretary if the secretary determines that a longer period is necessary to protect health, welfare, and the environment. The time period for application of the provisions for financial assurance as defined in 20.9.10 NMAC shall be coincident with the time period of the post-closure care period. Any reduction or extension of the post-closure care period as described in this section shall be accompanied by an identical reduction or extension of the financial assurance provisions.

L. The owner or operator shall submit a closure report to the department within 60 days after closure completion. The report shall include:

(1) a summary of closure activities: and

(2) a certification by a New Mexico registered professional engineer that the closure of the solid waste facility has been completed and all conditions of the approved closure plan have been satisfied.

M. The active life of the facility terminates, and post-closure care begins, upon written verification by the department that the facility has been closed in accordance with the closure plan approved by the secretary.

N. The owner or operator shall submit a post-closure report to the department within 60 days after the post-closure period expires. The report shall include:

(1) a summary of post-closure activities: and

(2) a certification by a New Mexico registered professional engineer that the post-closure requirements, and if applicable, any corrective action requirements have been completed and all conditions of the approved post-closure care plan have been satisfied.

O. The post-closure care period for the facility terminates upon written verification by the secretary that the requirements of the approved post-closure care plan have been satisfied. If the secretary does not issue a verification, the secretary shall notify the owner or operator in writing that the activities required under 20.9.6 NMAC and 20.9.9 NMAC have not been conducted satisfactorily, and specify the reasons for such determination.

P. The secretary may require the owner or operator to amend the post-closure care plan if the secretary believes that the present or future implementation of the plan may cause a threat to human health or the environment.

[20.9.6.8 NMAC - Rp, 20 NMAC 9.1.V.501, 8/2/2007]

**20.9.6.9 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR MUNICIPAL AND SPECIAL WASTE LANDFILLS, AND MONOFILLS:**

A. Owners and operators of municipal landfills and special waste landfills shall begin closure within 30 days after the landfill receives the final receipt of waste or within 30 days after approval of the closure and post-closure care plan, whichever is later.

(1) Owners and operators shall install a final cover system which consists of the following:

(a) for municipal and special waste landfills (except monofills) that are not lined and which never received more than 7,300 tons of waste (i.e., an average of 20 tons or less per day annual average) during any calendar year, an infiltration layer comprised of a minimum of 18 inches of earthen material having a saturated hydraulic conductivity no greater than  $1 \times 10^{-5}$  cm/sec;

(b) for municipal landfills which exceed the tonnage requirements of Subparagraph (a) of this paragraph and for all special waste landfills (other than monofills), an infiltration layer comprised of a minimum of 18 inches of earthen material having a saturated hydraulic conductivity less than or equal to the saturated hydraulic conductivity of any bottom liner system or natural subsoils present, or a saturated hydraulic conductivity no greater than  $1 \times 10^{-5}$  cm/sec., whichever provides for less infiltration;

(c) a layer for minimizing erosion consisting of a minimum of six inches of earthen material that is capable of sustaining native plant growth;

(d) any necessary gas vents provided they are sealed to assure no water infiltration;

(e) finished grades over filled areas which shall not exceed 25 percent (four feet horizontal to one foot vertical), or be less than five percent for new landfills and lateral expansions permitted for construction, operation, and closure after the effective date of these regulations or two percent for all other landfills;

(f) run-off controls designed for a peak discharge of a 24-hour, 25-year storm;

(g) cover material compacted to no less than 75 percent and no more than 85 percent standard proctor density unless otherwise approved in the permit, closure plan or by specific approval; and

(h) for closure of a cell containing only regulated asbestos waste or scrap tires, the owner or operator shall cover with 30 inches of compacted native soils and 6 inches topsoil on top of the 30-inch cover, to provide a 36-inch final cover to the original grade and implement measures where necessary to control erosion and rodent intrusion.

(2) The secretary may permit an alternative final cover design that includes:

(a) an infiltration layer that achieves an equivalent reduction in infiltration as specified in Subparagraph (a) or (b) of Paragraph (1) of this subsection, as applicable; and

(b) an erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in Subparagraph (c) of Paragraph (1) of this subsection;

(c) for landfills that stopped accepting waste prior to the effective date of this part, finished grades different from those specified in Subparagraph (e) of Paragraph (1) of this subsection, provided a demonstration is made that the alternate grades will prevent erosion and will provide equivalent reduction in infiltration; and

(d) for landfills accepting waste after the effective date of this part and lateral expansions permitted after the effective date of this part, finished grades different than those specified in Subparagraph (e) of Paragraph (1) of this subsection, provided no grade is greater than 33 percent and a demonstration is made in the closure plan or permit or modification application that the alternate grades will prevent erosion and will provide equivalent reduction in infiltration.

(3) The written closure plan, at a minimum, shall include the following information:

(a) a schedule for completion of all activities necessary to meet the closure criteria specified in this part;

(b) a report that includes:

(i) a description of the local geology;

(ii) a description of the hydrogeology of the landfill site, including maps and cross-sections illustrating subsurface features;

(iii) well locations, depths to ground water, and, if available, ground water quality, flow direction and gradient shown on a topographic map; and

(iv) a description of the landfill, including: a) the date operations commenced and the date of final receipt of waste; b) the types of waste accepted at the landfill; c) the total volume of waste disposed; d) a topographic map that shows the size and dimensions of fill areas; e) a topographic map that shows structures, drainages, and water wells in the area of the landfill; and f) a topographic map that shows methane monitoring points and methane concentrations along the landfill property boundary and within structures located on landfill property;

(c) a description of the final cover and its placement, including:

(i) thickness and saturated hydraulic conductivity;

(ii) source of the cover material;

(iii) a construction quality assurance/construction quality control plan for placement of the final cover that meets the requirements of 20.9.4.14 NMAC;

(iv) equipment that will be utilized to apply the final cover and ensure it is adequately compacted to obtain the appropriate proctor density; and

(v) a map that shows final contours that meet the requirements of Subparagraph (e) of Paragraph (1) of this subsection;

(d) a vegetation plan, including:

(i) the seeding method to obtain proper growth density; and

(ii) species of vegetation to be planted, including grasses or local seed mix as recommended for the area by the natural resources conservation service for permanent soil stabilization and to minimize wind and water erosion;

(e) a plan to prevent unauthorized access by the public and entry by large animals to the landfill through the use of fences, gates, locks, or other means;

(f) a plan to remove structures, unless otherwise approved by the secretary;

(g) a description of the signs indicating that the site is a closed landfill and no dumping is permitted; all signs shall include the name and telephone number of the landfill owner; and

(h) a post-closure care plan, including:

(i) a monitoring and repair plan that describes methods to be used to ensure cover integrity, including but not limited to settlement, ponding, water erosion, wind erosion, and inadequate drainage, to ensure the final cover meets the slope requirements of 20.9.6.9 NMAC, and to maintain adequate vegetation during the post-closure period;

(ii) a methane monitoring plan in compliance with Subsections B and C of 20.9.5.9 NMAC;

(iii) a ground water monitoring plan; and

(iv) a leachate collection system plan, if applicable;

(4) prior to beginning closure of a landfill, the owner or operator shall notify the secretary that a notice of the intent to close the landfill has been placed in the operating record;

(5) the owner or operator shall complete closure activities in accordance with the closure plan within 180 days following the beginning of closure, unless otherwise approved in the closure plan; extensions of the closure period may be granted by the secretary if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and has taken and will continue to take all steps necessary to prevent threats to public health, welfare and the environment;

(6) upon completion of closure, a detailed description of the location of areas of waste disposal at the facility, including a plat signed by a registered surveyor, shall be filed with the appropriate county land recording agent; the description and the plat shall be filed so that it will be found during a title search and proof of the filing shall be submitted to the secretary; the description shall perpetually notify any potential purchaser of the property that:

(a) the land has been used as a landfill facility;

(b) its use is restricted as described in the post-closure care plan; and

(7) the owner or operator may request permission from the secretary to file a revised description if all wastes are removed from the facility.

B. Landfill owners or operators shall submit reports of monitoring performance and data to the secretary within 45 days after the end of each calendar year.

C. The post-closure care period for a landfill shall be 30 years.

D. The owner or operator may amend the post-closure care plan, provided the amendment is not a permit modification, by submitting a request to the secretary at

least 30 days prior to the proposed change. No proposed amendment shall be effective unless first approved in writing by the secretary.

E. The secretary may require the owner or operator to modify or amend the post-closure care plan if the secretary determines that the present or future implementation of the plan may cause a threat to public health, welfare and or the environment.

[20.9.6.9 NMAC - Rp, 20 NMAC 9.1.V.502, 8/2/2007]

#### **20.9.6.10 CONSTRUCTION AND DEMOLITION LANDFILL CLOSURE AND POST-CLOSURE REQUIREMENTS:**

A. Owners and operators of construction and demolition landfills shall comply with the following closure requirements.

(1) A final cover of not less than 24 inches of approved material shall be placed over the entire surface of each portion of the final lift starting no later than 30 days and completed within 60 days after the known final receipt of waste. The final cover shall consist of a compacted layer of not less than 18 inches of approved material and a layer for minimizing erosion of not less than 6 inches of approved material that is capable of sustaining native plant growth.

(2) The finished grades over filled areas shall not exceed 25 percent (four feet horizontal to one foot vertical), or be less than five percent for landfills permitted after the effective date of these regulations or two percent for all other landfills. The slope shall be sufficient to prevent the ponding of water and the erosion of the cover material. For existing landfills, the secretary may approve slopes which exceed 25 percent grade provided the owner demonstrates there is no practicable alternative and the steeper slopes can be permanently stabilized to prevent erosion.

(3) The owner or operator shall provide a plan showing the final contours and vegetation in relationship to the surrounding land, the description of final use of the land with drawings as appropriate, and a description of vegetation to provide permanent soil stabilization.

(4) Upon completion of closure, a detailed description of the location of areas of waste disposal at the site, including a plat signed by a registered surveyor, shall be filed with the appropriate county land recording agency. The description and the plat shall be filed so that it will be found during a title search and proof of the filing shall be submitted to the secretary. The description shall perpetually notify any potential purchaser of the property that:

(a) the land has been used as a landfill; and

(b) its use is restricted as described in the post-closure care plan.

(5) The owner or operator may request permission from the secretary to file a revised description if all wastes are removed from the facility.

B. Post-closure care for construction and demolition landfills shall be for a period of 30 years and includes control of erosion, maintenance of cover, top slopes, side slopes, drainage, and vegetation. The owner or operator of a construction and demolition landfill shall conduct post-closure care inspections:

- (1) at least once a year for the first three years; and
- (2) at least once every three years, thereafter.

[20.9.6.10 NMAC - Rp, 20 NMAC 9.1.V.503, 8/2/2007]

**20.9.6.11 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR COMPOSTING FACILITIES THAT ACCEPT SOLID WASTE:**

A. Within 30 days of closure, composting facility owners or operators shall:

- (1) remove all windrows and in-vessel compost material on the compost facility's real property;
- (2) remove or vegetate compacted compost material that may be left on the land;
- (3) drain ponds or leachate collection systems, back fill, and assure removed contents are properly disposed;
- (4) provide cover if necessary; and
- (5) if required in the approved closure plan, remove buildings, fences, roads, and equipment, clean up the site, and conduct tests on the soils for contamination.

B. Composting facility owners or operators shall:

- (1) maintain ground water monitoring, if required to detect possible migration of contaminants; and
- (2) inspect and maintain any cover material.

C. Post-closure inspection and maintenance shall not be required if the facility owner or operator demonstrates that all requirements of closure have been met and there is no evidence of contamination.

[20.9.6.11 NMAC - Rp, 20 NMAC 9.1.V.504, 8/2/2007]

### **20.9.6.12 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR OTHER SOLID WASTE FACILITIES:**

A. Owners or operators of solid waste facilities other than landfills shall comply with the following requirements:

- (1) cleanup of the area;
- (2) dismantling and removal of any improvements related to solid waste handling or disposal, if required in the approved closure plan, such as:
  - (a) removal of buildings;
  - (b) removal of fences;
  - (c) removal of roads; and
  - (d) removal of equipment;
- (3) testing of soils and ground water for contamination, if required in the approved closure plan; and
- (4) all other conditions of the permit.

B. Post-closure inspection and maintenance may be waived upon written approval of the secretary, if the facility owner or operator demonstrates to the department that all requirements of closure have been met and there is no evidence of contamination.

[20.9.6.12 NMAC - Rp, 20 NMAC 9.1.V.505, 8/2/2007]

## **PART 7: SOLID WASTE FACILITY AND REGISTERED FACILITY OPERATOR CERTIFICATION**

### **20.9.7.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.9.7.1 NMAC - Rp, 20 NMAC 9.1.I.001, 8/2/2007]

### **20.9.7.2 SCOPE:**

This part applies to all certified operators of solid waste facilities, composting facilities and recycling facilities.

[20.9.7.2 NMAC - Rp, 20 NMAC 9.1.I.002, 8/2/2007]

**20.9.7.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.7.3 NMAC - Rp, 20 NMAC 9.1.1.003, 8/2/2007]

**20.9.7.4 DURATION:**

Permanent.

[20.9.7.4 NMAC - Rp, 20 NMAC 9.1.1.004, 8/2/2007]

**20.9.7.5 EFFECTIVE DATE:**

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.7.5 NMAC - Rp, 20 NMAC 9.1.1.005, 8/2/2007]

**20.9.7.6 OBJECTIVE:**

The objective of Part 7 of Chapter 9 is to establish a rule governing operator certification requirements for operators of solid waste facilities, composting facilities and recycling facilities.

[20.9.7.6 NMAC - Rp, 20 NMAC 9.1.1.006, 8/2/2007]

**20.9.7.7 DEFINITIONS:**

[RESERVED]

[See 20.9.2.7 NMAC for Definitions.]

**20.9.7.8 GENERAL PROVISIONS:**

A. Owners and operators of landfills and transformation facilities shall require the managers of those facilities to attend, at least once every three years, a training program offered by the department or department certified training program on the subject of environmental justice.

B. To become a certified operator an individual shall:

(1) complete a certification training course offered by the department or its designated agent, or equivalent training approved by the department;

(2) pass an examination approved by the department;

(3) have at least one year of experience in the operation of a facility of the same type as that for which certification is sought;

(4) file an application with the department on a form provided by the department;

(5) meet the requirements of the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13 (1998 Cum. Supp.);

(6) for operators of municipal waste incinerators, also meet the training requirements of New Mexico Municipal Waste Combustion rule, 20.2.62 NMAC; and

(7) for operators of biomedical waste incinerators, also meet the training requirements of New Mexico Biomedical Waste Combustion rule, 20.2.63 NMAC.

C. Operator certification is valid for three years from date of issuance.

D. The department may certify an operator with alternate training. Alternate training shall be equivalent to or more extensive than the department's course work, and shall be approved by the department. It shall be the applicant's responsibility to submit any documentation the department may require to evaluate the equivalency of alternate training.

E. A person holding certification in a particular facility type may operate any facility of that type.

[20.9.7.8 NMAC - Rp, 20 NMAC 9.1.VI.601, 8/2/2007]

#### **20.9.7.9 OPERATOR CERTIFICATION TRAINING COURSES:**

A. All operator certification training courses, with the exception of the transformation facility operator training course, will be offered by the department or other approved authority at least once every twelve months.

B. All operator certification training courses shall, at a minimum, address:

- (1) composition of wastes;
- (2) facility design;
- (3) facility staffing and operations;
- (4) transportation requirements;
- (5) traffic flow control;

- (6) environmental monitoring;
- (7) handling of special wastes;
- (8) identification of unauthorized wastes, including hot waste, hazardous wastes and materials, and PCB's;
- (9) environmental health and safety;
- (10) waste diversion;
- (11) applicable laws and rules;
- (12) the permitting process;
- (13) documentation, including manifests, operating records, and reports;
- (14) pollution prevention; and
- (15) environmental justice.

C. In addition to the requirements of Subsection B of this section, the landfill operator training course shall address:

- (1) interpretation and use of engineering plans;
- (2) surveying techniques;
- (3) waste decomposition;
- (4) basic geology and hydrology;
- (5) landfill gas generation and control;
- (6) leachate generation and control;
- (7) landfill cover systems;
- (8) closure and post-closure care;
- (9) vector control; and
- (10) odor control.

D. In addition to the requirements of Subsection B of this section, the recycling facility operator training course shall address:

- (1) equipment operation and technology;
- (2) materials flow;
- (3) quality control; and
- (4) distribution and marketing.

E. In addition to the requirements of Subsection B of this section, the transformation facility operator training course shall address:

- (1) theory of combustion;
- (2) basic chemistry;
- (3) basic thermodynamics;
- (4) equipment operation and technology;
- (5) air pollution control technology;
- (6) ash handling and disposal;
- (7) control room operation;
- (8) continuous emissions monitors and their calibration;
- (9) efficacy testing;
- (10) waste decomposition; and
- (11) waste flow.

F. In addition to the requirements of Subsection B of this section, the composting facility operator training course shall address:

- (1) basic microbiology;
- (2) basic chemistry;
- (3) waste decomposition;
- (4) compost end use, distribution and marketing;
- (5) composting equipment operations, care and maintenance;

- (6) composting processing methods and techniques;
- (7) quality control;
- (8) yard waste and food waste collection systems;
- (9) sludge handling;
- (10) odor control; and
- (11) vector control.

G. In addition to the requirements of Subsection B of this section, the transfer station operator training course shall address:

- (1) controls and operations;
- (2) equipment operation and technology;
- (3) waste flow;
- (4) vehicle operations and safety;
- (5) large waste item handling;
- (6) odor control; and
- (7) vector control.

[20.9.7.9 NMAC - Rp, 20 NMAC 9.1.VI.602 - 20 NMAC 9.1.VI.607, 8/2/2007]

**20.9.7.10 EXAMINATION:**

A. A written examination shall be administered at the conclusion of each training course. Certification requires a score of at least 70 percent on the examination.

B. Results of the examination shall be forwarded to the trainee within 60 days after the date of the examination. A certificate shall be forwarded to the trainee within 60 days after the trainee provides documentation that he has met all the applicable requirements of Subsection B of 20.9.7.8 NMAC.

[20.9.7.10 NMAC - Rp, 20 NMAC 9.1.VI.608, 8/2/2007]

**20.9.7.11 RECIPROCITY:**

The department may issue certificates without examination to applicants who hold valid certificates or licenses issued by any state, territory, or foreign jurisdiction, provided, the department determines the requirements for such certification are equivalent to those set forth in 20.9.7.8 - 20.9.7.10 NMAC.

[20.9.7.11 NMAC - Rp, 20 NMAC 9.1.VI.609, 8/2/2007]

#### **20.9.7.12 RECERTIFICATION:**

A. To maintain certification, certified operators shall apply for recertification at least 30 days prior to the expiration date of their certification.

B. Recertification shall be obtained by making application to the department and successfully completing:

- (1) an operator certification training course offered by the department or its designated agent;
  - (2) an alternate training course which has been approved by the department;
- or
- (3) 24 hours of course work which has been approved by the department.

[20.9.7.12 NMAC - Rp, 20 NMAC 9.1.VI.610, 8/2/2007]

#### **20.9.7.13 SUSPENSION OR REVOCATION OF CERTIFICATION:**

A. An operator's certification may be suspended or revoked by the secretary for:

- (1) failure to comply with the terms or conditions of a solid waste facility permit or a facility registration;
- (2) fraud, deceit or submission of inaccurate qualification information;
- (3) violation of the Solid Waste Act or 20.9.2 - 20.9.10 NMAC by the certified operator; or
- (4) failure to comply with the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13 (1998 Cum. Supp.).

B. Suspension and revocation proceedings shall be conducted in accordance with the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to 61-1-33; 20.1.5 NMAC and if applicable, 20.1.7 NMAC.

[20.9.7.13 NMAC - Rp, 20 NMAC 9.1.VI.611, 8/2/2007]

## **PART 8: SPECIAL WASTE REQUIREMENTS**

### **20.9.8.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.9.8.1 NMAC - Rp, 20 NMAC 9.1.1.001, 8/2/2007]

### **20.9.8.2 SCOPE:**

This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.

[20.9.8.2 NMAC - Rp, 20 NMAC 9.1.1.002, 8/2/2007]

### **20.9.8.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.8.3 NMAC - Rp, 20 NMAC 9.1.1.003, 8/2/2007]

### **20.9.8.4 DURATION:**

Permanent.

[20.9.8.4 NMAC - Rp, 20 NMAC 9.1.1.004, 8/2/2007]

### **20.9.8.5 EFFECTIVE DATE:**

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.8.5 NMAC - Rp, 20 NMAC 9.1.1.005, 8/2/2007]

### **20.9.8.6 OBJECTIVE:**

The objective of Part 8 of Chapter 9 is to establish regulations governing the management of special waste, including manifest requirements for the transportation of special waste.

[20.9.8.6 NMAC - Rp, 20 NMAC 9.1.1.006, 8/2/2007]

### **20.9.8.7 DEFINITIONS:**

**[RESERVED]**

[See 20.9.2.7 NMAC for Definitions.]

**20.9.8.8 GENERAL:**

The generator of a special waste shall assure that the special waste is disposed of in a solid waste facility permitted to accept the special waste or treated at a permitted facility, prior to disposal, to render it a non-special waste.

[20.9.8.8 NMAC - Rp, 20 NMAC 9.1.VII.701, 8/2/2007]

**20.9.8.9 RESTRICTIONS:**

A. No solid waste facility shall accept special waste unless the facility owner or operator has been issued a permit to accept that type of special waste for disposal, transfer, processing, or transformation.

B. No person may incinerate infectious waste except in an infectious waste incinerator permitted under 20.9.2 - 20.9.10 NMAC.

C. A hauler of special waste shall not deliver special waste to any place or person except to a facility that has been issued a permit to accept that type of special waste for disposal, transfer, processing or transformation.

[20.9.8.9 NMAC - Rp, 20 NMAC 9.1.VII.702, 8/2/2007]

**20.9.8.10 GENERAL REQUIREMENTS FOR SPECIAL WASTE:**

A. Any person who stores a special waste shall assure that the special waste is stored at designated special waste storage areas meeting the requirements of 20.9.8 NMAC.

B. No person who stores special waste shall store the waste for longer than 90 days from the date the waste is placed in storage awaiting transportation, processing, or final disposal, unless otherwise approved by the department, except no person other than the generator shall store infectious waste for over seven days without refrigeration at or below 45 degrees fahrenheit.

C. A generator of special waste shall assure that all containers of special waste when deemed full and placed in storage are clearly labeled or marked, indicating the name and address of the generator, contents, date placed in storage and potential health, safety, and environmental hazards associated with the waste.

D. A generator of special waste shall assure that all containers of special waste that are prepared for transportation are clearly labeled or marked, indicating the name and address of the generator, contents, and potential health, safety, and environmental hazards associated with the waste.

E. A hauler of special waste shall assure that all containers of special waste are clearly labeled or marked prior to transportation, indicating the name and address of the generator, contents, date transported, and potential health, safety, and environmental hazards associated with the waste.

F. Any generator or hauler of special waste shall assure that a manifest in accordance with 20.9.8.19 NMAC accompanies each load of special waste originating in or to be disposed in New Mexico;

G. A hauler of special waste shall carry an appropriate clean-up kit in each vehicle used for hauling.

[20.9.8.10 NMAC - Rp, 20 NMAC 9.1.VII.703, 8/2/2007]

### **20.9.8.11 REQUIRED ANALYSIS:**

A. The generator of a special waste shall document the physical and chemical characteristics of all special wastes for storage, transportation or disposal, by means of:

- (1) records of the results of analyses performed in accordance with this section as applicable; or
- (2) detailed descriptions of the generator's knowledge of specific wastes, including process, source and chemical and physical properties;
- (3) or both.

B. All laboratory analyses shall be performed by a laboratory that follows U.S. EPA quality assurance and quality control procedures in accordance with U.S. EPA approved analytical methods or such other methods acceptable to the department.

C. Representative sample(s) shall be analyzed in conformance with the following parameters as appropriate:

- (1) ignitability characteristic as defined in 40 CFR Part 261;
- (2) corrosivity characteristic as defined in 40 CFR Part 261;
- (3) reactivity characteristic as defined in 40 CFR Part 261;
- (4) toxicity characteristic as defined by U.S. EPA test method 1311: toxicity characteristic leaching procedure (TCLP);
- (5) paint filter liquids test as defined by U.S. EPA Test Method 9095;
- (6) additional parameters as identified by the department;

(7) RCRA Subtitle C listed wastes as defined in 40 CFR Part 261; and

(8) Toxic Substance Control Act (TSCA), Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), or other applicable statutes.

[20.9.8.11 NMAC - Rp, 20 NMAC 9.1.VII.704, 8/2/2007]

**20.9.8.12 ASBESTOS WASTE:**

A. The generator of asbestos waste shall prevent public access to asbestos wastes at the point of generation. Haulers of asbestos waste shall prevent public access to asbestos waste during transportation.

B. Generators of asbestos waste shall determine whether the asbestos waste is regulated asbestos waste. If it is not regulated asbestos waste, and it is to be disposed as non-regulated asbestos waste, the generator shall assure that the asbestos waste is handled in a manner to prevent the asbestos waste from becoming regulated asbestos waste. The handling of non-regulated asbestos waste shall include measures to assure that any category I non-friable asbestos containing material is not subjected to sanding, grinding, cutting or abrading and that any category II non-friable asbestos containing material is not subjected to forces expected to break, crumble, pulverize or reduce the material to powder during the course of excavation, renovation, demolition, or storage, and that it is disposed at a permitted landfill. If the waste is regulated asbestos waste it shall be disposed at a landfill permitted to accept regulated asbestos waste and shall be handled accordingly.

C. If non-regulated asbestos waste is to be disposed as non-regulated asbestos waste, the hauler of non-regulated asbestos waste shall handle the waste in a manner to prevent the asbestos waste from becoming regulated asbestos waste. The handling of non-regulated asbestos waste by a hauler shall include measures to assure that any category I non-friable asbestos containing material is not subjected to abrading and that any category II non-friable asbestos containing material is not subjected to forces expected to break, crumble, pulverize or reduce the material to powder during the course of storage, transportation, or while exposed during disposal operations. The hauler shall notify the landfill operator that the load contains non-regulated asbestos waste that must be disposed of in a manner to prevent breakage and release of fibers while exposed during disposal operations.

D. A landfill that accepts non-regulated asbestos waste shall assure that the asbestos containing material is not broken, abraded, crumbled, pulverized or reduced to powder while exposed during disposal operations. The non-regulated asbestos waste shall be covered with at least six inches of non-waste containing material prior to compaction.

E. The generator of regulated asbestos waste shall properly wet and containerize the waste. No hauler shall accept or transport regulated asbestos waste unless the waste has been properly wetted and containerized.

(1) Regulated asbestos waste is properly wetted when its moisture content prevents fiber release.

(2) Regulated asbestos waste is properly containerized when it is placed in a plastic bag of 6-mil or thicker, sealed in such a way to be leak-proof, and the amount of void space or air in the bag is minimized. Asbestos waste slurries shall be packaged in leak-proof drums if they are too heavy for the plastic bag containers. Regulated asbestos waste may also be containerized by double bagging, using plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(a) Pipes or other facility components that are removed as sections without first removing the asbestos shall be wrapped in a minimum of 6-mil plastic sufficient to prevent asbestos fibers from escaping.

(b) The hauler shall ensure that regulated asbestos waste is properly contained in a manner to prevent asbestos fibers from escaping and with appropriate labels, and that the outsides of the containers are not contaminated with asbestos debris adhering to the containers. The transporter shall not accept nor transport regulated asbestos waste if there is a reason to believe that the condition of the asbestos waste may allow fiber release.

(3) The hauler shall ensure that the regulated asbestos waste containers are loaded into the transport vehicle in a manner which prevents the breaking of the containers. The hauler shall ensure that the asbestos waste containers are transferred at the disposal site in such a manner to prevent fiber release.

(a) If the hauler discovers that the regulated asbestos waste is not properly containerized in conformance with Paragraph (2) of this subsection, the hauler shall immediately clean up the contaminated area and repair or reseal the container by appropriate methods. The department shall be notified of any release within 24 hours. The transporter shall ensure that all containers in his possession are of adequate design and condition to prevent the release of fibers during transport.

(b) Vehicles used for transport of containerized regulated asbestos waste shall have an enclosed carrying compartment or utilize a canvas or plastic lined covering sufficient to contain the transported waste, prevent damage to containers, and prevent fiber release. All surfaces of vehicles and other asbestos handling equipment and facilities shall be maintained free from the accumulation of dusts and waste containing asbestos and shall have a smooth, non-absorbent finish. No vehicle which uses compactors to reduce waste volume may be used to transport asbestos waste.

Vacuum trucks used to transport waste slurry shall be inspected to ensure that liquid is not leaking from the truck.

(c) The hauler of the regulated asbestos waste shall notify the landfill operator that the load contains regulated asbestos waste.

F. All regulated asbestos containers, to include individually wrapped facility components or pipes, shall have a warning label specified by the U.S. EPA or the occupational safety and health administration (OSHA). Labels shall be printed in both English and Spanish.

G. The operator of a landfill permitted to accept regulated asbestos waste shall:

(1) inspect the loads at the time of disposal at the landfill to verify that the regulated asbestos waste is properly contained and labeled;

(2) if the wastes are not properly containerized and the landfill operator accepts the load, thoroughly soak the asbestos with a water spray prior to unloading, rinse out the truck, and immediately cover the wastes with non-waste containing material to prevent fiber release, prior to compacting the waste in the landfill;

(3) prepare a separate excavation to receive only regulated asbestos wastes; the excavation shall be as narrow as possible while complying with all occupational safety and health administration (OSHA) regulations and standards;

(4) align the excavation perpendicular to the prevailing winds;

(5) off-load asbestos containers within the excavation with sufficient care to avoid breaking the containers;

(6) completely cover the containerized waste within 18 hours with a minimum of six inches of non-waste containing material;

(7) completely cover improperly containerized regulated asbestos waste with six inches of non-waste containing material immediately; and

(8) not compact the regulated asbestos waste until it is completely covered with six inches of non-waste containing material.

H. If, at any time during the generation or transportation of non-regulated asbestos waste the waste material is subjected to handling that renders it to be regulated asbestos waste, the generator or hauler shall immediately begin handling the regulated asbestos waste according the requirements of this part, and shall dispose of the regulated asbestos waste in a landfill or monofill permitted to accept such waste.

I. When closing a cell containing regulated asbestos waste, the landfill operator shall:

- (1) cover with an additional 30 inches of compacted non-waste containing material to provide a 36-inch final cover to the original grade; and
- (2) implement measures as necessary to control erosion and rodent intrusion.

J. The operator of a landfill that accepts regulated asbestos shall provide barriers adequate to control public access. At a minimum, the owner or operator shall:

(1) limit access to the regulated asbestos management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to deter access by the general public: and

(2) place warning signs at the entrance and at intervals no greater than 100 feet along the perimeter of the sections where regulated asbestos waste is deposited. The sign shall read as follows in English and other languages as approved by the department:

ASBESTOS WASTE DISPOSAL SITE

DO NOT CREATE DUST

BREATHING ASBESTOS IS HAZARDOUS

TO YOUR HEALTH

the signs shall be posted in such a manner and location that a person can easily read the legend and conform to the requirements of 20 inches by 14 inches upright format signs specified in 29 CFR 1910.145(d)(4) (or equivalent regulation adopted by the board under the Occupational Health and Safety Act); spacing between any two lines shall be at least equal to the height of the upper of the two lines; and

(3) have at least one employee who has received at least 32 hours of course work in a U.S. EPA certified training course which deals with the identification, hazards and management of asbestos wastes. An employee with this training shall be present at all times when asbestos wastes are being disposed.

[20.9.8.12 NMAC - Rp, 20 NMAC 9.1.VII.705, 8/2/2007]

### **20.9.8.13 INFECTIOUS WASTE:**

A. This section applies:

(1) without regard to the quantity of infectious waste generated, to any generator of infectious waste including, but not limited to:

- (a) general acute care hospitals;
- (b) skilled nursing facility or convalescent hospitals;
- (c) intermediate care facilities;
- (d) in-patient care facilities for the developmentally disabled;
- (e) dialysis clinics;
- (f) free clinics;
- (g) community clinics;
- (h) employee clinics;
- (i) health maintenance organizations;
- (j) home health agencies;
- (k) surgical clinics;
- (l) urgent care clinics;
- (m) acute psychiatric hospitals;
- (n) blood/plasma centers;
- (o) laboratories;
- (p) medical buildings;
- (q) physicians offices;
- (r) veterinarians;
- (s) dental offices;
- (t) acupuncturists;
- (u) funeral homes;
- (v) eye clinics; and

(w) tattoo parlors and body-piercing establishments; and

(2) to all infectious waste storage areas, processing, transformation, transfer and disposal facilities, other than sewage treatment systems that provide secondary treatment of waste.

B. All material that has been rendered non-infectious is not subject to the handling requirements of this section, provided:

(1) if it is an otherwise regulated, hazardous, special, or radioactive waste, it shall be handled according to regulations applicable to that type of waste;

(2) any person that processes or transforms infectious waste shall certify in writing on at least an annual basis, or upon any change that could affect the efficacy of the treatment that the waste has been rendered non-infectious by sterilization, incineration or another method approved by the secretary; a certification that the waste has been rendered non-infectious shall be provided to the generator, transporter, and disposal facility; the generator, processing or transformation facility, and disposal facility shall maintain copies of certifications for a period of three years and the records shall be made available to the department upon request; and

(3) the operator of the disposal facility applies daily cover as required in 20.9.5.9 NMAC prior to any compaction of the sharps.

C. The following storage and containment requirements apply to all infectious waste.

(1) Containment shall be in a manner and location which affords protection from animal intrusion, does not provide a breeding place or a food source for insects and rodents, and minimizes exposure to the public.

(2) Infectious waste shall be segregated by separate containment from other waste at the point of origin.

(3) Except for sharps, infectious waste shall be contained in plastic bags inside rigid containers. The bags shall meet the testing requirements specified by 40 CFR 173.197. All bags used for containment purposes shall be red or orange and clearly identified as specified in 29 CFR 1910.145(f). The bags shall be securely tied to prevent leakage or expulsion of solid or liquid wastes during storage, handling or transport.

(4) Sharps shall be contained for storage, transportation, transfer, processing, transformation, and disposal in leak-proof, rigid, puncture-resistant containers which are manufactured for the purpose of sharps containment and are taped closed or tightly lidded to preclude loss of contents.

(5) Rigid containers shall be labeled "biomedical waste", or otherwise conspicuously labeled as holding infectious waste, or placed in disposable bags used for other infectious waste. Rigid containers shall meet or exceed the requirements of 49 CFR 173.197 including that the containers be:

- (a) rigid;
- (b) leak resistant;
- (c) impervious to moisture;
- (d) of sufficient strength to prevent tearing or bursting under normal conditions of use;
- (e) sealed to prevent leakage during transport; and
- (f) puncture resistant for sharps and sharps with residual fluids.

(6) If other waste is placed in the same container as regulated infectious waste, then the generator shall package, label and mark the container and its entire contents as infectious waste.

(7) Rigid infectious waste containers may be reused for infectious or non-infectious waste if they are thoroughly washed and decontaminated each time they are emptied or the surfaces of the containers have been completely protected from contamination by disposable, unpunctured or undamaged liners, bags, or other devices that are removed with the infectious waste, and the surface of the containers have not been damaged or punctured.

(8) Storage and containment areas shall protect infectious waste from the elements, be ventilated to the outdoors (unless refrigerated), provide refrigeration as necessary, be only accessible to authorized persons, and be marked with prominent warning signs on, or adjacent to, the exterior doors or gates. The warning signs shall be easily read during daylight from a distance of 25 feet.

(9) Generators of infectious waste, shall place sufficient absorbent material inside the rigid container or liner of the rigid container sufficient to absorb the entire amount of liquid present in the event of an unintentional release of contents, as specified in 49 CFR 173.197.

(10) Compactors, grinders or similar devices shall not be used to reduce the volume of infectious waste before the waste has been rendered non-infectious unless prior approval has been obtained from the department.

D. All generators of infectious waste shall dispose of the infectious waste at a facility permitted to process, store or dispose of infectious waste.

E. All infectious waste generation, processing, transformation, transfer, storage and disposal facilities subject to this section shall comply with the following operational requirements.

(1) Every person who generates, transports, stores, processes, or disposes of infectious waste shall prepare and maintain on file a management plan for the waste that identifies the type of waste the person generates or handles, the segregation, packaging, labeling, collection, storage, method of storage, and transportation procedures to be implemented, the processing, transformation or disposal methods that will be used, the transporter and disposal facility that will be used, and the person responsible for the management of the infectious waste.

(2) All infectious waste management facilities may only accept infectious waste that is accompanied by a manifest that contains the information required by 20.9.8.19 NMAC.

(3) Report to the secretary any delivery of unauthorized waste, contamination of any person, or other emergencies immediately upon recognition.

(4) Human fetal remains, as defined by the state medical investigator, when measured to be 500 grams or greater, shall be disposed by incineration or interment.

(5) Infectious waste consisting of recognizable human anatomical remains shall be disposed by incineration or interment, unless such remains are subject to different treatment or disposal standards due to contamination by a hazardous or radioactive substance. Recognizable human anatomical remains may be released to the patient, proper governmental authority, or designated family member for interment or incineration, as long as all forensic needs of the facility have been met and the release is not in violation of any other law.

F. Processing, transformation and disposal of infectious waste shall be by one of the following methods:

(1) incineration in a controlled air multi-chambered incinerator which provides complete combustion of the waste to carbonized or mineralized ash:

(a) ash from the incinerator shall be sampled in accordance with Subsection B of 20.9.8.11 NMAC;

(b) the sample shall be analyzed by the U.S. EPA test method 1311: toxic characteristics leaching procedure (TCLP) to determine if it is a hazardous waste; if hazardous, it shall be managed by applicable state regulations;

(c) the retention times and temperatures for each chamber shall be continuously measured and recorded, or other equivalent tests approved by the

department to determine if it is still infectious shall be performed; if infectious, it shall be re-incinerated in accordance with this section; and

(d) charge rates shall be maintained and recorded;

(2) sterilization by heating in a steam sterilizer so as to render the waste non-infectious:

(a) the operator shall have available and shall certify in writing that she or he understands written operating procedures for each steam sterilizer including time, temperature, pressure, type of waste, type of container(s), closure on container(s), pattern of loading, water content, and maximum load quantity;

(b) infectious waste shall be subjected to sufficient temperature, pressure and time to kill *Geobacillus stearothermophilus* spores or induce a complete color change in an approved steam sterilization integrator when either indicator is located in the center of the waste load being decontaminated;

(c) unless a steam sterilizer is equipped to continuously monitor and generate a printed paper record of time, temperature and pressure during the entire length of each sterilization cycle, a chemical indicator shall be attached to each package of infectious waste that will visually demonstrate at the end of the autoclave cycle that each package was exposed to a temperature of at least 250 degrees fahrenheit or 121 degrees celsius in the presence of steam under pressure was reached during the process; the original printed record generated by the autoclave must be maintained for three years;

(d) each sterilization unit shall be evaluated for effectiveness with spores of *Geobacillus stearothermophilus* or approved steam sterilization integrator at least once each 40 hours of operation; and

(e) a written log shall be maintained for each sterilization unit which contains:

- (i) date, time and load number for each load;
- (ii) amount per load;
- (iii) duration of the cycle; and
- (iv) the operator's name;

(3) discharge to a sewage treatment system that provides secondary treatment of waste, if the waste is liquid or semi-solid and approved in writing by the operator of the sewage treatment system; or

(4) other products or methods may be approved by order of the secretary which provide:

(a) a 6Log10 reduction in *mycobacteria* of *Mycobacterium phlei* or *Mycobacterium bovis* (BCG) or if specifically approved, other *Mycobacterium* species;

(b) a 4Log10 reduction in bacterial spores of *Geobacillus stearothermophilus*, *Bacillus atrophaeus* or if specifically approved, other species of spore-forming bacterium; and

(c) verification that the species used in Subparagraphs (a) and (b) of Paragraph (4) of this subsection are the species indicated and that the strain used is appropriate for the proposed method.

G. The following requirements and condition shall apply to any person seeking approval from the secretary for a treatment method under Paragraph (4) of Subsection F of this section:

(1) the person shall provide any information requested by the secretary within the time period specified by the secretary;

(2) the request for approval shall be approved, approved with terms and conditions, or denied by the secretary;

(3) within 45 days from the end of each calendar year, manufacturers of on-site treatment or processing products approved by the secretary shall submit an annual report to the department that includes:

(i) current manufacturer's company name, contact names, addresses, and telephone numbers;

(ii) a current list of product consumers or clients in New Mexico identified as generators of infectious waste under Subsection A of 20.9.8.13 NMAC, with contact names, addresses, and telephone numbers;

(iii) proof of current registration with the U.S. EPA, if required under the Federal Insecticide, Fungicide, and Rodenticide Act;

(iv) a current material safety data sheet for any materials used in the treatment method;

(v) a current copy of the manufacturer's instructions as printed on the product and a copy of the most recent operator's manual, if not previously submitted; and

(vi) proof of current registration with the New Mexico department of agriculture, if required under the New Mexico Pesticide Control Act;

(4) the secretary may withdraw the approval of an on-site processing product if the product fails to properly treat infectious waste as claimed, or if the on-site processing product or method is altered in any manner; to withdraw the approval, the secretary shall issue an order withdrawing the approval; the interested person may appeal the secretary's order by filing a request for hearing within 30 days of the date of the secretary's order; the procedures set forth in Adjudicatory Procedures - Environment Department, 20.1.5 NMAC shall apply to the appeal.

[20.9.8.13 NMAC - Rp, 20 NMAC 9.1.VII.706, 8/2/2007]

**20.9.8.14 ASH:**

A. Transporters of ash shall:

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

(2) cover vehicles to prevent fugitive dust loss during transport; and

(3) line or seal vehicles in a manner to prevent any leakage of liquids or fugitive dust during transport.

B. The landfill owner or operator that accepts ash shall:

(1) prepare an excavation to receive non-hazardous ash;

(2) provide a ground water monitoring system and a leachate collection system unless an adequate demonstration is made to the secretary that such systems are not necessary;

(3) keep the ash wetted to prevent fugitive emissions prior to covering;

(4) unload transport vehicles at the bottom of the excavations; and

(5) completely cover the ash within 24 hours with a minimum of six inches of clean non-waste containing material, or other material approved by the secretary; if the ash is containerized, an alternate frequency may be specifically approved.

C. The landfill owner or operator that accepts ash shall provide barriers adequate to control public access and shall:

(1) limit access to the ash site to no more than two entrances, by:

(a) gates that can be locked when left unattended; and

(b) fencing adequate to deter access by the general public; or

(2) when excavations are used at a landfill, isolate such excavations from the rest of the facility in a manner to deter access by the general public.

D. Ash that is temporarily stored at a generation site awaiting transportation shall be stored in a manner so as to prevent fugitive dust emissions.

[20.9.8.14 NMAC - Rp, 20 NMAC 9.1.VII.707, 8/2/2007]

#### **20.9.8.15 PETROLEUM CONTAMINATED SOILS:**

A. The generator of petroleum contaminated soil shall assure that all petroleum contaminated soils to be disposed, processed, composted, or transformed at a solid waste facility shall be tested under the requirements of 20.9.8.11 NMAC.

(1) All soils that are suspected to be contaminated with petroleum products shall be tested for total petroleum hydrocarbons (TPH) and other contaminants as required by the disposal management plan to determine the contaminants of the soil.

(2) The frequency of sampling shall be one representative sample per 100 cubic yards of contaminated soil, unless an alternate frequency is permitted or specifically approved by the secretary upon a demonstration that the contaminated soil is homogeneous.

(3) Copies of the results from the laboratory analyses shall be placed in the operating record.

B. Petroleum contaminated soils containing free liquid shall not be accepted at a solid waste facility. When the soil can pass the paint filter liquids test, the test results shall be placed in the daily operating record and made available to the secretary upon request.

C. Petroleum contaminated soil may be stored temporarily or remediated at a solid waste facility in a bermed area on an impermeable liner or in a manner that does not contaminate ground water, surface water, or uncontaminated soil above regulatory limits. The method of storage, remediation, and testing shall be described in the disposal management plan. Remediation shall be complete when the following conditions are met in a soil sample:

(1) the sum of benzene, toluene, ethylbenzene, and xylene isomer concentrations is less than 500 mg/Kg, with benzene individually less than 10 mg/Kg; and

(2) the TPH concentration is less than 1,000 mg/Kg.

D. Remediated petroleum contaminated soil may be disposed at a landfill authorized to accept petroleum contaminated soils. Petroleum contaminated soils that have been remediated at the landfill may be removed only if the soil complies with applicable environmental laws. Remediated petroleum contaminated soil may not be removed from the facility for beneficial use as clean fill, as the soil does not constitute clean fill as defined in Paragraph (4) of Subsection C of 20.9.2.7 NMAC.

E. Uncontaminated or remediated soils shall not be mixed with contaminated soils.

F. The owner or operator shall provide a written report to the department documenting remediation.

G. Permitted facilities not otherwise authorized to accept petroleum contaminated soil for remediation may remediate petroleum contaminated soil generated at the facility, provided the volume of contaminated soil does not exceed 50 cubic yards and the area where the petroleum contaminated soil is remediated is restricted from public access. Remediation shall be complete when the soil meets the standards in 20.5.12.1202 NMAC or other applicable standards.

[20.9.8.15 NMAC - Rp, 20 NMAC 9.1.VII.708, 8/2/2007]

**20.9.8.16 SLUDGE:**

A. The owner or operator of a landfill may dispose or use sludge as an amendment to intermediate or final cover material provided:

(1) the landfill owner or operator has been issued a permit to dispose of sludge or has received specific approval from the secretary to use sludge as an amendment to intermediate or final cover material, respectively;

(2) the sludge does not exceed the test parameters specified in Subsection D of this section; and

(3) the sludge contains no free liquids as determined by the paint filter liquids Test (U.S. EPA test method 9095), unless permitted to do otherwise under 20.9.4.17 NMAC.

B. The owner or operator of a solid waste facility that is authorized to accept sludge shall have an approved disposal management plan that shall, at a minimum:

(1) describe the methods used to:

(a) obtain representative samples of sludge for analysis; and

(b) analyze the sludge for the parameters specified in Subsection D of this section to demonstrate the sludge is non-hazardous and passes the paint filter liquids test, unless otherwise permitted under 20.9.4.17 NMAC;

(2) identify the laboratory used to analyze the sludge and include a certification that, to the best of the preparer's knowledge and belief, the laboratory follows quality assurance and quality control procedures in accordance with U.S. EPA approved methods;

(3) describe the transport method, indicate transportation routes that will be used by the transport vehicles, and demonstrate that the transport method will prevent leaks and litter;

(4) describe the anticipated volumes to be transported and total time period for disposal of any sludges;

(5) describe any plans for continuation of landfill disposal of the sludge, including how often sludge will be tested and transported to the landfill and how long the sludge will be stored at the landfill prior to disposal;

(6) provide a site map indicating the solid waste facility boundaries, the location of the sludge disposal area, and the routes of the disposal vehicles once they enter the facility; and

(7) include the portion of the facility's contingency plan a section describing methods for clean-up if an accident should occur during transport or disposal;

C. In addition to the requirements of Subsection A of this section, all owners or operators that dispose of sewage sludge or use sewage sludge as an amendment to cover material at a landfill shall meet the following requirements prior to disposal or use as a cover material amendment:

(1) obtain at least one representative sample per 100 cubic yards of sludge for analysis of the parameters listed in Subsection D of this section, but an alternate frequency may be permitted or specifically approved by the secretary if a demonstration is made that the sludge is homogeneous;

(2) cover the sludge with six inches of clean earthen material or other suitable material at the end of the day in order to be excluded from the 40 CFR Part 503 pathogen reduction criteria;

(3) restrict the treatment area from public access until the sludge is either placed in a disposal cell and covered or until it meets the requirements of 40 CFR Part 503; and

(4) ensure that all sewage sludge complies with 40 CFR Part 503, Subpart B before it is used as an amendment to intermediate or final cover.

D. Prior to delivery of sludge to a solid waste facility for disposal, the generator shall test a representative sample for the following parameters to determine if it exceeds the specified limits below:

(1) no free liquids as determined by paint filter liquids test (U.S. EPA test method 9095), unless exempt in accordance with 20.9.4.17 NMAC;

(2) percent solids (no specified limits);

(3) pH, within the range of 2.0 to 12.5;

(4) polychlorinated biphenyls (PCB's), less than 50 mg/Kg; and

(5) toxicity characteristic leaching procedure (TCLP) (U.S. EPA test method 1311), for the following parameters and maximum allowable concentrations:

(a) arsenic, 5.0 mg/L;

(b) benzene, 0.5 mg/L;

(c) cadmium, 1.0 mg/L;

(d) chlordane, 0.03 mg/L;

(e) chromium, 5.0 mg/L;

(f) 2,4-Dichlorophenoxy-acetic acid, 10.0 mg/L;

(g) lead, 5.0 mg/L;

(h) lindane, 0.4 mg/L;

(i) mercury, 0.2 mg/L;

(j) methyl ethyl ketone, 200.0 mg/L; and

(k) toxaphene, 0.5 mg/L.

[20.9.8.16 NMAC - Rp, 20 NMAC 9.1.VII.709, 8/2/2007]

**20.9.8.17 PACKING HOUSE AND KILLING PLANT OFFAL:**

The owner or operator of a solid waste facility that is authorized to accept offal shall have an approved disposal management plans for packing house and killing plant offal ensuring that, prior to disposal at the working face of a landfill, the wastes shall:

- A. pass the paint filter liquids test (U.S. EPA test method 9095);
- B. be mixed with soil, in a separate area of the facility, to a consistency that will support compaction and cover material; and
- C. be covered immediately after disposal.

[20.9.8.17 NMAC - Rp, 20 NMAC 9.1.VII.710, 8/2/2007]

#### **20.9.8.18 DISPOSAL OF SPECIAL WASTE NOT OTHERWISE SPECIFIED:**

Any solid waste facility owner or operator who wishes to be permitted to receive special wastes that do not have specified disposal requirements shall submit a disposal management plan, as specified in Subsection C of 20.9.3.9 NMAC, to the department for approval.

[20.9.8.18 NMAC - Rp, 20 NMAC 9.1.VII.711, 8/2/2007]

#### **20.9.8.19 MANIFEST REQUIREMENTS:**

A. Each generator or his authorized agent shall prepare a manifest to accompany each load of special waste, including:

- (1) the name, address and telephone number of the generator and origin of the special waste;
- (2) the name, address and telephone number of all haulers in the order each will be transporting the waste;
- (3) the name, site address, telephone number and identification number of the solid waste facility to which the waste is to be delivered;
- (4) the type and proper name of waste being shipped;
- (5) the total weight or volume of waste prior to shipment from the generator;
- (6) the type and number of containers in the shipment; and
- (7) any special handling instructions.

B. The generator or his authorized agent shall sign the manifest and obtain the signature of the initial transporter and date of acceptance on the manifest, and shall

retain a copy of the manifest. Each hauler shall obtain the signature of the individual who accepts the special waste for storage, further transportation or disposal, retain a copy of the manifest, and provide the original manifest to the next hauler or solid waste facility operator who receives the special waste.

C. The manifest shall accurately reflect the required information and shall be signed and dated by the generator and each hauler of the special waste, and by the solid waste facility owner or operator, acknowledging delivery, weight or volume, and receipt of the special waste. All signatories shall be duly authorized agents of their organizations. The generator shall keep a copy of the originating manifest for three years.

D. Upon discovery of any significant discrepancy including, but not limited to, factual misrepresentation on the manifest, irregularities in transportation, discharges, or any unauthorized action in regard to the shipment, delivery, or disposal of the solid waste, the person discovering the discrepancy shall notify the department, the generator, hauler, and the solid waste facility operator in writing within 24 hours.

E. Within 30 days of receipt of a special waste shipment at the solid waste facility, the owner or operator shall send the original signed copy of the manifest to the generator, acknowledging receipt of the shipment. The facility owner or operator shall list any discrepancies on the manifest. Other methods of return of the manifest may be allowed upon specific approval from the secretary.

F. A copy of the manifest shall be retained by each hauler, and solid waste facility operator for their operating records. The generator shall retain for a period of three years both the originating copy and the returned original manifest signed by the solid waste facility owner or operator and all haulers transporting the waste. Haulers shall retain a copy of the manifest for a period of three years.

G. Copies of the manifest shall be retained by the facility owner or operator throughout any post-closure period.

[20.9.8.19 NMAC - Rp, 20 NMAC 9.1.VII.712, 8/2/2007]

## **PART 9: SOLID WASTE FACILITY GROUND WATER MONITORING SYSTEM PLAN AND GROUND WATER MONITORING PLAN; CORRECTIVE ACTION**

### **20.9.9.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.9.9.1 NMAC - Rp, 20 NMAC 9.1.I.001, 8/2/2007]

### **20.9.9.2 SCOPE:**

This part applies to all solid waste facilities.

[20.9.9.2 NMAC - Rp, 20 NMAC 9.1.1.002, 8/2/2007]

**20.9.9.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.9.3 NMAC - Rp, 20 NMAC 9.1.1.003, 8/2/2007]

**20.9.9.4 DURATION:**

Permanent.

[20.9.9.4 NMAC - Rp, 20 NMAC 9.1.1.004, 8/2/2007]

**20.9.9.5 EFFECTIVE DATE:**

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.9.5 NMAC - Rp, 20 NMAC 9.1.1.005, 8/2/2007]

**20.9.9.6 OBJECTIVE:**

The objective of Part 9 of Chapter 9 is to establish a rule governing solid waste facility ground water monitoring and corrective action requirements.

[20.9.9.6 NMAC - Rp, 20 NMAC 9.1.1.006, 8/2/2007]

**20.9.9.7 DEFINITIONS:**

**[RESERVED]**

[See 20.9.1 NMAC for Definitions.]

**20.9.9.8 GROUND WATER MONITORING APPLICABILITY:**

A. The owner or operator of a municipal or special waste landfill, unless it is a category 1 landfill, is waived under 20.9.2.14 NMAC, or is suspended under Subsection C of this section, shall submit, obtain approval of, and implement a ground water monitoring system plan and a ground water monitoring plan in accordance with the following:

(1) owners or operators of category 4 landfills and landfills seeking approval of lateral expansions shall obtain approval of a ground water monitoring system plan

and ground water monitoring plan in compliance with 20.9.9 NMAC prior to placement of waste in the landfill or lateral expansion, as part of their permit or permit modification; owners or operators of category 4 landfills and landfills making lateral expansions shall implement and comply with their ground water monitoring system plan and ground water monitoring plan as approved;

(2) owners or operators of category 3 landfills or landfills that closed on or after October 9, 1993 shall submit and obtain approval of a ground water monitoring system plan and ground water monitoring plan in compliance with 20.9.9 NMAC as part of their permit or closure or post closure care plan, and shall implement and comply with the approved ground water monitoring system plan and ground water monitoring plan; and

(3) owners or operators of category 2 landfills shall comply with 20.9.9 NMAC, with the exception that the ground water sampling parameters may be limited to those approved in the closure and post-closure care plan;

(4) the secretary may require monitoring for additional parameters as necessary to protect the public health, welfare and the environment.

B. Construction and demolition landfills, scrap tire monofills, and asbestos monofills are not required to comply with the ground water monitoring requirements of 20.9.9 NMAC unless required in the permit, or if the secretary orders groundwater monitoring, based on a finding that there is a potential for constituents to migrate from the facility to the uppermost aquifer. If contamination is detected at a construction and demolition landfill, scrap tire monofill or asbestos monofill, the requirements of 20.9.9 NMAC shall thereafter apply.

C. The secretary may suspend part or all of the ground water monitoring requirements of 20.9.9.9 - 20.9.9.13 NMAC if the owner or operator demonstrates that there is no potential for migration of constituents referenced in 20.9.9.20 NMAC from the landfill to the uppermost aquifer during the active life or post-closure care period of the landfill. This demonstration shall be certified by a qualified ground water scientist and presented in the permit application or a permit modification or petition (from non-permitted landfills) for approval by the secretary. For category 2 landfills that closed prior to receiving a solid waste facility permit, the demonstration shall be presented in an application for a closure and post closure care plan or an application to modify the approved closure and post closure care plan. The demonstration shall include:

(1) site-specific field measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport;

(2) contaminant fate and transport predictions that maximize contaminant migration and consider impacts on public health, welfare and environment; and

(3) a plan for periodic leak detection or vadose zone monitoring or ground water monitoring in compliance with Subsection N of 20.9.9.9 NMAC may be implemented as a secondary monitoring approach to support approval of a monitoring suspension.

D. If a suspension is granted, the secretary may require the owner or operator to conduct periodic ground water or vadose zone monitoring and leak detection at any landfill during the active life or post-closure care period as necessary to protect the public health, welfare or environment.

E. If ground water contamination is detected after a suspension has been granted pursuant to Subsection C of this section, the suspension is revoked and the requirements of 20.9.9 NMAC shall apply, unless the owner or operator can demonstrate that ground water cannot be adversely affected and there is no risk to human health or the environment. If contaminants are detected in vadose zone monitoring instruments or a leak is detected after a suspension has been granted pursuant to Subsection C of this section, actions specified in the vadose zone monitoring or leak detection plan must be undertaken to respond.

F. The secretary may require the owner or operator to conduct periodic ground water or vadose zone monitoring at any landfill for which ground water monitoring has been waived under 20.9.2.14 NMAC during the active life or post-closure care period to demonstrate the landfill is not contaminating ground water.

[20.9.9.8 NMAC - Rp, 20 NMAC 9.1.VIII.801, 8/2/2007]

### **20.9.9.9 GROUND WATER MONITORING SYSTEMS AND GROUND WATER MONITORING SYSTEM PLANS:**

A. A ground water monitoring system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground water samples from the uppermost aquifer that:

(1) represent the background quality of ground water that has not been affected by a release from the landfill as determined under 20.9.9.10 NMAC; and

(2) represent the quality of ground water passing the detection monitoring point which shall be at the waste management unit boundaries on land owned by the owner of the landfill:

(a) the downgradient monitoring system shall be installed at the detection monitoring point;

(b) when physical obstacles preclude installation of ground water monitoring wells immediately downgradient from an existing landfills, the secretary may approve a monitoring system plan that provides for an alternative detection monitoring point at the

closest practicable distances hydraulically downgradient from the landfill that ensure detection of ground water contamination in the uppermost aquifer.

B. The ground water monitoring system plan shall comply with this section and shall include a detailed plan for all wells, piezometers or other measurement and sampling devices and an explanation of the purpose and placement of each (with maps). The ground water monitoring system plan shall be certified that it is in compliance with this section by a qualified ground water scientist on a form provided by the department.

C. The ground water monitoring plan shall include a description of the hydrogeologic characteristics of the site, a geologic cross-section of the site, a description of ground water sampling and analysis procedures, and a detection monitoring plan, and shall comply with 20.9.9 NMAC. The ground water monitoring plan shall be certified that it is in compliance with 20.9.9 NMAC by a qualified ground water scientist on a form provided by the department.

D. The owner or operator shall comply with the ground water monitoring system plan and ground water monitoring plan approved by the department throughout the active life and post-closure care period of each landfill subject to the requirements of 20.9.9 NMAC. The secretary may require monitoring for additional constituents, parameters and frequency as necessary to protect the public health, welfare and the environment. No change shall be made to the approved ground water monitoring system plan or ground water monitoring plan without a specific approval by the department.

E. Owners or operators shall not install or decommission any monitoring well, piezometer, or other ground water measurement, sampling, or analytical device unless it is in accordance with an approved ground water monitoring system plan. The owner or operator shall submit a written notice of intent to the department at least 14 days prior to the installation or decommissioning of any monitoring wells or piezometers. The notice shall include a statement, on a form provided by the department, that the installation or decommissioning of any monitoring well complies with this section and the approved ground water monitoring system plan.

F. The owner or operator shall submit an installation report to the department within 90 days after the installation of a monitoring well or piezometer. The report shall include the following documentation.

(1) A certification by a qualified ground water scientist that the monitoring device has been installed in compliance with the approved ground water monitoring system plan and 20.9.9 NMAC.

(2) A construction and lithologic log for each monitoring well or piezometer. The lithologic log shall be drawn to a scale of one inch equals ten feet, except if the boring is greater than 200 feet, then a scale of one-half inch equals ten feet may be

used, graphically depicting the initial depth at which ground water was encountered and the soil or rock strata penetrated and describing each layer.

(a) If soil was encountered, the log should indicate the color, degree of compaction, moisture content plus any additional information necessary for an adequate visual description and classification of each stratum based on the unified soils classification system.

(b) If rock was encountered, the log should include a detailed lithologic description, including rock type, degree of induration, presence of fractures, fissility, and porosity (including vugs) plus any other information necessary for an adequate description. All field notes made by the qualified ground water scientist shall be made available on request of the department.

G. A copy of all construction and lithologic logs, and all sampling data from groundwater monitoring shall be placed in the operating record.

H. The secretary may approve an alternate detection monitoring point in the monitoring system plan if it is located 150 meters or less from the waste management unit boundary and it is located on land owned by the owner of the landfill. When approving an alternate detection monitoring point under this section, the secretary shall consider at least the following factors:

- (1) the hydrogeologic characteristics of the facility and surrounding land;
- (2) the volume and physical and chemical characteristics of the leachate;
- (3) the quantity, quality, and direction of flow of the ground water;
- (4) the proximity and withdrawal rate of the ground water users;
- (5) the availability of alternative drinking water supplies;
- (6) the existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;
- (7) public health, safety, and welfare effects; and
- (8) the practicable capability of the owner or operator.

I. The secretary may approve, in the ground water monitoring system plan or closure and post-closure care plan, a multiunit ground water monitoring system instead of separate systems for each landfill where the facility has several landfills, provided the multiunit system meets the appropriate requirements of this part and will be as

protective of public health, welfare and the environment as individual monitoring systems for each landfill, based on the following factors:

- (1) number, spacing, and orientation of the landfills;
- (2) hydrogeologic setting;
- (3) site history;
- (4) engineering design of the landfills; and
- (5) types of waste accepted at the landfills.

J. Unless otherwise approved by the department in the ground water monitoring system plan or by specific approval, monitoring wells shall be constructed in such a manner that the integrity of the bore-hole and well is maintained and is in accordance with American society of testing materials method D-5092 or the following requirements:

- (1) the bore-hole shall be drilled a minimum of 4 inches larger than the casing diameter to allow for the emplacement of sand and sealant;
- (2) care shall be taken not to introduce contamination to the well;
- (3) the well shall be developed so that ground water flows freely through the screen and to decrease turbidity, and that all sediment is removed from the well;
- (4) the casing shall, unless otherwise approved by the secretary, consist of schedule 40 or heavier threaded PVC pipe of not less than 2 inches diameter;
  - (a) the casing shall extend from the top of the screen to at least one foot above ground surface;
  - (b) the casing top shall be protected by a cap and a locking shroud shall protect the exposed casing; and
  - (c) the shroud shall be large enough to allow easy access for removal of the plastic cap;
- (5) the screen shall be at least a 20-foot section of machine slotted or other manufactured screen; a slot size of 0.01-inch generally is adequate for most installations; no on-site or hack-saw slotting is permitted;
- (6) if the uppermost aquifer is unconfined; the top of the screen shall be 5 feet above the water table to allow for seasonal fluctuations;

(7) if the uppermost aquifer is confined, the top of the screen shall be at the location of the geologic boundary between the top of the aquifer and the bottom of the confining unit;

(8) centralizers shall be placed at the top and the bottom of the screen;

(9) an annular space from 2 feet below to 2 feet above the screen shall be packed with sand;

(a) the sand shall be clean and medium to coarse grained;

(b) the sand shall be properly sized to prevent fines from entering the well;  
and

(c) a tremmie pipe shall be used for sand placement in deeper wells when appropriate;

(10) the annular space for at least 2 feet above the sand pack shall be grouted or sealed;

(a) pressure grouting with bentonite or cement using a tremmie pipe is preferred; or

(b) alternatively, a bentonite seal may be installed using bentonite pellets, 1/4 or 1/2 inch in size;

(11) the annular space above the seal shall be fully sealed using grout or bentonite to within 3 feet of the ground surface;

(12) the annular space above the cuttings shall be filled with bentonite-cement grout to within 3 feet of the ground surface;

(13) the remaining 3 feet shall be filled with concrete (expanding cement); and

(14) a concrete slab with a minimum 2-foot radius and a 4-inch thickness shall be poured around the shroud; the pad shall be sloped so that rainfall and run-off flows away from the shroud.

K. The casing of each well or wells that will be used to monitor ground water shall be surveyed, referenced to a standard grid, and subsequently mapped by a licensed surveyor. The location of the well shall be determined within one-tenth of a foot, and the height above sea level at the top of the casing shall be determined within one-hundredth of a foot. This information shall be submitted to the department with the installation report required in Subsection F of 20.9.9.9 NMAC.

L. The monitoring wells, piezometers, and other measurement, sampling, and analytical devices shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring plan.

M. The number, spacing, and depths of monitoring systems shall be based upon site-specific technical information that includes thorough characterization of:

(1) aquifer thickness, ground water flow rate, and flow direction, including seasonal and temporal fluctuations in ground water flow; and

(2) saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer; and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities.

N. Vadose zone monitoring or leak detection systems, if required by the secretary pursuant to Subsections C or F of 20.9.9.8 NMAC, shall include:

(1) direct and indirect monitoring techniques such as:

(a) permanent monitoring stations such as those which utilize access tubes for neutron moderation instrumentation, time domain reflectometry (TDR) probes, capacitance probes or other permanently installed devices;

(b) nested piezometers when used for monitoring perched water or locally saturated portions of the vadose zone;

(c) soil gas measurements;

(d) lysimeters;

(e) electronic leak detectors; and

(f) other devices or methods as approved in the permit ;

(2) an adequate frequency of testing and a sufficient number of sampling points at appropriate locations and depths to determine a change in soil characteristics; and

(3) an action plan that addresses potential vadose zone contamination and the sources of the contamination.

O. Amendments to an approved groundwater monitoring system plan shall be by specific approval.

[20.9.9.9 NMAC - Rp, 20 NMAC 9.1.VIII.802, 8/2/2007]

**20.9.9.10 GROUND WATER MONITORING PLAN; SAMPLING AND ANALYSIS; ESTABLISHING BACKGROUND CONCENTRATION LEVELS AND ASSESSMENT MONITORING LEVELS:**

A. Ground water monitoring plans shall describe in detail all aspects of the landfill's proposed ground water monitoring program. It shall include descriptions of sampling and analysis procedures to be used, proposed sampling frequencies, test methodologies, procedures that will be used to establish background concentrations of all constituents and parameters listed in 20.9.9.20 NMAC, assessment monitoring levels (AMLs), and practical quantitation limits (PQL) for each constituent listed in 20.9.9.20 NMAC, and any other information describing the program as required by this section.

B. The ground water monitoring plan shall include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground water quality at the upgradient and downgradient wells. The plan shall include procedures and techniques for:

- (1) sample collection;
- (2) sample preservation and shipment;
- (3) analytical procedures;
- (4) chain of custody control; and
- (5) quality assurance and quality control.

C. The ground water monitoring plan shall describe sampling and analytical methods that are appropriate for ground water sampling and that accurately measure constituents and other monitoring parameters in ground water samples. A PQL for each constituent listed in 20.9.9.20 NMAC shall be proposed in the plan based on the proposed sampling and analytical method. A PQL will not be approved unless the level is the lowest concentration that can be reliably determined by an analytic methodology acceptable to the department. Ground water samples shall not be field-filtered prior to laboratory analysis unless otherwise allowed under 40 CFR Part 258 and the approved ground water monitoring plan. The owner or operator shall conduct ground water sampling in accordance with the "*EPA solid waste disposal facility criteria technical manual*" (1998, EPA 530-R-93-017, revised April 13, 1998) unless otherwise approved in the ground water monitoring plan.

D. Ground water elevations shall be measured within one-hundredth of a foot in each well immediately prior to purging, each time ground water is sampled. The owner or operator shall determine the rate and direction of ground water flow each time ground water is sampled. Ground water elevations in wells which monitor the same waste

management area shall be measured within a period of time short enough to avoid temporal variations in ground water flow which could preclude accurate determination of ground water flow rate and direction.

E. The owner or operator of a landfill seeking a background determination shall apply for specific approval of background ground water quality concentrations for each constituent and parameter referenced in Subsections A and C of 20.9.9.20 NMAC, and as required in the landfill's approved ground water monitoring plan within 14 months after any waste disposal at the landfill or lateral expansion. The application shall propose background concentrations based upon the following:

(1) the sampling results from at least four independent samples taken during the first semiannual sampling event and at least one additional sample during the subsequent semiannual sampling event for each individual monitoring well;

(2) the first sampling event shall occur prior to any waste disposal at a new landfill or lateral expansion; and

(3) if a constituent is not detected in the sampling used to establish background concentrations, the owner or operator shall propose the PQL approved in the ground water quality monitoring plan as the background concentration.

F. The background ground water quality concentrations and values must be approved by the department in writing. Once background ground water quality concentrations and values for the constituents and the parameters referenced in Subsections A and C of 20.9.9.20 NMAC are approved for a landfill, an individual well comparison procedure shall be used to compare constituent concentrations and parameter values with background constituent concentrations, ground water protection standards and parameter values for purposes of detection and assessment monitoring. Alternatively, if it is in accordance with the approved ground water quality monitoring plan, the background levels established from hydraulically upgradient wells may be used for comparison purposes.

G. For category 4 and 5 landfills, a background determination shall be made at each monitoring well as specified in Subsection E of this section unless the owner operator demonstrates that hydrogeological conditions are such that sampling at upgradient wells will provide an indication of background ground water quality that is as representative or more representative than that provided by making a determination at each monitoring well.

H. For category 2 and 3 landfills, a background determination shall be made at each individual monitoring well as specified in Subsection E of this section, except when the concentration of a hazardous constituent at an upgradient well is lower than the concentration at a downgradient well, in which case the concentration of that constituent at the upgradient well shall be used as the background concentration, unless the owner or operator demonstrates that use of the downgradient well to determine the

background concentration of that constituent will provide an indication of background ground water quality that is as representative or more representative than that provided by the upgradient well.

I. The owner or operator shall identify ground water protection standards for which a numeric standard has been established and shall apply for specific approval of proposed assessment monitoring levels (AMLs) in compliance with 20.9.9.12 NMAC for constituents listed or referenced in Subsection A of 20.9.9.20 NMAC, and for the parameter of pH, within 90 days following approval of background ground water quality concentrations by the department. The ground water protection standard for a constituent and for pH shall be the more stringent of the maximum contaminant level (MCL) promulgated at 40 CFR 141, or the ground water protection standard established by the commission at 20.6.2.3103 NMAC.

J. The number of samples collected to establish ground water quality data shall be consistent with the appropriate statistical procedures determined pursuant to this section.

K. The owner or operator of a landfill using an individual well comparison procedure shall use one of the following statistical methods to compare an individual compliance well constituent concentration and parameter value with background constituent concentration and parameter value or the relevant ground water protection standard:

(1) a comparison using a t-interval or t-test with a type I error level of no less than 0.01 shall be made between the approved background concentration or value and any subsequent sample analysis results for each parameter or constituent from each individual well;

(a) background values and concentrations shall be established for each parameter or constituent for each individual well from at least four independent samples during the first semiannual sampling event and at least one additional sample during the subsequent semi-annual sampling event; and

(b) if the background concentration is below the practical quantitation limit (PQL), the PQL shall be used to establish background. A statistical method is not necessary for a comparison between the analytical results and the PQL; or

(2) another method that meets the performance standards of 40 CFR 258.53(h). The alternative must be approved in the ground water monitoring plan, and the owner or operator must demonstrate the method meets the performance standards of 40 CFR 258.53(h).

L. The owner or operator of a landfill using an upgradient well to establish background concentrations shall specify in the ground water monitoring plan one of the statistical methods described in 40 CFR 258.53(g). The statistical method to be used in

evaluating ground water monitoring data must be demonstrated to meet the performance criteria of 40 CFR 254.53(h).

(1) If the background concentration at the upgradient well is below the practical quantitation limit (PQL), the PQL shall be used to establish background; a statistical method is not necessary for a comparison between the analytical results and the PQL.

(2) The number of samples collected to establish ground water quality data must be consistent with the appropriate statistical procedure that meets the performance standards of 40 CFR 258.53(h).

M. Ground water samples for the constituents and values referenced in Subsections A and C of 20.9.9.20 NMAC shall be collected from each monitoring well at least semi-annually during the active life of the facility.

(1) At a new landfill, or at a lateral expansion, the first sampling event shall be prior to the receipt of any waste.

(2) Once background concentrations and values have been established and approved, the owner or operator shall conduct detection monitoring for all constituents and parameters listed in or referenced in Subsections A and C of 20.9.9.20 NMAC and determine whether or not the AML has been exceeded for any constituent referenced in Subsection A of 20.9.9.20 NMAC and for the parameter of pH, or as required in the particular ground water monitoring plan that applies to the landfill.

(3) In determining whether the AML has been exceeded, the owner or operator shall compare the ground water quality for each constituent at each monitoring well to the background value for that constituent, according to the statistical procedures and performance standards specified in the ground water monitoring plan and this section.

N. Ground water documentation shall be submitted to the department within 90 days of completing sampling, in a form acceptable to the department, for each sample, and a copy of all monitoring results shall be kept in the operating record. The documentation shall include:

- (1) the constituents and parameter tested;
- (2) the test method (U.S. EPA or equivalent) for each constituent and parameter;
- (3) the ground water protection standard for each constituent detected (if a numeric standard has been established);
- (4) the method detection limit (MDL) for each constituent;

- (5) the practical quantitation limit (PQL) for each constituent and parameter;
- (6) the well number and location for each sample;
- (7) the laboratory ID sample number;
- (8) chain of custody documentation;
- (9) the date sampled;
- (10) the date received at the laboratory;
- (11) the date analysis commenced;
- (12) results, with constituent or parameter, chemical abstract system number, concentration with units, approved AML, ground water protection standard, PQL, qualifier code (e.g., J, B, U, etc.), well number, and sample date;
- (13) sample preservation (field data);
- (14) field blank results, and trip blank results;
- (15) quality assurance/quality control summary report (laboratory blanks, spike recoveries, etc.);
- (16) anomaly report (non-conformance with quality assurance/quality control plan, corrective actions, etc.);
- (17) laboratory review (signature and date);
- (18) an updated ground water elevation contour map for the facility or, if ground water elevation data is insufficient to contour, then the ground water elevation for each monitoring well, prior to purging, reported on a well location map;
- (19) the approved background concentration levels as determined in accordance with Subsection E of this section; and
- (20) a certification by a qualified ground water scientist that AMLs have or have not been exceeded.

O. Amendments to an approved ground water monitoring plan shall be by specific approval.

[20.9.9.10 NMAC - Rp, 20 NMAC 9.1.VIII.803, 8/2/2007]

#### **20.9.9.11 DETECTION MONITORING PLAN:**

A. The owner or operator shall conduct detection monitoring at all ground water detection monitoring wells unless such monitoring has been suspended in accordance with Subsection C of 20.9.9.8 NMAC. The detection monitoring program shall include the monitoring for constituents and parameters listed and referenced in Subsection A of 20.9.9.20 NMAC, and shall be conducted at least semiannually during the active life and post-closure care period of the facility. After background concentrations have been approved as required in Subsection E of 20.9.9.10 NMAC for all constituents in Subsection A of 20.9.9.20 NMAC, the owner or operator may request a specific approval that the ground water detection monitoring program description be amended to:

(1) not require testing for particular constituents in Subsection A of 20.9.9.20 NMAC for a municipal landfill if it can be shown that the particular constituents are not reasonably expected to be in or derived from the waste contained in the landfill; and

(2) establish an alternate list of inorganic indicator parameters constituents for a landfill in lieu of some or all of the heavy metals listed or referenced in Subsection A of 20.9.9.20 NMAC if the alternative constituents provide a reliable indication of inorganic releases from the landfill to the ground water; in determining alternative constituents, the department shall consider the following factors:

(a) the types, quantities, and concentrations of constituents in wastes managed at the landfill;

(b) the mobility, stability, and persistence of constituents or their reaction products in the unsaturated earth zone beneath the landfill;

(c) the detectability of the constituents, and reaction products in the ground water; and

(d) the concentrations or values and coefficients of variation of levels of the constituents in the ground water;

(3) allow annual sampling of the approved alternate list after the first year based on the following factors:

(a) lithology of the aquifer and unsaturated zone;

(b) hydraulic conductivity of the aquifer and unsaturated zone;

(c) ground water flow rates;

(d) minimum distance between upgradient edge of the landfill and downgradient monitoring well screen (minimum distance of travel); and

(e) resource value of the aquifer.

B. Regardless of approval by the department of an alternate constituent list under Subsection A of this section, the minimum frequency for testing for all the constituents in Subsection A of 20.9.9.20 NMAC shall be at least once every five years in addition to the required frequencies for the alternate list.

C. If the owner or operator determines, as evidenced in the ground water monitoring data, that the AML has been exceeded for one or more of the constituents or parameters referenced in Subsection A of 20.9.9.20 NMAC or approved alternate constituent list at any monitoring well, the owner or operator:

(1) shall, within 14 days of this finding, notify the department of the exceedance and place a notice in the operating record indicating which constituents or values have exceeded approved AMLs; and

(2) shall submit, within 60 days of the finding, an assessment monitoring plan that meets the requirements of 20.9.9.13 NMAC;

(3) in addition, the owner or operator may submit, within 60 days after the finding, a demonstration that a source other than a landfill caused the contamination or that the AML exceedance resulted from an error in sampling, analysis, statistical evaluation, or natural variation in ground water quality; a report documenting this demonstration shall be certified by a qualified ground water scientist, shall be placed in the operating record, and shall be submitted to the department for specific approval; the department shall issue a specific approval or denial within 90 days approving or denying the demonstration; if the demonstration is denied, the assessment monitoring shall proceed according to the submitted plan within 90 days after the denial.

[20.9.9.11 NMAC - Rp, 20 NMAC 9.1.VIII.804, 8/2/2007]

#### **20.9.9.12 ASSESSMENT MONITORING LEVELS:**

A. Approved background ground water quality determinations shall be used as the baseline for determination of AMLs.

B. For all hazardous constituents, AMLs shall be 50 percent of the ground water protection standard.

C. If the background concentrations of any hazardous constituents is above 50 percent of the ground water protection standards, then the background concentration shall be the AML. Any statistically significant increase above the AML shall be an exceedance of the AML for that constituent.

D. If a ground water protection standard has not been established for a hazardous constituent, the AML shall be the background concentration or a 95 percent increase over the PQL of the constituent, whichever is greater.

E. For constituents identified in Subsections B and C of 20.6.2.3103 NMAC, the AMLs shall be 75 percent of the ground water protection standard, except pH, which shall be within the range of values shown in Subsection B of 20.6.2.3103 NMAC

F. If the background concentration of any constituent identified in Subsections B and C of 20.6.2.3103 NMAC is above 75 percent of the ground water protection standard, then the background concentration shall be the AML. Any statistically significant increase above the AML shall be an exceedance of the AML for that constituent.

G. If more than one toxic pollutant identified in 20.6.2.7 NMAC is detected, the toxic pollutant criteria of the commission rules for the combination of constituents shall be used to determine a ground water standard, using the methods described in Subsection I of 20.9.9.13 NMAC. The AML shall be 50 percent of the ground water standard, or the background concentration, whichever is greater. If the background concentration is greater than the ground water standard, then any statistically significant increase above the background concentration shall be an exceedance of the AML. However, this shall apply only in cases where such AMLs are more stringent than the AMLs otherwise determined under this section.

[20.9.9.12 NMAC - Rp, 20 NMAC 9.1.VIII.805, 8/2/2007]

### **20.9.9.13 ASSESSMENT MONITORING:**

A. Owners and operators shall conduct assessment monitoring whenever the AML has been exceeded for one or more constituent of Subsection A of 20.9.9.20 NMAC or an alternate constituent list approved under Subsection A of 20.9.9.11 NMAC unless a demonstration has been approved pursuant to Paragraph (3) of Subsection C of 20.9.9.11 NMAC. Assessment monitoring shall be conducted in accordance with an assessment monitoring plan, approved in accordance with Subsection C of 20.9.9.11 NMAC.

B. Within 90 days of the determination of an exceedance under Subsection M of 20.9.9.10 NMAC, and annually thereafter, the owner or operator shall sample and analyze the ground water for all constituents and parameters referenced and listed in Subsections B and C of 20.9.9.20 NMAC for each downgradient well. For any constituents detected in the downgradient wells as a result of the complete analysis, a minimum of four independent samples from each well (upgradient and downgradient) shall be collected and analyzed to establish background for the constituents for which background has not been established. Sampling data and proposed background concentration shall be submitted to the department within 180 days of the determination of an exceedance under Subsection M of 20.9.9.10 NMAC. The upgradient concentrations shall be presumed to be the background unless the owner or operator demonstrates that hydrogeological conditions are such that sampling at other points will provide an indication of background ground water quality that is as representative or more representative than that provided at the upgradient wells. The department shall

approve background levels for those detected constituents for which background concentrations have not previously been determined within 60 days, or the upgradient concentrations shall be deemed to be the background concentrations.

C. The department may specifically approve an alternative frequency or subset of wells for repeated sampling for assessment monitoring during the active life and post-closure care period of the facility. In determining an alternative frequency or subset of wells, the department shall consider:

- (1) lithology of the aquifer and unsaturated zone;
- (2) hydraulic conductivity of the aquifer and unsaturated zone;
- (3) ground water flow rate;
- (4) minimum distance between the waste management unit boundary and downgradient monitoring well screen;
- (5) resource value of the aquifer; and
- (6) nature of any constituents detected.

D. After obtaining the results from the sampling required by Subsection B of this section, the owner or operator shall:

- (1) within 14 days, notify the department in writing and document in the operating record any constituents that have been detected;
- (2) within 90 days and at least semiannually, resample all wells and analyze for all constituents in Subsections A and C of 20.9.9.20 NMAC and any constituents in Subsection B of 20.9.9.20 NMAC or an approved alternate list that have been detected; the department may specify an alternate monitoring frequency in accordance with Subsection A of 20.9.9.11 NMAC, but all constituents in Subsection B of 20.9.9.20 NMAC shall be sampled no less frequently than once every five years during the active life and post-closure care period.

E. If the concentration of each constituents in Subsection A of 20.9.9.20 NMAC, and each detected constituent of Subsection B of 20.9.9.20 NMAC is determined to be at or below the approved AML after two sampling events, the owner or operator shall notify the department in writing and may return to detection monitoring.

F. If the concentration of any constituent in 20.9.9.20 NMAC is above the AML, but below the corrective action level (CAL), the owner or operator shall continue assessment monitoring in accordance with this section.

G. If one or more constituents in 20.9.9.20 NMAC is detected above the CALs in any sampling event, the owner or operator shall:

(1) within 14 days of this finding, notify the department and all appropriate local government officials in writing;

(2) install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with this section within six months; the department may approve an extension for this installation and sampling for good cause for up to an additional six months of the finding of the exceedance;

(3) characterize the nature and extent of the release by installing additional monitoring wells as necessary within one year of the finding of the exceedance;

(4) notify area residents and land owners in the same manner as described in Subsection B of 20.6.2.4108 NMAC; and

(5) initiate an assessment of corrective measures as required by 20.9.9.15 NMAC within 90 days; or

(6) the owner or operator may demonstrate that a source other than the facility caused the contamination, or that the increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground water quality; a report documenting this demonstration shall be certified by a qualified ground water scientist and submitted to the department for review and approval; if a demonstration is specifically approved by the department, the owner or operator may return to detection monitoring; until a successful demonstration is made, the owner or operator shall comply with 20.9.9.12 - 20.9.9.20 NMAC, including initiating an assessment of corrective action.

H. Within 90 days after any AML exceedance, the owner or operator shall identify the ground water protection standard for each constituent in 20.9.9.20 NMAC that exceeded the AML in the ground water that was not identified pursuant to Subsection I of 20.9.9.10 NMAC. The owner or operator shall propose for department approval ground water protection standards for any constituent that exceeded the AML pursuant to Subsection B of this section and Paragraph (2) of Subsection D of this section that does not have an MCL or numeric standard in commission rules. The owner or operator shall make a demonstration that the proposed standard will be protective of the public health and the environment, in accordance with Subsection I of this section.

(1) The ground water protection standards for constituents shall be the more stringent of the MCL promulgated at 40 CFR 141, or the numeric standard established by commission rules.

(2) For hazardous constituents for which the background concentration is higher than the ground water protection standard, the background concentration shall be used as the ground water protection standard.

I. The secretary may establish an alternative ground water protection standard for constituents for which MCLs or commission standards have not been established. These ground water protection standards shall be appropriate health based levels that satisfy the following:

(1) the level is derived in a manner consistent with U.S. EPA guidelines for assessing the health risks of environmental pollutants;

(2) the level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act good laboratory practice standards or equivalent;

(3) for carcinogens, the level represents a concentration associated with an excess lifetime cancer risk of more than one cancer per 100,000 exposed persons; and

(4) for systemic toxicants, the level represents a concentration to which the human population could be exposed on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime; systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

J. In establishing ground water protection standards under Subsection I of this section, the secretary may consider the following:

(1) multiple contaminants in the ground water;

(2) exposure threats to sensitive environmental receptors; and

(3) other site specific exposure or potential exposure to ground water.

[20.9.9.13 NMAC - Rp, 20 NMAC 9.1.VIII.806, 8/2/2007]

#### **20.9.9.14 CORRECTIVE ACTION LEVELS:**

A. Background water quality data approved by the department shall be used as the baseline to determine corrective action levels (CALs).

B. For all constituents, CALs shall be the ground water protection standard.

C. If the background concentrations of any constituent is above what would otherwise be the ground water protection standards, then the background concentration shall be used as the CAL. Any statistically significant increase above the CAL shall be considered an exceedence of the CAL for that constituent.

D. If more than one potential toxic pollutant, as defined in 20.6.2.7 NMAC, is detected, the potential toxic pollutant criteria of the commission rules for the combination of constituents shall be used to determine the CALs. If the background concentration is greater than the ground water standard, then any statistically significant increase above the background concentration shall be an exceedence of the CAL. However, this shall apply only in cases where such CALs are more stringent than the CALs otherwise determined under this section.

[20.9.9.14 NMAC - Rp, 20 NMAC 9.1.VIII.807, 8/2/2007]

#### **20.9.9.15 ASSESSMENT OF CORRECTIVE MEASURES:**

A. Upon finding that any constituent listed in 20.9.9.20 NMAC has exceeded its CAL, the owner or operator shall initiate an assessment of corrective measures. Such an assessment shall be submitted to the department within 180 days of the finding.

B. The owner or operator shall continue to monitor in accordance with the assessment monitoring program as specified in 20.9.9.13 NMAC.

C. The assessment shall include a demonstration of:

- (1) the extent and nature of contamination;
- (2) the practical capabilities of remedial technologies in achieving compliance with ground water protection standards and other objectives of the remedy;
- (3) the availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
- (4) the desirability of utilizing technologies that are not currently available, but which may offer significant advantages over available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
- (5) the potential risks to public health, welfare and the environment from exposure to contamination prior to completion of the remedy;
- (6) the resource value of the aquifer including:
  - (a) current and future uses;
  - (b) proximity and withdrawal rate of users;
  - (c) ground water quantity and quality;
  - (d) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

- (e) the hydrogeologic characteristic of the facility and surrounding land;
- (f) ground water removal and treatment costs; and
- (g) the cost and availability of alternative water supplies;
- (7) the practicable capability of the owner or operator;
- (8) the performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts and control of exposure to any residual contamination;
- (9) the time required to begin and complete the remedy;
- (10) the costs of remedy implementation;
- (11) the institutional requirements for local permits or other environmental or public health requirements that may substantially affect implementation of the remedy(s);
- (12) the need for interim measures in accordance with provisions of Paragraph (3) of Subsection A of 20.9.9.17 NMAC;
- (13) an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives and evaluation factors of the remedy as described in 20.9.9.16 NMAC; and
- (14) other relevant factors.

D. The owner or operator shall discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties. Notice of the public meeting shall be provided the same as that specified in the Solid Waste Act for permit applications and Paragraph (4) of Subsection G of 20.9.9.13 NMAC. The public notice shall also contain the following information:

- (1) name, address, and telephone number of the owner or operator and contact person;
- (2) name and location of the facility;
- (3) meeting location, date, and time;
- (4) nature and extent of the plume;
- (5) brief description of the assessment of corrective measures and the preferred remedy of the owner or operator;

(6) location where the assessment of corrective measures can be reviewed;  
and

(7) information regarding the opportunity to submit oral or written comments at the public meeting, and until 30 days after the public meeting, regarding the assessment and proposed remedy for consideration by the department.

E. The owner or operator shall make a record of the public meeting and submit it to the department.

F. The secretary may, based on the initial assessment, order interim measures, in accordance with Paragraph (3) of Subsection A of 20.9.9.17 NMAC.

[20.9.9.15 NMAC - Rp, 20 NMAC 9.1.VIII.808, 8/2/2007]

#### **20.9.9.16 SELECTION OF REMEDY:**

A. Based on the results of the corrective measures assessment conducted under 20.9.9.15 NMAC, the owner or operator shall, within 120 days following the submission of the assessment of corrective measures, submit a proposed remedy to the department for review and approval that meets the standards listed in this section. The secretary may issue an order approving, approving with conditions, denying the proposed remedy, may require submission of an alternative proposed remedy, or may impose a remedy whether or not proposed by the owner or operator.

B. Prior to approving or imposing a remedy, the department shall hold a hearing on the remedy proposed by the owner or operator and any draft remedy proposed by the department. The owner or operator shall be required to provide notice of hearing on the proposed remedy or remedies in accordance with Section 74-9-22 NMSA 1978. Hearing procedures shall be in accordance with Permit Procedures – Environment Department, 20.1.4 NMAC.

C. The selected remedy shall:

- (1) be protective of public health, welfare and the environment;
- (2) attain the CAL;
- (3) control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases into the environment that may pose a threat to public health, welfare or the environment;
- (4) comply with standards for management of wastes as specified in Subsection C of 20.9.9.17 NMAC.

D. In its submission of a proposed remedy that meets the standards listed above, the owner or operator shall provide evidence demonstrating:

(1) the long and short term effectiveness and protectiveness of the potential remedy, along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(a) magnitude of reduction of existing risks;

(b) magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(c) the type and degree of long term management required, including monitoring, operation, and maintenance;

(d) short term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to public health, welfare and the environment associated with excavation, transportation, and redisposal of wastes;

(e) time until full protection is achieved;

(f) potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to public health, welfare and the environment associated with excavation, transportation, redisposal, or containment;

(g) long term reliability of the engineering and institutional controls; and

(h) potential need for replacement of the remedy;

(2) the effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(a) the extent to which containment practices will reduce further releases; and

(b) the extent to which treatment technologies may be used;

(3) the ease or difficulty of implementing a potential remedy based on consideration of the following factors:

(a) degree of difficulty associated with constructing the technology;

(b) expected operational reliability of the technology;

(c) need to coordinate with, and obtain necessary approvals and permits from, other agencies;

(d) availability of necessary equipment and specialists; and

(e) available capacity and location of needed treatment, storage, and disposal services;

(4) practicable capability of the owner or operator, including a consideration of the technical and economic capability; and

(5) the degree to which community concerns are addressed.

E. The owner or operator shall specify as part of the proposed selected remedy a schedule for initiating and completing remedial activities. Such a schedule shall provide for the initiation of remedial activities within a reasonable period of time, taking into consideration the factors listed in Subsection C of 20.9.9.15 NMAC.

F. In its submission of a proposed remedy under this section, the owner or operator may seek a determination that remediation of a contaminant to the CAL is not required as follows:

(1) if an exceedance of a commission standard would occur, the owner or operator shall seek a variance from the commission standard in accordance with Subsection E or F of 20.6.2.4103 NMAC and incorporate the terms and conditions of any such variance into the selected remedy and corrective action program; or

(2) the owner or operator may seek a determination from the secretary that remediation of a contaminant to the CAL (for CALs not based on a commission standard) is not required by submitting a written request to the secretary for a determination that attainment of the CAL is technically infeasible; the request shall include: a demonstration of technical or physical impossibility of attaining the CAL using potential remedies; the effectiveness of potential remedies; whether the proposed determination will allow a present or future hazard to public health or the environment; and any other information required by the secretary; in addition, the request shall propose an alternate CAL for the secretary's approval, based on the effectiveness of potential remedies and a site-specific risk assessment; the secretary may approve, approve with terms and conditions, or deny the requested determination.

G. A determination by the secretary pursuant to Subsection F of this section shall not affect the authority of the secretary to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize releases to the ground water, to prevent exposure of the ground water to concentrations that are technically practicable and significantly reduce threats to public health, welfare or the environment.

[20.9.9.16 NMAC - Rp, 20 NMAC 9.1.VIII.809, 8/2/2007]

**20.9.9.17 IMPLEMENTATION OF A CORRECTIVE ACTION PROGRAM:**

A. Based on the schedule approved by the secretary under Subsection F of 20.9.9.16 NMAC for initiation and completion of remedial activities, the owner or operator shall:

(1) establish and implement a corrective action ground water monitoring program that:

(a) at a minimum, meets the requirements of an assessment monitoring program under 20.9.9.13 NMAC;

(b) will indicate the effectiveness of the corrective action remedy; and

(c) demonstrates compliance with the corrective action levels;

(2) implement the corrective action remedy approved under 20.9.9.16 NMAC; and

(3) take any interim measures necessary to ensure the protection of public health, welfare and the environment; interim measures should, to the greatest extent practicable, be consistent with the objectives of, and contribute to the performance of, any remedy that may be required pursuant to 20.9.9.16 NMAC; the following factors shall be considered in determining whether interim measures are necessary:

(a) time required to develop and implement a final remedy;

(b) actual or potential exposure of nearby populations or environmental receptors to constituents;

(c) actual or potential contamination of drinking water supplies or sensitive ecosystems;

(d) further degradation of the ground water that may occur if remedial action is not initiated expeditiously;

(e) weather conditions that may cause constituents to migrate or be released;

(f) risks of fire or explosion, or potential for exposure to constituents as a result of an accident or failure of a container or handling system; and

(g) other situations that may pose threats to public health, welfare and the environment.

B. If the secretary determines, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of Subsection C of 20.9.9.16 NMAC are not being achieved through the remedy selected the secretary may issue an order requiring the owner or operator to propose, for

consideration by the secretary, other methods or techniques that could practicably achieve compliance with Subsection C of 20.9.9.16 NMAC. An owner or operator proposing an alternative remedy under this subsection shall comply with all factors and criteria of 20.9.9.15-16 NMAC.

C. All solid wastes that are generated pursuant to this section , or an interim measure required under Paragraph (3) of Subsection A of this section, shall be managed in a manner which:

- (1) is protective of public health, welfare and the environment; and
- (2) complies with applicable RCRA requirements, the Solid Waste Act and 20.9.2 - 20.9.10 NMAC.

D. Remedies selected pursuant to 20.9.9.16 NMAC shall be considered complete when:

(1) the owner or operator complies with the CALs at all points within the plume of contamination for a period of three consecutive years; the secretary may specify an alternative length of time during which the owner or operator shall demonstrate that concentrations of constituents referenced in 20.9.9.20 NMAC have not exceeded CALs provided the time is not less than eight consecutive calendar quarters with one sampling event per quarter, and taking into consideration:

- (a) extent and concentration of the release(s);
- (b) behavior characteristics of the hazardous constituents in the ground water;
- (c) accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that affect the accuracy; and
- (d) characteristics of the ground water; and

(2) all actions required to complete the remedy have been satisfied.

E. Upon completion of the remedy, the owner or operator shall notify the secretary in writing within 14 days with a certification that the remedy has been completed in compliance with the requirements of Subsection D of this section. The certification shall be signed by a qualified ground water scientist and submitted to the secretary for specific approval.

F. Upon approval of the certification that the corrective action remedy has been completed in accordance with the requirements under Subsection D of this section, the owner or operator shall be released from the requirements for financial assurance for corrective action under 20.9.10.12 NMAC.

G. In the event that new information becomes available which indicates a constituent release may pose a threat to human health or welfare or the environment, the department may require continued compliance with 20.9.9.17 NMAC, or further investigation or selection of a remedy as necessary.

[20.9.9.17 NMAC - Rp, 20 NMAC 9.1.VIII.810, 8/2/2007]

#### **20.9.9.18 APPROVED LABORATORIES:**

For the purpose of determining compliance with the requirements of 20.9.9 NMAC, within one year of the effective date of this part, analytical results may be considered only if they have been determined by a laboratory acceptable to the department as specified in this section. The department may accept analytical results if they have been determined by:

A. the scientific laboratory division of the New Mexico department of health or other laboratories certified by the U.S. EPA; a laboratory, other than the scientific laboratory division, shall provide the department documentation of its certification by the U.S. EPA;

B. a laboratory certified by an official agency of a state and approved by the department; a laboratory shall provide the department documentation of its certification by an official agency of a state for review and approval; or

C. a laboratory accredited by an approved third party accreditation organization and approved by the department; a third party accreditation organization shall submit a quality assurance project plan to the department for review and approval.

[20.9.9.18 NMAC - N, 8/2/2007]

#### **20.9.9.19 DEPARTMENT APPROVAL OF BACKGROUND AND TOXIC POLLUTANT STANDARDS:**

All background levels proposed by the owner or operator are subject to review and approval by the secretary. All ground water protection standards proposed for toxic pollutants listed in 20.6.2.7 NMAC are subject to review and approval by the secretary.

[20.9.9.19 NMAC - N, 8/2/2007]

#### **20.9.9.20 CONSTITUENTS AND PARAMETERS:**

Constituents and parameters to be evaluated under the requirements of 20.9.9.1 - 20.9.9.19 NMAC include:

A. every constituent listed in the following:

(1) 40 CFR 258 Appendix I;

(2) 20.6.2.3103 NMAC, including the parameter of pH;

B. all constituents listed in 40 CFR 258 Appendix II, 20.6.2.3103 NMAC, potential toxic pollutants listed in 20.6.2.7 NMAC; and

C. the following constituents and parameters:

- (1) calcium (CAS No. 7440-70-2);
- (2) magnesium (CAS No. 7439-95-4);
- (3) potassium (CAS No. 7440-09-7);
- (4) sodium (CAS No. 7440-23-5);
- (5) ammonia (CAS No. 1331-21-6);
- (6) bicarbonate alkalinity;
- (7) carbonate alkalinity;
- (8) total nitrogen;
- (9) total kjeldahl nitrogen;
- (10) total organic carbon;
- (11) phosphate;
- (12) specific conductance;
- (13) temperature;
- (14) depth to ground water; and
- (15) ground water elevation.

D. When additional constituents are added to ground water monitoring requirements through updates to the rules cited, the new constituents shall be added to the routine sampling frequency for a particular landfill. Background quality for the new constituent shall be determined after a sufficient number of samples are collected during routine sampling, unless a new constituent is detected above the AML, in which case the procedure in Subsection E of 20.9.9.10 NMAC shall be used to determine background concentration.

E. A list of constituents and parameters to be evaluated under the requirements of 20.9.9 NMAC will be made available to the public and posted on the NMED website.

[20.9.9.20 NMAC - N, 8/2/2007]

## **PART 10: FINANCIAL ASSURANCE**

### **20.9.10.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.9.10.1 NMAC - Rp, 20 NMAC 9.1.1.001, 8/2/2007]

### **20.9.10.2 SCOPE:**

This part applies to the transportation, storage, transfer, processing, transformation, recycling, composting, nuisance abatement and disposal of solid waste.

[20.9.10.2 NMAC - Rp, 20 NMAC 9.1.1.002, 8/2/2007]

### **20.9.10.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 74-1-1 to 74-1-15, NMSA 1978, Sections 74-9-1 to 74-9-43, and NMSA 1978 Sections 74-13-1 to 74-13-20.

[20.9.10.3 NMAC - Rp, 20 NMAC 9.1.1.003, 8/2/2007]

### **20.9.10.4 DURATION:**

Permanent.

[20.9.10.4 NMAC - Rp, 20 NMAC 9.1.1.004, 8/2/2007]

### **20.9.10.5 EFFECTIVE DATE:**

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.10.5 NMAC - Rp, 20 NMAC 9.1.1.005, 8/2/2007]

### **20.9.10.6 OBJECTIVE:**

The objective of Part 10 of Chapter 9 is to establish a rule governing financial assurance requirements for solid waste facilities, composting facilities and recycling facilities.

[20.9.10.6 NMAC - Rp, 20 NMAC 9.1.1.006, 8/2/2007]

#### **20.9.10.7 DEFINITIONS:**

**[RESERVED]**

[See 20.9.2.7 NMAC for Definitions.]

#### **20.9.10.8 APPLICABILITY AND EFFECTIVE DATE:**

A. The requirements of 20.9.10 NMAC apply to owners and operators of all solid waste facilities and composting and recycling facilities required to provide financial assurance pursuant to Subsection C of 20.9.3.28 NMAC and Subsection E of 20.9.3.29 NMAC, except owners and operators who are the United States, the state of New Mexico, or any agency, department, instrumentality, office, or institution of those governments whose debts and liabilities are the debts and liabilities of the United States or the state of New Mexico. Owners or operators of composting and recycling facilities required to provide financial assurance pursuant to Subsection C of 20.9.3.28 NMAC and Subsection E of 20.9.3.29 NMAC are not required to provide financial assurance for post-closure care, phase I and II assessments or corrective action.

B. The owner or operator of a category 5 landfill or any solid waste facility modified after the initial effective date of this section shall submit to the department proof of financial assurance prior to the initial receipt of waste.

C. For municipal landfills operating on or after April 9, 1997, or solid waste facilities permitted after January 30, 1992, the requirements of 20.9.10 NMAC apply. For landfills that have been granted a waiver under 20.9.2.14 NMAC, the requirements of 20.9.10 NMAC apply.

D. Multiple facilities under one permit shall be treated individually for the purposes of 20.9.10 NMAC. Estimates and assurance must be given for each facility, but multiple facilities may be covered by the same mechanism(s).

[20.9.10.8 NMAC - Rp, 20 NMAC 9.1.IX.901, 8/2/2007]

#### **20.9.10.9 FINANCIAL ASSURANCE FOR CLOSURE AND NUISANCE ABATEMENT:**

A. The owner or operator of a solid waste facility shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of the facility ever requiring closure under 20.9.6 NMAC at any time during the active life. This estimated cost should include estimated costs for an independent project manager and contract administration. The estimate may contain a subsidiary schedule showing the amount necessary to perform closure of the facility in each year of the permit life of the facility. The owner or operator shall file a copy of the estimate with the department concurrently with proof of financial assurance and shall notify the department that copies have also been placed in the operating record.

(1) For landfills, the cost estimate shall be based upon the cost of closing the largest area of all landfill cells ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan. Should the owner or operator submit a subsidiary schedule, the amount guaranteed annually may be in accordance with this schedule upon approval by the secretary. If the owner or operator is found to be utilizing acreage in excess of the amount shown in the subsidiary schedule, final closure on the excess acreage shall be completed within sixty days of the subsidiary schedule and the amount of financial assurance shall be increased to reflect the excess acreage.

(2) For all other solid waste facilities, the cost estimate must be a detailed written estimate of the cost of closure to be performed in accordance with the applicable portions of 20.9.6.12 NMAC and also shall include the cost of hiring a third party to clean up and dispose of the largest inventory of material and end product expected at the facility and to clean up and dispose of all fugitive trash, solid waste, or other materials that could potentially create a nuisance at the facility. The cost estimate shall also include costs of an independent project manager and contract administration. For a recycling or composting facility required to provide financial assurance for nuisance abatement pursuant to Subsection C of 20.9.3.28 NMAC or Subsection E of 20.9.3.29 NMAC, the owner or operator shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to clean up and dispose of the largest inventory of compostable or recyclable material and end product expected at the facility and to clean up and dispose of all fugitive trash, solid waste, or other materials that could potentially create a nuisance at the facility. The cost estimate shall also include the costs of an independent project manager and contract administration.

(3) During the active life of the facility, the owner or operator shall annually adjust the closure cost estimate for inflation, installation of final cover material on any areas at final grade, and any other factors affecting closure costs. A copy of the adjusted closure cost estimate shall be placed in the operating record.

(4) The owner or operator shall increase the amount of financial assurance if changes to the closure plan or facility conditions increase the maximum cost of closure at any time during the remaining active life by over three percent of the current financial assurance amount.

(5) The owner or operator may reduce the amount of financial assurance for closure if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the facility, upon specific approval by the secretary. To seek approval, the owner or operator shall provide the adjusted cost estimate and supporting documentation to the department. If approved, the owner or operator may revise any financial assurance documents to reflect the adjusted closure cost estimate, and shall file a duplicate original of each financial assurance document with the department within 15 days following approval, and shall place a copy of the estimate and approval in the operating record.

B. The owner or operator of each solid waste facility shall establish a financial assurance mechanism for closure of the facility in compliance with 20.9.10.13 - 20.9.10.23 NMAC. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by a written verification issued by the secretary pursuant to Subsection O of 20.9.6.8 NMAC.

[20.9.10.9 NMAC - Rp, 20 NMAC 9.1.IX.902, 8/2/2007]

#### **20.9.10.10 FINANCIAL ASSURANCE FOR POST-CLOSURE CARE:**

A. The owner or operator of a solid waste facility shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the facility in compliance with the post-closure care plan developed under 20.9.6 NMAC. The post-closure care cost estimate shall account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure care plan over the entire post-closure care period. This estimated cost should also include estimated costs for an independent project manager and contract administration. The owner or operator may submit a subsidiary schedule showing, for the permit life of the facility, the annual incremental acreage and total acreage needing post-closure care and the corresponding estimate of post-closure costs. The owner or operator shall file a copy of the estimate with the department concurrently with proof of financial assurance and shall notify the department that copies have also been placed in the operating record.

(1) The cost estimate for post-closure care shall be based on the most expensive costs for care during the post-closure period. Should the owner or operator submit a subsidiary schedule as described in Subsection A of this section, the amount guaranteed annually for post-closure care during the permit life of the facility may be in accordance with this schedule upon approval by the secretary. If the owner or operator, upon inspection, is found to have exceeded the acreage shown on the subsidiary schedule, the subsidiary schedule and the amount of financial assurance shall be increased within sixty days.

(2) During the active life of the facility and during the post-closure care period, the owner or operator shall annually adjust the post-closure care estimate for inflation, and any other factors affecting post-closure care costs. The owner or operator shall place a copy of the adjusted estimate in the operating record.

(3) The owner or operator shall increase the amount of financial assurance if changes in the post-closure care plan or facility conditions increase the maximum cost of post-closure care by over three percent of the current financial assurance amount.

(4) The owner or operator may reduce the amount of financial assurance if the adjusted cost estimate exceeds the maximum cost of care remaining over the post-closure period, upon specific approval by the secretary. To seek approval, the owner or

operator shall provide the reduced post-closure care cost estimate and any justification for the reduced estimate in a request to the department.

B. The owner or operator of each solid waste facility shall establish financial assurance for the costs of post-closure care in compliance with 20.9.10.13 - 20.9.10.23 NMAC. An originally signed duplicate of each financial assurance document shall be filed with the department. The owner or operator shall provide continuous coverage for post-closure care until released from financial assurance requirements by a written verification issued by the secretary pursuant to Subsection O of 20.9.6.8 NMAC.

[20.9.10.10 NMAC - Rp, 20 NMAC 9.1.IX.903, 8/2/2007]

#### **20.9.10.11 FINANCIAL ASSURANCE FOR PHASE I & PHASE II ASSESSMENTS:**

A. Unless suspended from the requirements of 20.9.9.9 - 20.9.9.13 NMAC in accordance with Subsection C of 20.9.9.8 NMAC, the owner or operator shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct activities of the phase I (20.9.9.13 NMAC) and phase II (20.9.9.15 -20.9.9.16 NMAC) assessments. The phase I and phase II assessments cost estimate shall account for the entire cost of the phase I and phase II assessments for the entire assessment period. This estimated cost should also include estimated costs for an independent project manager and contract administration. The owner or operator shall file a copy of the estimate with the department concurrently with proof of financial assurance and shall notify the department that copies have also been placed in the operating record. The estimate may contain a subsidiary schedule showing the amount necessary to perform a phase I assessment if a release is detected. Should the owner or operator submit a subsidiary schedule, the amount guaranteed annually may be in accordance with this schedule upon approval by the secretary.

(1) During the permit life of the facility and during the post-closure care period, the owner or operator shall annually adjust the phase I and phase II assessments estimate for inflation and any other factors affecting phase I and phase II assessment costs.

(2) The owner or operator shall increase the amount of financial assurance for phase I and phase II assessment costs if changes in the phase I and phase II assessments or facility conditions increase the maximum costs of the phase I and phase II assessments by over three percent of the current financial assurance amounts for phase I and phase II costs.

(3) The owner or operator may reduce the amount of the phase I and phase II financial assurance if the cost estimate exceeds the maximum remaining cost for the phase I and phase II assessments, upon specific approval by the secretary. To seek approval, the owner or operator shall provide a revised cost estimate and supporting documentation to the department. If approved, the owner or operator shall place a copy of the revised cost estimate in the operating record, shall notify the secretary that the

estimate has been placed in the operating record and shall file a copy with the department.

B. Unless suspended from the requirements of 20.9.9.9 - 20.9.9.13 NMAC in accordance with Subsection C of 20.9.9.8 NMAC, the owner or operator of each solid waste facility shall secure financial assurance for the costs of phase I and phase II assessments as required under 20.9.9.13 - 20.9.9.16 NMAC. The owner or operator shall provide continuous coverage for the phase I and phase II assessments until released from financial assurance requirements by a written verification issued by the secretary pursuant to Subsection O of 20.9.6.8 NMAC.

[20.9.10.11 NMAC - Rp, 20 NMAC 9.1.IX.904, 8/2/2007]

### **20.9.10.12 FINANCIAL ASSURANCE FOR CORRECTIVE ACTION:**

A. An owner or operator of a facility required to undertake a corrective action program under 20.9.9.13 -20.9.9.17 NMAC, or required to guarantee any portion of a corrective action program as a condition of any permit or order by the secretary, shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate shall account for the total costs of activities as described in the corrective action plan for the entire corrective action period. This estimated cost should also include estimated costs for an independent project manager and contract administration. The owner or operator shall file a copy of the estimate with the department concurrently with proof of financial assurance and shall notify the department that copies have also been placed in the operating record.

(1) The owner or operator shall annually adjust the estimate for inflation and any other factors affecting the corrective action costs until the corrective action program is completed.

(2) The owner or operator shall increase the amount of financial assurance if changes in the corrective action program or facility conditions increase the maximum costs of corrective action by over three percent of the current financial assurance amounts for corrective action costs.

(3) The owner or operator may reduce the amount of the financial assurance if the cost estimate exceeds the maximum remaining cost of corrective action, upon specific approval by the secretary. To seek approval, the owner or operator shall provide the revised cost estimate and supporting documentation to the department. If approved, the owner or operator shall notify the secretary when notice of the amount of financial assurance has been placed in the operating record.

B. The owner or operator of each solid waste facility required to implement a corrective action program shall secure financial assurance for the corrective action program in compliance with 20.9.10.13 - 20.9.10.23 NMAC. The owner or operator shall

provide continuous coverage for corrective action until released from corrective action financial assurance requirements by a written verification issued by the secretary pursuant to Subsection O of 20.9.6.8 NMAC.

[20.9.10.12 NMAC - Rp, 20 NMAC 9.1.IX.905, 8/2/2007]

#### **20.9.10.13 ALLOWABLE MECHANISMS:**

A. The owner or operator shall establish a financial assurance mechanism to ensure that the funds necessary to meet the costs of closure, post-closure care, phase I and phase II assessments, and corrective action for known releases will be available whenever they are needed. The allowed mechanisms are:

- (1) trust fund;
- (2) surety bond;
- (3) irrevocable letter of credit;
- (4) insurance;
- (5) risk management pool;
- (6) local government financial test;
- (7) local government guarantee;
- (8) local government reserve fund;
- (9) corporate financial test; or
- (10) multiple mechanisms.

B. Owners or operators shall implement one or more of the financial assurance mechanisms specified in 20.9.10.14 - 20.9.10.23 NMAC. Each selected mechanism shall be made payable to or name the New Mexico governmental entity or entities that own or operate the facility as the beneficiary of the instrument, but if no New Mexico governmental entity or entities own or operate the facility, then the instrument shall be made payable to or name the New Mexico environment department as the beneficiary.

[20.9.10.13 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

#### **20.9.10.14 TRUST FUND:**

An owner or operator may demonstrate financial assurance for closure, post-closure care, phase I and phase II assessments, or corrective action by establishing a trust fund

that is worded as shown in forms supplied by the department. This trust fund may also be used as a repository for funds received from other financial assurance mechanisms. The trust fund shall be established as follows:

A. in the case of a trust fund for closure, post-closure care, or phase I and phase II assessments, payments into the trust fund shall be made at least annually over the term of the initial permit or over the remaining life of the facility, whichever is shorter; in the case of a trust fund for corrective action for known releases, payments into the trust fund shall be made annually over the first half of the estimated length of the corrective action period, or in the time period specified by the permit condition or the secretary's decision; this period is referred to as the pay-in period;

B. for a trust fund used to demonstrate financial assurance for closure, post-closure care, and phase I and phase II assessments, the first payment into the fund shall be at least equal to the current approved cost estimate divided by the number of years in the pay-in period; the amount of subsequent payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

where CE is the current cost estimate (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period;

C. for a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund shall be at least one-half of the current approved cost estimate for corrective action; the amount of subsequent annual payments shall be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

where CE is the current remaining cost estimate for corrective action, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period;

D. in the case of closure, post-closure care, and phase I and phase II assessments, the initial payment into the trust fund shall be made prior to the initial receipt of waste; in the case of corrective action, the initial payment into the trust fund shall be made no

later than 120 days after the corrective action remedy has been approved by the secretary;

E. if the owner or operator establishes a trust fund after having used one or more other mechanisms, the initial payment into the trust fund shall be at least equal to the amount that the fund would contain if the trust fund had been established initially and annual payments had been made according to the specifications of Paragraphs (1), (2) and (3) of Subsection C of this section, as applicable;

F. the owner or operator, or other person authorized to conduct closure, post-closure care, phase I and phase II assessments, or corrective action activities may request reimbursement from the trust fund for these expenditures by submitting itemized bills to the secretary; unless there is an imminent threat to public health, welfare and safety or the environment, or undue economic hardship would delay or cease the required activities, requests for reimbursement shall be granted by the secretary only if the trust fund assets are sufficient to cover the remaining costs of required activities, and if justification and documentation of the expenditure is filed with the secretary and placed in the operating record; withdrawals of any funds from the trust fund shall be directed in writing to the trustee by the secretary;

G. the trust fund may be terminated only if the owner or operator substitutes alternate financial assurance as approved in writing by the secretary as specified in 20.9.10.13 - 20.9.10.23 NMAC or if the secretary determines that the owner or operator is no longer required to demonstrate financial assurance;

H. the trustees shall be a trust company or banks authorized to do business as a trust company in New Mexico under the Trust Company Act, NMSA 1978 Section 58-9-4 or 58-10-35, or authorized under federal law;

I. the trustee shall file annual reports on the trust fund balance with the department.

[20.9.10.14 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

#### **20.9.10.15 SURETY BOND GUARANTEEING PAYMENT OR PERFORMANCE:**

An owner or operator may demonstrate financial assurance for closure, post-closure care, phase I and phase II assessments, or corrective action by obtaining a surety bond guaranteeing payment into a trust fund or standby trust fund established by the owner or operator. The surety bond and standby trust fund shall be worded as in the forms supplied by the department.

A. In the case of closure, post-closure care, and phase I and phase II assessments, the surety bond shall be effective prior to the initial receipt of waste. In the case of corrective action, the surety bond shall be effective no later than 120 days after the corrective action remedy has been approved by the secretary.

B. The owner or operator who uses a surety bond to satisfy its financial assurance requirements must also establish a trust fund or standby trust fund. Under the terms of the bond, all payments made thereunder must be deposited by the surety directly into the trust fund or standby trust fund in accordance with instructions from the secretary. A standby trust fund must meet all the requirements of the trust fund specified in 20.9.10.14 NMAC as applicable, except that, until the standby trust fund is funded pursuant to the requirements of this 20.9.10.14 NMAC and the surety agreement, annual payments into the standby trust fund are not required, updating of Schedule A to the trust agreement is not required, annual valuation as required by the trust agreement is not required, and notices of non-payment are not required.

C. Companies providing surety bonds shall be admitted carriers, licensed carriers, or registered carriers of surplus lines of insurance and authorized in the state of New Mexico to do business and be among those listed as acceptable sureties on federal bonds in circular 570 of the U.S. department of the treasury.

D. Except as provided in 20.9.10.23 NMAC, the penal sum of the bond shall be in an amount at least equal to the estimated costs to perform the activities assured by the bond.

E. Under the terms of the bond, the surety shall become liable on the bond obligation when the secretary determines that the owner or operator has failed to perform as guaranteed by the bond.

F. Payments made under the terms of the bond shall be deposited by the surety directly into the trust fund or standby trust fund in accordance with instructions by the secretary. No payments shall be made from the trust fund or standby trust fund unless approved in writing by the secretary.

G. The bond shall remain in effect until the closure and post-closure care or phase I and phase II assessments or any corrective action for which the bond was acting as financial assurance is certified as complete, or until it is replaced by an alternate financial assurance mechanism.

[20.9.10.15 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

#### **20.9.10.16 IRREVOCABLE STANDBY LETTER OF CREDIT:**

An owner or operator may demonstrate financial assurance for closure, post-closure care, phase I and phase II assessments, and corrective action by obtaining an irrevocable standby letter of credit worded as in forms supplied by the department and payable to a trust fund or standby trust fund established in conformance with 20.9.10.14 NMAC.

A. In the case of closure, post-closure care, and phase I and phase II assessments, the letter of credit shall be effective prior to the initial receipt of waste. In the case of

corrective action, the letter of credit shall be effective no later than 120 days after the corrective action remedy has been approved by the secretary.

B. The issuing institution shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state of New Mexico agency. The issuing institution shall be authorized to transact business in the state of New Mexico.

C. A letter from the owner or operator referring to the letter of credit by number, issuing institution, issue date, and providing the name and address of the facility, and the amount of funds assured, shall be submitted to the secretary along with the letter of credit. A copy of the letter from the owner or operator and a copy of the letter of credit shall be placed in the operating record.

D. The institution issuing the letter of credit shall be an institution with assets of at least one billion dollars (\$1,000,000,000). If the assets of the issuing institution are less than this amount, the letter of credit shall be fully collateralized by the owner or operator.

E. The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the secretary 120 days in advance of cancellation. If the issuing institution notifies the owner or operator that it plans to cancel the letter of credit, the owner or operator shall obtain alternate financial assurance at least 30 days prior to the cancellation date. If the owner or operator fails to obtain alternate financial assurance in a timely manner, the secretary shall draw funds guaranteed by the letter of credit and place them in the trust fund or standby trust fund.

F. The trust fund or standby trust fund established by the owner or operator shall be worded as in forms supplied by the department.

G. The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in 20.9.10.13 - 20.9.10.23 NMAC or if the owner or operator is notified in writing by the secretary that financial assurance is no longer required.

H. The owner or operator shall file an originally signed duplicate of the standby trust agreement and originally signed duplicate of the letter of credit with the department.

[20.9.10.16 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

#### **20.9.10.17 INSURANCE:**

An owner or operator may demonstrate financial assurance for closure, post-closure care, and phase I and phase II assessments by obtaining insurance which conforms to the requirements of 20.9.10 NMAC. In the case of closure, post-closure care, and phase I and phase II assessments, the insurance shall be effective prior to the initial receipt of waste. In the case of corrective action, the insurance shall be effective no later than 120 days after the corrective action remedy has been approved by the secretary.

A. The insurer shall be authorized to transact the business of insurance in the state of New Mexico and:

- (1) have assets of one hundred million dollars (\$100,000,000) or more; or
- (2) be an admitted carrier, a licensed carrier or a registered carrier of surplus lines of insurance or reinsurance in one or more states and have either a surplus of not less than twenty-five million dollars (\$25,000,000) above undiscounted actuarial reserves (including incurred but not reported (IBNR) claims), or have an A.M. best rating of not less than a B+ or the equivalent rating of other recognized rating companies.

B. The certificate of insurance shall be worded as in a form supplied by the department.

C. The insurance policy shall guarantee that funds will be available for closure post-closure care, phase I and phase II assessments, and corrective action, as applicable. The policy shall also guarantee that the insurer will, as necessary, provide funds up to the face amount of the policy to persons authorized by the secretary to conduct activities covered by the policy. The face amount of the policy shall be at least equal to the most recent cost estimate for each of the covered activities.

D. Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

E. The insurance policy shall provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator, and to the secretary, 120 days in advance of cancellation. If the insurer notifies the owner or operator that it plans to cancel the policy, the owner or operator shall obtain alternate financial assurance at least 60 days prior to cancellation of the policy. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

- (1) the secretary deems the facility abandoned;

- (2) the permit is terminated or revoked or a new permit is denied;
- (3) closure is ordered by the secretary or a court of competent jurisdiction;
- (4) the owner or operator is named a debtor in a voluntary or involuntary bankruptcy proceeding;
- (5) the premium due is paid.

F. For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer shall thereafter annually increase the face amount of the policy. Such increase shall be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. treasury for 26-week treasury securities.

G. The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted or if the secretary notifies the owner or operator that financial assurance is no longer required.

H. The owner or operator shall file a copy of the certificate of insurance and insurance policy with the department. The owner or operator shall report any changes in either surplus or rating to the secretary. In addition, a copy of the latest annual rating (if applicable) and a copy of the latest audited financial statements shall be forwarded by the insurer to the owner or operator and the secretary.

[20.9.10.17 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

#### **20.9.10.18 RISK MANAGEMENT POOL:**

An owner or operator may demonstrate financial assurance for closure, post-closure care, phase I and phase II assessments, or corrective action by joining a risk management pool. In the case of closure, post-closure care, and phase I and phase II assessments, participation in an approved risk management pool shall be effective prior to the initial receipt of waste. In the case of corrective action, participation shall be effective no later than 120 days after the corrective action remedy has been approved by the secretary.

A. A risk management pool shall not be an allowed mechanism unless the pool is approved by the secretary. Approved pools shall incorporate any mechanisms or combination of mechanisms in 20.9.10.13 - 20.9.10.23 NMAC and have the following characteristics:

- (1) be evidenced by a written contractual agreement among participating private entities or a joint powers agreement among participating governmental entities;

(2) would not be in violation of the anti-donation clause of the New Mexico State Constitution if funds were used;

(3) is liquid in nature, allowing for prompt initiation and payment of closure, post-closure care, phase I and phase II assessments, or corrective action activities;

(4) has a defined annual contribution table that provides for timely periodic payments from the risk sharers;

(5) provides for guaranteed and timely supplemental funding in the event of an incident that depletes the assets of the pool;

(6) has incorporated in its framework a trust fund or standby trust fund that conforms with 20.9.10.14 NMAC.

B. The risk management pool shall provide an explicit guarantee that funding in the amount of estimated closure, post closure care, phase I and phase II assessments and any corrective action costs will be paid by the pool into the trust fund or standby trust fund established by the facility in the event the owner or operator fails to undertake and complete the covered activities.

C. The owner or operator shall file a copy of the agreement establishing the risk management pool and the contribution table. The owner operator shall file an original duplicate of the trust fund agreement or standby trust fund agreement, and the guarantee by the pool to pay into the standby trust fund or trust fund for covered activities for the particular facility.

[20.9.10.18 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

#### **20.9.10.19 LOCAL GOVERNMENT FINANCIAL TEST:**

A local government that satisfies the requirements of Subsections A through E of this section may demonstrate financial assurance pursuant to Subsection A of 20.9.10.13 NMAC up to the amount specified in Subsection F of this section for closure, post-closure care, phase I and phase II assessments, and corrective action.

A. Financial component. The local government shall satisfy one of the following:

(1) if the local government has outstanding general obligations bonds, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard and Poor's on all outstanding general obligation bonds; or,

(2) if the local government does not have outstanding general obligation bonds, it must satisfy each of the following financial ratios based on the local government's most recent audited annual financial statement: a ratio of cash plus

marketable securities to total expenditures greater than or equal to 0.05; and a ratio of annual debt service to total expenditures less than or equal to 0.20.

B. The local government shall prepare its financial statements in conformity with generally accepted accounting principles for governments and have its financial statements audited by an independent certified public accountant or appropriate state agency.

C. A local government is not eligible to assure its obligations using the local government financial test if it is currently in default on any outstanding general obligation bonds; has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; operated at a deficit equal to five percent or more of total annual revenue in either of the past two fiscal years; or receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement. However, the secretary may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the secretary deems the qualification insufficient to warrant disallowance of the test.

D. Public notice component. The local government shall place a reference to all closure, post-closure care, phase I and phase II assessments, and corrective action costs assured through the financial test into its comprehensive annual financial reports (CAFR) and budgets. Upon initial receipt of waste at the facility, the reference must be included in the next CAFR. In the case of existing facilities, for closure, post closure care, and the phase I and phase II assessment, the reference must be included prior to the effective date of 20.9.10.19 NMAC. In the case of corrective action, the reference must be included not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 20.9.9 NMAC, the permit issuance, or the secretary's decision. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the operation record until insurance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. The reference shall include the amount of each cost estimate and the year in which the local government expects these costs to be incurred. References in the budget must occur as budgeted line items if the activities are to occur in the period covered by the budget, but may appear in a supplemental data section if the activities will not occur until after the period covered by the budget.

E. Record keeping and reporting requirements.

(1) The local government shall submit the following items to the department:

(a) a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in Subsection F of 20.9.10.19 NMAC, provides evidence and certifies that the local government meets the

conditions of Subsections A, B and C of 20.9.10.19 NMAC, and certifies that the local government meets the conditions of Subsections D and F of 20.9.10.19 NMAC;

(b) the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years and where unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent, certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits; and

(c) a report to the local government from the local government's independent certified public accountant or the appropriate state agency stating that the certified public accountant or state agency has compared the data in the chief financial officer's letter with the owner's or operator's most recent independently audited, year-end financial statements, and in connection with that examination, no matters came to his attention which caused him to believe that the data in the chief financial officer's letter should be adjusted; a copy of the supporting documentation shall also be placed in the facility operating record.

(2) The items required in Subsection E of 20.9.10.19 NMAC must be placed in the facility operating record as follows: in the case of closure, post-closure care, and the phase I and phase II assessment, prior to the initial receipt of waste at the facility, or for existing facilities, prior to the effective date of this part; or in the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of 20.9.9 NMAC, the permit issuance, or the secretary's decision.

(3) After the initial placement of the items in the facility's operating record, the local government owner or operator shall update the information and place the updated information in the operating record within 180 days following the close of the local government's fiscal year.

(4) The local government owner or operator is no longer required to meet the requirements of Subsection E of 20.9.10.19 NMAC when the owner or operator substitutes alternate financial assurance as specified in 20.9.10.13 NMAC, or the owner or operator is released from the requirements of 20.9.10.13 - 20.9.10.23 NMAC in accordance with Subsection B of 20.9.10.9 NMAC, Subsection B of 20.9.10.10 NMAC, Subsection B of 20.9.10.11 NMAC, or Subsection B of 20.9.10.12 NMAC.

(5) A local government shall satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test it shall, within 210 days following the close of the owner or operator's fiscal year, obtain alternative or supplemental financial assurance, and place the required submissions for that assurance in the operating record.

(6) The secretary, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the secretary finds that the local government no longer meets the requirements of the local government financial test, the local government shall provide alternate financial assurance that meets the requirements of 20.9.10 NMAC.

F. Calculation of costs to be assured. The portion of the closure, post-closure care, phase I and phase II assessments, and corrective action costs which a local government can assure under 20.9.10.19 NMAC is determined as follows:

(1) if the local government does not assure other environmental obligations through a financial test, it may assure closure, post-closure care, phase I and phase II assessments, and corrective action costs in an amount not to exceed 43 percent of the local government's total annual revenue;

(2) if the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, it must add those costs to the closure, post-closure care, the phase I and phase II assessments, and corrective action costs it seeks to assure under this paragraph; the total shall not exceed 43 percent of the local government's total annual revenue;

(3) the local government shall obtain an alternate financial assurance instrument for those costs that exceed the limits set in Paragraphs (1) and (2) of Subsection F of 20.9.10.19 NMAC.

[20.9.10.19 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

#### **20.9.10.20 LOCAL GOVERNMENT RESERVE FUND:**

A local government may demonstrate financial assurance for closure, post-closure care, phase I and phase II assessments, and corrective action by establishing a reserve fund within its existing financial accounting system.

A. The reserve fund shall be created by resolution of the governing body specifying the use of funds only for purposes of closure, post-closure care, phase I and phase II assessments, or corrective action for the facility. The reserve fund shall specify that the funds shall be used for closure, post-closure care, phase I and phase II assessments and corrective action costs in compliance with 20.9.2 - 20.9.10 NMAC and orders issued pursuant to such rules by the secretary. In the case of closure, post-closure care, and phase I and phase II assessments for new facilities, the resolution shall be effective prior to the initial receipt of waste. In the case of corrective action, the resolution shall be effective not later than 120 days after the corrective action remedy has been

approved by the secretary. The resolution shall specify withdrawals from the fund will shall only occur with approval by the secretary. Funding of the reserve fund shall be in conformance with the formulas specified for trust funds in 20.9.10.14 NMAC. The reserve fund shall be audited annually by the state auditor under the Single Audit Act.

B. The local government shall file a copy of the resolution with the department. The local government shall file audit reports of the reserve fund annually with the department.

[20.9.10.20 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

#### **20.9.10.21 LOCAL GOVERNMENT GUARANTEE:**

A. An owner or operator may demonstrate financial assurance for closure, post-closure, phase I and phase II assessment, and corrective action, as required by 20.9.10.9 - 20.9.10.12 NMAC by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in 20.9.10.19 NMAC, and must comply with the terms of a written guarantee.

B. Terms of the written guarantee. The guarantee must be effective prior to the initial receipt of waste, or in the case of existing facilities, prior to the effective date of this part. In the case of closure, post-closure care, or phase I and phase II assessments, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 20.9.9 NMAC, the permit issuance, or the secretary's decision. The guarantee must provide that if the owner or operator fails to perform closure, post-closure care, phase I and phase II assessments, or corrective action of a facility covered by the guarantee, the guarantor will perform, or pay a third party to perform, closure, post-closure care, and corrective action as required; or establish a fully funded trust fund as specified in 20.9.10.14 NMAC in the name of the owner or operator.

(1) The guarantee shall remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the secretary. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the secretary, as evidenced by the return receipts.

(2) If a guarantee is canceled, the owner or operator must within 90 days following receipt of the cancellation notice by the owner or operator and the secretary, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the secretary. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days following the close of the guarantor's fiscal year, obtain alternative assurance, place evidence of the alternate assurance in the facility operating record and notify the secretary.

### C. Record keeping and reporting.

(1) The owner or operator must place a certified copy of the guarantee along with the items required under Subsection E of 20.9.10.19 NMAC into the facility's operating record prior to the initial receipt of waste, or in the case of existing facilities, prior to the effective date of this part. In the case of closure, post-closure care, or phase I and phase II assessments, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 20.9.9 NMAC, the permit issuance, or the secretary's decision.

(2) The owner or operator is no longer required to maintain the items specified in Subsection C of 20.9.10.21 NMAC when the owner or operator substitutes alternate financial assurance as specified in 20.9.10.13 NMAC through 20.9.10.23 NMAC; or the owner or operator is released from the requirements of 20.9.10.13 NMAC through 20.9.10.23 NMAC in accordance with Subsection B of 20.9.10.9 NMAC, Subsection B of 20.9.10.10 NMAC; Subsection B of 20.9.10.11 NMAC, or Subsection B of 20.9.10.12 NMAC.

(3) If a local government guarantor no longer meets the requirements of Subsection E of 20.9.10.19 NMAC the owner or operator must, within 90 days following the close of the guarantor's fiscal year obtain alternative assurance, place evidence of the alternate assurance in the facility operating record, and notify the secretary. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate assurance within 120 days.

[20.9.10.21 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

### **20.9.10.22 CORPORATE FINANCIAL TEST:**

A private entity that satisfies the financial test requirements of this section may provide a corporate guarantee for financial assurance up to the amounts specified in this section for closure, post-closure care, phase I and phase II assessments, and corrective action.

#### A. Financial component.

(1) The owner or operator shall satisfy at least one of the following three conditions:

(a) a current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;

(b) a ratio of less than 1.5 comparing total liabilities to net worth; or

(c) a ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

(2) The tangible net worth of the owner or operator shall be greater than:

(a) the sum of the current closure, post-closure care, phase I and phase II assessments, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by a financial test plus \$10 million; or

(b) \$10 million in net worth plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided all of the current closure, post-closure care, phase I and phase II assessments and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements;

(c) the owner or operator shall have assets located in the United States amounting to at least the sum of current closure, post-closure care, phase I and phase II assessments, corrective action cost estimates, and any other environmental obligations covered by a financial test as described in Subsection C of 20.9.10.22 NMAC.

B. Recordkeeping and reporting requirements.

(1) An owner or operator seeking to demonstrate that it meets the corporate financial test shall file the following items with the department:

(a) a letter signed by the owner's or operator's chief financial officer that lists all the current cost estimates covered by a financial test, including, but not limited to, cost estimates required for municipal solid waste management facilities and cost estimates required for any facilities described in Subsection C of 20.9.10.22 NMAC, and provides evidence demonstrating that the firm meets the conditions of Subsection A of this section;

(b) a copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year; to be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant; an adverse opinion, disclaimer of opinion, or other qualified opinion shall be cause for disallowance, except that the secretary may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the secretary deems that the matters which form the basis for the qualification are insufficient to warrant disallowance of the test;

(c) if the chief financial officer's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies Subparagraphs (b) or (c) of Paragraph (1) of Subsection A of 20.9.10.22 NMAC that are different from data in the audited financial statements referred to in Subparagraph (b) of Paragraph (1) of Subsection B of 20.9.10.22 NMAC or any other audited financial statement or data filed with the securities and exchange commission, then a special report from the owner's or operator's independent certified public accountant to the

owner or operator is required; the special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences; and

(d) if the chief financial officer's letter provides a demonstration that the firm has assured for environmental obligations as provided in Subparagraph (b) of Paragraph (2) of Subsection A of 20.9.10.22 NMAC, then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements, how these obligations have been measured and reported, and that the tangible net worth of the firm is at least \$10 million plus the amount of any guarantees provided.

(2) The owner or operator shall meet the requirements of 20.9.10.22 NMAC unless the owner or operator provides alternate financial assurance that is approved in writing by the secretary or if the secretary notifies him in writing that he is no longer required to provide financial assurance.

(3) The owner or operator shall satisfy the requirements of the corporate financial test at the close of each fiscal year. If the owner or operator no longer meets the requirements of the test, the owner or operator shall, within 60 days following the close of the owner or operator's fiscal year, obtain alternate financial assurance approved in writing by the secretary.

(4) The secretary, based on a reasonable belief that the owner or operator may no longer meet the requirements of the corporate financial test, may require the owner or operator to provide reports of its financial condition at any time. If the secretary finds that the owner or operator no longer meets the requirements of the corporate financial test, the owner or operator shall provide alternate financial assurance.

C. Calculation of costs to be assured. When calculating the current cost estimates for closure, post-closure care, phase I and phase II assessments, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a corporate financial test, the owner or operator shall include cost estimates required for municipal solid waste management facilities under this part, as well as cost estimates required for the following environmental obligations, if they are assured through a corporate financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

[20.9.10.22 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

### **20.9.10.23 MULTIPLE FINANCIAL MECHANISMS:**

An owner or operator may satisfy financial assurance requirements by establishing more than one financial mechanism per facility. The mechanisms shall be as specified in Subsection A of 20.9.10.13 NMAC, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate approved by the secretary for closure, post-closure care, the phase I and phase II assessments, or corrective action, as applicable. The language of the mechanism listed in 20.9.10.13 NMAC through 20.9.10.23 NMAC must ensure that the instruments satisfy the following criteria:

A. the financial assurance mechanisms must ensure that amount of funds assured is sufficient to cover the cost of closure, post-closure care, phase I and phase II assessments, or corrective action for known releases when needed, as applicable;

B. the financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

C. the financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closer and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of 20.9.9.17 NMAC, until the owner of operation is released from the financial assurance requirements under 20.9.10.9.9 - 20.9.10.12 NMAC;

D. the financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law.

[20.9.10.23 NMAC - Rp, 20 NMAC 9.1.IX.906, 8/2/2007]

## **PART 11-19: [RESERVED]**

## **PART 20: RECYCLING, ILLEGAL DUMPING AND SCRAP TIRE MANAGEMENT**

### **20.9.20.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[20.9.20.1 NMAC - Rp, 20 NMAC 9.2.I.101, 8/2/2007]

### **20.9.20.2 SCOPE:**

This part applies to the transporting, processing, storage, recycling, use, abatement, and generation of scrap tires. It establishes eligibility criteria for the Recycling and Illegal Dumping Fund. With the exception of 20.9.20.45 NMAC, 20.9.20.50 NMAC,

20.9.20.55 NMAC, 20.9.20.60 NMAC, and 20.9.20.63 NMAC, this part does not apply to permitted or registered solid waste facilities, registered recycling facilities, composting facilities or collection centers. A registered recycling facility, composting facility or collection center that stores 20,000 or more scrap tires or processes 200,000 or more scrap tires per year shall also comply with the requirements of 20.9.20.57 - 20.9.20.59 NMAC.

[20.9.20.2 NMAC - Rp, 20 NMAC 9.2.I.102, 8/2/2007]

### **20.9.20.3 STATUTORY AUTHORITY:**

This part is adopted under the authority of the Recycling and Illegal Dumping Act, Sections 74-13-1 et seq. NMSA 1978 and the Solid Waste Act, Sections 74-9-1 et seq. NMSA 1978.

[20.9.20.3 NMAC - Rp, 20 NMAC 9.2.I.103, 8/2/2007]

### **20.9.20.4 DURATION:**

Permanent.

[20.9.20.3 NMAC - Rp, 20 NMAC 9.2.I.104, 8/2/2007]

### **20.9.20.5 EFFECTIVE DATE:**

August 2, 2007, unless a later date is cited at the end of a section.

[20.9.20.5 NMAC - Rp, 20 NMAC 9.2.I.105, 8/2/2007]

### **20.9.20.6 OBJECTIVE:**

The objective of the Recycling, Illegal Dumping, and Scrap Tire Management rule is to implement the provisions of the act with the purposes stated in Section 74-13-2 NMSA 1978.

[20.9.20.6 NMAC - Rp, 20 NMAC 9.2.I.106, 8/2/2007]

### **20.9.20.7 DEFINITIONS:**

As used in this part, the following definitions apply.

**A. "Abatement"** means to reduce in amount, degree or intensity or to eliminate.

**B. "Act"** means the Recycling and Illegal Dumping Act, Sections 74-13-1 et seq. NMSA 1978.

**C. "Agricultural use"** means the beneficial use of scrap tires in conjunction with the operations of a farm or ranch that includes construction projects and aids in the storage of feed, as defined in the act.

**D. "Alliance"** means the recycling and illegal dumping alliance.

**E. "Board"** means the environmental improvement board.

**F. "Civil engineering application"** means the use of scrap tires or other recycled material in conjunction with other aggregate materials in engineering applications.

**G. "Composting"** means the process by which biological decomposition of organic material is carried out under controlled conditions and the process stabilizes the organic fraction into a material that can be easily and safely stored, handled and used in an environmentally acceptable manner.

**H. "Cooperative association"** means a refuse disposal district created pursuant to the Refuse Disposal Act, Sections 4-52-1 et seq. NMSA 1978; a sanitation district created pursuant to the Water and Sanitation District Act, Sections 73-21-1 et seq. NMSA 1978; a special district created pursuant to the Special District Procedures Act, Sections 4-53-1 et seq. NMSA 1978; or other associations created pursuant to the Joint Powers Agreements Act, Sections 11-1-1 et seq. NMSA 1978; or the Solid Waste Authority Act, Sections 74-10-1 et seq. NMSA 1978.

**I. "Department"** means the New Mexico environment department.

**J. "Dispose"** means to deposit scrap tires or solid waste into or on any land or water.

**K. "Hauler's temporary storage facility"** means a facility where less than 100 scrap tires are stored for no more than 72 hours by a registered scrap tire hauler or registered commercial hauler for the purpose of separating scrap tires from tires that will be reused for their original purpose.

**L. "Household"** means any single and multiple residence, hotel or motel, bunkhouse, ranger station, crew quarters, campground, picnic ground or day-use recreation area.

**M. "Illegal dumping"** means disposal of trash, scrap tires or any solid waste in a manner that violates the Solid Waste Act or the Recycling and Illegal Dumping Act.

**N. "Illegal dumpsite"** means a place where illegal dumping has occurred.

**O. "Land reclamation"** means the filling and restoring of excavated land for the purpose of restoring the land to its approximate natural grade and to prepare or reclaim

the land for re-use. Disposal of scrap tires in a permitted or registered solid waste facility is not "land reclamation."

**P. "Land reclamation project"** means a civil engineering application designed to fill and restore land which had been excavated before the project and was not excavated for the burying of scrap tires, and does not include bank stabilization and erosion control projects.

**Q. "Market development"** means activities to expand or create markets for recyclable and reusable materials.

**R. "Modify"** means to change the terms or conditions of a permit or registration including:

- (1) any change in the fundamental method of processing of scrap tires;
- (2) any lateral or vertical expansion or alteration of the storage areas of the scrap tires, used tires, or tire derived products;
- (3) storage of scrap tires, used tires, or tire derived products beyond the permitted or registered boundaries; but
- (4) "modify" does not include:
  - (a) routine maintenance, repair, or replacement;
  - (b) an increase in the process rate, if such increase does not exceed the design capacity of the tire recycling facility, civil engineering application or violate any condition of the permit;
  - (c) a change in the hours of operation, unless such hours are specified in a permit condition;
  - (d) a change in the operating plan that is not the subject of a permit condition;and
  - (e) temporary changes allowed by the secretary under Subsection B of 20.9.20.39 NMAC and Subsection D of 20.9.20.41 NMAC when there is an imminent danger to public health, welfare, or the environment.

**S. "Motor vehicle"** means a vehicle or device that is propelled by an internal combustion engine or electric motor power that is used or may be used on the public highways for the purpose of transporting persons or property and includes any connected trailer or semi-trailer.

**T. "Operator"** means the person(s) responsible for the overall operation or construction of all or any portion of a tire recycling facility, civil engineering application, or business that generates or hauls scrap tires.

**U. "Owner"** means the person(s) who owns all or part of a tire recycling facility, civil engineering application, or business that generates or hauls scrap tires.

**V. "Passenger tire equivalent" or "PTE"** is a conversion factor for converting between numbers of scrap tires and weight; for passenger and light truck tires, the total weight of scrap tires, in pounds, divided by 22.5 pounds produces the passenger tire equivalent. For purposes of this part, any numerical requirement associated with scrap tires may be measured in either PTEs or the actual number of scrap tires.

**W. "Person"** means any individual, partnership, company, corporation, firm, association, trust, estate, or legal entity, including government entities.

**X. "Processing"** means techniques to change physical, chemical or biological character or composition of solid waste but does not include composting, transformation or open burning.

**Y. "Public entity"** means:

- (1) any state or local government;
- (2) any department, agency, special purpose district, or other instrumentality of federal, state or local government; or
- (3) any pueblo, tribe or Indian nation.

**Z. "Recycling"** means any process by which recyclable materials are collected, separated or processed and reused or returned to use in the form of raw materials or products.

**AA. "Reusable tire" or "used tire"** means a whole tire which has been used but is suitable for reuse for its originally intended purpose and has been specifically separated from scrap tires for reuse or resale. A used tire which appears to be suitable for its originally intended purpose but which has not been separated from scrap tires and stacked either vertically or horizontally shall be considered a scrap tire.

**BB. "Reuse"** of a tire means the return of a tire to use for its originally intended purpose without a change to its original form.

**CC. "Scrap tire"** means a tire, including a baled tire, that is no longer suitable for its originally intended purpose because of wear, damage, defect or obsolescence.

**DD.** "Scrap tire baling" means the process by which scrap tires are mechanically compressed and bound into block form.

**EE.** "Scrap tire generator" means a person who generates scrap tires, including retail tire dealers, retreaders, scrap tire processors, automobile dealers, automobile salvage yards, private company vehicle maintenance shops, garages, service stations and city, county and state government, but does not include persons who generate scrap tires in a household or in beneficial agricultural operations.

**FF.** "Scrap tire hauler" means a person who transports scrap tires for hire for the purpose of recycling, disposal, transformation or use in a civil engineering application.

**GG.** "Scrap tire manifest" means a document containing information as required by, Section 20.9.20.50, that is necessary to transport scrap tires in the state of New Mexico.

**HH.** "Secretary " means the secretary of the New Mexico environment department or his or her designee.

**II.** "Storage" or "temporary storage" means storage for a period of time allowed by a permit for storage of scrap tires. Storage or temporary storage does not include a staging area where scrap tires will be staged for 5 days or less during construction.

**JJ.** "Tire" means a continuous solid or pneumatic rubber covering that encircles the wheel of a motor vehicle.

**KK.** "Tire-derived fuel" means whole or chipped tires that produce a low sulfur, high-heating-value fuel.

**LL.** "Tire-derived product" means a usable product produced from the processing of a scrap tire but does not include baled tires.

**MM.** "Tire recycling" means a process in which scrap tires are collected, stored, separated or reprocessed for reuse as a different product or shredded into a form suitable for use in rubberized asphalt or as raw material for the manufacture of other products.

**NN.** "Tire recycling facility" means a place operated or maintained for tire recycling but does not include:

(1) retail business premises where tires are sold, if no more than five hundred loose scrap tires or two thousand scrap tires, if left in a closed conveyance or enclosure, are kept on the premises at one time;

(2) the premises of a tire retreading business, if no more than three thousand scrap tires are kept on the premises at one time;

(3) premises where tires are removed from motor vehicles in the ordinary course of business, if no more than five hundred scrap tires are kept on the premises at one time;

(4) a solid waste facility having a valid permit or registration issued pursuant to the provisions of the Solid Waste Act or regulations adopted pursuant to that act or registration issued pursuant to the Environmental Improvement Act; or

(5) a site where tires are stored or used for beneficial agricultural uses.

**OO.** "Vector" means any agent capable of transmitting a disease from one individual or organism to another. Vectors include, but are not limited to, mosquitoes, flies and other insects, rodents, and vermin.

[20.9.20.7 NMAC - Rp, 20 NMAC 9.2.I.107, 8/2/2007]

#### **20.9.20.8 PROHIBITED ACTS:**

**A.** A person shall not store or use in a civil engineering application, except for beneficial agricultural use, more than one hundred scrap tires anywhere in this state, unless the person has a valid permit or registration from the department, or is excluded from the definition of a tire recycling facility pursuant to Subsection NN of 20.9.20.7 NMAC.

**B.** A person shall not operate or maintain a tire recycling facility unless the facility has a valid permit issued pursuant to the provisions of the Recycling and Illegal Dumping Act or is a facility where tires are stored and used for beneficial agricultural uses and complies with rules enacted pursuant to the Recycling and Illegal Dumping Act.

**C.** A person shall not transport scrap tires for hire to a place other than a permitted tire recycling facility or permitted civil engineering application unless the place is specifically excluded from the definition of a "tire recycling facility".

**D.** A person shall not transport scrap tires for hire either for disposal or recycling purposes without being registered as a scrap tire hauler by the department pursuant to rules adopted in accordance with the Recycling and Illegal Dumping Act.

**E.** A scrap tire generator shall not release scrap tires to a person other than a registered scrap tire hauler pursuant to the Recycling and Illegal Dumping Act, a registered commercial waste hauler pursuant to the Solid Waste Act, or a self-hauling agricultural operation.

**F.** A person shall not engage in the open burning of scrap tires.

**G.** A person shall not store or dispose of scrap tires or tire-derived products in a manner that creates a public nuisance, promotes the breeding or harboring of disease vectors or creates a potential for fire or other health or environmental hazards.

**H.** A generator, scrap tire hauler or registered solid waste hauler shall not transport scrap tires without possessing a New Mexico scrap tire manifest approved by the department, except as otherwise provided in this part.

**I.** A person shall not engage in, maintain or allow illegal dumping.

[20.9.20.8 NMAC - Rp, 20 NMAC 9.2.I.108, 8/2/2007]

**20.9.20.9 TIRE RECYCLING FACILITIES; ENTRY BY DEPARTMENT;  
AVAILABILITY OF RECORDS TO DEPARTMENT:**

The secretary or any authorized representative, employee or agent of the department may enter, inspect, monitor, sample, or obtain records of a tire recycling facility, civil engineering application, scrap tire generator, or scrap tire hauler as provided in Section 74-13-5 NMSA 1978. The secretary, authorized representative, employee, agent or other law enforcement officer shall present proper identification prior to inspection.

[20.9.20.9 NMAC - Rp, 20 NMAC 9.2.III.301, 8/2/2007]

**20.9.20.10 PERMITS FOR SCRAP TIRE STORAGE, RECYCLING FACILITIES,  
AND CIVIL ENGINEERING APPLICATIONS AND REGISTRATIONS FOR SCRAP  
TIRE HAULERS:**

**A.** Any person seeking to store more than 100 scrap tires or seeking to construct, operate, or modify a tire recycling facility or civil engineering application that uses more than 100 scrap tires shall first obtain a permit.

**B.** Any permit or registration for a civil engineering application granted prior to the effective date of these regulations shall remain in effect.

**C.** Permits are not required for a hauler's temporary storage facility that is used by a registered scrap tire hauler or a registered commercial hauler to separate scrap tires from reusable tires. Such facilities shall be included in the application for registration of the commercial hauler under Subsection A of 20.9.3.31 NMAC or registration of the scrap tire hauler under Subsection I of 20.9.20.26 NMAC.

**D.** A tire recycling facility or civil engineering application at a permitted or registered solid waste facility is not required to obtain a tire recycling or civil engineering application permit.

E. The department shall maintain a list of permitted and registered solid waste facilities and permitted tire recycling facilities and civil engineering applications on its solid waste bureau website.

[20.9.20.10 NMAC - Rp, 20.9.2.II.200, 8/2/2007]

**20.9.20.11 APPLICATION REQUIREMENTS FOR TIRE RECYCLING FACILITY OR STORAGE PERMITS:**

Any person seeking a tire recycling facility permit or storage permit to process or temporarily store scrap tires, including tire bales, shall file an application, which shall contain the following information.

A. A site layout plan of the proposed facility drawn to scale that is in compliance with the requirements of 20.9.20.36 NMAC and 20.9.20.37 NMAC. The map shall include at least the following information:

- (1) site/facility name;
- (2) labels of all features shown on the map;
- (3) north arrow;
- (4) map scale;
- (5) all structures and buildings that are or will be constructed at the facility including those used in collection, storage or processing operations;
- (6) location of equipment;
- (7) property boundaries;
- (8) water sources, arroyos, wetlands, ditches and other topographic features;
- (9) wells;
- (10) fences;
- (11) easements, and power lines;
- (12) all access routes and internal roads used for residential, commercial and emergency use;
- (13) loading and unloading areas;

**(14)** the location of the areas used for collection of scrap tires, processing of scrap tires, used tires, tire derived products, and residuals from processing; and

**(15)** the location and width of fire lanes.

**B.** The name, mailing address, telephone number and e-mail address, if available, of the proposed facility, facility owner, operator, and property owner.

**C.** The location of the front gate of the proposed facility in latitude and longitude, as determined by a geographic information system unit or survey, and the physical address, if available.

**D.** Total acreage of the proposed facility site.

**E.** A copy of the deed or other legal description of the site.

**F.** Zoning of the site, and the zoning of all adjacent properties, if applicable.

**G.** The anticipated start up date of the facility and hours of operation.

**H.** An emergency contingency plan that meets the requirements of 20.9.20.47 NMAC.

**I.** An affidavit certifying that the proposed site complies with the applicable regulations of all local governing bodies having jurisdiction over the proposed facility, including planning, zoning, building, code enforcement and drainage departments.

**J.** Affidavits certifying that all applicable notifications required by 20.9.20.19 NMAC have been published and posted.

**K.** Any other information deemed applicable and requested by the secretary.

**L.** The following operational information:

**(1)** a list and description of the equipment to be used for handling, processing, recycling, or disposing of scrap tires;

**(2)** a detailed narrative of the method of any processing;

**(3)** the maximum number of scrap tires to be processed in one year, if applicable;

**(4)** the maximum number of scrap tires to be processed in one month, if applicable;

(5) the maximum number of unprocessed scrap tires that will be located at the site at any one time;

(6) the maximum number of processed scrap tires that will be located at the site at any one time, if applicable;

(7) the plans for the transportation of scrap or processed tires or both to and from the site;

(8) a description of the methods to be employed to prevent, control or contain a tire fire, including a description of the facility's water source and capacity;

(9) a description of the methods to be employed to monitor and control vectors for scrap and processed tires in storage at the site;

(10) a description of the method to be used to remove residuals from the site; and

(11) any other information requested by the secretary.

M. Closure plans pursuant to 20.9.20.51 NMAC and 20.9.20.52 NMAC.

N. All applications shall be signed by the owner and operator, with a statement certifying that all information in the application is true and correct.

[20.9.20.11 NMAC - N, 8/2/2007]

**20.9.20.12 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR FACILITIES THAT STORE 20,000 OR MORE SCRAP TIRES AT ANY ONE TIME OR PROCESS 200,000 SCRAP TIRES OR MORE PER YEAR:**

Any person seeking a permit for a facility that stores 20,000 or more scrap tires at any one time or processes 200,000 or more scrap tires per year shall submit the following information in addition to all information required in 20.9.20.11 NMAC:

A. an operation and maintenance manual that addresses all of the operating requirements; and

B. proposed financial assurance to meet the requirements of 20.9.20.57-20.9.20.59 NMAC.

[20.9.20.12 NMAC - N, 8/2/2007]

**20.9.20.13 APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATION PERMITS:**

**A.** Any person seeking a permit for a civil engineering application that uses 101 to 999 scrap tires and is two (2) bales high or less, other than a commercial feed operation that uses scrap tires as tarp weights, shall comply with the requirements of 20.9.20.36 NMAC and 20.9.20.37 NMAC and file an application which includes the following information. If the civil engineering application applicant has obtained an approval form the U.S. army corps of engineers or construction industries division for the siting or design of the civil engineering application, then it may file only the information in paragraphs (1), (2), (4), (6), (7), (8) and (9) of this subsection.

**(1)** The name, mailing address, telephone number, and e-mail address, if available, of the applicant, property owner, and builder of the civil engineering application.

**(2)** The location of the of the civil engineering application, including its physical address if available.

**(3)** A copy of the deed or other legal description of the property on which the proposed civil engineering application will be constructed.

**(4)** If different from the civil engineering application site, the location, including the physical address, if available, and the name, mailing address, telephone number, and the e-mail address, if available, of the property owner of the temporary storage site where scrap tires will be stored temporarily before and during construction.

**(5)** A detailed narrative describing the proposed civil engineering application, unless the civil engineering application has a set of plans signed and stamped by a registered professional engineer.

**(6)** If the civil engineering application is to be in a floodplain, a waterway, or a wetland, written authorization of the project by the U.S. army corps of engineers or other appropriate authorities.

**(7)** The anticipated date when scrap tires will be brought to the civil engineering application site or temporary storage site.

**(8)** The origins, if known, of the scrap tires to be used for the civil engineering application.

**(9)** The proposed dates of completion of the civil engineering application and removal of scrap tires kept in temporary storage.

**(10)** The method to be used to anchor scrap tires, if applicable.

**(11)** The method to be used to cover scrap tires, if applicable.

**(12)** The method to be used to fill scrap tires; if applicable.

(13) Any other information deemed applicable and requested by the department.

(14) An affidavit certifying that the proposed site complies with the applicable regulations of all local governing bodies having jurisdiction over the proposed facility, including planning, zoning, building, code enforcement and drainage departments.

**B.** A commercial feed operation that uses over 100 scrap tires for the weighting of tarps shall file an application, which shall include:

(1) the name, mailing address, telephone number, and e-mail address, if available, of the applicant, and property owner where the scrap tires will be used;

(2) the physical address or other description of the location where the scrap tires will be used;

(3) an affirmative statement that the scrap tires will be used only for tarp weights; and

(4) any other information deemed applicable and requested by the department.

**C.** All applications shall be signed by the applicant, with a statement certifying that all information in the application is true and correct.

[20.9.20.13 NMAC - N, 8/2/2007]

**20.9.20.14 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATION THAT USES 1000 TO 99,999 SCRAP TIRES AND IS NO MORE THAN TWO BALES HIGH:**

Any person seeking a permit for a civil engineering application that uses 1000 to 99,999 scrap tires and is no more than 2 bales high shall submit an application which includes the following information in addition to that required under 20.9.20.13 NMAC. If the civil engineering application applicant has obtained an approval from the army corps of engineers or construction industries division for the siting or design of the civil engineering application, then it may file only the information required in 20.9.20.13 NMAC.

**A.** A site layout plan of the proposed civil engineering application that is in compliance with the requirements of 20.9.20.37 NMAC, drawn to scale. The plan shall include at least the following information:

(1) labels of all features shown on the map;

(2) map scale;

- (3) north arrow;
- (4) the proposed civil engineering application;
- (5) all structures and buildings at the civil engineering application site if within 100 feet of the civil engineering application;
- (6) temporary storage areas for other material, equipment, and residuals from processing;
- (7) loading and unloading areas for scrap tires and other material to be used for the civil engineering project;
- (8) location of all storage areas for scrap tire, tire derived products, used tires and fire lanes;
- (9) property boundaries;
- (10) water sources, arroyos, wetlands, ditches and other topographic features;
- (11) wells;
- (12) fences;
- (13) easements, and power lines; and
- (14) all access routes and internal roads used for residential, commercial and emergency use.

**B.** If the scrap tires to be used for the proposed civil engineering application will be kept in temporary storage before and during construction on property that is different from the one described in Subsection A of 20.9.20.14 NMAC, the applicant must provide a plat map of the temporary storage facility that includes all items required in Subsection A of 20.9.20.14 NMAC for the civil engineering application.

**C.** An emergency contingency plan that meets the requirements of 20.9.20.47 NMAC.

[20.9.20.14 NMAC - N, 8/2/2007]

**20.9.20.15 PERMIT APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATION THAT USES 100,000 SCRAP TIRES OR MORE OR IS MORE THAN TWO SCRAP TIRE BALES HIGH:**

Any person seeking a permit for a civil engineering application that uses 100,000 scrap tires or more or is more than two scrap tire bales high shall submit the following information in addition to that required under 20.9.20.14 NMAC:

**A.** facility plans, elevations, drawings and cross sections of the proposed civil engineering application signed and sealed by a professional engineer registered in New Mexico; and

**B.** if the scrap tires to be used for the proposed civil engineering application will be kept in temporary storage before and during construction on property that is different from the proposed civil engineering application, demonstration that the temporary storage facility is in compliance with 20.9.20.37 NMAC.

[20.9.20.15 NMAC - N, 8/2/2007]

**20.9.20.16 PERMIT APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS USING SCRAP TIRES FOR LAND RECLAMATION:**

Any person seeking a permit for a civil engineering application using scrap tires for land reclamation shall file an application which shall include:

**A.** the name, mailing address, telephone number and e-mail address, if available, of the proposed land reclamation site, the applicant, and the land reclamation site's property owner;

**B.** the physical address of the proposed land reclamation site, if available;

**C.** a copy of the deed or other legal description of the property on which the proposed land reclamation site will be constructed;

**D.** the anticipated start up date when tires will be brought to the site;

**E.** the anticipated completion date;

**F.** the origins, if known, of the scrap tires to be used for land reclamation;

**G.** a description of other fill materials and their application;

**H.** a description of compaction methods;

**I.** the method of placement and commingling of scrap tires below ground mixed in a proportion no greater than 33% scrap tires by volume with soil suitable as fill material;

**J.** the approximate volume, dimensions and depth of the depression to be filled;

**K.** the approximate number of scrap tires proposed to be placed in the site;

L. ground storage area that is in compliance with the requirements of 20.9.20.37 NMAC;

M. a description of the final cover;

N. an emergency contingency plan that meets the requirements of 20.9.20.47 NMAC;

O. a letter from the local county official or municipal authority in which the site is or will be located that the applicant has provided notice of the proposed civil engineering application to the county or municipality;

P. a sworn notarized affidavit signed by the property owner certifying that the excavated area, hole or disturbed land area existed before the project and was not excavated for the burying of scrap tires; and

Q. all applications shall be signed by the applicant, with a statement certifying that all information in the application is true and correct.

[20.9.20.16 NMAC - N, 8/2/2007]

**20.9.20.17 ADDITIONAL PERMIT APPLICATION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS THAT PLAN TO USE 100,000 OR MORE SCRAP TIRES PER YEAR FOR LAND RECLAMATION:**

Any person seeking a permit for a civil engineering application that plans to use more than 100,000 scrap tires per year for land reclamation shall submit the following information in addition to that required under 20.9.20.16 NMAC.

A. Site layout plan of the land reclamation site and any above ground storage areas signed and sealed by a professional engineer registered in New Mexico. The site layout plan shall include at least the following if applicable:

- (1) location of temporary storage areas of scrap tires and tire derived products;
- (2) location of fire lanes and fire control facilities;
- (3) security fencing, gates and gatehouse, site entrance and access roads and fire lanes in accordance with 20.9.20.37 NMAC;
- (4) locations of buildings; and
- (5) locations and descriptions of processing equipment.

**B.** An operation and maintenance manual that shall address all of the operating requirements.

**C.** Proposed financial assurance to meet the requirements of 20.9.20.57- 20.9.20.59 NMAC.

[20.9.20.17 NMAC - N, 8/2/2007]

**20.9.20.18 PERMIT APPLICATION REVIEW:**

**A.** Upon receipt of an application for a permit, the department shall review the application to determine if additional information is necessary or shall determine the application complete. If the department determines that additional information is necessary, it shall notify the applicant in writing.

**B.** The applicant shall submit any information requested within 60 days of receipt of a request for additional information, or the application shall be denied without prejudice. The department may extend the response time for good cause. When submitting the information, the applicant shall submit three copies. If the permit application is not complete after two requests for additional information, the secretary may deny the permit application without prejudice.

[20.9.20.18 NMAC - N, 8/2/2007]

**20.9.20.19 PUBLIC NOTICES, HEARINGS AND MEETINGS:**

**A.** Within thirty (30) days after an application for a facility that proposes to store 20,000 or more scrap tires at any one time or process 200,000 or more scrap tires per year or a land reclamation project that proposes to use 100,000 or more scrap tires per year is deemed complete, the applicant shall provide public notice. The notice shall be published once in a newspaper of general circulation in the county where the facility is proposed to be constructed, operated or closed. This notice shall appear in either the classified or legal advertisements section of the newspaper and at one other place in the newspaper expected to give the general public effective notice. A notice shall also be posted on the property boundary where the entrance to the facility will be. The posted notice shall be at least 1 1/2 feet by 2 1/2 feet in size with clear, legible letters. The notice shall be printed in both English and Spanish or other predominant language of the area. The notice shall include the following:

**(1)** name, address, and telephone number of the applicant and contact person;

**(2)** the anticipated start-up date of the facility or modification, and planned hours of operation;

(3) a description of the facility, including the general process, location, size, quantity, rate, and type of tires to be handled and a description of any proposed modification; and

(4) a statement that written comments regarding the application should be provided to the department and stating the date by which comments must be submitted.

B. Thirty (30) days shall be allowed for the public to submit written comments to the department. Should the secretary determine that there is significant public interest, a public hearing shall be held in the geographic area likely to be impacted by the tire facility.

[20.9.20.19 NMAC - N, 8/2/2007]

#### **20.9.20.20 PERMIT ISSUANCE:**

A. The secretary shall issue the permit, issue the permit with terms and conditions, or deny the permit within 60 days after the application is deemed complete or if a public hearing is held, within 120 days following the public hearing.

B. The secretary shall issue a permit if the applicant demonstrates that the requirements of this part and the act are met and that neither a hazard to public health, welfare or the environment nor undue risk to property will result.

C. The terms and conditions of the permit or permit modification shall be the approved representations made by the permit applicant in the application, together with any terms and conditions specifically identified by the secretary.

D. At the time of permit issuance, the tire recycling facility or civil engineering application will be assigned a permit number.

E. A permit issued for a new or existing tire recycling facility shall be for the active life of the facility as described in the approved permit, or for twenty years, whichever is less.

F. A permit issued for a civil engineering application shall terminate upon completion of the civil engineering application or within five years of issuance of the permit, whichever is less.

[20.9.20.20 NMAC - N, 8/2/2007]

#### **20.9.20.21 PERMIT DENIAL, SUSPENSION OR REVOCATION:**

A. In addition to the causes for suspension or revocation listed in Subsection B of 74-13-13 NMSA 1978, the secretary may deny, suspend or revoke a permit during its term for:

(1) violation by the owner or operator of any term or condition of the permit, any requirement of the act, these rules or any subsequent rule adopted by the department;

(2) failure of the applicant in the application or during the permit issuance process to disclose fully all relevant facts;

(3) misrepresentation by the owner or operator of any relevant facts at any time;

(4) a determination that the permitted activity endangers public health, welfare or the environment;

(5) failure of the owner or operator to demonstrate the knowledge and ability to operate a facility in accordance with this part;

(6) a history of non-compliance by the owner or operator with environmental regulations, rules or statutes at another facility;

(7) having any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States;

(8) modifying a facility without the approval of the secretary; or

(9) failure to respond to a request for additional information within sixty (60) days of notification.

**B.** A permit may be revoked in accordance with the procedures set forth in Adjudicatory Procedures - Environment Department, 20.1.5 NMAC. Construction, modification and interim operation, if any, shall cease upon the effective date of the revocation.

**C.** Once a permit or permit modification is issued and all appeals are final, operations or construction shall begin within one year. If operation or construction does not begin within one year, the secretary may revoke the permit, but in no event shall it be revoked pursuant to this subsection sooner than one year after the effective date of these regulations.

[20.9.20.21 NMAC - Rp, 20.9.2.212 NMAC, 8/2/2007]

#### **20.9.20.22 EFFECT OF PERMIT OR REGISTRATION:**

**A.** Any terms or conditions of the permit or registration shall be enforceable to the same extent as a regulation of the board.

**B.** The existence of a permit or registration issued under this part shall not constitute a defense to a violation of this part or the act.

**C.** The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

[20.9.20.22 NMAC - N, 8/2/2007]

#### **20.9.20.23 PERMIT MODIFICATION:**

**A.** Any owner or operator of a tire recycling facility, storage facility or civil engineering application who seeks to modify such facility or permit conditions shall obtain a permit modification prior to making any modifications. A permit modification shall not extend the term of any permit.

**B.** An application for a modification shall demonstrate compliance with the portions of this part that pertain to such a modification.

**C.** The secretary may initiate the modification of permit conditions or require modification of the facility if:

**(1)** changes occur after permit issuance, which justify permit conditions that are different from or are not included in the existing permit;

**(2)** the secretary has received information that was not in the record at the time of permit issuance and would have justified the application of different permit conditions at the time of issuance;

**(3)** the standards or regulations on which the permit was based have changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued; or

**(4)** the secretary determines good cause exists for modification, such as an act of God, strike, flood, or materials shortage, or other events over which the permittee has little or no control and for which there is no reasonable remedy.

[20.9.20.23 NMAC - N, 8/2/2007]

#### **20.9.20.24 TRANSFER OF PERMITS AND CHANGE IN PERMIT APPLICANT:**

**A.** A change in ownership of a permittee requires a permit transfer and shall be allowed according to the following procedure.

**(1)** Where the entity owning the permit undergoes an ownership change, but the permitted entity remains the same, the new owner shall, within thirty days of the change, submit the following:

**(a)** a description of the change in ownership;

**(b)** the date of the change in ownership;

**(c)** if the change in ownership is for a facility that stores 20,000 or more scrap tires at any one time or processes 200,000 or more scrap tires per year or a land reclamation project that uses 100,000 or more scrap tires per year, a statement that the current financial assurance will remain in effect, or a new proposed financial assurance to meet the requirements of 20.9.20.57 - 20.9.20.59 NMAC has been obtained;

**(d)** a statement whether the new owner has been convicted of a felony or other crime within ten years immediately preceding the date of the transfer, and if so details of the crime and conviction;

**(e)** a statement whether the new owner has been fined within the past five years for alleged violations of any environmental laws of this state, any other state or the United States, and if so, details of any allegations, settlements or compliance orders; and

**(f)** any other information required by the department.

**(2)** If the change in ownership is for a facility that stores 20,000 or more scrap tires at any one time or processes 200,000 or more scrap tires per year or a land reclamation project that uses 100,000 or more scrap tires per year, the permittee shall provide proof of public notice of the ownership change using the procedures applicable to permit applications in Subsection A of 20.9.20.19 NMAC, and shall indicate in the public notice that the department will accept public comment on the ownership change for a period of 30 days after the date of publication.

**(3)** The existing financial assurance required by 20.9.20.57 - 20.9.20.59 NMAC shall remain in effect until the secretary has approved any new proposed financial assurance submitted by the new owner.

**(4)** The secretary shall, within 90 days after the submission of all required information, but not before the close of the public comment period, issue an order approving, approving with terms or conditions, or denying the application for permit transfer and revoking the permit. The secretary may condition the approval or deny the application and revoke the permit based on evidence in the administrative record. The secretary may deny the application for any reason set forth in Subsection A of 20.9.20.21 NMAC.

**B.** A change in the named permittee requires a permit transfer and shall be allowed according to the following procedure.

**(1)** Where the person owning the permit seeks to transfer the permit to a new person to be named as permittee, the existing owner and the proposed new owner shall

file an application with the department requesting transfer of the permit. The application shall contain the following information:

- (a)** a description of the proposed change of permittee;
- (b)** an explanation of whether the change in permittee will have any effect on the operations;
- (c)** If the change in permittee is for a tire recycling facility that stores 20,000 or more scrap tires at any one time or processes 200,000 or more scrap tires per year or a land reclamation project that uses 100,000 or more scrap tires, a new proposed financial assurance to meet the requirements of 20.9.20.57 - 20.9.20.59 NMAC;
- (d)** a statement whether the new owner has been convicted of a felony or other crime within ten years immediately preceding the date of the transfer, and if so, details of the crime and conviction;
- (e)** a statement whether the new owner has been fined within the past five years for alleged violations of any environmental laws of this state, any other state or the united states, and if so, details of any allegations, settlements or compliance orders;
- (f)** If the change in permittee is for a facility that stores 20,000 or more scrap tires at any one time or processes 200,000 or more scrap tires per year or a land reclamation project that uses 100,000 or more scrap tires; and
- (g)** any other information required by the secretary.

**(2)** The permittee shall provide public notice of a proposed permit transfer using the procedures applicable to permit applications in Subsection A of 20.9.20.19 NMAC, and shall indicate in the public notice that the department will accept public comment on the permit transfer for a period of 30 days after the date of publication.

**(3)** If applicable, the existing financial assurance required by 20.9.20.57 - 20.9.20.59 NMAC shall remain in effect until the secretary has approved any new proposed financial assurance submitted by the proposed new permittee.

**(4)** The secretary shall, within 90 days after the submission of all required information, but not before the close of the public comment period, issue an order approving, approving with terms or conditions, or denying the application for permit transfer, and if necessary, revoking the permit. The secretary may condition the approval or deny the application and if necessary revoke the permit based on evidence in the administrative record. The secretary may deny the application or if necessary revoke the permit for any reason set forth in 20.9.20.21 NMAC.

**C.** If a permit applicant changes ownership or seeks to transfer the application to a new proposed permittee, the applicant and transferee shall follow the procedures in this

section. If the application has already been deemed complete, the application shall be re-noticed and re-submitted.

[20.9.20.24 NMAC - N, 8/2/2007]

**20.9.20.25 PERMIT EXPIRATION:**

**A.** A permit issued for a new or existing tire recycling facility shall expire twenty years after issuance.

**B.** A permit issued for a civil engineering applications shall expire when the project has been completed and the final report in compliance with 20.9.20.53 NMAC has been submitted and approved in writing.

**C.** A permit shall automatically expire when the department verifies that the closure and any post-closure care plan, including corrective action, have been completed.

**D.** If a permitted facility begins operation, and thereafter does not operate for at least one year, authorization to accept scrap tires is suspended and closure activities shall begin immediately.

[20.9.20.25 NMAC -Rp, 20.9.2.II.211 NMAC, 8/2/2007]

**20.9.20.26 APPLICATION REQUIREMENTS FOR SCRAP TIRE HAULER REGISTRATION:**

Haulers of scrap tires shall register with the department 30 days prior to beginning operations. A scrap tire hauler operating prior to the effective date of these regulations shall file an application within one year of the effective date of these regulations, and shall be allowed to continue hauling until its application is either approved or denied. Commercial solid waste haulers registered pursuant to 20.9.3.31 NMAC who haul scrap tires using vehicles that are primarily used for the hauling of other solid waste are not required to register under this section. Registrations are not transferable. Applications for a scrap tire hauler registration shall include the following information;

**A.** the name, address, telephone number, and e-mail address of the operation for which registration is sought, and the name address, telephone number, date of birth, driver's license number, and social security number of the owner and operator, unless the owner and operator are public entities or are a publicly held corporation that has on file and in effect with the federal securities and exchange commission a registration statement required under 15 U.S.C. Section 77e(c);

**B.** the anticipated start up date, hours of operation, and days of collection;

**C.** location and zoning of vehicle maintenance and any storage yard(s) and a demonstration that the use meets all zoning and land use regulations and restrictive covenants;

**D.** certification that drivers and vehicles are, and will continue to be, properly licensed;

**E.** a statement whether any of the owners or operators have been fined for violation of any environmental laws of any state or the United States;

**F.** a statement of whether any of the owners or operators have had any permit or registration revoked or permanently suspended for cause under the environmental laws of any state or the United States;

**G.** a copy of a current warrant issued by the New Mexico public regulations commission, transportation division pursuant to Paragraph (5) of Subsection A of 18.3.2.8 NMAC, if applicable, or in the case of a public entity hauling special waste, proof of financial responsibility;

**H.** a list of all registered or permitted tire recycling facilities, beneficial agricultural sites or solid waste facilities where scrap tires are expected to be transported on a regular basis;

**I.** if the hauler has a temporary storage facility used to separate scrap tires from tires that will be sold for reuse, a separate permit for the hauler's temporary storage facility is not required, but the hauler must provide a statement in the application that no more than 99 scrap tires will be stored at any one time at the haulers temporary storage facility, and that scrap tires will be separated from reusable tires and will not be stored for a period exceeding 72 hours;

**J.** evidence that a surety bond in the amount of \$10,000 has been posted; and

**K.** any additional information required by the secretary.

**L.** All applications shall be signed by the owner and operator, with a statement certifying that all information in the application is true and correct.

[20.9.20.26 NMAC - N, 8/2/2007]

#### **20.9.20.27 SCRAP TIRE HAULER BOND REQUIREMENTS:**

A scrap tire hauler must acquire and maintain a surety bond in the amount of \$10,000 submitted on a form prepared by the department. This form may be obtained by contacting the department solid waste bureau, and will be posted on its website. The purpose of the surety bond is to provide limited financial assurance for the cleanup and proper disposal of scrap tires found to be illegally dumped by the scrap tire hauler.

**A.** The surety bond provided to the department must be issued subject to the laws and jurisdiction of the state of New Mexico and must be issued by a surety company authorized by the superintendent of insurance to do business in New Mexico. The surety bond provided to the department must have original signatures. The wording of the surety bond must be identical to the wording on the form supplied by the department.

**B.** The surety bond must name the secretary of the New Mexico environment department as the obligee for the surety bond. The secretary may designate a third party to receive any funds from the surety in an amount up to \$10,000 to pay for the costs of clean-up activities.

**C.** The surety bond must be continuous in nature, unless canceled by the surety company. The surety company must notify the department sixty (60) calendar days prior to cancellation of the surety bond. Notice must be provided in writing via certified mail to the solid waste bureau chief.

**D.** In the event of cancellation of a surety bond, the scrap tire hauler must provide a replacement surety bond, executed by an authorized surety company, within thirty (30) calendar days of the department's receipt of the notice of cancellation of the existing surety bond. Should the scrap tire hauler fail to submit alternate bond coverage by the thirty-first (31) calendar day following receipt by the department of the notice of cancellation, the scrap tire hauler's certificate of registration shall be immediately suspended.

**E.** The surety company shall become liable under the terms of the bond if the department determines that the scrap tire hauler has failed to comply with the provisions of the Solid Waste Act, the Recycling and Illegal Dumping Act and 20.9.2 NMAC through 20.9.10 NMAC or this part. The registered scrap tire hauler is jointly and severally liable for the bond amount and any penalties, clean-up costs, or judgments resulting from hauling activities in violation of the Solid Waste Act, the Recycling and Illegal Dumping Act and 20.9.2 NMAC through 20.9.10 NMAC or this part that exceed the bond amount.

**F.** The surety's liability is limited to the amount of the surety bond. The amount of monies recoverable from the scrap tire hauler is not limited to the amount of the bond. A scrap tire hauler shall be responsible for paying for any financial obligations, beyond \$10,000 should the department successfully obtain the \$10,000 from the surety pursuant to the terms of the surety bond, caused by improper disposal of scrap tires by the scrap tire hauler or the scrap tire hauler's employee while acting within the scope of employment, as determined by the department.

**G.** The owner or operator may cancel the surety if the department has given prior written consent. The department will provide such written consent when the scrap tire hauler has given written notification that the scrap tire hauler is no longer in business and/or the date that the scrap tire hauling activities ceased.

[20.9.20.27 NMAC - N, 8/2/2007]

**20.9.20.28 SCRAP TIRE HAULER REGISTRATION PROCEDURES:**

**A.** The registration procedures in 20.9.20.26 - 20.9.20.32 NMAC apply to scrap tire haulers.

**B.** Upon receipt of an application for registration, the department shall review the application to determine if additional information is necessary or shall deem the application complete. The department shall issue a notice of administrative completeness or a notice that additional information is necessary within 60 days after receipt of the application. The secretary may extend the time for good cause.

**C.** Within 60 days of receipt of a request for additional information regarding any scrap tire hauler registration application, the owner or operator shall submit the information requested by the department, or the secretary may deny the registration application without prejudice.

[20.9.20.28 NMAC - N, 8/2/2007]

**20.9.20.29 SCRAP TIRE HAULER REGISTRATION DENIAL, REVOCATION, OR SUSPENSION:**

**A.** The secretary may deny, revoke, or suspend a scrap tire hauler registration on the basis of information in the application or evidence in the administrative record, or other information that comes to the secretary's attention at any time.

**B.** Causes for denying, revoking, or suspending a registration include a finding that the applicant or owner or operator has:

- (1)** knowingly misrepresented a material fact in the application;
- (2)** refused to disclose or failed to disclose the information required under the provisions of this part or the act;
- (3)** exhibited a history of willful disregard for the environmental laws of any state or the United States;
- (4)** had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States;
- (5)** violated a term or condition of the registration, any requirement of this part, or any requirement of the act or otherwise endangered public health or welfare;
- (6)** knowingly misrepresented a material fact at any time after issuance of the registration;

(7) failed to maintain a valid warrant pursuant to 18.3.2 NMAC; or

(8) failed to comply with the Parental Responsibility Act, Sections 40-5A-1 et seq. NMSA 1978 (1998 Cum. Supp.).

**C.** If the department recommends denial of a scrap tire hauler registration, notice shall be provided to the applicant by registered mail. The applicant may request a hearing on the registration denial by filing a written request for hearing with the hearing clerk within 30 days of receipt of the notice. A request for hearing shall be treated as a hearing determination and the hearing conducted pursuant to 20.1.4 NMAC, Permit Procedures - Environment Department. If no request for hearing is filed within 30 days of receipt of the notice, the recommended denial shall become a final action of the secretary.

**D.** A scrap tire hauler registration may be revoked or suspended in accordance with the procedures set forth in 20.1.5 NMAC, Adjudicatory Procedures - Environment Department. Operation, if any, shall cease upon the effective date of the revocation or suspension.

[20.9.20.29 NMAC - N, 8/2/2007]

#### **20.9.20.30 REGISTRATION ISSUANCE:**

**A.** Within 30 days after an application for a scrap tire hauler registration is deemed complete, the secretary shall issue the registration, issue the registration with terms and conditions, or deny the registration.

**B.** The secretary shall issue a registration if the owner or operator demonstrates that the requirements of this part and the act are met and that neither a hazard to public health, welfare or the environment nor undue risk to property will result.

**C.** The terms and conditions of the registration shall be the approved representations made by the registration applicant in the application, together with any terms and conditions specifically identified by the secretary.

**D.** At the time of registration issuance, the scrap tire hauler will be assigned a registration number.

**E.** The department shall maintain a list of registered scrap tire haulers on its solid waste bureau website.

[20.9.20.30 NMAC - N, 8/2/2007]

#### **20.9.20.31 SCRAP TIRE HAULER REGISTRATION RENEWAL:**

**A.** A scrap tire hauler shall renew its registration every five years. To renew a registration, the scrap tire hauler shall file a complete renewal application no later than 30 days prior to the expiration date of the registration. A registration renewal application shall include the same information required in 20.9.20.26 NMAC, and in addition provide a complete description of its compliance history and any other information requested by the secretary. The existing registration shall remain in effect until the registration is granted, granted with conditions or denied.

**B.** A registered scrap tire hauler may continue to operate under the terms and conditions of the existing registration for a period not to exceed one year after the effective date of these rules or until the registration is renewed whichever is first provided that:

(1) the owner and operator are in compliance with the existing registration, this part, and any applicable federal regulations;

(2) a complete renewal application is submitted in a timely fashion in accordance with this section; and

(3) the owner or operator adequately submits any requested additional information by the deadline specified by the secretary.

[20.9.20.31 NMAC - N, 8/2/2007]

#### **20.9.20.32 SCRAP TIRE HAULER REGISTRATION EXPIRATION:**

**A.** A scrap tire hauler registration shall expire five (5) years from the date of issuance of the registration.

**B.** A scrap tire hauler registration shall terminate upon any change of owners or operators of the registered scrap tire hauler, and the new owner or operator shall obtain a new registration prior to operation.

[20.9.20.32 NMAC - N, 8/2/2007]

#### **20.9.20.33 CURRENT HOLDERS OF TIRE RECYCLING FACILITY REGISTRATIONS, SPECIFIC TIRE RECYCLING FACILITY PERMITS AND LAND RECLAMATION SITES:**

Registered tire recycling facilities, land reclamation sites, and holders of specific permits for tire recycling facilities shall apply for a permit and demonstrate compliance with the provisions of this rule within 180 days after its effective date.

[20.9.20.33 NMAC - N, 8/2/2007]

#### **20.9.20.34 CONFIDENTIALITY OF INFORMATION:**

**A.** Permit applicants, owners or operators of tire recycling facilities or civil engineering applications, or scrap tire haulers who submit information to the department may claim such information as confidential. Any claim of confidentiality must be asserted at the time of submittal.

**B.** To claim confidentiality of information in a submittal, the submitter must clearly mark each page in the document on which the submitter claims there is confidential information, and submit to the department a written description of the basis for the claim of confidentiality at the time of submission. The department shall review the claim of confidentiality based on the written submittal and determine whether the information may be maintained as confidential pursuant to the Inspection of Public Records Act, Section 14-2-1 et seq. NMSA 1978. If the department determines that information in a submittal is confidential, the department may require submission of redacted copies of the submittal for the public record.

**C.** If no claim of confidentiality is made at the time of submission, any such claims are deemed waived and the department may make the information available to the public without further notice.

**D.** Information that is determined by the department to be confidential may be disclosed to officers, employees, or authorized representatives of the state or the United States concerned with implementing law enforcement, or when relevant in any proceedings under the act or this part.

[20.9.20.34 NMAC - N, 8/2/2007]

#### **20.9.20.35 FEE SCHEDULE:**

There are no fees for tire recycling facility permits, storage permits, civil engineering application permits, or scrap tire haulers registrations.

[20.9.20.35 NMAC - N, 8/2/2007]

#### **20.9.20.36 GENERAL SITING CRITERIA FOR TIRE RECYCLING FACILITIES, STORAGE FACILITIES AND CIVIL ENGINEERING APPLICATIONS:**

**A.** No tire recycling or storage facility shall be located within 25 feet of a floodplain, a watercourse (including arroyos), or a wetland unless the floodplain, watercourse, or a wetland has been altered pursuant to an approval from the U.S. army corps of engineers or other appropriate authority.

**B.** No civil engineering application shall be constructed in a floodplain, a waterway, or a wetland without authorization by the U.S. army corps of engineers or other appropriate authority.

C. No tire recycling facility or civil engineering application shall be located within historically or archaeologically significant sites, unless in compliance with the Cultural Properties Act, Sections 18-6-1 et seq. NMSA 1978 and the Prehistoric and Historic Sites Preservation Act, Sections 18-8-1 et seq. NMSA 1978.

[20.9.20.36 NMAC - N, 8/2/2007]

**20.9.20.37 REQUIREMENTS FOR STORAGE OF SCRAP TIRES AND TIRE DERIVED PRODUCT BY TIRE RECYCLING AND STORAGE FACILITIES AND FOR TEMPORARY STORAGE BY CIVIL ENGINEERING APPLICATIONS:**

**A.** A scrap tire storage site shall be designed, constructed, and operated so that the health, welfare and safety of operators, haulers, and others who may utilize the site are maintained.

**B.** Outdoor storage of scrap tires shall not be located within the right of way of any electric power lines and in no event within 20 feet on either side of an electric power line.

**C.** Open burning is prohibited at all tire storage sites. Smoking shall be allowed only in designated areas.

**D.** Scrap tire piles or stacks of tire bales shall be no greater than 10 feet in height, nor shall the pile or stack be more than 50 feet wide by 100 feet long.

**E.** There shall be a minimum separation of 40 feet between outdoor scrap tire piles, bale stacks, and other stored materials. This 40 foot space shall be designated as a fire lane that totally encircles the tire piles and shall be maintained as an all-weather road.

**F.** Outdoor storage piles and bale stacks must be separated from grass and weeds by a minimum of 40 feet and from brush and forested areas including pinon and juniper by a minimum of 100 feet.

**G.** When there are more than three (3) outdoor storage piles of scrap tires or scrap tire bales that are 10 feet high by 50 feet wide by 100 feet long, the separation between the groups shall be at least 75 feet wide.

**H.** Tires shall not be stored under bridges, elevated trestles, elevated roadways, or elevated railroads.

**I.** When the bulk volume of scrap tires will be more than 20,000 cubic feet, a firmly anchored fence that is at least six feet high or other method of security that has been approved by the local fire authority is required.

**J.** All gates to the outdoor storage piles of scrap tires shall be locked when the facility is not staffed.

**K.** All gateways, fire breaks and separation lanes shall be free of obstructions at all times.

**L.** The scrap tire storage site shall have fire extinguishers that are in compliance with the local fire code.

**M.** Each site permitted as a tire recycling or storage facility shall conspicuously display at each entrance a sign at least 1 1/2 feet by 2 1/2 feet in size with clear, legible letters stating the name of the scrap tire storage site using the, name, location, and physical address of the site, the tire recycling or storage facility permit number, the hours of operation and emergency telephone numbers.

**N.** The facility must have suitable structures or features to prevent surface water run-on from surrounding areas as well as preventing surface runoff from leaving the facility.

**O.** The scrap tire storage site shall be designed, constructed and maintained in accordance with all local building codes, fire codes, and other applicable local codes and regulations including litter and nuisance codes.

**P.** An adequate means of suppression or extinguishing fires shall be provided.

[20.9.20.37 NMAC - N, 8/2/2007]

#### **20.9.20.38 GENERAL OPERATING AND CONSTRUCTION REQUIREMENTS:**

Owners and operators of all tire recycling facilities and civil engineering application sites shall operate and construct the tire recycling facility or civil engineering application in a manner that:

**A.** does not cause a public nuisance or create a potential hazard to public health, welfare or the environment;

**B.** is in compliance with rules adopted by state and local fire authorities; and

**C.** operates and maintains the facility in accordance with 20.9.20.37 NMAC.

[20.9.20.38 NMAC - N, 8/2/2007]

#### **20.9.20.39 ADDITIONAL OPERATING REQUIREMENTS FOR ALL PERMITTED TIRE RECYCLING FACILITIES:**

**A.** Owners and operators of all tire recycling facilities shall:

**(1)** ensure that copies of the emergency contingency plan that meets the requirements of 20.9.20.47 NMAC; are readily accessible to employees on duty;

(2) train employees when hired and at least annually thereafter on when and how to implement the emergency contingency plan that meets the requirements of 20.9.20.47 NMAC and document in the operating record that such training has been conducted;

(3) maintain a written operating record and manifests in compliance with 20.9.20.48 - 20.9.20.50 NMAC; and

(4) notify the department both orally and in writing within 24 hours of an incident that may negatively impact the environment, or human health or requires implementation of the facility's emergency contingency plan.

B. The secretary may order temporary changes in operation or facility design in emergency situations when the secretary determines there is an imminent danger to public health, welfare or the environment.

[20.9.20.39 NMAC - N, 8/2/2007]

**20.9.20.40 ADDITIONAL OPERATING REQUIREMENTS FOR PERMITTED FACILITIES THAT STORE MORE THAN 20,000 SCRAP TIRES AT ANY ONE TIME OR PROCESSES MORE THAN 200,000 SCRAP TIRES PER YEAR:**

Owners and operators of facilities that store 20,000 or more scrap tires at any one time or processes 200,000 or more than scrap tires per year shall:

A. post signs at the facility to indicate the name and address of the site, the hours of operation, the tire recycling facility permit number and emergency telephone numbers; and

B. prominently post key operational procedures.

[20.9.20.40 NMAC - N, 8/2/2007]

**20.9.20.41 CIVIL ENGINEERING APPLICATION CONSTRUCTION AND MAINTENANCE REQUIREMENTS:**

A. Scrap tires kept in temporary storage before and during construction of a civil engineering application will be stored in compliance with 20.9.20.37 NMAC.

B. Copies of the emergency contingency plan that meets the requirements of 20.9.20.47 NMAC shall be readily accessible to employees on duty.

C. All civil engineering applications shall be constructed in a stable manner.

**D.** The secretary may order temporary changes in storage, construction or design in emergency situations when the secretary determines there is an imminent danger to public health, welfare or the environment.

**E.** After completion, all civil engineering applications should be inspected on a regular basis by the site owner or operator to observe any weakness or failure of the structure.

**F.** In the event of a crack, break or collapse of the civil engineering application, the failure will be repaired in a timely manner so that scrap tires do not enter contiguously owned property or become a health hazard.

**G.** Loose tires used for civil engineering applications shall be filled with soil or other fill material to prevent the tires from becoming harborage for vectors.

**H.** The owner or operator of a civil engineering application shall maintain a written operating record and retain manifests in compliance with 20.9.20.48 - 20.9.20.50 NMAC.

**I.** Upon completion of the civil engineering application, all excess scrap tires held in temporary storage and equipment used for construction shall be removed, and a final report shall be submitted to the department pursuant to 20.9.20.53 NMAC.

[20.9.20.41 NMAC - N, 8/2/2007]

**20.9.20.42 ADDITIONAL CONSTRUCTION AND MAINTENANCE REQUIREMENTS FOR A CIVIL ENGINEERING APPLICATION THAT USES 100,000 OR MORE SCRAP TIRES OR IS MORE THAN TWO BALES HIGH:**

If the civil engineering application constructed is different from the plans submitted in the application, a professional engineer registered in New Mexico shall provide stamped and sealed as-built certification of the civil engineering application actually constructed.

[20.9.20.42 NMAC - N, 8/2/2007]

**20.9.20.43 OPERATING REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS USING SCRAP TIRES FOR LAND RECLAMATION:**

**A.** Undisturbed land shall not be excavated for the purpose of filling the same land with a mixture of scrap tires and debris or soil. Any borrow area, hole or other disturbed land area to be used for a land reclamation project must have existed before the project, and it must have been excavated or soil removed for a purpose other than for the burial of tires or tire pieces.

**B.** Any person holding a permit for a civil engineering application using scrap tires for land reclamation shall:

(1) not adversely affect human health, public safety or the environment, either during fill operations or after the reclamation project is completed;

(2) not create a public nuisance;

(3) place scrap tires below ground mixed in a proportion no greater than 33% scrap tires by volume with soil suitable as fill material and compact and grade the structure in a manner that will prevent erosion;

(4) maintain a written operating record and retain manifests in compliance with 20.9.20.48 - 20.9.20.50 NMAC during the filling process; and

(5) not store scrap tires on the ground surface without burial and mixing with inert material for a period longer than one week.

[20.9.20.43 NMAC - N, 8/2/2007]

**20.9.20.44 ADDITIONAL OPERATING REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS THAT USE 10,000 OR MORE SCRAP TIRES PER YEAR FOR LAND RECLAMATION:**

No more than 10 acres of land shall be reclaimed using scrap tires at any one location.

[20.9.20.44 NMAC - N, 8/2/2007]

**20.9.20.45 OPERATING REQUIREMENTS FOR SCRAP TIRE HAULERS AND TRANSPORTERS:**

**A.** Any person who transports scrap tires, whether or not for hire, shall:

(1) collect and transport tires so as to prevent environmental, safety, and public health or welfare hazards and nuisances; and

(2) securely tie, strap or use a fully enclosed container to transport scrap tires to prevent loss of contents during transportation.

**B.** Additional operating requirements for persons that haul scrap tires for hire follows.

(1) All registered scrap tire haulers shall conspicuously label all vehicles on both sides with the company's name, telephone number and registration number.

(2) Pursuant to 20.9.20.50 NMAC, registered scrap tire haulers shall provide a scrap tire manifest to the scrap tire generator for each load of scrap tires hauled.

(3) Registered scrap tire haulers shall comply with all manifesting requirements in 20.9.20.50 NMAC and record keeping requirements in 20.9.20.48 NMAC and 20.9.20.49 NMAC.

(4) Scrap tire haulers shall provide prior notification to the department in writing of any major changes in operation. A major change includes a change in ownership, a change in location of vehicle maintenance and storage yard and a change in the disposal facility being used. In the case of emergency, where prior notice cannot be given, written notice shall be given within 48 hours after the change.

(5) A scrap tire hauler is responsible for assuring that scrap tires are transported to a permitted or registered facility or beneficial agricultural operation within 30 days after leaving the site of the generator.

(6) A hauler's temporary storage facility shall contain no more than 99 scrap tires at any one time.

(7) Scrap tires shall be stored for no more than 72 hours at a hauler's temporary storage facility.

[20.9.20.45 NMAC - N, 8/2/2007]

#### **20.9.20.46 SCRAP TIRE GENERATOR OPERATING REQUIREMENTS:**

**A.** Each scrap tire generator is responsible for assuring that scrap tires are transported to a permitted or registered facility or beneficial agricultural operation.

**B.** Each scrap tire generator shall use manifests to document the removal and management of all scrap tires generated on-site.

**C.** Each scrap tire generator shall monitor and control vectors in outdoor tire storage areas.

**D.** Each scrap tire generator may transport its scrap tires from its own business locations to a permitted or registered facility or bona fide beneficial agricultural operation without a scrap tire hauler registration and shall provide the manifest to the final destination for completion. The scrap tire generator shall retain the manifest pursuant to 20.9.20.50 NMAC.

**E.** Each scrap tire generator shall comply with all manifesting requirements in 20.9.20.50 NMAC.

[20.9.20.46 NMAC - N, 8/2/2007]

#### **20.9.20.47 CONTINGENCY PLAN FOR EMERGENCIES:**

**A.** Holders of tire recycling facility permits shall maintain a current emergency contingency plan designed to minimize hazards to public health, welfare or the environment.

**B.** A copy of the emergency contingency plan shall be kept at the permitted facility and copies shall be provided to the appropriate emergency response authorities of the local government.

**C.** The provisions of the emergency contingency plan shall be carried out immediately whenever there is a fire, explosion, or release of contaminants which could pose an immediate or imminent threat to public health, welfare or the environment.

**D.** The emergency contingency plan shall be amended immediately whenever the following occurs.

(1) The facility permit is modified.

(2) The plan fails in an emergency.

(3) The facility's design, operations, maintenance, or other circumstances change in a way that increases the potential for fires, explosions, or releases of hazardous constituents, or necessitate changes to the planned emergency response.

(4) The list of emergency coordinators changes.

(5) The list of emergency equipment changes.

**E.** The emergency contingency plan for emergencies shall include the following, if applicable.

(1) A description of the actions facility personnel should take in response to fires or other disaster.

(2) A description of arrangements with local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(3) A list of the name(s) and telephone numbers of the emergency coordinator(s). If more than one person is listed, one must be named as the primary emergency coordinator.

(4) A list of all emergency equipment at the facility (such as fire extinguishing systems, communications and alarm systems), along with the location, physical description, and a summary of the capabilities of each item.

(5) An evacuation plan for facility personnel which describes signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes in cases where the primary routes could be blocked by fire or releases of toxins.

(6) Instructions for the emergency coordinator or his designee, in case of an imminent or actual emergency situation, to immediately:

(a) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(b) notify appropriate state and local agencies with designated response roles if their assistance is needed.

(7) Instructions for the emergency coordinator, whenever there is a fire or other disaster, to as quickly as possible identify the nature, source, amount, and extent of any accident of fire by means of observation, review of facility records or manifests, or if necessary, by chemical analysis.

(8) Instructions for the emergency coordinator to assess possible hazards to public health, welfare or the environment that may result from the fire or explosion.

(9) Instructions for the emergency coordinator to provide for appropriate treatment, storage, or disposal of recovered waste, or any other material that results from a release, fire, or explosion at a facility, after the emergency situation is under control.

[20.9.20.47 NMAC - N, 8/2/2007]

#### **20.9.20.48 RECORD KEEPING:**

**A.** All persons holding a tire recycling facility permit shall maintain manifests and any records necessary to comply with its annual report requirements which shall include:

(1) the type of processing;

(2) the number of scrap tires or weight of the scrap tires received from each scrap tire generator or scrap tire hauler;

(3) the name, mailing address, contact name, telephone number and e-mail address if available, of each transporter that delivered scrap tires to the facility;

(4) the name, mailing address, contact name, telephone number and e-mail address if available, of the scrap tire generator where the scrap tires originated;

(5) the number of unprocessed scrap tire remaining at the site at the end of the calendar year;

(6) the number of processed scrap tire remaining at the site at the end of the calendar year; and

(7) the number of tire bales, if applicable, remaining at the site at the end of the calendar year.

**B.** Any person holding a civil engineering application permit shall maintain a record during the construction of the project that includes manifests and any records necessary to comply with applicable record keeping requirements and the final project report requirements which shall include:

(1) the number of scrap tires or weight of the scrap tires received from each scrap tire generator or scrap tire hauler;

(2) the name, mailing address, contact name, telephone number and e-mail address if available, of each transporter that delivered scrap tires to the civil engineering application; and

(3) the name, mailing address, contact name, telephone number and e-mail address if available, where the scrap tires originated.

**C.** Any person holding a scrap tire hauler registration shall maintain manifests and any records necessary to comply with its annual report requirements which shall include:

(1) the number of scrap tires or weight of the scrap tires for each month, by origin and destination;

(2) the name, mailing address, and e-mail address if available, of each scrap tire generator or scrap tire hauler; and

(3) the name, mailing address, and e-mail address if available, of each authorized facility where scrap tires are delivered.

**D.** Any person holding a scrap tire hauler registration shall retain all manifests showing the collection and disposition of all used or scrap tires.

**E.** All records, plans, manifests and information required by this part shall be furnished upon request and be made available at reasonable times for inspection by the department.

**F.** All records, plans, manifests and annual reports required by this part shall be retained by the facility during the operational life of the facility and for a period of three (3) years after closure of the facility.

**G.** Any person holding a tire recycling facility permit or a civil engineering application permit shall retain at the permitted site a copy of the terms and conditions of the permit or registration, the emergency contingency plan if applicable, and permit or registration certificate.

**H.** Any person holding a scrap tire hauler registration shall keep a copy of the certificate of registration and any terms and conditions in any vehicle used to transport the scrap tires.

[20.9.20.48 NMAC - Rp, 20 NMAC 9.2.III.301, 8/2/2007]

#### **20.9.20.49 ANNUAL REPORTS AND FINAL REPORTS:**

Any person having a tire recycling facility permit, civil engineering application permit or scrap tire hauler registration shall submit an annual report to the secretary within 60 days after the end of each calendar year describing the operations of the past year.

**A.** For tire recycling facilities, the report shall include the following information:

- (1) the type of processing;
- (2) the number of scrap tires or weight of the scrap tires received annually from each scrap tire generator or scrap tire hauler;
- (3) the name, mailing address, contact name, telephone number and e-mail address if available, of each transporter that delivered scrap tires to the facility;
- (4) the name, mailing address, contact name, telephone number and e-mail address if available, where the scrap tires originated;
- (5) the number of unprocessed scrap tire remaining at the site at the end of the calendar year;
- (6) the number of processed scrap tire remaining at the site at the end of the calendar year; and
- (7) the number of tire bales, if applicable, remaining at the site at the end of the calendar year.

**B.** For scrap tire haulers, the report shall include the following information:

(1) the number of scrap tires or weight of the scrap tires for each month, by origin and destination;

(2) the name, mailing address, contact name, telephone number and e-mail address if available, of each scrap tire generator or scrap tire hauler; and

(3) the name, mailing address, contact name, telephone number and e-mail address if available, of each authorized facility where scrap tires are delivered.

**C.** For civil engineering projects taking more than one year, the report shall include the following information:

(1) the number of scrap tires or weight of the scrap tires received from each scrap tire generator or scrap tire hauler;

(2) the name, mailing address, contact name, telephone number and e-mail address if available, of each scrap tire generator or scrap tire hauler;

(3) the name, mailing address, contact name, telephone number and e-mail address if available, where the scrap tires originated; and

(4) the status of the civil engineering application to include the number of scrap tires or weight of scrap tires that have not been used for the project yet, the number that is still needed, and the portion of the project that has already been completed.

**D.** For civil engineering projects taking less than one year, the report shall be submitted to the department 30 days after completion and shall include:

(1) as built drawings including cross section and plan view, if different from the proposed design; if the civil engineering application used 100,000 scrap tires or more or is more than two scrap tire bales high, the as built shall be signed and sealed by a professional engineer registered in New Mexico;

(2) the total number of scrap tires or tire bales used for the civil engineering application;

(3) the length, width and height of the civil engineering application; and

(4) photographs of the civil engineering application.

[20.9.20.49 NMAC - Rp, 20 NMAC 9.2.III.301, 8/2/2007]

**20.9.20.50 SCRAP TIRE MANIFEST SYSTEM:**

**A.** Each shipment of ten or more scrap tires generated, or recycled or disposed in New Mexico, and transported by a scrap tire generator or hauler shall be accompanied by a scrap tire manifest that complies with this section, in a format approved by the department. The department will place a copy of the approved format on the solid waste bureau website, and will also make it available at the department. The manifest form shall be provided by the transporter or if transportation is performed by the generator, then the generator shall supply the manifest. The manifest form shall include:

(1) the name, physical address, mailing address and telephone number of the generator;

(2) the name, address, and telephone number of all haulers in the order each will be transporting the scrap tires; if the scrap tires are being transported for hire, the scrap tire or commercial hauler's registration number shall be included;

(3) if the hauler removes scrap tires from the shipment for reuse, the number and type of tires removed, the name, phone number and physical address, of the used tire reseller or individual to whom the scrap tires were delivered;

(4) the name, telephone number and permit or registration number of the facility to which the scrap tires are to be delivered;

(5) the number and type of scrap tires released by the scrap tire generator;

(6) the number and type of scrap tires delivered to the final destination;

(7) sequential numbering; and

(8) a minimum of 4 copies; copy 4 will be retained by the scrap tire generator upon completion of tire loading; copy 3 will be retained by the scrap tire transporter upon delivery of tires to a permitted processing facility; copy 2 will be retained by the processing facility; copy 1, or the original copy, shall be returned to the generator by the processing facility in accordance with the requirements of this section.

**B.** The generator or his authorized agent shall sign and date the manifest and obtain the signature of the initial hauler and date of acceptance on the manifest. The generator shall retain a copy of the manifest. Each hauler shall obtain the signature and date of the individual who accepts the scrap tires for recycling, further transportation or disposal, retain a copy of the manifest, and provide the original manifest to the next hauler or facility operator who receives the scrap tires.

**C.** Once the scrap tires reach a permitted tire recycling facility, a permitted civil engineering application site, a bona fide beneficial agricultural use, or a solid waste facility having a valid permit or registration, that destination shall be considered the final destination and must return the signed and dated manifest to the generator. If the scrap

tires are transported from the permitted or registered facility or site, the facility or site shall be considered a generator of scrap tires, and a new manifest must be initiated.

**D.** If a registered scrap tire or registered commercial hauler removes tires for reuse or resale while transporting from a generator site to a permitted tire recycling facility, a permitted civil engineering application site, a bona fide beneficial agricultural use, or a solid waste facility having a valid permit or registration, he shall retain copies and invoices for the sale of any tires removed from the original shipment for a period of three (3) years, showing the name, address, and if available, the phone number of the customer.

**E.** If a registered scrap tire or registered commercial hauler removes for reuse all tires from an individually manifested shipment, the hauler shall return the original manifest to the generator within 60 days of the date of collection. If all are not removed, the manifest shall be adjusted to show the number of tires removed. The manifest shall follow the scrap tires to the next hauler or final destination.

**F.** The manifest shall accurately reflect the required information and shall be signed and dated by the generator, each hauler of the scrap tires, and by the final destination, acknowledging delivery, number or weight, and receipt of the scrap tires. All signatories shall be duly authorized agents of their organizations. The generator shall keep a copy of the originating manifest for three years.

**G.** The final destination of the scrap tires shall be a permitted tire recycling facility, a permitted civil engineering application site, a bona fide beneficial agricultural use, or a solid waste facility having a valid permit or registration issued pursuant to the Solid Waste Act 74-9-1, et seq. NMSA 1978.

**H.** A scrap tire hauler shall release the scrap tires and provide the accompanying scrap tire manifest(s) to the final destination within 30 days after the release of scrap tires from the scrap tire generator.

**I.** The generator shall contact the department if the original manifest is not received within 60 days of the date of release of the scrap tires.

**J.** Upon discovery of any significant discrepancy including, but not limited to, factual misrepresentation on the manifest, irregularities in transportation or any unauthorized action in regard to the shipment, delivery, or disposal of the scrap tires, the person discovering the discrepancy shall notify the department, the generator, the hauler, and the final destination in writing within 24 hours. A discrepancy of over 20% between the number of tires released by the generator site, if measured by number, and scrap tires accepted at the final destination, if measured by weight, and unless otherwise accounted for, shall be considered significant.

**K.** Within thirty days of receipt of a scrap tire shipment at the final destination, the owner or operator of the final destination shall send the original signed copy of the

manifest to the scrap tire generator, acknowledging receipt of the shipment. The facility owner or operator shall list any significant discrepancies on the manifest. Other methods of return of the manifest may be allowed upon specific approval from the secretary.

**L.** A copy of the manifest shall be retained by each hauler and final destination for their operating records. The scrap tire generator shall retain for a period of three years both the originating copy and the returned original manifest signed by the solid waste facility owner or operator and all haulers transporting the waste. Haulers shall retain a copy of the manifest for a period of three years.

**M.** Copies of the manifest shall be retained by the final destination throughout any closure period.

**N.** This section shall not apply to scrap tires that are collected incidentally to the collection and transportation of municipal solid waste to a permitted or registered facility.

**O.** The transportation of scrap tires between a permitted or registered solid waste facility and another permitted or registered solid waste facility or permitted civil engineering application shall be exempt from this section.

**P.** Transportation of scrap tires by the New Mexico department of transportation and its contractors is exempt from this section.

**Q.** Registered commercial waste haulers that are hired to transport scrap tires from an illegal dump site or an abatement project are exempt from this section.

[20.9.20.50 NMAC - N, 8/2/2007]

#### **20.9.20.51 CLOSURE REQUIREMENTS FOR TIRE RECYCLING FACILITIES AND CIVIL ENGINEERING APPLICATIONS:**

Closure plans are required in the application for a permit or permit modification, pursuant to 20.9.20.11 NMAC.

[20.9.20.51 NMAC - N, 8/2/2007]

#### **20.9.20.52 CLOSURE REQUIREMENTS FOR TIRE RECYCLING FACILITIES:**

**A.** The owner or operator of the tire recycling facility shall prepare a written closure plan that describes the steps necessary for closure of the tire recycling facility and any anticipated future uses of the property following closure.

**B.** The owner or operator of the tire recycling facility shall notify the department in writing of the intent to close at least 30 days before the last day tires are to be accepted

at the facility and shall notify the department in writing within 14 days after the closure is complete.

**C.** Within 30 days after site closure is complete, the owner or operator shall notify the department certifying that all requirements have been met.

**D.** If the facility was required to provide proof of financial assurance for closure, the department shall inspect the site within 30 days of closure. If the closure is found to be satisfactory, the department shall approve the closure in writing and release the financial assurance instruments.

**E.** Owners or operators of tire recycling facilities shall:

- (1)** remove all processed and unprocessed tires;
- (2)** dismantle and remove any improvements related to scrap tire handling and processing, if required in the approved closure plan; and
- (3)** comply with all other conditions of the approved closure plan of the permit.

[20.9.20.52 NMAC - N, 8/2/2007]

#### **20.9.20.53 COMPLETION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS:**

Upon completion of a civil engineering application, the owner or operator shall:

- A.** remove all scrap tires not used for the civil engineering application;
- B.** submit a completion report to the department within 60 days after completion. The report shall include photographs documenting that the project has been completed and that all scrap tires not used in the project have been removed; and
- C.** provide the department with a final report of the completed civil engineering application including as built drawings in accordance with Subsection D of 20.9.20.49 NMAC. If the civil engineering application used 100,000 scrap tires or more or is more than two scrap tire bales high, the as built shall be signed and sealed by a professional engineer registered in New Mexico.

[20.9.20.53 NMAC - N, 8/2/2007]

#### **20.9.20.54 ADDITIONAL CLOSURE AND COMPLETION REQUIREMENTS FOR CIVIL ENGINEERING APPLICATIONS THAT USE SCRAP TIRES FOR LAND RECLAMATION:**

**A.** For completion of a civil engineering application that uses scrap tires for land reclamation, the owner or operator shall cover the site with 30 inches of compacted native soils and 6 inches of top soil to provide a 36-inch final cover that meets original grade and implement measures where necessary to control erosion and rodent intrusion.

**B.** Upon completion of closure, a detailed description of the location of the land reclamation site, including a plat signed by a registered surveyor, shall be filed with the appropriate county land recording agent. The description and the plat shall be filed so that it will be found during a title search and proof of the filing shall be submitted to the department. The description shall perpetually notify any potential purchaser of the property that:

- (1) scrap tires have been used to reclaim the land; and
- (2) if applicable, its use is restricted as described in the post-closure care plan.

**C.** The owner or operator shall prepare a written closure and post-closure care plan that describes the steps necessary for closure and post-closure care of the project and any anticipated future uses of the property following closure. The written plan shall include the following:

- (1) a vegetation plan, if appropriate; and
- (2) a monitoring and repair plan that describes methods to be used to ensure cover integrity, including but not limited to settlement, ponding, water erosion, wind erosion, and inadequate drainage.

[20.9.20.54 NMAC - N, 8/2/2007]

#### **20.9.20.55 ENFORCEMENT:**

Enforcement of this part shall be done in compliance with the Recycling and Illegal Dumping Act, Sections 74-13-13 through 74-13-16 NMSA 1978 and the Solid Waste Act, Section 74-9-31 and Section 74-9-34 and Sections 74-9-36 through 74-9-38 NMSA 1978.

[20.9.20.55 NMAC - N, 8/2/2007]

#### **20.9.20.56 RECYCLING AND ILLEGAL DUMPING FUND CRITERIA AND PROCEDURES FOR AWARDING GRANTS AND LOANS:**

**A.** Counties, municipalities, cooperative associations, Indian nations, pueblos, tribes, or land grant communities may apply to the department for a grant, or loan for

the purposes stated in the Recycling and Illegal Dumping Act, Sections 74-13-12 and 74-13-17 NMSA 1978.

**B.** Counties, municipalities, cooperative associations, Indian nations, pueblos, tribes, or land grant communities seeking a contract for abatement of illegal dumpsites or the recycling of scrap tires shall submit an application on a form developed by the department. All dumpsite abatement contract applications will be prioritized for award using the following criteria:

- (1) number of scrap tires and estimated amount and type of other on-site solid waste;
- (2) population within a five-mile radius of the illegal dumpsite or stockpile;
- (3) schools, hospitals, businesses and industries within a five-mile radius of the illegal dumpsite or stockpile;
- (4) the distance to rivers, streams and arroyos;
- (5) the fire hazard posed; and
- (6) whether the illegal dumpsite or stockpile is still active, and if so, what action, if any, is being taken by the governing body of the county, municipality, cooperative association, Indian nation, pueblo or tribe, or land grant community to terminate the activity.

**C.** Counties, municipalities, cooperative associations, Indian nations, pueblos, tribes, or land grant communities seeking a grant or loan for the recycling of scrap tires, abatement of illegal scrap tire dumpsites, or other purposes described in Section 74-13-17 NMSA 1978 shall submit an application on a form developed by the department. All such grants or loans will be prioritized for award using the criteria in Subsection B above, or for the recycling of scrap tires or other purposes described in Section 74-13-17 NMSA 1978, using the following criteria:

- (1) need;
- (2) urgency;
- (3) amount of local funding available;
- (4) consistency with surrounding land use;
- (5) population served;
- (6) consistency with department priorities;

(7) alternative solutions available; and

8) in no event shall a grant, loan or contract for processing be awarded to a person who receives less than ninety-five percent of recyclable materials from sources in New Mexico.

D. The department shall allocate budgeted grant money consistent with the requirements of Section 74-13-17 NMSA 1978.

E. In accordance with Subsection C of Section 74-13-7 NMSA 1978, the recycling and illegal dumping alliance shall review and make recommendations to the department for establishing priorities for each funding and application cycle and for funding grant applications for grants from the recycling and illegal dumping fund.

F. The department shall establish funding and application cycles.

G. Once applications have been submitted, the department shall:

(1) review all applications for eligibility, completeness, and adequacy of technical and financial information;

(2) use a point system to evaluate each application; and

(3) make recommendations to the secretary for awarding grants and loans based on fund availability and points.

H. Grants or loans are contingent on the execution of an acceptable contract between the department and the entity awarded the grant or loan. Each contract shall, at a minimum:

(1) clearly state the proposed use of funds;

(2) establish a work plan and schedule;

(3) create a budget; and

(4) for abatement projects, state the mechanisms to be used by local authorities to prevent future illegal dumping at the site to be abated.

[20.9.20.56 NMAC - N, 8/2/2007]

#### **20.9.20.57 FINANCIAL ASSURANCE APPLICABILITY AND EFFECTIVE DATE:**

A. The requirements of 20.9.20.57 - 20.9.20.59 NMAC apply to owners and operators of all tire recycling facilities and civil engineering applications that use scrap tires for land reclamation required to provide financial assurance pursuant to Subsection

B of 20.9.20.12 NMAC and Subsection C of 20.9.20.17 NMAC, except owners and operators who are the United States, the state of New Mexico, or any agency, department, instrumentality, office, or institution of those governments whose debts and liabilities are the debts and liabilities of the United States or the state of New Mexico.

**B.** The owner or operator of a tire recycling facility modified after the effective date of these regulations shall have an approved financial assurance mechanism in place prior to implementing the modification.

**C.** For tire recycling facilities operating on or after September 1, 1995, the requirements of 20.9.20.57 - 20.9.20.59 NMAC apply beginning 180 days following the effective date of these regulations.

[20.9.20.57 NMAC - N, 8/2/2007]

#### **20.9.20.58 FINANCIAL ASSURANCE FOR CLOSURES:**

**A.** The owner or operator of a tire recycling facility or civil engineering application that uses scrap tires for land reclamation that is required to provide financial assurance pursuant to Subsection B of 20.9.20.12 NMAC and Subsection C of 20.9.20.17 NMAC shall develop a detailed written estimate, in current dollars, of the cost of hiring a third party to close the facility. The owner or operator shall file a copy of the estimate with the department concurrently with any request for approval of a financial assurance mechanism, and shall place a copy of the estimate in the operating record, and notify the department that the estimate has been placed in the operating record.

**B.** During the active life of the facility, the owner or operator shall annually adjust the cost estimate for inflation and any other factors affecting closure costs. A copy of the adjusted closure cost estimate shall be filed with the department, and a copy shall be placed in the operating record.

**C.** The owner or operator shall increase the amount of financial assurance if changes to the closure or facility conditions increase the maximum cost of closure or abatement at any time during the remaining active life by over 3 percent of the current financial assurance amount.

**D.** The owner or operator may reduce the amount of financial assurance for closure if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the facility, upon specific approval by the secretary. To seek approval, the owner or operator shall provide the adjusted cost estimate and supporting documentation to the department. If approved, the owner or operator may revise any financial assurance documents to reflect the adjusted closure cost estimate, and shall file a duplicate original of each financial assurance document with the department within 15 days following approval, and shall place a copy of the estimate and approval in the operating record.

E. Cost estimates for all facilities shall include department contract management costs of at least 10 percent of the estimated closure costs.

F. The owner or operator shall provide continuous coverage for closure until released from financial assurance requirements by a written verification issued by the secretary pursuant to Subsection D of 20.9.20.52 NMAC.

[20.9.20.58 NMAC - N, 8/2/2007]

**20.9.20.59 ALLOWABLE MECHANISMS FOR FINANCIAL ASSURANCE:**

The owner or operator of a tire recycling facility or civil engineering applications that use scrap tires for land reclamation that are required to post financial assurance shall select a financial assurance mechanism from those allowable mechanisms for closure identified in 20.9.10.13 NMAC.

[20.9.20.59 NMAC - N, 8/2/2007]

**20.9.20.60 VARIANCES:**

Any person seeking a variance from any requirement of this part shall do so in accordance with Permit Procedures - Environment Department, 20.1.4 NMAC.

[20.9.20.60 NMAC - N, 8/2/2007]

**20.9.20.61 RECYCLING AND ILLEGAL DUMPING ALLIANCE:**

The recycling and illegal dumping alliance shall complete the requirements of Subsection C of 74-13-7 NMSA 1978.

[20.9.20.61 NMAC - N, 8/2/2007]

**20.9.20.62 EXEMPTIONS:**

Any person claiming to be exempt from the act because the scrap tires will be used in an beneficial agricultural use shall demonstrate that the scrap tires will be used on land that has qualified as "Special Method of Valuation - Land Used Primarily For Agricultural Purposes", pursuant to 3.6.5.27 NMAC. Upon request, verification that the property upon which the tire recycling facility or civil engineering application is located has been granted an agricultural exemption by the assessor of the county where the tire recycling facility or civil engineering application is located shall be submitted to the secretary. In addition, any person claiming to be exempt from the act must show, upon request, that the scrap tires are being put to a beneficial agricultural use.

[20.9.20.62 NMAC - N, 8/2/2007]

**20.9.20.63 REUSABLE TIRES:**

Reusable tires shall be kept for resale for a period not to exceed one year. After that time, they are considered scrap tires subject to the Recycling and Illegal Dumping Act, Sections 74-13-1 et seq. NMSA 1978 and the Solid Waste Act, Sections 74-9-1 et seq. NMSA 1978.

[20.9.20.63 NMAC - N, 8/2/2007]

**20.9.20.64 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with this part does not relieve a person of the obligation to comply with other applicable local, state and federal laws.

[20.9.20.64 NMAC - Rp, 20 NMAC 9.2.109, 8/2/2007]

**PART 21-24: [RESERVED]**

**PART 25: FACILITY GRANT FUND**

**20.9.25.1 ISSUING AGENCY:**

Environment Department.

[11/30/95; 20.9.25.1 NMAC - Rn, 20 NMAC 9.3.I.100, 8/2/2007]

**20.9.25.2 SCOPE:**

This part applies to the use of the funds in the solid waste facility grant fund.

[7/16/91, 11/30/95; 20.9.25.2 NMAC - Rn, 20 NMAC 9.3.I.101, 8/2/2007]

**20.9.25.3 STATUTORY AUTHORITY:**

This part is adopted under the authority of NMSA 1978, Sections 9-7A-6.E and 74-9-40.

[7/16/91; 20.9.25.3 NMAC - Rn, 20 NMAC 9.3.I.102, 8/2/2007]

**20.9.25.4 DURATION:**

Permanent.

[11/30/95; 20.9.25.4 NMAC - Rn, 20 NMAC 9.3.I.103, 8/2/2007]

**20.9.25.5 EFFECTIVE DATE:**

November 30, 1995. This part amends and replaces the New Mexico environment department regulations, NMED 91-2, filed June 16, 1991.

[11/30/95; 20.9.25.5 NMAC - Rn, 20 NMAC 9.3.I.104, 8/2/2007]

#### **20.9.25.6 OBJECTIVE:**

This part governs the procedures by which municipalities and counties may apply for grants for solid waste management projects, and by which the department shall award such grants.

[7/16/91, 11/30/95; 20.9.25.6 NMAC - Rn, 20 NMAC.9.3.I.105, 8/2/2007]

#### **20.9.25.7 DEFINITIONS:**

As used in this part:

A. "applicant" means a municipality as defined in this section or a county that has submitted a grant application, or any number of such municipalities and/or counties that have submitted a grant application jointly;

B. "department" means the New Mexico environment department;

C. "fund" means the solid waste facility grant fund created by NMSA 1978, Section 74-9-41.A.

D. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties;

E. "regionalization" means the combining of activities of legally and politically distinct municipalities as defined in this section and/or counties within a geographical area to address through joint effort or activity mutual solid waste management problems;

F. "secretary" means the secretary of the environment department;

G. "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations and from community activities; "solid waste" does not include:

(1) drilling fluids, produced waters and other non-domestic wastes associated with the exploration, development or production, transportation, storage, treatment or refinement of crude oil, natural gas, carbon dioxide gas or geothermal energy;

(2) fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels and wastes produced in conjunction with the combustion of fossil fuels that are necessarily associated with the production of energy and that traditionally have been and actually are mixed with and are disposed of or treated at the same time with fly ash, bottom ash, boiler slag or flue gas emission control wastes from coal combustion;

(3) waste from the extraction, beneficiation and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore, coal, copper, molybdenum and other ores and minerals;

(4) agricultural waste, including, but not limited to, manures and crop residues returned to the soil as fertilizer or soil conditioner;

(5) cement kiln dust waste;

(6) sand and gravel;

(7) solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1342 or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, 42 U.S.C. Section 2011 et seq.;

(8) densified-refuse-derived fuel; or

(9) any material regulated by Subtitle C of the federal Resource Conservation and Recovery Act of 1976, substances regulated by the federal Toxic Substances Control Act or low-level radioactive waste;

H. "solid waste facility" means any public or private system, facility, location, improvements on the land, structures or other appurtenances or methods used for processing, transformation, recycling or disposal of solid waste, including landfill disposal facilities, transfer stations, resource recovery facilities, incinerators and other similar facilities not specified, but does not include equipment specifically approved by order of the secretary to render medical waste noninfectious or a facility which is permitted pursuant to the provisions of the Hazardous Waste Act and does not apply to a facility fueled by a densified-refuse-derived fuel that accepts no other solid waste.

[7/16/91, 20.9.25.7 NMAC - Rn, 20 NMAC.9.3.I.107, 8/2/2007]

#### **20.9.25.8 SEVERABILITY:**

If any part or application of this part is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[7/16/91, 20.9.25.8 NMAC - Rn, 20 NMAC.9.3.I.106, 8/2/2007]

## **20.9.25.9 GRANT APPLICATION:**

A. General Grant Application Requirements. Assistance is available on a competitive basis to qualified municipalities and counties, individually or jointly. Joint applications will be allowed when two or more eligible municipalities and/or counties within reasonable proximity of each other propose to address a common problem.

### B. Eligibility.

(1) Grants shall be made only to applicants that:

(a) agree to operate and maintain any facility proposed for funding so that the facility will function properly over its structural and material design life;

(b) require the contractor of any facility construction project to post a performance and payment bond in accordance with the requirements of NMSA 1978, 13-4-18;

(c) provide a written assurance, signed by an attorney, that it has proper title, easements leases. and right-of-ways to the property upon which any facility proposed for funding is to be constructed or improved;

(d) meet the requirements for financial capability set by the department to assure sufficient revenues to operate and maintain any facility proposed for funding for its useful life;

(e) agree to properly maintain financial records and to conduct an audit of the project's financial records;

(f) have a treasurer, clerk, secretary-treasurer, or other individual responsible for the financial aspects of the project who is bonded;

(g) employ a registered professional engineer licensed in the state of New Mexico to provide and be responsible for all engineering services on a project;

(h) provide a written notice to the department of completion and start of operation of any grant project;

(i) provide authorized state officials and representatives with access to all books, accounts, records, reports, files, and property or facilities pertaining to the project in order to make audits and inspections; and

(j) provide the department with quarterly accomplishment reports and an end-of-project report.

(2) Plans and specifications for a grant project, where applicable, shall be approved by the department before a grant is made to an applicant.

(3) Facilities or systems requiring department solid waste facility permits shall meet all requirements of the solid waste management regulations, 20.9.2 - 20.9.10 NMAC, and/or the Solid Waste Act, or have an approvable facility/system application on file at the time of application.

(4) An applicant that receives solid waste facility grant fund monies shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those related to procurement practices, construction wage rates, and this part.

#### C. Eligible and Non-eligible Items.

(1) Eligible items include but are not limited to planning for the development of a regional solid waste disposal facility or for regional disposal services. Additionally eligible items may include the costs of engineering feasibility reports, contracted engineering design, inspection of construction, special engineering services which includes, but is not limited to, the preparation of operation and maintenance manuals, and contracted facility construction, operation or system operation.

(2) Ineligible items include but are not limited to the costs of water rights, land, easements and rights-of-way; legal costs; fiscal agents' fees; and applicant administrative costs.

#### D. Responsibilities of the Department; Application and Notification Procedures.

(1) The department shall administer the solid waste facility grant fund program.

(2) Application shall be made using standard application forms available from the department.

(3) All applications for assistance under the solid waste facility grant fund program are due on the date(s) specified by the department.

(4) The department shall review the applications for completeness, eligibility, technical merits, and financial capability, and rate the applications based on the priority ranking system described in 20.9.25.10 NMAC.

(5) The department shall require such additional information as it deems necessary and appropriate to conduct its evaluation of the applications.

(6) The department shall make grants to applicants in order of priority as determined by the priority ranking system and considering the following:

(a) willingness of an applicant to accept a grant under the program;

(b) financial capability of the applicant to properly operate and maintain any project facility; and

(c) the applicant's readiness to proceed with the project.

(7) The department shall make its grant determination and notify all applicants of its determination within ninety (90) days after the close of each application deadline.

(8) Grant agreements will be prepared by the department and executed for those projects which can be financed with available funds.

E. Grant Disbursement Requirements. Payment(s) of awards will be on a reimbursement basis on a schedule to be developed by the grantee and approved by the department. Unexpended project funds remaining at the completion of the project shall revert to the solid waste facility grant fund.

[7/16/91, 11/30/95; 20.9.25.9 NMAC - Rn, 20 NMAC.9.3.II.204, 8/2/2007]

#### **20.9.25.10 PRIORITY RANKING FOR FACILITY GRANTS:**

A. Purpose. This section provides the procedures to rank applications so that highest priority is based on greatest need without ability to fund activity by other sources. These procedures also provide a mechanism to ensure an equitable and reasonable allocation of funds where there are not sufficient funds available to fund all eligible projects for which applications have been received.

##### **B. Elements of Ranking Criteria.**

(1) Applications shall be ranked on each of the criteria listed in this section. Each element shall be awarded a value from 0 to 10, with 10 being the optimum value. The sum of the numbers awarded each element multiplied by the weight given the element, will equal the total score of the application, which will determine its rank when compared to other applications. Maximum points attainable are 1,100.

##### **(2) Criteria:**

	<b>Weight</b>
(a) Fiscal capacity/self-funding capability. Points will be awarded to the extent that local resources, including bonding capacity, gross receipts taxing authority, are unavailable or inadequate for use on the proposed project. The greater the absence of local funding capacity, the higher the score:	25
(i) complete absence of funding capacity	10 pts.
	6 pts
	3 pts.

(ii) available funding 1% to 29%	
(iii) available funding 30% to 59%	
(b) Ability to sustain operation w/o additional grant funding. Points will be awarded to the extent that the applicant can demonstrate sufficient financial support or revenues to sustain the operation of any facility or system after this award without additional grant funding. The greater the ability to sustain operation without additional grant funding the higher the score.	10
(i) Sufficient support	10 pts.
(ii) Insufficient support	0 pts.
(c) Estimated beneficial time period (i.e., life of facility). Points will be awarded based on the length of time which any facility or improvement will satisfy the requirements of the affected geographical area. The greater the length of time (up to twenty-five years) of beneficial use the higher the score.	10
(i) Minimum of 25 years	10 pts.
(ii) Minimum of 10 but fewer than 25 years	
(d) Size of target area/population served. One point will be awarded for each 1,000 population increment served up to 10 points. Credit will be given to combined populations in the event of joint applications. The larger the target area/population served, the higher the score. One point for each 1,000 population.	10
(e) Ability to operate and maintain 10 facility/system. Points will be awarded to the extent that the applicant can demonstrate satisfactory ability to operate and maintain any proposed facility. Such demonstration may include past facility/system operating experience or professional qualifications of key personnel. The greater the demonstrated ability to operate and maintain the proposed facility the higher the score.	10
(i) Good ability	10 pts.
(ii) Fair ability	5 pts.
(iii) Poor ability	0 pts.

(f) Demonstration of project need. Points will be awarded based on the extent to which any project is necessary. The more severe the project need for the project the higher the score.	20
(i) Severe need	10 pts.
(ii) Moderate need	5 pts.
(g) Regulatory non-compliance and nature of violations. Points will be awarded based on the extent to which any proposed facility or improvement will remedy underlying causes for regulatory non-compliance. The greater the significance of the corrected violation(s) in terms of protecting public health and the environment the higher the score.	10
(i) 100% correction of significant violations	10 pts.
(ii) Correction unaffected by project	0 pts.
(h) Project Urgency. Up to 10 points will be awarded based on the urgency of need for the project. The greater the urgency the higher the score.	5
(i) Project needed within 6 months	10 pts.
(ii) Project needed within 6 to 12 months	5 pts.
(i) Regionalization Effort. Up to 10 points will be awarded to the extent that an application is jointly made by more than one municipality or county. The greater the regionalization effort the higher the score.	10
(i) Project servicing the entirety of at least three counties	10 pts. 5 pts.
(ii) Project servicing the entirety of at least two counties	2 pts.
(iii) Project servicing the entirety of at least one county	

[7/16/91; 20.9.3.10 NMAC - Rn, 20 NMAC.9.3.III.300 - III.301, 8/2/2007]

## CHAPTER 10: HEMP POST-HARVEST PROCESSING

## **PART 1: GENERAL PROVISIONS [RESERVED]**

## **PART 2: HEMP EXTRACTION, PRODUCTION, TRANSPORTATION, WAREHOUSING AND TESTING**

### **20.10.2.1 ISSUING AGENCY:**

New Mexico Environment Department, P.O. Box 5469, Santa Fe, New Mexico 87502, Telephone No. (505) 827-2855.

[20.10.2.1 NMAC - N, 1/28/2020]

### **20.10.2.2 SCOPE:**

All individuals, businesses, agencies, institutions, or other entities engaged in the transportation, extraction, storage, or processing of hemp products in New Mexico.

[20.10.2.2 NMAC - N, 1/28/2020]

### **20.10.2.3 STATUTORY AUTHORITY:**

The Hemp Manufacturing Act, NMSA 1978, Sections 76-24-1 to 76-24-10 (2017 as amended through 2019); Department of Environment Act, NMSA 1978, Sections 9-7A-1 through 9-7A-15 (1991 as amended through 2003).

[20.10.2.3 NMAC - N, 1/28/2020]

### **20.10.2.4 DURATION:**

Permanent.

[20.10.2.4 NMAC - N, 1/28/2020]

### **20.10.2.5 EFFECTIVE DATE:**

January 28, 2020, unless a later date is cited at the end of a section.

[20.10.2.4 NMAC - N, 1/28/2020]

### **20.10.2.6 OBJECTIVE:**

To establish uniform standards for the transportation, extraction, processing, and testing of hemp products for the purpose of ensuring the safe manufacture and accurate presentation of hemp products for human consumption, absorption, and inhalation.

[20.10.2.6 NMAC - N, 1/28/2020]

### 20.10.2.7 DEFINITIONS:

A. "**Act**" means the Hemp Manufacturing Act, Section 76-24-1, et seq., NMSA 1978.

B. "**Adulterated**" has the meaning stated in the New Mexico Food Act, Section 25-2-10 NMSA 1978.

C. "**Applicant**" means a person who has submitted a hemp facility application to the regulatory authority.

D. "**Application**" means documents provided by, and submitted to, the regulatory authority by an applicant as part of the process for obtaining a permit to extract, process, or engage in other manufacturing activities of hemp or hemp products.

E. "**Approved**" means acceptable to the regulatory authority based on the regulatory authority's determination of conformity with principles, practices, and generally recognized standards that protect public health and compliance with the requirements of this part and the act.

F. "**Blend**" means to combine into an integrated whole.

G. "**Board**" means the environmental improvement board.

H. "**Cannabis sativa L.**" means the plant cannabis sativa L. and any part of the plant, whether growing or not.

I. "**CBD**" means cannabidiol and is a cannabinoid and the primary non-psychoactive ingredient found in hemp.

J. "**Certificate of analysis**" means an official certificate issued by a hemp laboratory signed by an authorized official of the hemp laboratory that guarantees the results of the laboratory's testing of a sample.

K. "**Conditional employee**" means a potential hemp employee to whom a job offer is made, conditional on responses to subsequent medical questions or examinations designed to identify potential hemp employees who may be suffering from a disease that may be transmitted through hemp, hemp extract, hemp-derived material, or hemp finished product and done in compliance with Title 1 of the Americans with Disabilities Act of 1990.

L. "**Disposition**" means storing, transferring to another person, or disposal.

M. "**Drinking water**" means water that meets criteria as specified in 20.7.10 NMAC. Drinking water is traditionally known as "potable water" and includes the term "water"

except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "non-drinking" water.

**N. "Employee"** means the permit holder, person in charge, hemp employee, person having supervisory or management duties, person on the payroll, family member, volunteer, person performing work under contractual agreement, or other person working in a hemp facility.

**O. "Hemp"** means the plant *cannabis sativa* L. and any part of that plant, including seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts and salts of isomers, whether growing or not, with a THC concentration of not more than three-tenths percent on a dry weight basis.

**P. "Hemp-derived material"** means any material containing THC in any concentration derived from *cannabis sativa* L. through any activity authorized pursuant to the act.

**Q. "Hemp employee"** means an individual working with unpackaged hemp products or equipment utensils, or surfaces that contact unpackaged hemp products.

**R. "Hemp extract"** means oil and extracts, including cannabidiol, cannabidiolic acid, and other identified and non-identified compounds derived from hemp.

**S. "Hemp extraction facility"** means an operation that produces hemp extract.

**T. "Hemp facility"** means a hemp extraction facility, hemp manufacturing facility, hemp processing facility or hemp warehouse.

**U. "Hemp finished product"** means a hemp product that is intended for retail sale and containing hemp or hemp extracts for human consumption, absorption, or inhalation that has a THC concentration of not more than three-tenths of one percent (0.30%).

**V. "Hemp harvest certificate"** means a document issued by the New Mexico department of agriculture to a person licensed to harvest hemp for distribution or sale certifying that a quantity of hemp meets the THC concentration required pursuant to 21.20.3 NMAC.

**W. "Hemp laboratory"** means an analytical laboratory approved by the regulatory authority to conduct laboratory analysis of hemp products.

**X. "Hemp manufacturing facility"** means an operation, other than a hemp extraction facility, that produces hemp products, other than hemp extract, and provides hemp products for sale or distribution to other business entities.

**Y. "Hemp processing facility"** means an operation, other than a hemp manufacturing facility, where hemp is processed or dried into a hemp finished product

or into a hemp product that does not require further processing before being offered as a hemp finished product.

**Z. "Hemp products"** means hemp, hemp-derived material, hemp extract, and hemp finished product.

**AA. "Hemp transportation manifest"** means a form used for identifying the quantity, composition, origin, and destination of hemp products during transportation.

**BB. "Hemp transportation unit"** means a motor vehicle department-licensed, driven or towed wheeled vehicle utilized to transport hemp products.

**CC. "Hemp warehouse"** means a location, other than a hemp extraction facility or hemp manufacturing facility, where hemp extract is stored.

**DD. "Imminent health hazard"** means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on:

- (1) the number of potential injuries; and
- (2) the nature, severity, and duration of the anticipated injury.

**EE. "Law"** means applicable local, state, and federal statutes, regulations, and ordinances.

**FF. "Licensee"** means a person that possesses a valid license for hemp production issued by NMDA.

**GG. "Misbranded"** has the meaning stated in the New Mexico Food Act, Section 25-2-11 NMSA 1978.

**HH. "NMDA"** means the New Mexico department of agriculture.

**II. "Operational plan"** means a written plan outlining the product formulation, production steps, safety requirements, distribution, labeling, and recall procedures that will be implemented by a hemp facility when processing hemp products.

**JJ. "Permit"** means the document issued by the regulatory authority that authorizes a person to operate a hemp facility.

**KK. "Permit holder"** means the entity that:

- (1) is legally responsible for the operation of the hemp facility such as the owner, the owner's agent, or other person; and

(2) possesses a valid permit to operate a hemp facility.

**LL. "Person"** means an association, a corporation, individual, partnership, other legal entity, government, or governmental subdivision or agency.

**MM. "Person in charge"** means the individual present at a hemp facility who is responsible for the operation at the time of inspection.

**NN. "Personal care items"** means items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene, or appearance, and includes items such as medicines; first aid supplies; and other items such as cosmetics, and toiletries such as toothpaste and mouthwash.

**OO. "Poisonous or toxic materials"** means substances that are not intended for ingestion and are included in four categories:

(1) Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;

(2) Pesticides, except sanitizers, which include substances such as insecticides and rodenticides;

(3) Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants and personal care items that may be deleterious to health; and

(4) Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

**PP. "Premises"** means:

(1) The physical facility, its contents, and the contiguous land or property under the control of the permit hold; or

(2) The physical facility, its contents, and the land or property not described in paragraph (1) of this definition if its facilities and contents are under the control of the permit holder and may impact hemp facility personnel, facilities, or operations, and a hemp facility is only one component of a larger operation.

**QQ. "Process authority"** means an approved expert in the processes for controlling pathogenic microorganisms in food and/or hemp products, and as such, is qualified by education, training and experience to evaluate all of the aspects of pathogen control measures and determine if such control measures, when properly implemented, will control pathogens effectively.

**RR.** "Public water system" has the meaning stated in 20.7.10 NMAC.

**SS.** "Recall" means a return of hemp products that are either known or suspected to be adulterated, misbranded, or otherwise unsafe for human consumption, to the manufacturer or distributor, or that are disposed of by approved methods.

**TT.** "Regulatory authority" means the New Mexico environment department.

**UU.** "RLD / LP Gas Bureau" means the New Mexico regulation and licensing department, LP gas bureau.

**VV.** "Secretary" means the secretary of New Mexico environment department or a designee.

**WW.** "Sewage" means liquid waste containing animal or vegetable matter in suspension or solution and may include liquids containing chemicals in solution.

**XX.** "THC" means delta-9 tetrahydrocannabinol (CAS number 1972-08-3) as measured using a post-decarboxylation method and based on percentage dry weight.

**YY.** "THCA" means tetrahydrocannabinolic acid (CAS number 23978-85-0).

**ZZ.** "Variance" means a written document issued by the regulatory authority that authorizes a modification or waiver of one or more requirements of this part if the regulatory authority determines that no hazard to human health or the environment will result from the modification or waiver.

[20.10.2.7 NMAC - N, 1/28/2020]

## **20.10.2.8 GENERAL PROVISIONS:**

### **A. Prerequisite and Responsibility for Operation:**

(1) A person may not operate a hemp facility without a valid permit to operate as issued by the regulatory authority.

(2) When more than a single hemp facility is operated on the premises, each one shall be separately permitted.

(3) When a food processing plant permitted by the regulatory authority also operates as a hemp facility, both operations shall be permitted separately.

(4) Except as otherwise provided, the permit holder shall be responsible for all hemp facility operations conducted on the premises for which a permit is issued.

(5) When multiple hemp facilities are permitted by multiple permit holders on the same premises, each permit holder shall only be responsible for the hemp facility operations within the scope of their permit.

(6) Each permit holder shall be responsible for shared facilities or equipment on the premises.

(7) The permit holder shall ensure that the hemp facility remains in compliance with this part and the act. A violation of any provision of this part or the act may result in civil or criminal proceedings authorized in law, including but not limited to the assessment of civil penalties, the suspension or revocation of permit(s), destruction of hemp products, or other such actions.

(8) The issuance of a permit does not relieve any person operating a hemp facility from the

responsibility of complying with other applicable laws, ordinances and regulations.

#### **B. Application, Plans, and Specifications Requirements:**

(1) An applicant shall submit a written application for a permit, on a form provided by the regulatory authority, at least 30 calendar days prior to operating a hemp facility.

(2) An applicant or permit holder shall submit to the regulatory authority properly prepared plans and specifications for review and approval at least 30 calendar days before:

(a) the construction of a hemp facility;

(b) the conversion of an existing structure for use as a hemp facility;

(c) the remodeling of a hemp facility or a change of type of hemp facility if the regulatory authority determines that plans and specifications are necessary to ensure compliance with this part; or

(d) opening or changing ownership of an existing hemp facility, if current plans and specifications are not on file with the regulatory authority.

(3) It is the sole responsibility of the applicant to provide the regulatory authority with a complete permit application. The regulatory authority will not act on incomplete permit applications.

#### **C. Operational Plans.**

**(1)** Except as otherwise provided in paragraph (5) of this subsection, a hemp facility shall submit a written operational plan containing the following information, as applicable, for each product(s) to be extracted, manufactured and transported with the application for a permit:

- (a)** Planned source of hemp products.
- (b)** Names of the ingredient(s);
- (c)** The final product pH;
- (d)** The final product water activity ( $A_w$ );
- (e)** Names of preservative(s);
- (f)** The type of packaging to be used and whether the packaging is integral to product stability;
- (g)** The intended distribution and use condition of the product;
- (h)** If the product is to be distributed at ambient, refrigerated or frozen temperature;
- (i)** The expected shelf life during distribution, retail storage, and in the hands of the consumer;
- (j)** How the product should be prepared for consumption;
- (k)** What mishandling of the product might occur in the merchandising channels or in the hands of the consumer;
- (l)** A description of the batch/lot ID coding system, as required in this section;
- (m)** The proposed recall plan;
- (n)** The complete operational procedure for the intended process, using a flow chart, and the following, if applicable:
  - (i)** The proposed extraction method, and approval from RLD/LP Gas Bureau if utilizing propane or butane for extraction;
  - (ii)** The proposed process for the removal of all harmful solvents used during the extraction process;

(iii) The intended disposition for all unused hemp product and residual solvents;

(iv) The safety measures proposed to protect the public and employees from dangers associated with extraction methods;

(o) Proposed product labels that comply with all requirements of 20.10.2. 13 NMAC;

(p) Proposed record keeping system to assure traceability of hemp products from harvest to hemp finished products; and

(q) Proposed pest control plan.

(2) Prior to adding new hemp products, or changing the stated process for any existing product in the product line, the hemp facility shall provide to the regulatory authority:

(a) For each new hemp product, the same information as specified for the initial application in this section; and

(b) For each existing product for which a change will be made in the manufacturing process, the applicable changes to the information previously submitted pursuant to this section.

(3) The regulatory authority may require that the hemp facility's processes be reviewed by an approved process authority to verify all critical factors of public health significance are addressed.

(4) Recall procedures shall be prepared for hemp products that may be adulterated, misbranded, or otherwise unsafe for human consumption and shall include:

(a) Plans for identifying products which may be adulterated or misbranded;

(b) Procedures for collecting, warehousing, controlling, reworking, and/or disposal of recalled products;

(c) System for determining the effectiveness of recalls; and

(d) Persons to contact when implementing a recall, including the regulatory authority.

(5) A hemp warehouse is exempt from the requirements of Paragraph (1) of Subsection C of this section, except hemp warehouses shall provide:

(a) Proposed pest control plan;

(b) If the product is to be stored at ambient, refrigerated or frozen temperature;

(c) Proposed record keeping system to assure traceability of hemp products from receipt to release;

(d) Proposed recall plan meeting the requirements specified in Paragraph (4) of this subsection; and

(e) If storing non-hemp products in the same warehouse as hemp products, a complete operational procedure outlining how hemp products will remain clearly identified, segregated from non-hemp products, and unadulterated during storage.

**D. Fees, Penalty Fees, and Expiration Dates:**

(1) Initial and renewal application fees are non-refundable and shall be:

(a) \$1000.00 for a hemp extraction facility;

(b) \$1000.00 for a hemp manufacturing facility;

(c) \$1000.00 for a hemp warehouse; and

(d) \$500.00 for a hemp processing facility.

(2) Application fees specified in Paragraph (1) of Subsection D of this section shall be paid upon submission of an initial or renewal application. Except as specified in Paragraph (5) of Subsection D of this section, application fees shall include all applicable costs associated with administration of a hemp facility permit.

(3) Permits issued pursuant to Subsection E of this section shall expire on the last day of the anniversary month of the date of original issue.

(4) The expiration of permits issued prior to January 28, 2020 shall be extended to the last day of the anniversary month of the date of original issue.

(5) When a re-inspection is scheduled by the regulatory authority a penalty fee of \$250.00 shall be assessed and paid by the permit holder prior to the re-inspection being conducted as specified in Subsection B of 20.10.2.16 NMAC or prior to the approval of a renewal application.

**E. Permit Issuance, Permit Denial, Permit Renewal, and Change of Ownership:**

(1) To qualify for a permit, an applicant shall:

**(a)** be an owner of the hemp facility or an official authorized by the owner of a hemp facility;

**(b)** comply with the requirements of this part and the act;

**(c)** allow access to the hemp facility by the regulatory authority and to provide requested information; and

**(d)** pay the required fees as specified in Subsection D of this section.

**(2)** The regulatory authority shall issue a permit to the applicant after:

**(a)** a properly completed application is submitted;

**(b)** the required fee, as specified in Paragraph (1) of Subsection D of this section, is submitted;

**(c)** the requirements specified in Subsections B and C of this section are approved by the regulatory authority;

**(d)** a preoperational inspection by the regulatory authority is conducted and demonstrates that the hemp facility is built or remodeled in accordance with the approved plans and specifications; and,

**(e)** the hemp facility is in compliance with this part and the act.

**(3)** Upon acceptance of the permit issued by the regulatory authority, the permit holder, in order to retain the permit, shall:

**(a)** post the permit in a conspicuous location in the hemp facility;

**(b)** comply with the provisions of this part, including the approved operational plans;

**(c)** immediately contact the regulatory authority to report an illness of a hemp employee or conditional employee as specified under Subsection A of 20.10.2.9 NMAC;

**(d)** immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified in 20.10.2.17 NMAC;

**(e)** allow representatives of the regulatory authority access to the hemp facility as specified in 20.10.2.11 and 20.10.2.16 NMAC;

**(f)** replace existing facilities and equipment that comply with this part if:

**(i)** the regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;

**(ii)** the regulatory authority directs the replacement of the facilities and equipment because of a change of ownership; or

**(iii)** the facilities and equipment are replaced in the normal course of operation.

**(g)** comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's hemp facility or in response to community emergencies.

**(h)** accept notices issued and served by the regulatory authority according to law.

**(i)** be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this part, the act, or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

**(j)** provide the most recent hemp facility inspection report to consumers upon request.

**(4)** If an application for a permit to operate is denied, the regulatory authority shall provide the applicant with a written notice that includes:

**(a)** the specific reasons or regulation citations for the permit denial; and

**(b)** advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

**(5)** A permit may not be transferred. This includes a prohibition on transferring a permit from one person to another person, from one location to another location, or from one type of operation to another type of operation.

**(6)** The regulatory authority may issue a permit to a new owner of an existing hemp facility upon completion of requirements as specified in this subsection.

**(7)** The regulatory authority may renew a permit for a hemp facility upon submission of a renewal application provided by the regulatory authority and the required fee(s) as specified in Paragraph 1 of Subsection D of this section.

#### **20.10.2.9 MANAGEMENT AND PERSONNEL:**

**A.** Adoption of food code subparts 2-201, 2-301, and 2-401, and section 2-103.11. Except as otherwise provided, subpart 2-201, 2-301, and 2-401, and section 2-103.11 of the 2017 United States food and drug administration model food code is hereby adopted and incorporated in its entirety.

**B.** A hemp facility shall have written procedures for employees to follow when responding to vomiting or diarrheal events that involve the discharge of vomitus or fecal matter onto surfaces in the hemp facility. The procedures shall address the specific actions employees must take to minimize the spread of contamination and the exposure of employees, consumers, food, and surfaces to vomitus or fecal matter.

**C.** Except as otherwise provided, the permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the hemp facility during all hours of operation.

**D.** In a hemp facility with two or more separately permitted departments that are the legal responsibility of the same permit holder and that are located on the same premises, the permit holder may designate a single person in charge who is present on the premises during all hours of operation, and who is responsible for each separately permitted hemp facility on the premises.

**E.** The person in charge shall have the education, training, or experience necessary to supervise the production of clean and safe hemp product and ensure the hemp facility remains in compliance with this part and the act at all times.

**F.** Personal care items on the premises shall be stored in a manner to protect hemp products, other ingredients, equipment, and utensils from contamination at all times.

[20.10.2.9 NMAC - N, 1/28/2020]

#### **20.10.2.10 HEMP PRODUCT TRANSPORTATION REQUIREMENTS:**

**A.** Hemp facilities shall only transport hemp product to NMED permitted hemp facilities or persons approved by the regulatory authority.

**B.** Except as provided in Subsections E and F of this section, hemp facilities shall create and utilize a hemp transportation manifest meeting the requirements of subsection C of this section when transporting hemp product.

**C.** A hemp transportation manifest created by a hemp facility shall contain the following information:

- (1)** Name, address, phone number, and permit number of the hemp facility;

(2) Name, address, and phone number of the person transporting the hemp product;

(3) The hemp transportation unit's:

(a) year, make, model, and color (if applicable); and

(b) license plate number;

(4) Batch/lot ID created by the hemp facility;

(5) Item(s) description/composition of hemp product;

(6) Quantity of hemp product;

(7) Shipping date; and,

(8) Destination of the hemp product, including the name, address, and phone number of the person receiving the hemp product.

**D.** Hemp facilities transporting hemp finished products intended for human consumption or hemp products that will be utilized as ingredients in hemp finished products intended for human consumption shall transport such items under conditions that will protect against allergen cross-contact and against biological, chemical (including radiological), and physical contamination of food, as well as against deterioration of the food and the container in accordance with the New Mexico Food Service Sanitation Act and the New Mexico Food Act.

**E.** Hemp facilities transporting small amounts of hemp to approved laboratories or research facilities in accordance with practices approved under this part and the Act shall have a hemp harvest certificate and a hemp transportation manifest containing the following information:

(1) Batch/lot ID of the hemp product;

(2) Item(s) description;

(3) Origin and destination; and

(4) Total volume/weight of each hemp product.

**F.** Hemp facilities transporting small amounts of hemp extract, hemp-derived material, or hemp finished product to approved laboratories or research facilities in accordance with practices approved under this part and the Act shall have a hemp transportation manifest containing the following information:

- (1) Batch/lot ID of the hemp product;
- (2) Item(s) description;
- (3) Origin and destination; and
- (4) Total volume/weight of each hemp product.

[20.10.2.10 NMAC - N, 1/28/2020]

#### **20.10.2.11 HEMP FACILITY REQUIREMENTS:**

**A.** After the effective date of this part and unless otherwise provided, it is illegal to operate a hemp facility which does not meet the requirements of this section.

**B.** Adoption of 21 CFR 117 Subparts A, B, and F. Except as otherwise provided, Subparts A, B, and F of the United States code of federal regulations, title 21, part 117 are hereby adopted and incorporated in their entirety.

**C.** Modifications. Except as otherwise provided, the following modifications are made to the incorporated subparts of 21 CFR 117:

(1) 117.301: All records required by this part are subject to all requirements of this subpart;

(2) 117.315(c): Offsite storage of records is permitted if such records can be retrieved and provided onsite within 24 hours of request for official review. Electronic records are considered to be onsite if they are accessible from an onsite location; and

(3) 117.320: All records required by this part must be made promptly available to the regulatory authority for official review and copying upon oral or written request.

**D.** Omissions. The following provisions are omitted from the incorporated subparts of 21 CFR 117:

- (1) 117.1;
- (2) 117.5;
- (3) 117.7;
- (4) 117.8;
- (5) 117.310;
- (6) 117.315(d);

**(7)** 117.325; and

**(8)** 117.335.

**E.** The current 21 CFR 111 and United States federal food, drug, and cosmetic act, title 21, chapter 9 are hereby adopted as a technical reference and interpretation guide.

**F.** Hemp and Hemp Product Source and Hemp Product Transportation.

**(1)** Hemp facilities shall not receive hemp without a hemp harvest certificate issued by NMDA or a person approved by the regulatory authority verifying the hemp being transported has a THC concentration of not more than three-tenths of one percent (0.30%) on a dry weight basis.

**(2)** Hemp facilities shall not receive hemp-derived material, hemp extract, or hemp finished product unless:

**(a)** it is received from an NMED permitted hemp facility or a person approved by the regulatory authority;

**(b)** it is accompanied by a hemp transportation manifest; and

**(c)** hemp finished products intended for human consumption or hemp products that will be utilized as ingredients in hemp finished products intended for human consumption were transported under conditions that will protect against allergen cross-contact and against biological, chemical (including radiological), and physical contamination of food, as well as against deterioration of the food and the container in accordance with the New Mexico Food Service Sanitation Act and the New Mexico Food Act.

**G.** Records and Traceability.

**(1)** Hemp facilities shall implement the approved record keeping system at all times and shall maintain traceability records for a period of two years.

**(2)** Hemp facilities shall maintain all shipping records and records of receipt for all hemp products for a period of two years, including but not limited to:

**(a)** Hemp harvest certificate;

**(b)** Hemp transportation manifest;

**(c)** Date of receipt; and

**(d)** Certificate of analysis, if hemp finished product.

**H.** Hemp facilities shall maintain the operational plans and recall plan, accepted by the regulatory authority, onsite during all hours of operation and shall make them available for review by the regulatory authority.

**I.** The final disposition of all unused hemp product and residual solvents shall be conducted as approved by the regulatory authority in Subsection C of 20.10.2.8 NMAC.

**J.** The permit holder shall be responsible to ensure the security of, and limit access to, hemp-derived material with a THC concentration of greater than three-tenths of one percent (0.30%).

[20.10.2.11 NMAC - N, 1/28/2020]

**20.10.2.12 WATER SUPPLY:**

**A.** Drinking water shall be obtained from an approved source that is:

(1) a public water system; or

(2) a non-public water system that is constructed, maintained, and operated according to law.

**B.** A drinking water system shall be flushed and disinfected before being placed in service after construction, repair, or modification and after an emergency situation, such as a flood, that may introduce contaminants to the system.

**C.** Except as specified under Subsection D of this section:

(1) Water from a public water system shall meet the construction and drinking water quality standards specified in 20.7.10 NMAC; and

(2) Water from a non-public water system shall meet:

(a) the construction requirements and drinking water quality standards of a non-community water system as specified in 20.7.10 NMAC; and

(b) the drinking water source setback requirements as specified in 20.7.3 NMAC.

**D.** A non-drinking water supply shall be used only if its use is approved and shall be used only for nonculinary purposes such as air conditioning, non-hemp equipment cooling, and fire protection.

**E.** Except when used as specified in Subsection D of this section, water from a non-public water system shall meet the sampling requirements of a non-community water system as specified in 20.7.10 NMAC.

**F.** The most recent sample report for the non-public water system shall be retained on file in the hemp facility or the report shall be maintained as specified by state water quality regulations.

**G.** Water shall be received from the source through the use of:

(1) an approved public water main; or

(2) one or more of the following that shall be constructed, maintained, and operated according to law:

(a) Non-public water main, water pumps, pipes, hoses, connections, and other appurtenances;

(b) Water transport vehicles; or

(c) Water containers.

[20.10.2.12 NMAC - N, 1/28/2020]

#### **20.10.2.13 HEMP FINISHED PRODUCT LABELING:**

**A.** After the effective date of this part and unless otherwise provided, hemp finished products produced for:

(1) human consumption shall meet the applicable labeling requirements of 21 CFR 101 and the New Mexico Food Act; and

(2) absorption by humans shall meet the applicable labeling requirements of 21 CFR 701 and 740.

(3) inhalation by humans shall meet applicable state and federal labeling requirements.

**B.** In addition to the labeling requirements specified in Subsection A of this section, hemp finished products shall clearly identify on the principle display panel of the label:

(1) CBD content in the package and/or container, labeled in milligrams; and

(2) Total THC content in the package and/or container, labeled in milligrams.

**C.** In addition to the labeling requirements specified in Subsections A and B of this section, hemp finished products shall include the following statement on the label: "FDA has not evaluated this product for safety, effectiveness, and quality".

**D.** Unless otherwise approved, statements representing or inferring a hemp finished product contains no THC are prohibited.

**E.** Hemp facilities shall design, maintain and use a coding system that will identify the date and place of manufacture of each hemp product and shall be clearly visible on the product label or securely affixed to the body of the container.

**F.** Except as specified in paragraph (1) of Subsection D of 20.10.2.14 NMAC, product concentration and content stated on a hemp finished product label shall not deviate by more than ten percent of what is stated on the label.

**G.** Hemp finished products shall not contain medical, health, or benefit claims on the label.

[20.10.2.13 NMAC - N, 1/28/2020]

#### **20.10.2.14 HEMP FINISHED PRODUCT TESTING:**

**A.** After the effective date of this part and unless otherwise provided, hemp finished products that will be used for human consumption, absorption, or inhalation shall be tested by an approved laboratory and meet the requirements of this section before they leave the hemp facility and are transported, distributed, sold or otherwise made available to consumers.

**B.** Except as otherwise provided, each batch/lot of hemp finished product shall be tested as follows:

**(1)** Cannabinoid profile, including at a minimum the concentration of the following:

**(a)** Total THC calculated as  $THC = (0.877 \times THCA) + THC$ ;

**(b)** D9-THC;

**(c)** THCA;

**(d)** CBD; and

**(e)** CBDA;

**(2)** Solvents (volatile organic compounds) utilized throughout the processing of the hemp product;

**(3)** Content of CBD, total THC, and other compounds derived from hemp stated on the label of the hemp finished product; and

**(4)** If dried usable hemp finished product:

- (a)** Water content;
- (b)** Total aerobic microbial count;
- (c)** Total combined yeast and mold count;
- (d)** Bile-tolerant gram-negative bacteria;
- (e)** Salmonella spp. and E. coli; and
- (f)** Total coliforms count.

**C.** Hemp processed or dried as a hemp finished product or hemp product that does not require further processing before being offered as a hemp finished product shall:

- (1)** meet the requirements of this section for hemp finished product; and
- (2)** be prepared for testing, as required in Subsection B of this section, as follows:

- (a)** Blending of the entire batch/lot prior to testing; or
- (b)** Tested in accordance with a testing plan approved by the regulatory authority.

**D.** Testing limits for hemp finished product shall be as follows:

- (1)** Total THC concentration shall not exceed more than three-tenths of one percent (0.30%);
- (2)** Solvents (volatile organic compounds) utilized throughout the processing of the hemp finished product shall not exceed the current United States Pharmacopeia recommended limits for residual solvents; and
- (3)** If dried usable hemp finished product:
  - (a)** Water content shall be less than fifteen percent by weight;
  - (b)** Total aerobic microbial count shall be less than 100,000 colony forming units per gram (cfu/g) or colony forming units per milliliter (cfu/mL);
  - (c)** Total combined yeast and mold count shall be less than 10,000 cfu/g or cfu/mL;

(d) Bile-tolerant gram-negative bacteria shall be less than 1,000 cfu/g or cfu/mL;

(e) Salmonella spp. and E. coli shall be absent in 10 grams cfu/g or cfu/mL;  
and;

(f) Total coliforms count shall be less than 1,000 cfu/g or cfu/mL.

**E.** Hemp finished product that exceeds the testing limits specified in Subsection D of this section, or the testing results specified in Paragraph 3 of Subsection B of this section do not meet the requirements of Subsection E of 20.10.2.13 NMAC, may undergo a confirming test by a hemp laboratory. If the confirming test confirms the initial test results, the permit holder shall report the results to the regulatory authority within 24 hours.

**F.** Hemp finished products that exceed the testing limits specified in Subsection D of this section, or the testing results specified in Paragraph 3 of Subsection B of this section do not meet the requirements of Subsection E of 20.10.2.13 NMAC, shall not be distributed and shall be:

- (1) disposed of in an approved manner; or
- (2) re-worked in an approved manner.

**G.** Hemp finished product that is re-worked as specified in Paragraph 2 of Subsection F of this section shall meet requirements of this section before they are transported, distributed, sold or otherwise made available to consumers.

**H.** Hemp facilities shall obtain a certificate of analysis for each hemp finished product batch/lot from an approved laboratory. The certificate of analysis shall include the results of the required testing required in this section and shall include the following information:

- (1) The batch identification number;
- (2) The date received;
- (3) The date of testing completion;
- (4) The method of analysis for each test conducted; and
- (5) The signature of an authorized official of the hemp laboratory that guarantees the results of the laboratory's testing of a sample.

**I.** Hemp facilities shall provide the certificate of analysis with hemp finished products as follows:

(1) If shipped to another business entity, the certificate of analysis for each hemp finished product shall be provided to the business entity; or

(2) If shipped directly to the consumer, shall be provided to the consumer upon request.

[20.10.2.14 NMAC - N, 1/28/2020]

#### **20.10.2.15 HEMP LABORATORIES:**

Testing required in 20.10.2.14 NMAC shall be conducted by an approved laboratory that has no direct ownership or financial interest in the hemp facility for which the testing is being conducted.

[20.10.2.15 NMAC - N, 1/28/2020]

#### **20.10.2.16 INSPECTION BY REGULATORY AUTHORITY:**

**A.** The regulatory authority shall conduct inspections of hemp facilities to determine compliance with the act, Food Service Sanitation Act, the New Mexico Food Act, and this part.

**B.** When an inspection conducted by the regulatory authority reveals a violation or repeat violation of this part, and a re-inspection is scheduled by the regulatory authority, a re-inspection penalty fee shall be assessed by the regulatory authority and paid by the operator as specified in Paragraph 5 of Subsection D of 20.10.2.8 NMAC.

**C.** After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the hemp facility is in compliance with this part and the act by allowing access to the facility to make an inspection, interview employees, and take photos, and providing information and records requested and to which the regulatory authority is entitled according to law, during the hemp facility's hours of operation and other reasonable times.

**D.** The regulatory authority shall be allowed to copy any records pertaining to the manufacture, processing, packing, distribution, receipt, holding, or importation of hemp product maintained by or on behalf of a hemp facility in any format, including paper and electronic formats, and at any location. Proprietary documents shall be protected by the regulatory authority according to law.

**E.** If a person in charge denies access to the regulatory authority, the regulatory authority shall:

(1) inform the person that:

**(a)** the permit holder is required to allow access to the regulatory authority as specified in Subsection F of this section;

**(b)** access is a condition of the acceptance and retention of a hemp facility permit to operate as specified in Paragraph 3 of Subsection E of 20.10.2.8 NMAC;

**(c)** if access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to law; and

**(d)** refusal to allow access is grounds for immediate permit suspension or revocation; and

**(2)** make a final request for access.

**F.** If after the regulatory authority presents credentials and provides notice as specified in Subsection C of this section, explains the authority upon which access is requested, and makes a final request for access as specified in Subsection E of this section, the person in charge continues to refuse access, the regulatory authority shall provide details of the denial of access on an inspection report form.

**G.** If denied access to a hemp facility for an authorized purpose and after complying with Subsection E of this section, the regulatory authority may issue, or apply for the issuance of, an inspection order to gain access as provided in law.

**H.** The regulatory authority shall document on an inspection report form:

**(1)** Specific factual observations of violative conditions or other deviations from this part that require correction by the permit holder; and

**(2)** Time frame for correction of the violations observed and documented.

**I.** Except as otherwise provided, a permit holder shall at the time of inspection correct violations of this part.

**J.** Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may agree to or specify a longer time frame.

**K.** After observing at the time of inspection a correction of a violation, the regulatory authority shall enter the violation and information about the corrective action on the inspection report.

**L.** As specified in Subsection J of this section, after receiving notification that the permit holder has corrected a violation, or at the end of the specified period of time, the

regulatory authority shall verify correction of the violation, document the information on an inspection report, and enter the report in the regulatory authority's records.

**M.** The regulatory authority shall request a signed acknowledgment of receipt and provide a copy of the completed inspection report and the notice to correct violations, as soon as possible after the inspection, to the permit holder or to the person in charge.

**N.** The regulatory authority shall inform a person who declines to sign an acknowledgment of receipt of inspectional findings as specified in Subsection I of this section that:

(1) An acknowledgment of receipt is not an agreement with findings;

(2) Refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified;

(3) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the regulatory authority's historical record for the hemp facility; and

(4) A final request to sign an acknowledgement receipt of inspectional findings will be made to the person in charge.

[20.10.2.16 NMAC - N, 1/28/2020]

#### **20.10.2.17 CEASING OPERATIONS AND REPORTING:**

**A.** Except as specified in Subsections B and C of this section, a permit holder shall immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent foodborne or hempborne illness outbreak, gross insanitary occurrence or condition, or other circumstance that may endanger public health, employees, or the environment.

**B.** A permit holder need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

**C.** Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the regulatory authority may allow the permit holder to continue operations in the event of an extended interruption of electrical or water service if:

(1) a written emergency operating plan has been approved;

(2) immediate corrective action is taken to eliminate, prevent, or control any food safety risk and imminent health hazard associated with the electrical or water service interruption; and

(3) the regulatory authority is informed upon implementation of the written emergency operating plan.

**D.** If operations are discontinued as specified in Subsection A of this section or otherwise according to law, the permit holder shall obtain approval from the regulatory authority before resuming operations.

[20.10.2.17 NMAC - N, 1/28/2020]

### **20.10.2.18 PERMIT SUSPENSION AND REVOCATION:**

**A.** The regulatory authority may immediately suspend a permit, without prior warning, notice of a hearing, or a hearing, if it determines through inspection, examination of employees, hemp product records, or other means as specified in this part, if:

(1) an imminent health hazard exists; or

(2) the permit holder:

(a) allows serious or repeated violations of the Food Service Sanitation Act, the New Mexico Food Act, the act, or this part;

(b) allows violations of this part to remain uncorrected beyond time frames for correction approved, directed, or ordered by the regulatory authority;

(c) violates any term or condition of a permit as specified under Paragraph 3 of Subsection E of 20.10.2.8 NMAC;

(d) fails to comply with Subsection C of 20.10.2.16 NMAC;

(e) fails to comply with a regulatory authority order issued concerning an employee or conditional employee suspected of having a disease transmissible through hemp products by infected persons; or

(f) fails to comply with a hold order as specified in Subsection A of 20.10.2.21 NMAC;

**B.** The regulatory authority shall provide written notice of the immediate suspension to the permit holder or person in charge.

**C.** After receiving a written request from the permit holder stating that the conditions cited in the immediate suspension notice no longer exist, the regulatory authority shall conduct a reinspection of the hemp facility for which the permit was summarily suspended.

**D.** A permit suspension shall remain in effect until the conditions cited in the immediate suspension notice no longer exist and their elimination has been confirmed by the regulatory authority through re-inspection and other means as appropriate as described in Subsection C of this section.

**E.** If a permit has been suspended more than one time, the regulatory authority may revoke the permit.

**F.** If a hemp facility fails to comply with an employee restriction order, an order to hold and not transport hemp product, or an immediate suspension notice, the regulatory authority may revoke the permit.

**G.** The regulatory authority shall conduct a hearing as specified in 20.10.2.19 NMAC prior to revoking a permit.

**H.** A permit that has been revoked shall not be considered for reapplication until the permit holder has demonstrated to the satisfaction of the regulatory authority that the hemp facility will comply with this part.

[20.10.2.18 NMAC - N, 1/28/2020]

#### **20.10.2.19 APPEAL HEARINGS:**

**A.** A permit holder may request an appeal hearing to address concerns about the regulatory authority's denial of an application for permit, suspension or revocation of a permit, or an enforcement action taken by the regulatory authority. A hearing request does not stay the regulatory authority's immediate suspension as specified in Subsection A of 20.10.2.18 NMAC.

**B.** The permit holder shall submit a written hearing request to the secretary within 10 calendar days from the date of receipt of the denial of an application for permit, permit suspension, permit revocation, or enforcement action.

**C.** The written request for hearing as specified in Subsection B of this section shall contain the following information:

- (1)** A statement of the issue of fact for which the hearing is requested;
- (2)** A statement of defense, mitigation, denial, or explanation concerning each allegation of fact;

**(3)** A statement indicating whether witnesses will be utilized during the hearing; and

**(4)** The name and address of the respondent's or requestor's legal counsel, if any.

**D.** If the regulatory authority receives a hearing request within the required timeframe, the regulatory authority shall issue a notice of hearing. The secretary may designate a person to conduct the hearing and make a final decision or make recommendations for a final decision. The secretary's hearing notice shall indicate who will conduct the hearing and make the final decision.

**E.** A notice of hearing shall contain the following information:

**(1)** Time, date and place of the hearing;

**(2)** Purpose of the hearing;

**(3)** The rights of the respondent, including the right to be represented by counsel and to present witnesses and evidence on the respondent's behalf as specified in Subsection M of this section; and

**(4)** The consequences of failing to appear at the hearing.

**F.** In the appeal hearing, the burden of proof is on the person who requested the hearing.

**G.** A complete digital recording of a hearing shall be made and maintained as part of the regulatory authority's records.

**H.** The rules of civil procedure and the rules of evidence shall not apply, but a hearing shall be conducted so that all relevant views, arguments, and testimony are amply and fairly presented.

**I.** Parties to a hearing may be represented by counsel, examine and cross examine witnesses, and present evidence in support of their position.

**J.** The regulatory authority shall present at the hearing its evidence, orders, directives, and reports related to the proposed or appealed administrative remedy.

**K.** Evidence shall be excluded that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege.

**L.** Testimony of parties and witnesses shall be made under oath or affirmation administered by a duly authorized official.

**M.** Written evidence may be received if it will expedite the hearing without substantial prejudice to a party's interests.

**N.** Documentary evidence may be received in the form of a copy or excerpt.

**O.** At the end of the hearing, the secretary shall decide and announce if the hearing record will remain open and for how long and for what reason it will be left open. Based upon the evidence presented at the hearing, the secretary shall sustain, modify, or reverse the action of the regulatory authority. The secretary's decision shall be by written order within 15 working days following the close of the hearing record. The decision shall state the reasons therefore and shall be sent by certified mail to the hearing requestor and any other affected person who requests notice. Appeals from the secretary's final decision are by Rule 1-075 NMRA.

**P.** The regulatory authority may settle a case after a notice of hearing is served by providing a respondent with an opportunity to request a settlement before a hearing commences on the matter and by entering into a consent agreement with the respondent.

**Q.** Respondents accepting a consent agreement pursuant to Subsection P of this section waive their right to a hearing on the matter.

**R.** Failure by the permit holder to appear at the hearing shall result in the secretary upholding the regulatory authority's initial decision which led to the permit holder's hearing request.

[20.10.2.19 NMAC - N, 1/28/2020]

#### **20.10.2.20 REMEDIES:**

The regulatory authority may seek an administrative or judicial remedy to achieve compliance with the provisions of this part if a person operating a hemp facility:

**A.** fails to have a valid permit to operate a hemp facility as specified in Subsection A of Section 20.10.2.8 NMAC;

**B.** fails to comply with an employee restriction or exclusion order, an order to hold and not transport hemp product, or an immediate suspension notice issued by the regulatory authority as specified in Subsection A of 20.10.2.18 NMAC; or

**C.** denies the regulatory authority access to the premises of a hemp facility to:

(1) make an inspection, including taking photographs;

(2) examine and sample hemp products or other substances found on the premises; or

(3) examine and copy the records on the premises relating to hemp products as specified in Subsection C of 20.10.2.16 NMAC.

[20.10.2.20 NMAC - N, 1/28/2020]

**20.10.2.21 HOLDING, EXAMINATION, AND DESTRUCTION OF HEMP PRODUCTS:**

**A.** The regulatory authority may place a hold order on hemp products in a permitted hemp facility that:

- (1) originated from an unapproved source;
- (2) may be adulterated, misbranded, or otherwise unsafe for human consumption, or not accurately presented;
- (3) are not labeled according to law;
- (4) have a THC concentration of more than three-tenths percent, in hemp finished product; or
- (5) are otherwise not in compliance with this part or the act.

**B.** If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the hemp products that are subject to the order to a place of safekeeping.

**C.** The regulatory authority may issue a hold order to a permit holder or to a person who owns or controls the hemp products, as specified in Subsection A of this section, without prior warning, notice of a hearing, or a hearing on the hold order.

**D.** If the suspected hemp products have been transported, the permit holder shall be given the opportunity to recall the hemp products voluntarily at the permit holder's expense.

**E.** If the permit holder refuses to recall the suspected hemp products, the regulatory authority may order a mandatory recall of the suspected hemp products at the permit holder's expense.

**F.** The hold order notice shall:

- (1) state that hemp products subject to the order may not be used, sold, moved from the hemp facility, or destroyed without a written release of the order from the regulatory authority;

**(2)** state the specific reasons for placing the hemp products under the hold order with reference to the applicable provisions of this part and the hazard or adverse effect created by the observed condition;

**(3)** completely identify the hemp products subject to the hold order by the common name, the label information, a container description, the quantity, regulatory authority's tag or identification information, and location;

**(4)** state that the permit holder has the right to an appeal hearing and may request a hearing by submitting a timely request as specified in 20.10.2.19 NMAC;

**(5)** state that the regulatory authority may order the destruction of the hemp products if a timely request for an appeal hearing is not received; and

**(6)** provide the name and address of the regulatory authority representative to whom a request for an appeal hearing may be made.

**G.** The regulatory authority shall securely place an official tag or label on the hemp products or containers or otherwise conspicuously identify hemp products subject to the hold order.

**H.** The tag or other method used to identify a hemp product that is the subject of a hold order shall include a summary of the provisions specified in Subsection F of this section and shall be signed and dated by the regulatory authority.

**I.** Except as otherwise provided, hemp products placed under a hold order may not be used, sold, served, or moved from the establishment by any person.

**J.** The regulatory authority may allow the permit holder the opportunity to store the hemp products in an area of the hemp facility if the hemp products are protected from subsequent deterioration and the storage does not restrict operations of the establishment.

**K.** Only the regulatory authority may remove hold order tags, labels, or other identification from hemp products subject to a hold order.

**L.** The regulatory authority may examine, sample, and test the hemp products in order to determine its compliance with the Food Service Sanitation Act, the New Mexico Food Act, the act, and this part.

**M.** When hemp products are found to be adulterated, misbranded, or otherwise unsafe for human consumption, or not accurately presented; or found in any room, building, vehicle of transportation or other structure, any hemp products which are unsound or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the procedures outlined in Section 25-2-6 NMSA 1978 shall be followed.

**N.** When any product is found, by examination or laboratory analysis, to be in violation with this part or the act, the regulatory authority may order condemnation and disposal of the product lot, at the expense of the permit holder.

**O.** The regulatory authority shall issue a written notice of release from a hold order and shall remove hold tags, labels, or other identification from the hemp product if the hold order is vacated.

[20.10.2.21 NMAC - N, 1/28/2020]

#### **20.10.2.22 SERVICE OF NOTICE:**

**A.** A notice issued in accordance with this part shall be considered to be properly served if it is served by one of the following methods:

**(1)** The notice is personally served by the regulatory authority, a law enforcement officer, or a person authorized to serve a civil process to the permit holder, the person in charge, or person operating a hemp facility without a permit; or

**(2)** The notice is sent by the regulatory authority to the last known address of the permit holder or the person operating a hemp facility without a permit, by registered or certified mail or by other public means so that a written acknowledgment of receipt may be acquired.

**B.** An employee restriction or exclusion order, an order to hold and not transport hemp product, or an immediate suspension order shall be:

**(1)** served as specified in Paragraph (1) of Subsection A of this section; or

**(2)** clearly posted by the regulatory authority at a public entrance to the hemp facility and a copy of the notice sent by first class mail to the permit holder or to the owner or custodian of the hemp product, as appropriate.

**C.** Service is effective at the time of the notice's receipt or if service is made as specified in Paragraph (2) of Subsection B of this section, at the time of the notice's posting.

**D.** Proof of proper service may be made by affidavit of the person making service or by admission of the receipt signed by the permit holder, the person operating a hemp facility without a permit to operate, or an authorized agent.

[20.10.2.22 NMAC - N, 1/28/2020]

#### **20.10.2.23 VARIANCES:**

**A.** The regulatory authority may grant a variance by modifying or waiving the requirements of this part if the regulatory authority determines that no hazard to human health or the environment will result from the modification or waiver.

**B.** The person requesting a variance shall submit a written application on a form provided by the regulatory authority. The following information shall be provided by the person requesting the variance:

- (1) A statement of the proposed variance;
- (2) The applicable code citations from which the variance is requested;
- (3) A detailed rationale for how the potential hazards to human health or the environment addressed by the applicable code citations will be alternatively addressed by the proposal; and
- (4) If applicable, documentation supporting the rationale provided.

**C.** The regulatory shall grant the variance, grant the variance subject to conditions, or deny the variance within 15 working days following the receipt of the variance request.

**D.** If the regulatory authority grants a variance as specified in this section, the permit holder shall:

- (1) comply with the procedures that were approved; and
- (2) when required as a condition of the variance, maintain and provide to the regulatory authority, upon request, records that demonstrate compliance with the approved variance.

[20.10.2.23 NMAC - N, 1/28/2020]

20.110.2 NMAC, Hemp Extraction, Production, Transportation, Warehousing, and Testing, filed and effective August 1, 2019, duration expired by operation of law, January 27, 2020.

## **CHAPTER 11: ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD**

### **PART 1: GENERAL PROVISIONS**

#### **20.11.1.1 ISSUING AGENCY:**

Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293,  
Albuquerque, NM 87103. Telephone: (505) 768-2601.

[6/14/71. . .12/1/95; 20.11.1.1 NMAC - Rn, 20 NMAC 11.01.I.1, 10/1/02; A, 9/14/09]

**20.11.1.2 SCOPE:**

A. 20.11.1 NMAC is applicable within Bernalillo county.

B. **Exempt:** 20.11.1 NMAC does not apply to sources within Bernalillo county, which are located on Indian lands over which the Albuquerque - Bernalillo county air quality control board lacks jurisdiction.

[12/1/95. . .8/1/96; 20.11.1.2 NMAC - Rn, 20 NMAC 11.01.I.2, 10/1/02; A, 9/14/09]

**20.11.1.3 STATUTORY AUTHORITY:**

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

[6/14/71. . .12/1/95; 20.11.1.3 NMAC - Rn, 20 NMAC 11.01.I.3, 10/1/02; A, 7/1/04; A, 9/14/09]

**20.11.1.4 DURATION:**

Permanent.

[12/1/95; 20.11.1.4 NMAC - Rn, 20 NMAC 11.01.I.4, 10/1/02]

**20.11.1.5 EFFECTIVE DATE:**

December 1, 1995, unless a later date is cited at the end of a section. The effective date of a specific section is located at the end of that section within the historical brackets. As required by the New Mexico Air Quality Control Act, Chapter 74, Article 2, Section 6 NMSA 1978, no regulation or emission control requirement or amendment thereto, or repeal thereof, shall become effective until 30 days after its filing under the State Rules Act, Chapter 14, Article 4 NMSA 1978.

[12/1/95. . .8/1/96; 20.11.1.5 NMAC - Rn, 20 NMAC 11.01.I.5 & A, 10/1/02; A, 12/1/03; A, 7/1/04; A, 9/14/09]

**20.11.1.6 OBJECTIVE:**

To provide definitions which are generally applicable to Albuquerque - Bernalillo county air quality control board regulations.

[12/1/95; 20.11.1.6 NMAC - Rn, 20 NMAC 11.01.1.6 & A, 10/1/02; A, 7/1/04; A, 9/14/09]

#### **20.11.1.7 DEFINITIONS:**

The definitions of 20.11.1 NMAC apply unless there is a conflict between definitions in other parts, in which case the definition found in the applicable part shall govern. The definitions include the measurements, abbreviations, and acronyms in Subsection GGGG, of 20.11.1.7 NMAC.

**A. "Abnormal operating conditions"** means the startup or shutdown of air pollution control device(s) or process equipment.

**B. "Administrator"** means the administrator of the United States environmental protection agency or his or her designee.

**C. "Affected source" or "facility"** means any stationary source, or any other source of air pollutants, that must comply with an applicable requirement.

**D. "Air agency", "department" or "EHD"** means the environmental health department (EHD) of the city of Albuquerque. The EHD, or its successor agency or authority, as represented by the department director or his/her designee, is the lead air quality planning agency for the Albuquerque - Bernalillo county nonattainment/maintenance area. The EHD serves as staff to the Albuquerque - Bernalillo county air quality control board, (A-BC AQCB), and is responsible for the administration and enforcement of the A-BC AQCB regulations.

**E. "Air contaminant" or "air pollutant"** means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant; to the extent the EPA has identified such precursor or precursors for the purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N<sub>2</sub>), oxygen (O<sub>2</sub>), and ethane.

**F. "Air pollution"** means the emission, except as such emission occurs in nature, into the outdoor atmosphere of one or more air contaminants in such quantities and duration as may with reasonable probability injure human health, animal or plant life, or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property.

**G. "Air quality control act"** means the State of New Mexico Air Quality Control Act, Chapter 74, Article 2, NMSA 1978 as amended.

**H. "Air quality control board", "board" or "A-BC AQCB"** means the Albuquerque - Bernalillo county air quality control board, which is empowered by federal act, the Air Quality Control Act, and ordinances, to prevent or abate air pollution within the boundaries of Bernalillo county, except for Indian lands over which the board lacks jurisdiction.

**I. "Allowable emissions"** means:

(1) Any department or federally enforceable permit term or condition which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limits the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous reduction that are requested by the applicant and approved by the department or, determined at the time of issuance or renewal of a permit to be an applicable requirement.

(2) Any federally enforceable emissions cap that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject.

**J. "Ambient"** means that portion of the atmosphere, external to buildings, to which the general public has access.

**K. "Applicable requirement"** means any of the following (and includes requirements that have been promulgated or approved by the board or EPA through rulemaking):

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

(2) any term or condition of any pre-construction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the federal act;

(3) any standard or other requirement:

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

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

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

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

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

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

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

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

(7) any regulation adopted by the board in accordance with the joint air quality control board ordinances pursuant to the Air Quality Control Act, and the laws and regulations in effect pursuant to the Air Quality Control Act.

**L. "Breakdown or upset"** means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, or process equipment, which causes a process to not operate in a normal manner. Failures that are caused by process imbalance, poor maintenance or careless operation are not breakdowns.

**M. "Carbon monoxide" or "CO"** means a colorless, odorless, poisonous gas composed of molecules containing a single atom of carbon and a single atom of oxygen with a molecular weight of 28.01 g/mole.

**N. "Chemical process"** means any manufacturing processing operation in which one or more changes in chemical composition or chemical properties are involved.

**O. "Coal burning equipment"** means any device used for the burning of coal for the primary purpose of producing heat or power by indirect heat transfer in which the products of combustion do not come into direct contact with other materials.

**P. "Commenced"** means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a binding agreement or contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

**Q. "Construction"** means fabrication, erection, or installation of an affected facility.

**R. "Crematory"** means any combustion unit designed and used solely for cremating human or animal remains or parts and tissues thereof, and other items normally associated with the cremation process, but not including pathological waste.

**S. "Department"** means the Albuquerque environmental health department, which is the administrative agency of the Albuquerque - Bernalillo county air quality control board.

**T. "Director"** means the administrative head of the Albuquerque environmental health department or a designated representative(s).

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

**V. "EPA"** means the United States environmental protection agency or the EPA's duly authorized representative.

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

**X. "Excess emissions report"** means a report submitted by a stationary source at the request of the department in order to provide data on the source's compliance with emission limits and operating parameters.

**Y. "Federal act", "act" or "CAA"** means the Federal Clean Air Act, 42 U.S.C. Section 7401 through 7671 et seq., as amended.

**Z. "Federal class I wilderness areas"** means areas designated by the EPA as such. Federal class I wilderness areas within 100 kilometers of Bernalillo county are Bandelier wilderness, Pecos wilderness, and San Pedro Parks wilderness.

**AA. "Fluid"** means either of the two states of matter, liquid or gaseous.

**BB. "Fugitive emissions"** means any emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening or is not otherwise collected, unless the emission is otherwise regulated by the federal act, the Air Quality Control Act, or the laws and regulation in effect pursuant to the act.

**CC. "Greenhouse gases" or "GHGs"** means the air pollutant defined in § 86.1818–12(a) of Chapter I of Title 40 of the CFR, as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

**DD. "Grain"** means that unit of weight, which is equivalent to 0.0648 grams.

**EE. "Hazardous air pollutant"** means an air contaminant which has been classified pursuant to the federal act, the Air Quality Control Act, or laws and regulations in effect pursuant to the act.

**FF. "Hydrocarbons" or "HC"** means any chemical compound of a class of aliphatic, cyclic, or aromatic chemical compounds containing mostly hydrogen and carbon. Hydrocarbons are highly reactive in the presence of nitrogen oxides and sunlight. All are precursors to more serious air pollutants such as ozone and nitrogen dioxide.

**GG. "Hydrogen sulfide" or "H<sub>2</sub>S"** means the chemical compound containing two atoms of hydrogen and one of sulfur with a molecular weight of 34.07 g/mole.

**HH. "Incinerator"** means any furnace used in the process of burning solid waste for the purpose of reducing the volume, by removing combustible matter.

**II. "Inedible animal by-product processing"** means operations primarily engaged in rendering, cooking, drying, dehydration, digesting, evaporating or concentrating of animal proteins and fats.

**JJ. "Kraft mill"** means any pulping process, which uses an alkaline solution for a cooking liquor.

**KK. "Lead" or "Pb"** means a heavy metal, with a molecular weight of 207.19 g/mole that is hazardous to health if breathed or swallowed.

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

**MM. "Modification"** means any physical change in or change in the method of operation of a source that results in an increase in the potential emission rate of any regulated air contaminant emitted by the source or that results in the emission of any regulated air contaminant not previously emitted, but does not include:

- (1) a change in ownership of the source;
- (2) routine maintenance, repair or replacement;
- (3) installation of air pollution control equipment, and all related process equipment and materials necessary for its operation, undertaken for the purpose of complying with regulations adopted by the environmental improvement board or the local board or pursuant to the federal act; or
- (4) unless previously limited by enforceable permit conditions:

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

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

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

**NN.** "New source" means any stationary source, the construction or modification of which is commenced after the filing of a regulation applicable to the stationary source.

**OO.** "Nitrogen dioxide" or "NO<sub>2</sub>" means a reddish brown, poisonous gas composed of molecules containing a single atom of nitrogen and two of oxygen with a molecular weight of 46.0 g/mole.

**PP.** "Nitrogen oxides or NO<sub>x</sub>" is a class of chemicals containing varying quantities of nitrogen and oxygen that are created from combustion processes taking place at high temperatures and high pressures (e.g., inside automotive engine cylinders or in high temperature boilers). Examples of nitrogen oxides are NO, NO<sub>2</sub>, NO<sub>3</sub>, N<sub>2</sub>O<sub>2</sub>, and N<sub>2</sub>O<sub>5</sub>. Nitrogen oxides are also referred to as oxides of nitrogen.

**QQ.** "NMAC" means New Mexico administrative code, which contains the rules adopted by all rulemaking agencies of the state of New Mexico and the rules adopted by the A-BC AQCB.

**RR.** "Open burning" means the combustion of any material without the following characteristics:

(1) control of combustion air to maintain adequate temperature for efficient combustion;

(2) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(3) emission controls for the gaseous combustion products.

**SS.** "Operator" means the person(s) responsible for the overall operation of a source.

**TT.** "Owner" means the person(s) who owns a source or part of a source.

**UU.** "Ozone or O<sub>3</sub>" means a pungent, colorless gas composed of molecules containing three atoms of oxygen with a molecular weight of 48.0 g/mole.

**VV.** "Part" means the required NMAC designation for the normal division of a chapter. A part consists of a unified body of rule material applying to a specific function or devoted to a specific subject matter. Structurally, a part is the equivalent of a rule.

**WW.** "Particulate matter" or "PM" means any airborne finely divided solid or liquid material such as dust, smoke, mist, fumes or smog found in air or emissions.

**XX.** "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by the reference method in 40 CFR 60, Appendix A, Method 5, or an equivalent method approved by the EPA.

**YY.** "Pathological waste destructor" means any equipment, which is used to dispose of pathological waste by combustion or other process, which is approved by EPA.

**ZZ.** "Performance test" means the data, which is the result of a test performed as required by the department to determine compliance.

**AAA.** "Permit" means any permit or group of permits, modifications, renewals or revisions authorizing the construction or operation of a stationary source pursuant to the federal act, the Air Quality Control Act, or laws and regulations in effect pursuant to the act.

**BBB.** "Permittee" means the owner or operator identified in any permit application or permit.

**CCC.** "Person" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or their legal representatives, agents or assigns.

**DDD.** "Photochemical oxidants" means an air pollutant, which is formed by the action of sunlight on oxides of nitrogen and hydrocarbons.

**EEE.** "PM<sub>10</sub>", "PM<sub>2.5</sub>" or "PM<sub>1</sub>" means particulate matter with an aerodynamic diameter less than or equal to 10, 2.5, or 1 micrometers, respectively.

**FFF.** "PM<sub>2.5</sub> emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted into the ambient air as measured by the reference method in 40 CFR Part 50, Appendix L, approved by the EPA.

**GGG.** "PM<sub>10</sub> emissions" means finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted into the ambient air as measured by the reference method in 40 CFR Part 50, Appendix J and M, or equivalent method approved by the EPA.

**HHH. "Pollution control device" or "air pollution control equipment"** means any device, equipment, process or combination thereof, the operation of which may limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

**III. "Portable stationary source" or "temporary stationary source"** means a stationary source capable of changing its location with limited dismantling or reassembly which is associated with a specific construction project or increased production demand.

**JJJ. "Potential to emit" or "pre-controlled emission rate"** means the maximum capacity of a stationary source to emit any air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable or is included in a permit issued by the department. However, the potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

**KKK. "Process equipment"** means any equipment used for storing, handling, transporting, processing or changing any materials whatsoever but excluding that equipment specifically defined in these regulations as incinerators, crematories, pathological waste destructors, pathological destructors and medical waste destructors.

**LLL. "Process weight"** means the total weight of all materials introduced into any specific process, which causes any discharge of air contaminants into the atmosphere. Solid fuels introduced into any specific process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not.

**MMM. "Process weight rate"** means the hourly rate derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, or from the beginning to the completion of a typical portion thereof, excluding any time during which the equipment is idle.

**NNN. "Regulated air pollutant"** means the following:

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

(2) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;

(3) any Class I or II substance subject to any standard promulgated under or established by Title VI of the federal act; or

(4) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act.

**OOO. "Responsible official"** means one of the following:

(1) **for a corporation:** a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for, or subject to a permit and either:

(a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(b) the delegation of authority to such representatives is approved in advance by the department;

(2) **for a partnership or sole proprietorship:** a general partner or the proprietor, respectively;

(3) **for a municipality, state, federal or other public agency:** either a principal executive officer or ranking elected official; for the purposes of 20.11.1 NMAC, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

(4) **for an acid rain source:**

(a) the designated representative (as defined in Section 402(26) of the federal act) in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated thereunder are concerned; and

(b) the designated representative for any other purposes under 40 CFR Part 70.

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

**QQQ. [RESERVED]**

**RRR. [RESERVED]**

**SSS. "Smoke"** means small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, soot and combustible material.

**TTT.** "Solid waste" means garbage; refuse; yard waste; food wastes; plastics; leather; rubber; sludge; and other discarded combustible or noncombustible waste, including solid, liquid, semisolid; or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community or residential activities, and from waste treatment plants, water supply treatment plants, or air pollution control facilities; but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permit under Section 402 of the Federal Water Pollution Control Act, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act.

**UUU.** [RESERVED]

**VVV.** "Stack, chimney, vent, or duct" means any conduit or duct emitting particulate or gaseous emissions into the open air.

**WWW.** "Standard conditions" means the conditions existing at a temperature of 70° F (25° C) and pressure of 14.7 psia (760 mmHg).

**XXX.** "Standard cubic foot" means a measure of the volume of one cubic foot of gas at standard conditions.

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

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

**AAAA.** "Sulfur dioxide" or " $\text{SO}_2$ " means a pungent, colorless, poisonous gas composed of molecules containing a single atom of sulfur and two atoms of oxygen with a molecular weight of 64.07 g/mole.

**BBBB.** "Total reduced sulfur" means any combination of sulfur compounds, except sulfur dioxide and free sulfur, which test as reduced sulfur, including, but not limited to, hydrogen sulfide, methyl mercaptan, and ethyl mercaptan.

**CCCC. "Total suspended particulate" or "TSP"** means particulate matter as measured by the method described in 40 CFR Part 50, Appendix B.

**DDDD. "Vapors"** means the gaseous form of a substance, which exists in the liquid or solid state at standard conditions.

**EEEE. "Visible emission"** means an emission that can be seen because its opacity or optical density is above the threshold of vision.

**FFFF. "Volatile organic compounds" or "VOC"** means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(1) VOC includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HCFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ( $C_4F_9OCH_3$  or HFE-7100); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ( $(CF_3)_2CFCH_2OCH_3$ ); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ( $C_4F_9OC_2H_5$  or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ( $(CF_3)_2CFCH_2OC_2H_5$ ); methyl acetate; 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ( $n-C_3F_7OCH_3$  or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate ( $HCOOCH_3$ ); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); propylene carbonate; dimethyl carbonate; and perfluorocarbon compounds which fall into these classes:

(a) cyclic, branched, or linear, completely fluorinated alkanes;

(b) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(d) sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(2) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in the approved state implementation plan (SIP) or 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibility-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the enforcement authority.

(3) As a precondition to excluding these compounds as VOC or at any time thereafter, the enforcement authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the enforcement authority, the amount of negligibly-reactive compounds in the source's emissions.

(4) For purposes of federal enforcement for a specific source, the EPA shall use the test methods specified in the applicable EPA-approved SIP, in a permit issued pursuant to a program approved or promulgated under Title V of the act, or under 40 CFR Part 51, Subpart I or Appendix S, or under 40 CFR Parts 52 or 60. The EPA shall not be bound by any state determination as to appropriate methods for testing or monitoring negligibly-reactive compounds if such determination is not reflected in any of the above provisions.

(5) The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

(6) For the purposes of determining compliance with California's aerosol coatings reactivity-based regulation, (as described in the California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 3), any organic compound in the volatile portion of an aerosol coating is counted towards that product's reactivity-based limit. Therefore, the compounds identified in Subsection FFFF of 20.11.1.7 NMAC as negligibly reactive and excluded from EPA's definition of VOCs are to be counted towards a product's reactivity limit for the purposes of determining compliance with California's aerosol coatings reactivity-based regulation.

(7) For the purposes of determining compliance with EPA's aerosol coatings reactivity based regulation (as described in 40 CFR Part 59 - National Volatile Organic Compound Emission Standards for Consumer and Commercial Products) any organic compound in the volatile portion of an aerosol coating is counted towards the product's reactivity-based limit, as provided in 40 CFR Part 59, Subpart E. Therefore, the compounds that are used in aerosol coating products and that are identified in Subsection FFFF of 20.11.1.7 NMAC as negligibly reactive and excluded from EPA's definition of VOC are to be counted towards a product's reactivity limit for the purposes of determining compliance with EPA's aerosol coatings reactivity-based national regulation, as provided in 40 CFR Part 59, Subpart E.

**GGGG. "Measurements, abbreviations. and acronyms"**

**A-BC AQCB**-Albuquerque - Bernalillo county air quality control board

**ABT**-averaging, banking and trading (program)

**AIRS**-aerometric information retrieval system

**AMPA**-Albuquerque metropolitan planning area

**API**-American petroleum institute

**AQIA**-air quality impact assessment

**AQI**-air quality index

**AQS**-air quality services

**ASE**-national institute for automotive service excellence

**ASTM**-American society for testing and materials

**ATS**-allowance tracking system

**BACT**-best available control technology

**Bhp**-brake horsepower

**Btu**-British thermal unit

**C**-Celsius

**CAA(A)**-federal Clean Air Act (Amendments)

**CEM**-continuous emission monitor

**CFC(s)**-chlorofluorocarbon(s)

**cfh**-cubic feet per hour

**cfm**-cubic feet per minute

**CFR**-code of federal regulations

**CO<sub>2</sub>**-carbon dioxide.

**CO**-carbon monoxide.

**COG**-mid-region council of governments

**CMAQ**-congestion mitigation and air quality

**cu. in.**-cubic inch(es)

**DER**-discrete emission reduction

**DOE**-department of energy

**DOT-U.S.** department of transportation

**DPM**-development process manual

**DRB**-development review board

**EA**-environmental assessment

**EHD**-environmental health department

**EI**-emission inventory

**EIS**-environmental impact statement

**EPA**-U.S. environmental protection agency

**EPC**-environmental planning commission

**ERC**-emission reduction credit

**F**-Fahrenheit

**FHWA**-federal highway administration, DOT

**FMVCP**-federal motor vehicle control program

**FR**-federal register

**ft.**-feet

**FTA**-federal transit administration, DOT

**g**-gram(s)

**g/mole**-grams per mole

**gal**-U.S. gallon(s)

**GVW**-gross vehicle weight

**GVWR**-gross vehicle weight rating

**h**-hour(s)

**HAP**-hazardous air pollutants

**HC**-hydrocarbon(s)

**Hg**-mercury

**hp.**-horsepower

**I/M**-inspection/maintenance

**in.**-inch(es)

**ISTEA**-Intermodal Surface-Transportation Efficiency Act (see SAFETEA-LU)

**K**-Kelvin

**kg**-kilogram(s)

**km**-kilometer(s)

**kPa**-kilopascal(s)

**lb.**-pound(s)

**lb/day**-pounds per day

**lb-ft**-pound-feet

**lb/hr**-pounds per hour

**lb/yr**-pounds per year

**LAER**-lowest achievable emission rate

**LNG**-liquefied natural gas

**LPG**-liquefied petroleum gas

**LRTP**-long range transportation plan

**m**-meter(s)

**MACT**-maximum achievable control technology

**max.**-maximum

**MCO**-manufacturer's certificate of origin

**µg**-microgram

**µg/m<sup>3</sup>**-microgram per cubic meter

**mg**-milligram(s)

**mg/m<sup>3</sup>**-milligram per cubic meter

**mi.**-mile(s)

**min**-minute(s)

**ml**-milliliter(s)

**mm**-millimeter(s)

**MMBtu**-million Btu

**mmHg**-millimeters of mercury

**mph**-miles per hour

**MPO**-metropolitan planning organization

**MRCOG**-mid-region council of governments

**MSERC**-mobile source emission reduction credits

**MSMTC**-mobile source modeling technical committee

**MTBE**-methyl tertiary butyl ether

**MVD**-motor vehicle division

**MWe**-megawatt electrical

**N<sub>2</sub>**-nitrogen

**NAAQS**-national ambient air quality standards

**NAMS**-national air monitoring station

**NCore**-national core multi-pollutant monitoring network

**NDIR**-NonDispersive InfraRed

**NEPA**-National Environmental Policy Act

**NESCAUM/MARAMA**-northeast states for coordinated air use management/mid-atlantic regional air management association

**NESHAP**-national emission standards for hazardous air pollutants

**NIST**-national institute of standards and technology

**NM**-New Mexico

**NMAC**-New Mexico administrative code

**NMSA**-New Mexico statutes annotated

**NO**-nitric oxide

**NO<sub>2</sub>**-nitrogen dioxide

**NO<sub>x</sub>**-oxides of nitrogen

**No**-number

**NOV**-notice of violation

**NMHC**-non-methane hydrocarbons

**NSPS**-new source performance standards

**NSR**-new source review

**O<sub>2</sub>**-oxygen

**O<sub>3</sub>**-ozone

**OMTR**-open market trading rule

**OTAG**-ozone transport assessment group

**OTC**-ozone transport commission

**Pb**-lead

**PIC**-public involvement committee

**PM**-particulate matter

**PM<sub>2.5</sub>**-particulate matter less than 2.5 microns

**PM<sub>10</sub>**-particulate matter less than 10 microns

**ppm**-parts per million by volume

**ppm C**-parts per million, carbon

**PSD**-prevention of significant deterioration

**psi**-pounds per square inch

**psia**-pounds per square inch absolute

**psig**-pounds per square inch gauge

**PTE**-potential to emit

**PWD**-pathological waste destructor

**QF**-qualifying facility

**R**-Rankin

**RACT**-reasonably available control technology

**R&D**-research & development

**RECLAIM**-regional clean air incentives market

**ROG**-reactive organic gases

**rpm**-revolutions per minute

**RTA**-regional transit authority

**RTC**-RECLAIM trading credit

**RVP**-reid vapor pressure

**s**-second(s)

**SAE**-society of automotive engineers

**SAFETEA-LU**-The Safe, Accountable, Flexible, Efficient Transportation Equity Act - A Legacy for Users

**SBAP**-small business assistance program

**scf**-standard cubic foot

**SI**-international system of units

**SIP**-state implementation plan

**SLAMS**-state and local air monitoring station

**SMOG**-SMoke + fOG

**SO<sub>2</sub>**-sulfur dioxide

**State DOT**-New Mexico department of transportation

**STIP**-state transportation improvement program

**TCC**-transportation coordinating committee

**TCM**-transportation control measure

**TES**-transportation evaluation study

**TIP**-transportation improvement program

**TMA**-transportation management association

**ton/yr**-tons per year

**TPTG**-transportation program task group

**tpy**-tons per year

**TSP**-total suspended particulate

**UPWP**-unified planning work program

**UTPPB**-urban transportation planning policy board

**U.S.**-United States

**UV**-ultraviolet

**VE**-visible emission(s)

**VIN**-vehicle identification number

**VMT**-vehicle miles traveled

**VOC**-volatile organic compounds

**VPMD**-vehicle pollution management division

**%**-percent

**°**-degree(s)

[3/21/77. . .11/12/81, 11/21/81, 3/16/89, 6/16/92, 2/26/93, 9/23/94, 12/16/94, 12/1/95, 8/1/96; 20.11.1.7 NMAC - Rn, 20 NMAC 11.01.1.7, 10/1/02; A, 7/1/04; A, 9/14/09; A, 1/10/11]

#### **20.11.1.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.1.8 NMAC - Rn, 20 NMAC 11.01.1.8, 10/1/02]

#### **20.11.1.9 SAVINGS CLAUSE:**

Any amendment to 20.11.1 NMAC which is filed with the state records center shall not affect actions pending for violation of a city or county ordinance, or 20.11.1 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or regulation section in effect at the time the violation was committed.

[12/1/95; 20.11.1.9 NMAC - Rn, 20 NMAC 11.01.I.9, 10/1/02; A, 9/14/09]

#### **20.11.1.10 SEVERABILITY:**

If any section, paragraph, sentence, clause or word of 20.11.1 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.1 NMAC.

[12/1/95; 20.11.1.10 NMAC - Rn, 20 NMAC 11.01.I.10, 10/1/02; A, 9/14/09]

#### **20.11.1.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.1 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.1.11 NMAC - Rn, 20 NMAC 11.01.I.11 & A, 10/1/02; A, 9/14/09]

#### **20.11.1.12 [RESERVED]**

[12/1/95; 20.11.1.12 NMAC - Rn, 20 NMAC 11.01.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.01.II.1, 10/1/02]

#### **20.11.1.13 [RESERVED]**

[11/12/81. . .3/24/82, 8/1/96; 20.11.1.13 NMAC - Rn, 20 NMAC 11.01.II.2, 10/1/02; Repealed, 7/1/04]

#### **20.11.1.14 [RESERVED]**

[3/24/82; 20.11.1.14 NMAC - Rn, 20 NMAC 11.01.II.3, 10/1/02; Repealed, 9/14/09]

### **PART 2: FEES**

#### **20.11.2.1 ISSUING AGENCY:**

Albuquerque - Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.

[20.11.2.1 NMAC - Rp, 20 NMAC.11.02.I.1, 7/1/2001; A, 1/10/11]

## 20.11.2.2 SCOPE:

### A. Applicability:

- (1) every person required to submit a source registration application pursuant to 20.11.40 NMAC, *Source Registration* or other board regulation;
- (2) except for sources subject to 20.11.42 NMAC, Operating Permits, every person required to submit a permit application pursuant to 20.11.20 NMAC, *Fugitive Dust Control*; 20.11.41 NMAC, *Authority to Construct*; 20.11.60 NMAC, *Permitting in Nonattainment Areas*; 20.11.61 NMAC, *Prevention of Significant Deterioration*; or other board regulation;
- (3) every person with a valid source registration or permit issued pursuant to 20.11.20 NMAC; 20.11.40 NMAC; 20.11.41 NMAC; 20.11.42 NMAC; 20.11.60 NMAC; 20.11.61 NMAC; or other board regulation;
- (4) every person who submits a permit modification pursuant to 20.11.41 NMAC, *Authority to Construct*; 20.11.60 NMAC, *Permitting in Nonattainment Areas*; or 20.11.61 NMAC, *Prevention of Significant Deterioration*;
- (5) every person who submits a technical permit revision pursuant to 20.11.41 NMAC, *Authority to Construct*;
- (6) every person who submits an administrative revision to either a source registration issued pursuant to 20.11.40 NMAC, *Source Registration*, or a permit issued pursuant to 20.11.41 NMAC, *Authority to Construct*;
- (7) every person required to submit a notification regarding removal of regulated asbestos containing material pursuant to 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*;
- (8) every person who submits a request for a variance pursuant to 20.11.7 NMAC, *Variance Procedure*;
- (9) every person who submits a request for a hearing before the board unless otherwise exempted; and
- (10) every person who submits a request for professional or administrative services or copies of public records.

### B. Exempt: 20.11.2 NMAC does not apply to:

- (1) sources within Bernalillo county that are located on Indian lands over which the Albuquerque - Bernalillo county air quality control board lacks jurisdiction;

(2) requests for rulemaking hearings filed pursuant to 20.11.82 NMAC; and

(3) requests for hearings regarding decisions made by the vehicle pollution management program manager or designee concerning suspension or revocation of air care station certifications or air care inspector certifications.

**C. Variance:** Any person may request a timely variance from the requirements of 20.11.2 NMAC in accordance with 20.11.7 NMAC, *Variance Procedures*, unless prohibited by a federal, state or local law or regulation.

[20.11.2.2 NMAC - Rp, 20 NMAC 11.02.I.2 & 20 NMAC 11.02.I.8, 7/1/2001; A, 3/1/04; A, 1/10/11]

**20.11.2.3 STATUTORY AUTHORITY:**

20.11.2 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5 and 74-2-7; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5, Sections 3, 4 and 7; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994, Section 9-5-1-3, Section 9-5-1-4 and Section 9-5-1-7.

[20.11.2.3 NMAC - Rp, 20 NMAC 11.02.I.3, 7/1/2001; A, 3/1/04; A, 1/10/11]

**20.11.2.4 DURATION:**

Permanent.

[20.11.2.4 - Rp, 20 NMAC 11.02.I.4, 7/1/2001]

**20.11.2.5 EFFECTIVE DATE:**

July 1, 2001, unless a later date is cited at the end of a section or paragraph.

[20.11.2.5 NMAC - Rp, 20 NMAC 11.02.I.5, 7/1/2001]

**20.11.2.6 OBJECTIVE:**

To establish fees sufficient to cover the reasonable costs of implementing and enforcing the requirements of: the federal Clean Air Act (CAA); the New Mexico Air Quality Control Act, Chapter 74, Article 2, NMSA 1978; the city of Albuquerque and Bernalillo county joint air quality control board ordinances; and the Albuquerque-Bernalillo county air quality control board regulations, including:

**A.** reviewing and acting upon submittals made pursuant to Subsection A of 20.11.2.2 NMAC;

**B.** implementing and enforcing the terms and conditions of source registrations or permits, but not including any court costs or other costs associated with an enforcement action;

**C.** reviewing air dispersion modeling analysis and demonstrations;

**D.** reviewing emission inventory submittals, conducting electronic filing and maintaining inventories, preparing emission inventories and tracking emissions;

**E.** developing, adopting, promulgating, publishing, amending and repealing regulations;

**F.** conducting emissions monitoring and ambient air monitoring;

**G.** administering variance procedures;

**H.** administering administrative hearings before the board as authorized by 20.11.81 NMAC, *Adjudicatory Procedures – Air Quality Control Board*; and

**I.** administering a small business stationary source technical and environmental compliance assistance program pursuant to Section 507 of the federal CAA.

[20.11.2.6 NMAC - Rp, 20 NMAC 11.02.1.6, 7/1/2001; A, 3/1/04; A, 12/16/06; A, 1/10/11]

#### **20.11.2.7 DEFINITIONS:**

In addition to the definitions in 20.11.2.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.2.7 NMAC shall govern.

**A. "Administrative revision"** means a revision to either:

(1) a source registration issued pursuant to 20.11.40 NMAC, to incorporate a change in the stationary source information that does not result in the source being subject to 20.11.41 NMAC; or

(2) a permit that has been issued pursuant 20.11.41 NMAC in order to:

(a) correct a typographical error not made by the department;

(b) identify a change in ownership, name, address or contact information of any person identified in the permit; or

(c) incorporate a change in the permit to include a source or activity at the facility if the facility is exempted pursuant 20.11.41 NMAC.

**B. "Allowable emission rate"** means the fee-pollutant emission rate that has been established by a permit issued by the department.

**C. "Asbestos Unit" or "AU"** is the number derived by dividing the amount of asbestos removed, at or above the levels specified in 40 CFR 61.145, by the corresponding conversion factor and unit of measure in square feet, linear feet, or cubic feet respectively.

**D. "Consumer price index all urban consumers" or "CPI-U"** means a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services as reported by the U.S. Department of Labor, Bureau of Labor Statistics.

**E. "Division"** means the department's air quality division or successor organizational unit.

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

**G. "Emissions unit"** means any part or activity of a stationary or portable source that emits or has the potential to emit a fee pollutant.

**H. "Fee pollutant"** means any regulated air pollutant as defined in 20.11.2.7 NMAC, not including any Class I or II substance subject to a standard established in Title VI of the federal Clean Air Act.

**I. "Fugitive emissions"** means emissions that cannot reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

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

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

**L. "Major source"** shall have the meaning defined in 40 CFR 70.2.

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

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

**O. "Proposed allowable emission rate"** means the proposed fee pollutant emission rate that has been requested in a stationary source application submittal.

**P. "Qualified small business"** means a business that meets all of the following requirements:

- (1) a business that has 100 or fewer employees;
- (2) a small business concern as defined by the federal Small Business Act;
- (3) a source that emits less than 50 tons per year of any individual regulated air pollutant, or less than 75 tons per year of all regulated air pollutants combined; and
- (4) a source that is not a major source or major stationary source.

**Q. "Regulated air pollutant"** means:

- (1) nitrogen oxides, total suspended particulate matter, or any volatile organic compound as defined in 40 CFR 51.100(s);
- (2) any pollutant for which a national, state or local ambient air quality standard has been promulgated;
- (3) any pollutant that is subject to a standard established in Section 111 of the federal Clean Air Act;
- (4) any Class I or II substance subject to a standard established in Title VI of the federal Clean Air Act; and
- (5) any pollutant subject to standards or requirements established in Section 112 of the federal Clean Air Act, including:
  - (a) any pollutant subject to requirements under Section 112(j) of the federal Clean Air Act; and
  - (b) any pollutant for which the requirements of Section 112(g)(2) of the federal Clean Air Act have been met, but only with respect to the individual source subject to the requirements.

**R. "Technical permit revision" or "technical revision"** means a revision to a permit issued pursuant to 20.11.41 NMAC:

- (1) to incorporate a change in the permit if the change only involves a change in monitoring, record keeping or reporting requirements, if the department determines the change does not reduce the enforceability of the permit;
- (2) to incorporate a change in the permit if the change only involves incorporating permit conditions, including emissions limitations, but only if the source

existed on August 31, 1972, and the source has been in regular operation since that date;

(3) if the permittee wishes to impose a voluntary reduction of an emission limitation or retire an emission unit that was included as a specific permit condition;

(4) to incorporate a change at a facility by replacing an emissions unit for which an allowable emissions rate has been established in the permit, but only if the replacement emissions unit:

(a) is equivalent to the replaced emissions unit, and serves the same function within the facility and process;

(b) has the same or lower capacity and allowable emission rates;

(c) has the same or higher control efficiency, and stack parameters that are at least as effective in dispersing air pollutants;

(d) would not result in an increase of the allowable emission rate of any other equipment at the facility;

(e) is subject to the same or lower allowable emissions limits as the original permit prior to making the replacement and to all other original permit conditions prior to making the technical permit revision request;

(f) will not cause or contribute to a violation of any NAAQS and NMAAQs when operated under applicable permit conditions, and as determined by the department;

(g) will not require additional permit conditions to ensure the enforceability of the permit, such as additional record keeping or reporting in order to establish compliance, as determined by the department; and

(h) does not emit a regulated air contaminant not previously emitted;

(5) in order to reduce the allowable emission rate of a unit or source, by incorporating terms and conditions in the permit, such as a cap on hours of operation, limitations on throughput of a specific product or products, or limitations on equipment capacity; and

(6) to incorporate a change in the permit solely involving the addition of air pollution control equipment or the substitution of a different type of air pollution control equipment to existing equipment if the requested addition or substitution will not result in an increase in the allowable emission rate.

**S. "Submittal"**, when used as a noun, means a document listed in 20.11.2.2 NMAC, and, when used as a verb, means the act of delivering a document listed in 20.11.2.2 NMAC either to the department or filing the document with the board hearing clerk, as required by the applicable procedure.

[20.11.2.7 NMAC - Rp, 20 NMAC 11.02.I.7, 7/1/2001; A, 3/1/04; A, 1/10/11]

#### **20.11.2.8 SAVINGS CLAUSE:**

Any amendment to 20.11.2 NMAC that is filed with the state records center shall not affect actions pending for violation of a federal or state statute or regulation, a city or county ordinance, or a board regulation. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or regulation section in effect at the time the violation was committed.

[20.11.2.8 NMAC - Rp, 20 NMAC 11.02.I.9, 7/1/2001; A, 1/10/11]

#### **20.11.2.9 SEVERABILITY:**

If for any reason any section, paragraph, sentence, clause or word of 20.11.2 NMAC or federal, state or local standard incorporated in 20.11.2 NMAC is determined to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of the remaining provisions of 20.11.2 NMAC.

[20.11.2.9 NMAC - Rp, 20 NMAC 11.02.I.10, 7/1/2001; A, 3/1/04; A, 1/10/11]

#### **20.11.2.10 DOCUMENTS:**

Documents cited and incorporated in 20.11.2 NMAC may be viewed at the Albuquerque Environmental Health Department, One Civic Plaza NW, 3rd Floor, Suite 3023, Albuquerque, NM 87102.

[20.11.2.10 NMAC - Rp, 20 NMAC 11.02.I.11, 7/1/2001; A, 3/1/04; A, 1/10/11]

#### **20.11.2.11 GENERAL PROVISIONS:**

**A.** Any person, including a federal, state or local governmental agency, who submits a document described in Subsection A of 20.11.2.2 NMAC, shall pay the total fee required by 20.11.2 NMAC at the time the document is submitted.

**B.** Every person with a valid source registration or a permit issued pursuant to 20.11.20 NMAC, 20.11.40 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC or another board regulation, shall pay an annual emission fee as required by 20.11.2 NMAC, with the exception of fugitive dust control construction permits, which do not require payment of an annual emission fee.

**C.** No notification or submittal will be reviewed or source registration or permit issued unless the owner or operator provides documentary proof satisfactory to the department that either all applicable fees have been paid as required by 20.11.2 NMAC or the owner or operator has been granted a variance pursuant to 20.11.7 NMAC, *Variance Procedures*.

**D.** All fees required to be paid at the time of notification or submittal shall be paid by check or money order payable to the "City of Albuquerque fund 242" and either be delivered in person to the Albuquerque Environmental Health Department, 3rd floor, Suite 3023 or Suite 3047, Albuquerque - Bernalillo County Government Center, south building, One Civic Plaza NW, Albuquerque, NM, or mailed to Attn: Air Quality Division, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. The department shall provide a receipt of payment to the applicant. The person delivering or filing a submittal shall attach a copy of the receipt of payment to the submittal as proof of payment.

**E.** Failure of the owner or operator of a source to pay an annual emission fee required by 20.11.2 NMAC, is a violation of 20.11.2 NMAC.

**F.** No fee or portion of a fee required by 20.11.2 NMAC shall be refunded unless the written approval of the manager is obtained using the procedure required by 20.11.2.16 NMAC.

**G.** As required by 74-2-16 NMSA, all money received by the department pursuant to 20.11.2.13 NMAC, shall be deposited by the city of Albuquerque in the city's air quality permit fund ("fund 242").

[20.11.2.11 NMAC - N, 7/1/2001; A, 3/1/04; A, 1/10/11]

#### **20.11.2.12 AIR QUALITY SOURCE REGISTRATION AND STATIONARY SOURCE PERMIT APPLICATION FEES; FEE CALCULATIONS AND PROCEDURES:**

**A. Air quality source registration and permits for minor sources:** A person who submits an application for an air quality source registration pursuant to 20.11.40 NMAC or a permit pursuant to 20.11.41 NMAC shall pay the applicable fees provided in Section 20.11.2.18 NMAC.

**B. 20.11.41 NMAC, *Authority-to-Construct* permits required to be issued before construction of a stationary source whose applicability is determined by 'pound-per-hour' or 'ton-per-year' emissions:**

(1) Authority-to-construct application review fees shall be calculated based on the proposed source's proposed allowable emission rate for fee pollutants. Federally approved state implementation plan limitations may be used to determine a source's proposed allowable emission rate.

(2) Fugitive emissions shall be included in the application submittal to determine the source's proposed allowable emission rate.

(3) For sources that become subject to 20.11.42 NMAC, emissions from operations that the department determines to be insignificant activities shall not be included in the calculation.

(4) For each fee pollutant, calculate the proposed allowable emission rate for each proposed emission unit to the nearest tenth of a ton. Total each of the fee pollutants from each proposed emission unit and express the value in tons per calendar year as a whole number. When rounding, if the number after the decimal point is less than 5, the whole number remains unchanged. If the number after the decimal point is 5 or greater, the whole number shall be rounded up to next whole number.

(5) The applicant shall determine the 20.11.41 NMAC application review fee by applying the proposed source's calculated proposed allowable emission rate for the single highest fee pollutant in tons per year to the applicable 20.11.41 NMAC application review fee provided in Subsection C of 20.11.2.18 NMAC.

(6) In addition to paying the application review fee, a person who proposes to construct an emission unit or units that must comply with the provisions of 20.11.60 NMAC, *Permitting in Nonattainment Areas*; 20.11.61 NMAC, *Prevention of Significant Deterioration*; 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*; or 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*, shall also pay the applicable federal program review fees listed in Subsection D of 20.11.2.18 NMAC.

(7) Example: A person proposes to build a facility with a NSPS boiler with a proposed allowable emission rate of greater than 100 tons per year of NO<sub>x</sub>. The person shall determine and pay an application review fee of \$7,500.00, as required by Subsection C of 20.11.2.18 NMAC and a federal program review fee of \$1,000.00 for the NSPS boiler, as required by Subsection D of 20.11.2.18 NMAC, for a total fee of \$8,500.00. The total fee shall be submitted with the application as required by Subsections A, C, and D of 20.11.2.11 NMAC.

**C.** Authority-to-construct permits required to be issued before construction of a stationary source whose applicability is not determined by pound-per-hour or ton-per-year emissions shall pay the applicable application fee provided in Subsection B of 20.11.2.18 NMAC.

**D. Permit revisions, portable stationary source relocations and permit modifications:**

(1) The person requesting a permit revision, relocation or modification, as the terms are defined in the applicable board regulation, shall pay the fee required by the applicable provisions of 20.11.2.19 NMAC and 20.11.2.20 NMAC.

(2) Payment of an applicable federal program review fee, provided in Subsection D of 20.11.2.18 NMAC is required only with respect to the individual emission unit that is subject to relocation or modification.

**E.** Qualified small businesses shall pay one-half of the Application review fees for 20.11.41 NMAC, or other board regulation, and 100 % of all applicable federal program review fees.

[20.11.2.12 NMAC - Rp, 20 NMAC 11.02.II.1, 7/1/2001; A, 3/1/04; A, 1/10/11]

### **20.11.2.13 ANNUAL EMISSION FEES; FEE CALCULATIONS AND PROCEDURES:**

**A.** By June 1 of each year, the department shall send each owner or operator with either a valid source registration pursuant to 20.11.40 NMAC, a fugitive dust control programmatic permit issued pursuant to 20.11.20 NMAC, or a permit issued pursuant to 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC, or other board regulation, a letter stating the annual emission fee amount. If the owner or operator wishes to challenge or request a correction to the letter, then within 30 days after the owner or operator has received the letter from the department, the owner or operator shall deliver a written request to the department challenging the letter or requesting a correction to the letter. An owner or operator who submits a request to challenge or correct an error regarding the annual emission fee shall state in writing the basis upon which the fee was computed and shall follow the procedures set out in 20.11.2.16 NMAC.

**B.** Beginning August 1 of each year the city of Albuquerque shall send each owner or operator with either a valid source registration pursuant to 20.11.40 NMAC, a fugitive dust control programmatic permit issued pursuant to 20.11.20 NMAC, or a permit issued pursuant to 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC, or other board regulation, an official invoice stating the annual emission fee due. The owner or operator shall pay the invoiced amount in full as directed in the invoice. All incorrect-fee challenges shall follow the appeal procedures set forth in 20.11.2.16 NMAC.

#### **C. Calculating annual emission fees:**

(1) For a fugitive dust control programmatic permit, the annual fee shall be calculated as required by Subsection J of 20.11.2.15 NMAC.

(2) For a source registration, the annual emission fee shall be the minimum annual emission

fee as provided in 20.11.2.21NMAC.

(3) For all other permitted sources, the allowable emission rate for each fee pollutant shall be totaled and expressed in tons per calendar year as a whole number. When rounding, if the number after the decimal point is less than five, the whole number remains unchanged. If the number after the decimal point is five or greater, the whole number shall be rounded up to next whole number. The sum of each fee pollutant expressed in tons, shall be multiplied by the applicable annual emission fee rate provided in Section 20.11.2.21 NMAC, then totaled to determine the annual emission fee due.

**D.** An owner or operator who wishes to reduce the annual emission fee for a source may apply for a modification to the existing permit and shall comply with the requirements of 20.11.20 NMAC, 20.11.41 NMAC, or 20.11.42 NMAC, as applicable.

**E.** Beginning January 1, 2011, and every January 1 thereafter, an increase based on the consumer price index shall be added to the annual emission fee rates. The annual emission fee rates pursuant to Subsection A of 20.11.2.21 NMAC shall be adjusted by an amount equal to the increase in the consumer price index for the immediately-preceding year. Annual emission fee adjustment amounts equal to or greater than fifty cents (\$0.50) shall be rounded up to the next highest whole dollar. Annual emission fee adjustments totaling less than fifty cents (\$0.50) shall be rounded down to the next lowest whole dollar. The department shall post the annual emission fee rates on the city of Albuquerque environmental health department air quality division website.

[20.11.2.13 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04; A, 1/10/11]

#### **20.11.2.14 FILING FEES FOR REMOVAL OF REGULATED ASBESTOS CONTAINING MATERIAL; FEE CALCULATIONS AND PROCEDURES:**

**A.** A filing fee of \$21.00 per asbestos unit (AU), adjusted as required by Subsection D of 20.11.2.14 NMAC, shall be paid at the time notification is delivered to the department as required by 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*.

**B.** The filing fee shall be calculated by multiplying the total number of asbestos units proposed to be removed, by the fee per asbestos unit (AU) provided in Subsection A of 20.11.2.14 NMAC. Equation 1 at Paragraph (1) of Subsection B of 20.11.2.14 NMAC shall be used to calculate the total asbestos units (AU) removed and filing fee amount due at the time the notification is delivered to the department:

(1) **Equation 1:** Amount due at time of filing = AU x AU fee = [(SF / 160) + (LF / 260) + (CF / 35)] x AU fee; where: SF = square feet of asbestos containing material to be removed; LF = linear feet of asbestos containing material to be removed; CF = cubic feet of asbestos containing material to be removed; and AU fee = filing fee per asbestos unit.

(2) Example: A contractor proposes to remove 320 square feet (SF), 260 linear feet (LF) and 70 cubic feet (CF) of regulated asbestos containing material. Therefore,  $[(SF / 160) + (LF / 260) + (CF / 35)] \times AU \text{ fee} = [(320 / 160) + (260 / 260) + (70 / 35)] \times \$21.00 = [(2) + (1) + (2)] \times \$21.00 = 5 \times \$21.00 = \$105.00$

**C.** All fees due pursuant to Section 20.11.2.14 NMAC shall be paid as required by Subsections A, C, and D, of 20.11.2.11 NMAC, except that the word "applicant" shall be substituted for the phrase "owner/operator".

**D.** Beginning January 1, 2011, and every January 1 thereafter, an increase based on the consumer price index shall be added to the asbestos unit fee. The asbestos unit fee established in Subsection A of 20.11.2.14 NMAC shall be adjusted by an amount equal to the increase in the consumer price index for the immediately-preceding year. The applicable consumer price index is the all-urban consumer price index published by the United States department of labor. Asbestos unit fee adjustment amounts equal to or greater than fifty cents (\$0.50) shall be rounded up to the next highest whole dollar. Asbestos unit fee adjustments totaling less than fifty cents (\$0.50) shall be rounded down to the next lowest whole dollar. The department shall post the asbestos unit fee rate on the city of Albuquerque environmental health department air quality division website.

**E.** If asbestos removal begins before both the notification and filing fee are delivered to the department as required by 20.11.2.14 NMAC, the person removing asbestos shall also pay a \$100.00 late fee, to partially offset the additional related costs. In addition to the late fee, penalties may be assessed pursuant to the New Mexico Air Quality Control Act, Chapter 74, Article 2, New Mexico Statutes Annotated 1978.

**F.** An annual fee is not required for sources that are solely subject to 20.11.2.14 NMAC.

[20.11.2.14 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04; A, 1/10/11]

#### **20.11.2.15 FEES FOR FUGITIVE DUST CONTROL PERMITS AND INSPECTIONS; FEE CALCULATIONS AND PROCEDURES:**

**A.** Every person required to submit a permit application for a fugitive dust control construction permit as defined in 20.11.20.7 NMAC shall pay the total fee due at the time the permit application is submitted to the department.

**B.** The filing and review fee for a fugitive dust control construction permit for a project that is at least:

- (1) three-quarters of an acre or more, but less than 2 acres is \$250.00;
- (2) 2 acres, but less than 5 acres is \$350.00;

- (3) 5 acres, but less than 15 acres is \$450.00; and
- (4) 15 acres or more is \$550.00.

**C.** To calculate the fugitive dust control construction permit inspection fee, (which is in addition to the filing and review fee required by Subsection B of 20.11.2.15 NMAC), multiply the acreage on which active operations or disturbance will occur by \$115.00 per acre. The number of acres must be expressed as a whole number. When rounding, if the number after the decimal point is less than five, the whole number remains unchanged. If the number after the decimal point is five or greater, the whole number shall be rounded up to the next whole number. Rounding of acres shall occur before the fees are calculated.

**D.** All filing and review fees, and inspection fees required by 20.11.2.15 NMAC for a fugitive dust control construction permit shall be paid as required by Subsections A, C, and D of 20.11.2.11 NMAC.

**E.** If an application to obtain a fugitive dust control construction permit is submitted after active operations have commenced at the project location, a late fee of 50 percent of both the filing and review fee and the inspection fee shall be assessed to partially offset the additional related costs. In addition, penalties may be assessed pursuant to the New Mexico Air Quality Control Act, Chapter 74, Article 2 New Mexico Statutes Annotated 1978.

**F.** An annual fee is not required for sources that are solely subject to a fugitive dust control construction permit.

**G.** To calculate the fugitive dust control programmatic permit annual fee, multiply the acreage upon which routine maintenance or routine ongoing active operations will occur by the applicable emission control factor for a low impact source, moderate impact source, or high impact source as defined in Section 20.11.2.7 NMAC and then multiply by \$127.00. A "source classification guidebook" is available through the department which includes nonbinding examples of how to classify a no impact source, low impact source, a moderate impact source and a high impact source. The number of acres must be expressed as a whole number. When rounding, if the number after the decimal point is less than five, the whole number remains unchanged. If the number after the decimal point is five or greater, the whole number shall be rounded up to the next whole number. Rounding of acres shall occur before the fees are calculated using the applicable emission control factor in Section 20.11.2.7 NMAC. No filing and review fee is required for a programmatic permit. The total annual programmatic permit fee is:

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

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

(4) No fee shall be paid for "no impact source" acreage.

**H.** Example: The application for a programmatic permit includes a total of 20 acres, of which 2 acres are no impact source acres, 8 acres are low impact source acres, 5 acres are moderate impact source acres, and 5 acres are high impact source acres. To calculate the programmatic permit fee: 2 no impact source acres x 0 = 0 acres. 8 low impact source acres x 0.1 = 0.8 acre. 5 moderate impact acres x 0.5 = 2.5 acres. 5 high impact source acres x 0.9 = 4.5 acres. Therefore, 0 acres, plus 0.8 acre, plus 2.5 acres, plus 4.5 acres = a total of 7.8 acres. 7.8 acres x \$127.00 per acre = a total programmatic permit fee of \$991.00.

**I.** When a programmatic permit application is submitted, the applicant may either ask the department to determine the annual fee to be paid by the applicant, or the applicant may submit a proposed annual fee calculation. No later than 10 business days after the department has received the programmatic permit application and the proposed fee calculation, the department shall notify the applicant in writing of the total fees due. The applicant and the department may agree in writing to extend the deadline for the department to issue the programmatic permit in order to attempt to resolve any pending issues, including any dispute over the source classification or fee calculation. A permit applicant may challenge the department's determination of source classification or annual programmatic fee calculation for a fugitive dust control permit by following the procedures provided in Section 20.11.20.25 NMAC.

**J.** The annual term of each programmatic permit will be from July 1 through the following June 30. Annual programmatic permit fees shall be paid for each additional annual term and shall be calculated in the same manner as the annual fee that is paid for a programmatic permit, as provided in Subsection G of 20.11.2.15 NMAC.

**K.** Annual fees required by Subsection J of 20.11.2.15 NMAC for a fugitive dust control programmatic permit shall be paid as required by Subsections B, D and E of Section 20.11.2.11 NMAC and Subsection J of 20.11.2.15 NMAC.

**L.** Beginning January 1, 2011, and every January 1 thereafter, an increase based on the consumer price index shall be added to each fugitive dust fee. The fugitive dust fee required by Subsections C and G of 20.11.2.15 NMAC shall be increased by an amount equal to the change in the consumer price index for the immediately-preceding year. The applicable consumer price index is the all-urban consumer price index published by the United States department of labor. Fugitive dust fee adjustments equal to or greater than fifty cents (\$0.50) shall be rounded up to the next highest whole dollar. Fugitive dust fee adjustment amounts less than fifty cents (\$0.50) shall be rounded down to the next lowest whole dollar. The department shall post the fugitive dust fee rates on the city of Albuquerque environmental health department air quality division website.

**M. Demolition activities – fugitive dust control construction permit fee:**

Pursuant to 20.11.20.22 NMAC, no person shall demolish any building containing over 75,000 cubic feet of space without first submitting to the department a fugitive dust control construction permit application and fugitive dust control plan, accompanied by a filing and review fee that shall be the same as the filing and review fee required by Paragraph (1) of Subsection B of 20.11.2.15 NMAC, plus the fee charged for a 1-acre site as required by Subsection C of 20.11.2.15 NMAC. The total fugitive dust control construction fee shall be paid as required by Subsections D through F of 20.11.2.15 NMAC.

[20.11.2.15 NMAC - N, 7/1/2001; A, 3/1/04; A, 1/10/11]

**20.11.2.16 FEE ERRORS, CORRECTIONS AND REFUNDS:**

**A.** Pursuant to 20.11.20.17 NMAC, *Filing Review and Inspection Fees*, the filing and review fees portion of the total permit application fee due at time of submittal for a fugitive dust control construction permit application are non-refundable.

**B.** For all review fees that are due at the time of submittal, the person submitting the document (payor) shall pay the required review fee in full. If the payor wishes to request correction of an alleged error or to challenge the basis of a fee calculation, then, within 30 days after the payor delivers the submittal and the fee, the payor shall deliver a written request for review by a manager of the division ("manager"). The written request shall be addressed as required by Subsection D of 20.11.2.16 NMAC. If the manager has not received a written request for review within 30 days of submittal, the fee shall be deemed final.

**C.** An owner or operator (payor) who does not agree with the annual fee amount due may deliver a written request to the manager asking for a correction of an alleged error or challenging the basis upon which the fee was computed. Requests must be delivered to the manager within 30 days of payor's receipt of an invoice from the city requiring payment of an annual fee. If the manager has not received a written request for correction of an alleged error or a challenge to the basis of the fee calculation within 30 days after the payor receives the invoice, the invoice shall be deemed final, and immediately paid by the payor.

**D.** All written requests for review of a submittal or an annual fee shall be sent to: Manager, Air Quality Division, Albuquerque Environmental Health Department, Air Quality Division, P.O. Box 1293, Albuquerque, NM 87103, or hand-delivered to: Manager, Air Quality Division, Albuquerque Environmental Health Department, 3rd floor, Suite 3023 or 3047, Albuquerque - Bernalillo County Government Center, south building, One Civic Plaza NW, Albuquerque, NM.

**E.** The request for review of a submittal or annual fee shall include:

- (1) the name, address and telephone number of the payor;

- (2) the dollar amount of the alleged error or challenged calculation; and
- (3) a description of the alleged error or basis of the challenge and any other information the payor believes may support the claim.

**F.** Within 45 days of receiving the request for review of the submittal or annual fee, the manager shall review the account and either:

- (1) amend the invoice and refund any money due the payor;
- (2) state that the invoice is correct; or
- (3) require additional fee payment if the manager determines that the payor delivered an insufficient fee to the department.

**G.** The manager may confer with the payor to obtain additional information during the review period.

**H.** Within 10 business days after the manager completes the manager's review, the manager's decision shall be sent by certified mail to the address provided by the payor

**I.** If the manager determines a refund is owed to the payor, the department shall refund all money due consistent with the policies and procedures of the city of Albuquerque. If a refund is owed, the manager may deduct a reasonable professional service fee to cover the costs of staff time involved in processing the review. However, if the manager determines the department or the city made the error, no deduction shall be made from the amount refunded.

**J.** As authorized by NMSA Section 74-2-9, the manager's decision may be appealed to the board using the procedures described in 20.11.81 NMAC, *Adjudicatory Procedures – Air Quality Control Board*.

[20.11.2.16 NMAC - N, 7/1/2001; A, 3/1/04; A, 1/10/11]

#### **20.11.2.17 FAILURE TO PAY; LATE FEE:**

**A.** Failure to pay any fee required by 20.11.2 NMAC, a manager's decision made pursuant to 20.11.2.16 NMAC, or a board regulation is a violation of 20.11.2 NMAC.

**B.** All incorrect-fee challenges shall follow the appeal procedures set forth in 20.11.2.16 NMAC. Stating an invoice is in error shall not be a defense to violation of Section 20.11.2.17 NMAC.

**C.** Every person who is required by 20.11.2 NMAC to pay an annual emission fee but who does not submit payment in full as directed in the invoice shall pay an additional 50 percent of the annual emission fee, plus interest, as a late fee to partially

offset related costs. Interest shall be computed in accordance with the section of the internal revenue code relating to computing interest on underpayment of federal taxes.

**D.** In addition to paying a late fee for late delivery of an annual emission fee, the payor may be required to pay a penalty, as authorized by the New Mexico Air Quality Control Act, Chapter 74, Article 2, New Mexico Statutes Annotated 1978.

[20.11.2.17 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04; A, 1/10/11]

#### **20.11.2.18 REVIEW FEES:**

**A. Source registration review fees:** A person with a stationary source that is required by 20.11.40 NMAC to submit a source registration shall pay a registration review fee of \$500.00 when the registration application is delivered to the department.

**B. Permit application review fees for stationary sources that require permits pursuant to 20.11.41 NMAC or other board regulation, and that are not subject to Subsection C of 20.11.2.18 NMAC:** \$1,000.00.

**C. Ton-per-year application review fees for stationary sources that require permits pursuant to 20.11.41 NMAC or other board regulation, and whose applicability is based on the source's pound per hour or ton per year emissions:** A person with a stationary source that is required by Subsection C of 20.11.2.18 NMAC to obtain a permit and whose applicability is determined by pound per hour or ton per year emissions shall pay the following application review fee, based on the source's ton per year proposed allowable emission rate for the single highest fee pollutant:

(1) proposed sources with a proposed allowable emission rate equal to or greater than one ton per year and less than five tons per year: \$750.00;

(2) proposed sources with a proposed allowable emission rate equal to or greater than 5 tons per year and less than 25 tons per year: \$1,500.00;

(3) proposed sources with a proposed allowable emission rate equal to or greater than 25 tons per year and less than 50 tons per year: \$3,000.00;

(4) proposed sources with a proposed allowable emission rate equal to or greater than 50 tons per year and less than 75 tons per year: \$4,500.00;

(5) proposed sources with a proposed allowable emission rate equal to or greater than 75 tons per year and less than 100 tons per year: \$6,000.00; and

(6) proposed sources with a proposed allowable emission rate equal to or greater than 100 tons per year: \$7,500.00.

**D. Federal program review fees due in addition to the stationary source permit application review fees:** A person with a stationary source that is required by 20.11.41 to apply for a permit and pay a review fee pursuant to Subsection B or Subsection C of 20.11.2.18 NMAC shall also pay the federal program review fee for each applicable federal program standard or review listed in Paragraphs (1) through (5) of Subsection D of 20.11.2.18 NMAC:

- (1) for review of each 40 CFR 60 standard: \$1,000.00;
- (2) for review of each 40 CFR 61 standard: \$1,000.00;
- (3) for review of each 40 CFR 63 promulgated standard: \$1000.00;
- (4) for each case-by-case 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*, maximum achievable control technology (MACT) review: \$10,000.00; and
- (5) for each 20.11.61 NMAC, *Prevention of Significant Deterioration*, and 20.11.60 NMAC, *Permitting in Nonattainment Areas*, review: \$5,000.00.

**E.** Beginning January 1, 2011, and every January 1 thereafter, an increase based on the consumer price index shall be added to the application review fees. The application review fees established in Subsection A through D of 20.11.2.18 NMAC shall be adjusted by an amount equal to the increase in the consumer price index for the immediately-preceding year. Application review fees adjustments equal to or greater than fifty cents (\$0.50) shall be rounded up to the next highest whole dollar. Application review fees adjustments totaling less than fifty cents (\$0.50) shall be rounded down to the next lowest whole dollar. The department shall post the application review fees on the city of Albuquerque environmental health department air quality division website.

[20.11.2.18 NMAC - Rp, 20 NMAC 11.02.II.2, 7/1/2001; A, 3/1/04; A, 12/16/06; A, 1/10/11]

#### **20.11.2.19 APPLICATION REVIEW FEES FOR MODIFICATION OF EXISTING PERMITS:**

**A. Modifications:** A person who submits an application for a proposed modification to an existing stationary source permit shall pay either \$1000.00 if subject to Subsection B of 20.11.2.18 NMAC, or the applicable fee listed in Paragraphs (1)-(6) of Subsection A of 20.11.2.19 NMAC based on the source's ton-per-year proposed allowable emission rate for the single highest fee pollutant: The applicant shall round the calculations as described in Paragraph 4 of Subsection B of 20.11.2.12 NMAC:

- (1) proposed sources with a proposed allowable emission rate equal to or greater than one ton per year and less than five tons per year: \$750.00;

(2) proposed sources with a proposed allowable emission rate equal to or greater than 5 tons per year and less than 25 tons per year: \$1,500.00;

(3) proposed sources with a proposed allowable emission rate equal to or greater than 25 tons per year and less than 50 tons per year: \$3,000.00;

(4) proposed sources with a proposed allowable emission rate equal to or greater than 50 tons per year and less than 75 tons per year: \$4,500.00;

(5) proposed sources with a proposed allowable emission rate equal to or greater than 75 tons per year and less than 100 tons per year: \$6,000.00; and

(6) proposed sources with a proposed allowable emission rate equal to or greater than 100 tons per year: \$7,500.00.

**B. Major modifications:** A person, who submits an application for a proposed modification to an existing stationary source permit, shall pay the following fee as applicable in addition to the application review fee required by Subsection A of 20.11.2.19 NMAC. The applicant shall round the calculations as described in Paragraph 4 of Subsection B of 20.11.2.12 NMAC.

(1) 20.11.60 NMAC, *Permitting in Non-Attainment Areas*, major modification: \$5,000.00; and

(2) 20.11.61 NMAC, *Prevention of Significant Deterioration*, major modification: \$5,000.00.

**C. Federal program review fees for modification of an existing permit:** A person proposing a modification to an existing stationary source permit shall pay a review fee pursuant to Subsection A or Subsection B of 20.11.2.19 NMAC, and shall also pay the federal program review fee for each applicable federal program standard or review listed in Paragraphs (1) through (5) of Subsection C of 20.11.2.19 NMAC, if the federal program review is triggered by the modification:

(1) for review of each 40 CFR 60 standard: \$1,000.00;

(2) for review of each 40 CFR 61 standard: \$1,000.00;

(3) for review of each 40 CFR 63 standards promulgated standard: \$1000.00;

(4) for each case-by-case 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*, maximum achievable control technology (MACT) review: \$10,000.00; and

(5) for each 20.11.61 NMAC, *Prevention of Significant Deterioration*, and 20.11.60 NMAC, *Permitting in Nonattainment Areas*, review: \$5,000.00.

**D.** Beginning January 1, 2011, and every January 1 thereafter, an increase based on the consumer price index shall be added to the application review fees required by 20.11.2.19 NMAC. The application review fees established by Subsections A, B and C of 20.11.2.19 NMAC shall be adjusted by an amount equal to the increase in the consumer price index for the immediately-preceding year. Application review fee adjustments equal to or greater than fifty cents (\$0.50) shall be rounded up to the next highest whole dollar. Application review fee adjustments totaling less than fifty cents (\$0.50) shall be rounded down to the next lowest whole dollar. The department shall post the application review fee rates on the city of Albuquerque environmental health department air quality division website.

[20.11.2.19 NMAC - N, 1/10/11]

**20.11.2.20 ADMINISTRATIVE AND TECHNICAL REVISION APPLICATION FEES;  
PORTABLE STATIONARY SOURCE RELOCATION FEES:**

**A. Revision fees:**

(1) administrative revisions to permits issued pursuant to 20.11.41 NMAC:  
\$250.00;

(2) technical revisions to permits issued pursuant to 20.11.41 NMAC:  
\$500.00.

**B. Portable stationary source relocation fees:**

(1) no new air dispersion modeling required: \$500.00;

(2) new air dispersion modeling required: \$750.00.

[20.11.2.20 NMAC - N, 1/10/11]

**20.11.2.21 ANNUAL EMISSIONS FEES AND RATES FOR STATIONARY  
SOURCES:**

**A.** Source registration: \$185.00.

**B.** Permitted source: Sources issued a permit pursuant to 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC or other board regulation, shall pay a minimum annual emission fee of \$185.00 or \$44.00 per ton, whichever is greater. The annual emission fee shall be calculated as required by Subsection C of 20.11.2.13 NMAC.

**C.** Hazardous fee pollutants (major sources): \$308.00 per ton.

**D.** Stationary sources that require permits pursuant to 20.11.41 NMAC or other board regulation, and that are not subject to Subsection C of 20.11.2.18 NMAC shall pay an annual emission fee of \$185.00.

**E.** The following sources shall pay a minimum annual emission fee of \$308.00 or a fee of \$44.00 per ton whichever is greater, with the annual emission fee calculated as required by Subsection C of 20.11.2.13 NMAC:

- (1) emergency generators; and
- (2) gasoline service and fleet stations.

**F.** Beginning January 1, 2011, and every January 1 thereafter, an increase based on the consumer price index shall be added to the annual emission fee and rates required by 20.11.2.21 NMAC. The annual emission fees and rates pursuant to 20.11.2.21 NMAC shall be adjusted by an amount equal to the increase in the consumer price index for the immediately-preceding year. Annual emission fee and rate adjustments equal to or greater than fifty cents (\$0.50) shall be rounded up to the next highest whole dollar. Annual emission fee and rate adjustments totaling less than fifty cents (\$0.50) shall be rounded down to the next lowest whole dollar. The department shall post the annual emission fees and rates on the city of Albuquerque environmental health department air quality division website.

[20.11.2.21 NMAC - N, 1/10/11]

**20.11.2.22 MISCELLANEOUS FEES -- ADMINISTRATIVE FEES; VARIANCE REQUEST FEES; BOARD HEARING FILING FEES:**

**A. Administrative fees:**

- (1) Professional services fee: \$92.00 per staff hour.
- (2) Photocopying and other copies of public records: as provided by the New Mexico Inspection of Public Records Act and by the applicable city of Albuquerque ordinance and city administrative instruction number 1-7. The charge for copying public records shall not include a separate charge for staff time for locating and copying documents or for determining whether documents are exempt from inspection and copying.

**B. Variance request fees:** Every person who petitions for a variance shall pay a fee of \$1500.00, unless the board determines at a hearing that the variance fee imposes an undue economic burden on the petitioner.

**C. Board hearing filing fees:** Every person who requests a hearing before the board shall pay a filing fee of \$125.00, which shall be delivered to the board hearing clerk with the petition or other document that requests a hearing before the board.

However, the hearing filing fee does not apply to requests for rulemaking hearings or to board hearings regarding decisions made by the Albuquerque-Bernalillo County vehicle pollution management program manager or designee regarding the proposed suspension or revocation of an air car station certification or air car inspector certification.

[20.11.2.22 NMAC - N, 1/10/11]

## **PART 3: TRANSPORTATION CONFORMITY**

### **20.11.3.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.

[7/1/98; 20.11.3.1 NMAC - Rn, 20 NMAC 11.03.I.1, 6/1/02; A, 6/13/05; A, 12/17/08]

### **20.11.3.2 SCOPE:**

#### **A. Action applicability:**

(1) Except as provided for in Subsection C of 20.11.3.2 NMAC or 20.11.3.126 NMAC, conformity determinations are required for:

(a) the adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the metropolitan planning organization (MPO) or the United States department of transportation (DOT);

(b) the adoption, acceptance, approval or support of transportation improvement programs (TIPs) and TIP amendments developed pursuant to 23 CFR Part 450 or 49 CFR Part 613 by the MPO or DOT; and

(c) the approval, funding or implementation of federal highway administration/federal transit administration (FHWA/FTA) projects.

(2) Conformity determinations are not required under 20.11.3 NMAC for individual projects that are not FHWA/FTA projects. However, 20.11.3.121 NMAC does apply to such projects if they are regionally significant.

**B. Geographic applicability:** This transportation conformity regulation is an Albuquerque-Bernalillo county air quality control board (AQCB) regulation for Bernalillo county and is included in the state implementation plan (SIP) revision pertaining to transportation conformity for Bernalillo county. The provisions of 20.11.3 NMAC shall apply to the area within Bernalillo county for which the area is designated nonattainment or has a maintenance plan for transportation-related criteria pollutants, and shall not

apply to Indian lands over which the AQCB lacks jurisdiction, except that any FHWA/FTA project on Indian land that uses funds received from the FHWA or FTA or receives a federal permit must comply with 20.11.3 NMAC.

(1) The provisions of 20.11.3 NMAC apply with respect to emissions of the following criteria pollutants: ozone (O<sub>3</sub>), carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>), and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM<sub>2.5</sub>).

(2) The provisions of 20.11.3 NMAC apply with respect to emissions of the following precursor pollutants:

(a) volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) in ozone areas;

(b) NO<sub>x</sub> in NO<sub>2</sub> areas;

(c) VOC and NO<sub>x</sub> in PM<sub>10</sub> areas if the environmental protection agency (EPA) regional administrator or the director of the air agency has made a finding that transportation-related emissions of one or both of these precursors within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy;

(d) NO<sub>x</sub> in PM<sub>2.5</sub> areas, unless both the EPA regional administrator and the director of the state air agency have made a finding that transportation-related emissions of NO<sub>x</sub> within the nonattainment area are not a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT, or the applicable implementation plan (or implementation plan submission) does not establish an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy; and

(e) VOC, sulfur dioxide (SO<sub>2</sub>) and ammonia (NH<sub>3</sub>) in PM<sub>2.5</sub> areas either if the EPA regional administrator or the director of the state air agency has made a finding that transportation-related emissions of any of these precursors within the nonattainment area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of 20.11.3 NMAC apply to PM<sub>2.5</sub> nonattainment and maintenance areas with respect to PM<sub>2.5</sub> from re-entrained road dust if the EPA regional

administrator or the director of the air agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

(4) The provisions of 20.11.3 NMAC apply to maintenance areas through the last year of a maintenance area's approved CAA Section 175A(b) maintenance plan, unless the applicable implementation plan specifies that the provisions of 20.11.3 NMAC shall apply for more than 20 years.

**C. Limitations:** In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to 20.11.3. NMAC, a currently conforming transportation plan and TIP shall be in place at the time of project approval as described in 20.11.3.114 NMAC, except as provided by Subsection B of 20.11.3.114 NMAC.

**D. Grace period for new nonattainment areas:** For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM<sub>10</sub>, PM<sub>2.5</sub> or NO<sub>2</sub> since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of 20.11.3. NMAC shall not apply with respect to that NAAQS for 12 months following the effective date of final designation to nonattainment for each NAAQS for such pollutant.

[7/1/98; 20.11.3.2 NMAC - Rn, 20 NMAC 11.03.I.2, 6/1/02; A, 6/13/05; A, 12/17/08; A, 11/15/10]

### **20.11.3.3 STATUTORY AUTHORITY:**

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

[7/1/98; 20.11.3.3 NMAC - Rn, 20 NMAC 11.03.I.3, 6/1/02]

### **20.11.3.4 DURATION:**

Permanent.

[7/1/98; 20.11.3.4 NMAC - Rn, 20 NMAC 11.03.I.4, 6/1/02]

### **20.11.3.5 EFFECTIVE DATE:**

July 1, 1998, unless a later date is cited at the end of a section.

[7/1/98; 20.11.3.5 NMAC - Rn, 20 NMAC 11.03.I.5, & A, 6/1/02]

**20.11.3.6 OBJECTIVE:**

To implement Section 176(c) of the CAA, as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs and projects which are developed, funded or approved by the United States DOT, and by the MPO or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53) to the Bernalillo county portion of the SIP. 20.11.3 NMAC sets forth policy, criteria and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to Section 110 and Part D of the CAA.

[7/1/98; 20.11.3.6 NMAC - Rn, 20 NMAC 11.03.I.6, 6/1/02; A, 6/13/05]

**20.11.3.7 DEFINITIONS:**

Terms used but not defined in 20.11.3 NMAC shall have the meaning given to them by the CAA, Titles 23 and 49 U.S.C., other EPA regulations, or other DOT regulations, in that order of priority. In addition to the definitions in Section 20.11.3.7 NMAC, the definitions in 20.11.1 NMAC shall apply unless there is a conflict between definitions, in which case the definition in 20.11.3 NMAC shall govern.

A. Reserved

B. Reserved

C. Reserved

D. Reserved

E. Reserved

F. "**Air agency**" means the air quality division (AQD) of the city of Albuquerque environmental health department (EHD). The EHD, or its successor agency or authority, as represented by the department director or his designee, is the lead air quality planning agency for Albuquerque-Bernalillo county nonattainment/ maintenance areas. The EHD serves as staff to the AQCB and is responsible for administering and enforcing AQCB regulations.

G. "**Albuquerque metropolitan planning area (AMPA)**" means the portion of New Mexico state planning and development district 3 that comprises the area for which federal transportation funding allocated for areas of a 200,000 or greater population is

expended. The AMPA is described in the MPO's most recent transportation planning documents.

**H. Reserved**

**I. "Applicable implementation plan"** is defined in Section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under Section 110, or promulgated under Section 110(c), or promulgated or approved pursuant to regulations promulgated under Section 301(d) and which implements the relevant requirements of the CAA.

**J. "CAA"** means the Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

**K. "Cause or contribute to a new violation"** for a project means:

(1) to cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question if the project were not implemented; or

(2) to contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such an area.

**L. "Clean data"** means air quality monitoring data determined by EPA to meet the applicable requirements of 40 CFR Parts 50 and 58 and to indicate attainment of a national ambient air quality standard.

**M. "Conformity analysis"** means any regional emissions analysis or localized hot-spot computer modeling assessments or any other analyses, which serve as the basis for the conformity determination.

**N. "Conformity determination"** means the demonstration of consistency with motor vehicle emissions budgets or with the appropriate interim emissions test identified at 20.11.3.118 NMAC for each pollutant and precursor identified in the applicable SIP. The conformity determination is the affirmative written documentation declaring conformity with the applicable implementation plan, which is submitted to FHWA and FTA for approval with EPA consultation. An affirmative conformity determination means conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities shall not:

(1) cause or contribute to any new violations of any standard in any area;

(2) increase the frequency or severity of any existing violation of any standard in any area; or

(3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

**O. "Consultation"** means the process by which the affected agencies identified in 20.11.3.105 NMAC confer with each other, provide to the agencies all relevant information needed for meaningful input and, prior to taking any action, consider the views of the other agencies and (except with respect to those actions for which only notification is required and those actions subject to Subsection C of 20.11.3.105 NMAC and Subparagraph (g) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC) respond in writing to substantive written comments in a timely manner prior to any final decision on such action.

**P. "Control strategy implementation plan revision"** means a revision to the implementation plan that contains specific strategies for controlling emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA Sections 172 (c) , 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A) and 189(d); Sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment).

**Q. "Design concept"** means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

**R. "Design scope" or "scope"** means the design aspects that shall affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

**S. "Donut areas"** means geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

**T. "DOT"** means the United States department of transportation.

**U. "EPA"** means the United States environmental protection agency.

**V. "FHWA"** means the federal highway administration of the DOT.

**W. "FHWA/FTA project"** means any highway or transit project that is proposed to receive funding assistance and approval through the federal-aid highway program or the federal mass transit program, or requires federal highway administration (FHWA) or federal transit administration (FTA) approval for some aspect of the project, such as

connection to an interstate highway or deviation from applicable design standards on the interstate system.

**X. "Fiscally constrained"** means, consistent with DOT's metropolitan transportation planning regulations at 23 CFR Part 450.

**Y. "Forecast period"** means, with respect to a transportation plan, the time period covered by the transportation plan pursuant to 23 CFR Part 450.

**Z. "FTA"** means the federal transit administration of the DOT.

**AA. "Highway project"** means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

**BB. "Horizon year"** means a year for which the transportation plan describes the envisioned transportation system according to 20.11.3.106 NMAC.

**CC. "Hot-spot analysis"** means an estimation of likely future localized CO, PM<sub>10</sub> and PM<sub>2.5</sub> pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

**DD. "Increase the frequency or severity"** means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question if the project were not implemented.

**EE. "Isolated rural nonattainment and maintenance areas"** mean areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects

in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas.

**FF. "Lapse"** means that the conformity determination for a transportation plan or a TIP has expired, and thus there is no currently conforming transportation plan and TIP.

**GG. "Limited maintenance plan"** means a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area shall have a design value that is significantly below a given NAAQS, and it shall be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

**HH. "Local publicly-owned transit operator"** means the current transit operator, the city of Albuquerque.

**II. "Maintenance area"** means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

**JJ. "Maintenance plan"** means an implementation plan under Section 175A of the CAA, as amended.

**KK. "Metropolitan planning organization (MPO)"** means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

**LL. "Mid-region council of governments (MRCOG)"** means the association of local governments within New Mexico state planning and development district 3 (Bernalillo, Sandoval, Tarrant and Valencia counties) that is designated by the governor of New Mexico, in consultation with the elected officials of the area, as the MPO for the Albuquerque metropolitan planning area.

**MM. "Milestone"** has the meaning given in CAA Sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM<sub>10</sub> nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date when that level shall be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

**NN. "Motor vehicle emissions budget (MVEB)"** means the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

**OO.** "National ambient air quality standards (NAAQS)" are those standards established pursuant to Section 109 of the CAA.

**PP.** "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

**QQ.** "NEPA process completion" means, with respect to the FHWA and the FTA, the point at which there is a specific action to make a determination that a project is categorically excluded, to make a finding of no significant impact or to issue a record of decision on a final environmental impact statement under NEPA.

**RR.** "Nonattainment area" means any geographic region of the United States that has been designated as nonattainment under Section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

**SS.** "Project" means a highway project or a transit project.

**TT.** "Protective finding" means a determination by EPA that a submitted control strategy implementation plan revision contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirement relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

**UU.** "Public involvement committee (PIC)" means the permanent advisory committee established by the MRCOG to provide proactive public input to the transportation planning process.

**VV.** "Recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws" means any agency at any level of state, county, city, or regional government that routinely receives Title 23 U.S.C. or federal transit laws funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers or contractors or entities that are only paid for services or products created by their own employees.

**WW.** "Regionally significant project" means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc. or transportation terminals) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

**XX.** "Safety margin" means the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that

would satisfy the applicable requirement for reasonable further progress, attainment or maintenance.

**YY.** "Standard" means a national ambient air quality standard.

**ZZ.** "State implementation plan (SIP)" (see applicable implementation plan).

**AAA.** "State DOT" means the New Mexico department of transportation or its successor agency or authority, as represented by the department secretary or his designee.

**BBB.** "Title 23 U.S.C." means Title 23 of the United States Code.

**CCC.** "Transit" is mass transportation by bus, rail or other conveyance that provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

**DDD.** "Transit project" means an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules or fares and may consist of several phases. For analytical purposes, a transit project shall be defined inclusively enough to:

(1) connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

**EEE.** "Transportation conformity technical committee (TCTC)" means the group that provides interagency consultation and consists of transportation, planning and air quality staff of the MPO, local government staff, staff from the state DOT, EPA, FHWA, FTA, and staff from the air agency, and that is responsible for evaluating and establishing the assumptions and circumstances for the application of transportation and air quality models.

**FFF.** "Transportation control measure (TCM)" means any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA Section 176(c)(8), that is either one of the types listed in Section 108 of the CAA, or any other measure that reduces emissions or concentrations

of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the first sentence of this definition, vehicle technology-based, fuel-based and maintenance-based measures that control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of 20.11.3 NMAC.

**GGG. "Transportation improvement program (TIP)"** means a transportation improvement program developed by a metropolitan planning organization under 23 U.S.C. 134(j).

**HHH. "Transportation plan"** means the official 20-year fiscally constrained intermodal metropolitan transportation plan (MTP) that is developed for the metropolitan planning area through the metropolitan planning process, pursuant to 23 CFR Part 450.

**III. "Transportation project"** is a highway project or a transit project.

**JJJ. "Written commitment"** means a written commitment that includes a description of the action to be taken; a schedule for the completion of the action; a demonstration that funding necessary to implement the action has been authorized by the appropriating or authorizing body; and an acknowledgment that the commitment is an enforceable obligation under the applicable implementation plan.

**KKK. Acronyms**

- (1) **AMPA**-Albuquerque metropolitan planning area
- (2) **AQCB**-Albuquerque-Bernalillo county air quality control board
- (3) **CAA**-Clean Air Act, as amended
- (4) **CFR**-code of federal regulations
- (5) **CO**-carbon monoxide
- (6) **DOT**-U.S. department of transportation
- (7) **EHD**-Albuquerque environmental health department
- (8) **EPA**-U.S. environmental protection agency
- (9) **FHWA**-federal highway administration, DOT
- (10) **FTA**-federal transit administration, DOT
- (11) **MPO**-metropolitan planning organization

- (12) **MRCOG**-mid-region council of governments
- (13) **MTB**-metropolitan transportation board
- (14) **MTP**-metropolitan transportation plan
- (15) **MVEB**-motor vehicle emissions budget
- (16) **NAAQS**-national ambient air quality standards
- (17) **NEPA**-National Environmental Policy Act
- (18) **NO<sub>x</sub>** -oxides of nitrogen
- (19) **PIC**-public involvement committee
- (20) **PM<sub>2.5</sub>**-particulate matter less than or equal to 2.5 micrometers in diameter
- (21) **PM<sub>10</sub>**-particulate matter less than or equal to 10 micrometers in diameter
- (22) **SIP**-state implementation plan (applicable implementation plan)
- (23) **State DOT**-New Mexico department of transportation
- (24) **STIP**-state transportation improvement program
- (25) **TCC**-transportation coordinating committee
- (26) **TCM**-transportation control measure
- (27) **TCTC**-transportation conformity technical committee
- (28) **TIP**-transportation improvement program
- (29) **VOC**-volatile organic compound
- (30) **VMT**-vehicle miles traveled

[7/1/98; 20.11.3.7 NMAC - Rn, 20 NMAC 11.03.I.7, & A, 6/1/02; A, 6/13/05; A, 12/17/08; A, 11/15/10; A, 10/15/12]

#### **20.11.3.8 VARIANCES:**

**[RESERVED]**

[7/1/98; 20.11.3.8 NMAC - Rn, 20 NMAC 11.03.I.8, 6/1/02]

### **20.11.3.9 SAVINGS CLAUSE:**

Any amendment to 20.11.3 NMAC that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance or board regulation. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or section in effect at the time the violation was committed.

[7/1/98; 20.11.3.9 NMAC - Rn, 20 NMAC 11.03.I.9, 6/1/02; A, 6/13/05]

### **20.11.3.10 SEVERABILITY:**

If any section, paragraph, sentence, clause or word of 20.11.3 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of the remaining provisions of 20.11.3 NMAC.

[7/1/98; 20.11.3.10 NMAC - Rn, 20 NMAC 11.03.I.10, 6/1/02; A, 6/13/05]

### **20.11.3.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.3 NMAC may be viewed at the Albuquerque environmental health department, one civic plaza NW, suite 3023, 400 Marquette NW, Albuquerque, NM 87102.

[7/1/98; 20.11.3.11 NMAC - Rn, 20 NMAC 11.03.I.11, 6/1/02; A, 6/13/05; A, 10/15/12]

### **20.11.3.12 [RESERVED]**

[7/1/98; 20.11.3.12 NMAC - Rn, 20 NMAC 11.03.I.12, & A, 6/1/02; Repealed, 6/13/05]

### **20.11.3.13-20.11.3.102 [RESERVED]**

### **20.11.3.103 PRIORITY:**

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

[20.11.3.103 NMAC - Rn, 20.11.3.200 NMAC, 11/15/10]

### **20.11.3.104 FREQUENCY OF CONFORMITY DETERMINATIONS:**

**A.** Conformity determinations and conformity redetermination for transportation plans, TIPs and FHWA/FTA projects shall be made according to the requirements of 20.11.3.104 NMAC and the applicable implementation plan.

**B. Frequency of conformity determinations for transportation plans:**

(1) Each new transportation plan shall be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan amendments shall be found to conform before the transportation plan amendments are approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in 20.11.3.126 NMAC or 20.11.3.127 NMAC. The conformity determination shall be based on the transportation plan and the amendment taken as a whole.

(3) The MPO and DOT shall determine the conformity of the transportation plan (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, a 12-month grace period will be implemented as described in Subsection F of 20.11.3.104 NMAC. At the end of this 12-month grace period, the existing conformity determination shall lapse.

**C. Frequency of conformity determinations for transportation improvement programs:**

(1) A new TIP shall be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in 20.11.3.126 NMAC or 20.11.3.127 NMAC and has been made in accordance with the notification provisions of Subparagraph (g) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(3) The MPO and DOT shall determine the conformity of the TIP (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, a 12-month grace period will be implemented as described in Subsection F of 20.11.3.104 NMAC. At the end of this 12-month grace period, the existing conformity determination shall lapse.

**D. Projects:** FHWA/FTA projects shall be found to conform before they are adopted, accepted, approved or funded. Conformity shall be re-determined for any FHWA/FTA project if one of the following occurs: a significant change in the project's design concept and scope; three years have elapsed since the most recent major step to advance the project; or initiation of a supplemental environmental document for air

quality purposes. Major steps include NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; and, construction (including federal approval of plans, specifications and estimates).

**E. Triggers for transportation plan and TIP conformity determinations:**

Conformity of existing transportation plans and TIPs shall be re-determined within two years of the following, or after a 12-month grace period (as described in Subsection F of 20.11.3.104 NMAC) the existing conformity determination shall lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT:

(1) the effective date of EPA's finding that motor vehicle emission budgets from an initially submitted control strategy implementation plan or maintenance plan are adequate pursuant to Subsection E of 20.11.3.118 NMAC and can be used for transportation conformity purposes;

(2) the effective date of EPA approval of a control strategy implementation plan revision or maintenance plan that establishes or revises a motor vehicle emissions budget if that budget has not yet been used in a conformity determination prior to approval; and

(3) the effective date of EPA promulgation of an implementation plan that establishes or revises a motor vehicle emissions budget or adds, deletes or changes TCMs.

**F. Lapse grace period.** During the 12-month grace period referenced in Paragraph (3) of Subsection B of 20.11.3.104 NMAC, Paragraph (3) of Subsection C of 20.11.3.113 NMAC, and Subsection E of 20.11.3.113 NMAC, a project may be found to conform according to the requirements of 20.11.3 NMAC:

(1) the project is included in the currently conforming transportation plan and TIP (or regional emissions analysis); or

(2) the project is included in the most recent conforming transportation plan and TIP (or regional emissions analysis).

[20.11.3.104 NMAC - Rn & A, 20.11.3.201 NMAC, 11/15/10]

**20.11.3.105 CONSULTATION:**

**A. General:** Transportation plans and programs shall be in conformity with the applicable implementation plan (SIP) for the nonattainment/maintenance area of Bernalillo county. The MRCOG, as the MPO, is responsible for conducting the air quality transportation conformity analyses for all of Bernalillo county. The applicable plans and programs are the TIP and the MTP. The document serving to demonstrate conformity is the transportation/air quality conformity finding. 20.11.3.105 NMAC

provides procedures for interagency consultation (federal, state and local) and resolution of conflicts. Such consultation procedures shall be undertaken by the MPO, state DOT and DOT with the air agency and EPA before making conformity determinations and by the air agency and EPA with the MPO, state DOT and DOT in developing applicable implementation plan revisions.

**B. Interagency consultation procedures: General factors:** The affected agencies shall participate in an interagency consultation process to assure that proposed transportation investments conform with the applicable implementation plan developed pursuant to the CAA. The affected agencies shall participate in a consultation process during the development of the transportation-related elements in the applicable SIP (i.e. TCMs, the MTP, and the TIP under 23 CFR Section 450.314 and 49 CFR Section 613.100), any significant revisions to the preceding documents and all conformity determinations required by 20.11.3 NMAC.

(1) The affected agencies acting in consultation include: EHD; EPA; FHWA; FTA; MPO; state DOT; local publicly-owned transit operator; appropriate local government transportation agencies and land use planning agencies (e.g. city of Albuquerque and Bernalillo county planning departments); and other federal and state agencies as appropriate.

(2) Each lead agency in the consultation process required under Subsection D of 20.11.3.105 NMAC (i.e. the agency responsible for preparing the final document subject to the interagency consultation process) shall provide reasonable opportunity for consultation with the affected agencies identified above. The lead agency shall provide to the affected agencies all information needed for meaningful input and shall consider the views of each agency and respond in writing to substantive written comments submitted during the formal comment period prior to making a final decision on such document. Such written response shall be made part of the record of any decision or action. Roles of these agencies are further described in Paragraph (1) of Subsection C of 20.11.3.105 NMAC below.

(3) Project planning, public involvement, management systems, project development and other requirements for the MPO, state DOT and the local publicly-owned transit operator are covered by the applicable DOT rules and regulations for MPOs and state DOTs (23 CFR Part 450, 500, 626 and 771, 49 CFR 613).

**C. Interagency consultation procedures roles and responsibilities:**

(1) **Development of transportation plans and programs and associated conformity determinations.**

(a) The MPO, as the lead transportation planning agency, has the primary responsibility in the AMPA for developing the MTP, TIP and technical analyses related to travel demand and other associated modeling, data collection and coordination of consultation for these activities with the agencies specified in Paragraph (1) of

Subsection B of 20.11.3.105 NMAC, in accordance with 23 CFR Part 450, 500 and 626. The MPO shall be responsible for regional emissions and travel demand analyses of the MTP and TIP in consultation with the EHD. Corridor and project-level hot spot and emissions analyses, developed in consultation with the EHD, shall be the responsibility of the project-implementing agency through the NEPA process or similar environmental evaluation process.

(b) The committees and member agencies, identified in the most recent MPO document regarding public involvement procedures for transportation plans and programs, entitled *Public Involvement Procedures for the Mid-Region Council of Governments Acting as the MPO for the Albuquerque Metropolitan Planning Area*, shall participate in the MPO process for the development, monitoring and revision of the MTP and the development of the TIP.

(i) The MPO shall forward a preliminary version of the MTP, the TIP and the draft conformity finding to the AQCB for review with a minimum of 14 calendar days to provide comments. Upon release of the final draft of the MTP and TIP for public review, the MPO shall submit the final drafts of the MTP, TIP and accompanying conformity documents to the AQCB and agencies in Paragraph (1) of Subsection B of 20.11.3.105 NMAC for review and comment before adoption and final approval by the MTB. Following review of the conformity determination, the AQCB shall state whether the TIP, the MTP or both are in compliance with the applicable implementation plan. The MPO shall provide a review and comment period consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(a), 49 CFR Section 613). Briefings to the AQCB shall be provided upon request.

(ii) The MPO shall provide information and appropriate advance notification of meeting places, dates and times, agendas and supporting materials for all of its special and regularly scheduled meetings on transportation and air quality to each of the agencies specified in Paragraph (1) of Subsection B of 20.11.3.105 NMAC in accordance with the public involvement process adopted by the MPO, consistent with the Metropolitan Planning Rule (23 CFR Section 450.316(a), 49 CFR Section 613) and described in the MRCOG's public involvement document, entitled *Public Involvement Procedures for the Mid-Region Council of Governments Acting as the MPO for the Albuquerque Metropolitan Planning Area*. The MPO's compliance with the New Mexico Open Meetings Act is documented annually. Resolution of conflicts shall follow the provisions of Subsection E of 20.11.3.105 NMAC.

(2) **Development of applicable implementation plans:** Within the nonattainment/maintenance area, the EHD, in consultation with the MPO, shall be responsible for developing the transportation-related components for the applicable SIP, air quality modeling, general emissions analysis, emissions inventory, all related activities and coordination of these tasks with the agencies specified in Paragraph (1) of Subsection B of 20.11.3.105 NMAC through the TCTC as described in Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC. Upon release of the final draft of the SIP revision for public review, the EHD shall submit the final draft document

to the MTB and agencies in Paragraph (1) of Subsection B of 20.11.3.105 NMAC for review and comment before final adoption by the AQCB. The EHD shall provide at least a 30 day review and comment period consistent with CAA requirements. Briefings to the MTB shall be provided upon request.

(3) The organizational level of regular consultation is described in Subsection B of 20.11.3.105 NMAC and Subsection C of 20.11.3.105 NMAC. All correspondence concerning consultation related to the transportation conformity SIP shall be addressed to the designated points of contact below:

- (a) EPA: regional administrator or designee;
- (b) FHWA: division administrator or designee;
- (c) FTA: regional administrator or designee;
- (d) State DOT: secretary of transportation or designee;
- (e) MPO: MRCOG executive director or designee;
- (f) EHD: director or designee;
- (g) local publicly-owned transit operator: chief administrative officer or designee;
- (h) local governments within the nonattainment/maintenance area: chief administrative officer or equivalent or designee.

(4) The MPO shall respond in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of Subsection B of 20.11.3.105 NMAC regarding the MTP, TIP and related conformity determinations. The project implementing agencies shall respond in writing to substantive written comments regarding projects in accordance with the provisions of 20.11.3 NMAC. The EHD shall respond in writing to substantive written comments from the affected consultation agencies described in Paragraph (1) of Subsection B of 20.11.3.105 NMAC regarding the transportation components of the applicable implementation plan for the nonattainment/maintenance area, in accordance with the provisions of 20.11.3 NMAC. All formal comments (e.g. those received during the public comment period) and responses to those comments shall be included within final documents before they are forwarded for review and final approval by the FHWA/FTA or EPA, as appropriate.

(5) Prior to AQCB adoption of a TCM in the applicable implementation plan, the MPO shall, in consultation and coordination with the agencies identified in Paragraph (1) of Subsection D of 20.11.3.105 NMAC, develop the proposed TCM in a manner consistent with the MTP and TIP transportation development processes. After approval of a TIP, MTP or both, the AQCB shall incorporate all proposed TCMs into the

applicable implementation plan. The necessary TCMs shall be specifically described in the applicable implementation plan. TCMs shall also be cross-referenced to the approved TIP, MTP or both. EHD shall coordinate the necessary efforts to achieve inclusion of the proposed TCM into the applicable implementation plan. The TCMs approved by the AQCB and subsequently by the EPA as part of the applicable implementation plan shall receive priority funding for implementation in a manner consistent with funding and phasing schedules specified in the MPO's TIP or MTP or both.

(a) In the event that implementation of a TCM is infeasible in the time frame for that measure in the applicable implementation plan (as defined in Subsection D of 20.11.3.7 NMAC), the parties in the interagency consultation process established pursuant to Paragraph (1) of Subsection D of 20.11.3.105 NMAC shall assess whether such a measure continues to be appropriate. When the MPO and the AQCB concur that a TCM identified in the applicable implementation plan is no longer appropriate, the agencies may initiate the process described in Subparagraph (b) through Subparagraph (e) of Paragraph (5) of Subsection C of 20.11.3.105 NMAC to identify and adopt a substitute TCM.

(b) **Substitution of TCMs.** Any TCM that is specified in the applicable implementation plan may be replaced or added to the implementation plan with alternate or additional TCMs without an implementation plan revision if the proposed measure meets the following provisions:

(i) upon request by the MPO, the EHD shall convene the TCTC to identify and evaluate possible substitute and additional measures; consultation with EPA may be accomplished by sending copies of all draft and final documents, agendas and reports to EPA Region 6;

(ii) the substitute TCM shall provide for equivalent or greater emissions reductions than the TCM to be replaced in the applicable implementation plan, as demonstrated by an emissions impact analysis that is consistent with the current methodology used for evaluating the replaced TCM in the implementation plan;

(iii) the substitute TCM shall be implemented in accordance with a schedule that is consistent with the schedule provided for the TCM contained in the applicable implementation plan; or if the implementation plan date for implementation of the TCM to be replaced has already passed, a TCM selected pursuant to 20.11.3 NMAC that requires funding shall be included in the first year of the next MTP and TIP adopted by the MPO; however, the substituted TCM shall be implemented as soon as possible, but not later than one year from the date of the original TCM, and in no case, later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iv) in order for the AQCB to adopt substitute and additional TCMs, there shall be evidence of adequate personnel, funding and authority under state or

local law to implement, monitor and enforce the control measures; commitments to implement the substitute TCMs shall be made by the agency with legal authority for implementation;

(v) the TCMs substituted under 20.11.3.105 NMAC for purposes of the applicable implementation plan shall receive priority funding for implementation within the MPO's MTP and TIP funding processes; and

(vi) no TCM shall be replaced until the substitute TCM has been adopted and the existing TCM in the applicable implementation plan has been rescinded by the AQCB; adoption of a substitute TCM by the AQCB formally rescinds the previously applicable TCM and adopts the substitute TCM.

(c) **Public participation:** After the concurrence required under Subparagraph (a) of Paragraph (5) of Subsection C of 20.11.3.105 NMAC, the AQCB shall conduct a public hearing and comment process, in accordance with 40 CFR 52.102, on the proposed substitute TCM(s). The hearing can only be held after a reasonable public notice and comment period, which begins at least 30 days prior to the hearing date. The AQCB shall ensure that:

(i) the public is notified by prominent advertising in the area affected announcing the time, date and place of the hearing;

(ii) each proposed plan or revision is available for public inspection in at least one location in the applicable area;

(iii) the MPO, EPA, affected local agencies and other interested parties are notified; and

(iv) a description of the TCM(s), analysis supporting the proposal, assumptions and methodology are available to the public, the MPO and EPA for at least 30 days before the public hearing and at least 30 days prior to the close of the public comment period.

(d) **Concurrence process for substitute TCMs:**

(i) before initiating any public participation process, the AQCB, MPO and EPA shall concur with the appropriateness and equivalency of the substitute or additional TCM;

(ii) the AQCB shall respond to all public comments and submit to EPA a summary of comments received during the public comment period along with the responses following the close of the public comment period;

(iii) the EPA shall notify the AQCB within 14 days if EPA's concurrence with the substitution TCM has changed as a result of public comment;

(iv) all substitute TCMs shall be adopted by the AQCB following the public comment period and EPA's concurrence described in Subparagraph (d) of Paragraph (5) of Subsection C of 20.11.3.105 NMAC; if not adopted, the substitute TCM cannot replace the existing TCM.

(e) **Technical information:** The analysis of substitute TCMs shall be consistent with methodology used for evaluating TCMs in the nonattainment or maintenance plan. Where emissions models or transportation models have changed since those used for purposes of evaluating measures in the nonattainment or maintenance plan, the TCM to be replaced and the substitute TCMs shall be evaluated using the latest modeling techniques for purposes of demonstrating equivalency or greater emissions reductions. The key methodology and assumptions shall be consistent with EPA approved regional and hot-spot emissions models (for CO, PM<sub>10</sub> and PM<sub>2.5</sub>), the area's transportation model, and population and employment growth projections.

(f) **Record keeping:** The AQCB shall maintain documentation of approved TCM substitutions. The documentation shall provide a description of the substitute and replaced TCMs, including requirements and schedules. The documentation shall also provide a description of the substitution process including the public and agency participation and coordination with the TCTC, the public hearing and comment process, EPA concurrence and AQCB adoption. The documentation shall be submitted to EPA following adoption of the substitute TCMs by the AQCB, and made available to the public as an attachment to the applicable implementation plan.

(g) **Adoption:**

(i) concurrence by the metropolitan planning organization, the state air pollution control agency and the administrator as required by Subparagraph (i) of Paragraph (d) of Subsection C of 20.11.3.105 NMAC, shall constitute adoption of the substitute or additional control measures so long as the requirements of Paragraph (b) of Subsection C of 20.11.3.105 NMAC are met;

(ii) once adopted, the substitute or additional control measures become, by operation of law, part of the state implementation plan and become federally enforceable;

(iii) within 90 days of its concurrence under Subparagraph (i) of Paragraph (d) of Subsection C of 20.11.3.105 NMAC, the state air pollution control agency shall submit the substitute or additional control measure to the administrator for incorporation in the codification of the applicable implementation plan; notwithstanding any other provision of the Clean Air Act, no additional state process shall be necessary to support such revision to the applicable plan.

(h) **No requirement for express permission.** The substitution or addition of a transportation control measure in accordance with Paragraph (5) of Subsection C of

20.11.3.105 NMAC and the funding or approval of such a control measure shall not be contingent upon the existence of any provision in the applicable implementation plan that expressly permits such a substitution or addition.

(i) **No requirement for new conformity determination.** The substitution or addition of a transportation control measure in accordance with Paragraph (5) of Subsection C of 20.11.3.105 NMAC shall not require:

- (i) a new conformity determination for the transportation plan; or
- (ii) a revision of the implementation plan.

**D. Interagency consultation procedures: Specific processes.**

(1) Interagency consultation procedures for the Bernalillo county nonattainment/maintenance area, in accordance with Subsection C of 20.11.3.105 NMAC, shall involve the MPO (transportation, land use and transit members from within the AMPA), state DOT, EPA, FHWA, FTA and the air agency. The TCTC's role in interagency consultation for the specific processes is described below. The TCTC shall include representatives as described in Paragraph (1) of Subsection B of 20.11.3.105 NMAC. The TCTC shall be established by the air agency in cooperation with the MPO. The TCTC shall meet on an as-needed basis. The air agency, in consultation with the MPO, shall be responsible for convening meetings and establishing meeting agendas.

(a) The TCTC shall evaluate and participate in establishing the circumstances for the application of a transportation or air quality model (or models). Committee review shall include VMT forecasting and associated methods and assumptions to be used in: 1) hot-spot and regional emissions analysis for establishing motor vehicle emissions budgets; 2) developing the MTP and the TIP; 3) developing implementation plan revisions directly applicable to transportation, and 4) making the conformity determinations and planning assumptions identified in 20.11.3.110 NMAC. The TCTC shall also review assumptions, analyses and results of the conformity and fiscal constraint determinations and other applicable implementation plan revisions or actions affecting the MTP and transportation programs. The TCTC shall function as a cooperative interagency effort to share mobile source modeling and transportation and air quality modeling information, and to evaluate modeling assumptions through interagency consultation. Regional modeling shall be the responsibility of the MPO and the air agency as appropriate. Hot-spot analysis shall be the responsibility of the lead agency of the project requiring the analysis. Before new models used in hot-spot or regional emissions analyses are adopted for general use, the TCTC shall be provided an opportunity to review and comment. This process also applies to consultation on the design, schedule and funding of research and data collection efforts regarding regional transportation models developed by the MPO (e.g. household travel transportation surveys) described in 20.11.3.110 NMAC. New modeling information shall be presented by the air agency and the MPO in regularly scheduled meetings.

(b) The TCTC shall determine which minor arterials and other transportation projects shall be considered regionally significant for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects shall be considered to have a significant change in design concept, timing and scope from the MTP or TIP. When the TCTC determines that a significant change in design concept, timing and scope has occurred, the MPO and lead agency shall, as part of the MTP and TIP process, consult with the appropriate agencies identified in Paragraph (1) of Subsection D of 20.11.3.105 NMAC to assess the impact of this project change on the conformity determination. The MPO shall redetermine transportation conformity for air quality if a significant change occurs within the transportation network that is likely to lead to a meaningful increase in a pollutant for which the nonattainment area exceeds the NAAQS, or for an area that is designated as attainment and is subject to a maintenance plan.

(c) The TCTC shall evaluate whether projects otherwise exempt from meeting the regional or hot-spot conformity analysis requirements shall be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The MPO's conformity documents shall include a list of transportation projects exempted from inclusion in a regional conformity determination. Exempt projects are identified in 20.11.3.126 NMAC and 20.11.3.127 NMAC. The process used to reach a determination of exemption shall include an evaluation of whether or not the exempt project shall interfere with or impede the implementation of TCMs in the applicable implementation plan. If no substantive comments related to air quality impacts are received as part of the TIP review process, the lead agency for the project may proceed with implementation of the exempt project. If substantive air quality impact comments are received which indicate that an exempt project may adversely affect air quality, the lead agency for the project shall consult with the air agency and the MPO to determine the appropriate action necessary to address the adverse air quality impacts.

(d) If TCMs are included in the SIP, the MPO shall give maximum priority to approval or funding of those TCMs, report to the AQCB annually whether those TCMs are on schedule and, if not, what delays have been encountered, what obstacles to implementation have been identified and whether or not these obstacles are likely to be overcome. The AQCB shall also consider whether delays in TCM implementation necessitate a SIP revision to remove, substitute, or modify TCMs or identify other reduction measures. If substitute TCMs or other reduction measures beyond those already in the SIP are deemed necessary through the consultation process specified in 20.11.3.105 NMAC, the MPO shall work with the members of the TCTC to identify and coordinate appropriate modifications to the MTP, TIP and conformity determination. All revisions to the MTP, TIP and conformity determination shall be made as part of the MPO's transportation planning process.

(e) The MPO shall, through its transportation planning process, notify the agencies represented on the TCTC regarding revisions and amendments to the MTP and TIP that merely add or delete exempt projects identified in 20.11.3.126 NMAC.

(f) If Bernalillo county is designated nonattainment for PM<sub>10</sub> or PM<sub>2.5</sub>, the consultative process as specified in Subsection D of 20.11.3.105 NMAC shall be used to coordinate the identification of projects located at sites that have vehicle and roadway emission and dispersion characteristics which are similar to those sites that have violations verified by monitoring. A quantitative PM<sub>10</sub> hot-spot analysis shall be required for these projects in accordance with Subsection B of 20.11.3.123 NMAC. The air agency, in consultation with the MPO, shall advise the appropriate lead agency responsible for project development of the projects identified and the basis for their identification.

(g) The MPO shall provide written notification to all agencies in the MTP, TIP and conformity determination processes, including the AQCB, of plan revisions or plan amendments that merely add or delete exempt projects identified in 20.11.3.126 NMAC.

(h) Requirements for conformity tests for isolated rural nonattainment and maintenance areas shall be governed by Subparagraph (c) of Paragraph (2) of Subsection G of 20.11.3.109 NMAC.

(2) Interagency consultation procedures shall include the agencies specified in Paragraph (1) of Subsection D of 20.11.3.105 NMAC. These agencies shall participate in the following processes.

(a) In addition to the triggers defined in 20.11.3.105 NMAC, the air agency may request a new conformity determination when an emergency project involves substantial functional, location or capacity changes, or when the project may otherwise adversely affect the transportation conformity determination.

(b) If an adjacent area is designated nonattainment and the area includes another MPO, the agencies involved shall cooperatively share the responsibility for conducting conformity determinations for transportation activities that cross borders of the MPOs or nonattainment areas. An agreement shall be developed between the MPOs and other appropriate local and state government agencies to address the responsibilities of each for regional emissions analysis.

(3) Although the metropolitan planning area may not include all of the nonattainment/ maintenance area of Bernalillo county, the MPO (which is also the regional planning organization for all of Bernalillo county), in coordination with the state DOT, shall be responsible for conducting conformity analyses and conformity determinations for transportation activities for the entire nonattainment/ maintenance area that is located within the MPO's area of planning responsibility.

**(4) Interagency consultation on regionally significant non-FHWA/FTA projects:**

(a) Any group, entity or individual planning to construct a regionally significant transportation project that is not a FHWA/FTA project (including a project for which

alternative locations, design concept and scope, or the no-build option is still being considered), including projects planned by recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, shall ensure that these plans are disclosed to the MPO on a regular basis through the MTP and TIP development processes, or as soon as they are identified, and shall notify the MPO immediately of any changes to an existing plan so that these transportation projects can be incorporated into the regional emissions analysis and modeling for the nonattainment/maintenance area. Any member of the TCTC may request that the TCTC make a determination regarding whether a project is regionally significant. Upon receipt of a written request stating the reasons why the TCTC should make a determination, the EHD in coordination with the MRCOG shall convene a meeting of the TCTC to make a determination regarding regional significance. If the TCTC determines that the non-FHWA/FTA project is not regionally significant, no further actions by the TCTC are required. If the TCTC determines that the non-FHWA/FTA project is regionally significant, the TCTC will follow the requirements of 20.11.3 NMAC and the MPO will incorporate the project into the regional emissions analysis, the TIP and the MTP.

(b) The sponsor of any regionally significant project, and other recipients of funds designated under Title 23 U.S.C. or the Federal Transit Act, who knows about any such project through applications for approval, permitting, funding or otherwise gains knowledge of a regionally significant project, shall promptly disclose the project to the MPO. Such disclosures shall be made not later than the first occasion on which any of the following actions is sought: any MTB action or other action by government decision making bodies necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to design or construct the facility, the execution of any indebtedness for the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with design, permitting or construction of the project, or the execution of any contract to design or construct or any approval needed for any facility that is dependent upon the completion of a regionally significant project. At the earliest opportunity, the MPO shall apprise the agencies participating in the consultation process identified above in Paragraph (1) of Subsection D of 20.11.3.105 NMAC of these projects and include them in the conformity analysis networks.

(c) **Procedures to address non-conforming regionally significant projects not in the TIP or MTP or both.** When an regionally significant project has not been included in the TIP or MTP or both, the TCTC shall participate in the air quality evaluation of a non-conforming regionally significant project to ensure that the project is integrated into the regional emissions analysis, the TIP and the MTP in a manner consistent with the MPO's transportation planning process, the requirements of 20.11.3 NMAC and other applicable federal requirements. Section 23 CFR 450.316 lists factors that shall be considered as part of the planning process. Among the factors that shall be considered is an analysis of the effects of all transportation projects to be undertaken within the metropolitan planning area, without regard to the funding source. Therefore, a regionally significant project funded entirely with local funding is subject to the planning requirements of Section 23 CFR 450.316. The analysis shall consider the effectiveness,

cost effectiveness, and financing of alternative investments in meeting transportation demand and supporting the overall efficiency and effectiveness of transportation system performance and related impacts on community/central city goals regarding social and economic development, housing and employment. Another factor that shall be considered is the overall social, economic, energy and environmental effects of transportation decisions (including consideration of the effects and impacts of the transportation plan on the human, natural and man-made environment and consultation with appropriate resource and permit agencies to ensure early and continued coordination with environmental resource protection and management plans, and appropriate emphasis on transportation-related air quality problems in support of 23 U.S.C. 109(h) and Section 14 of the Federal Transit Act (49 U.S.C. 1610), Section 4(f) of the DOT Act (49 U.S.C. 303) and Section 174(b) of the Clean Air Act (42 U.S.C. 7504(b)). All projects, including regionally significant projects not yet included in a TIP or MTP or both, shall follow the requirement in 23 CFR 450.316 that calls for a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs and that provides for involvement of local, state and federal environment resource (e.g., EPA, EHD) and permit agencies as appropriate.

(d) If a regionally significant project has not been disclosed in a timely manner to the MPO and other agencies involved in the consultation process, then, for the purposes of 20.11.3.121 NMAC, the regionally significant project shall not qualify as a conforming project until the project complies with the requirements of 20.11.3 NMAC. When a regionally significant project has not been included in the regional emissions analysis for the current conforming TIP or MTP or both, proceeding toward implementing the project without complying with 20.11.3.105 NMAC and 20.11.3.121 NMAC may be inconsistent with federal and local laws including, but not limited to the following.

(i) **23 U.S.C. Section 109(i).** This requires that the secretary of transportation for the DOT consult with the administrator for the EPA to develop and promulgate guidelines to assure that highways constructed pursuant to Title 23 of the U.S. Code are consistent with the applicable implementation plan pertaining to a nonattainment area or an attainment area subject to a maintenance plan. 20.11.3 NMAC is part of the applicable implementation plan.

(ii) **23 CFR Section 450.312, metropolitan transportation planning: Responsibilities, cooperation, and coordination.** This prohibits the MRCOG from approving any transportation plan or program that does not conform to the applicable implementation plan. Regionally significant projects are required to be included in the regional emissions analysis for the transportation plan or program.

(iii) **23 CFR Section 450.324, transportation improvement program: General.** This requires that the TIP include all regionally significant projects to be funded with non-federal funds in the air quality analysis for nonattainment areas and areas subject to a maintenance plan.

(iv) **20.11.3 NMAC, *Transportation Conformity*.** This regulation requires that regionally significant projects be included in the transportation plans and the regional emissions analysis. Failure to include a regionally significant project in a transportation plan violates 20.11.3 NMAC and jeopardizes approval of the regional MTP and the TIP.

(e) **Consequences of implementing a non-conforming regionally significant project:** Violations of 20.11.3 NMAC may result in criminal, civil and administrative penalties, including a potential administrative penalty of \$15,000 per day of non-compliance. In addition, the EPA may determine that implementing a nonconforming regionally significant project violates the applicable implementation plan, and the EPA may impose federal sanctions that would jeopardize the receipt of federal transportation funds to the affected area, including Title 23, U.S.C. or Federal Transit Act funds. In addition, the FHWA must periodically review the transportation planning process used by the MRCOG, and failure to follow federal requirements may adversely affect FHWA's certification of the MRCOG process.

(f) For the purposes of 20.11.3.105 NMAC and 20.11.3.121 NMAC, the phrase "adopt or approve a regionally significant project" means the first time any action necessary to authorize a project occurs, such as any MTB action or other action by government decision making bodies necessary for the project to proceed, the issuance of administrative permits for the facility or for construction of the facility, the execution of a contract to construct the facility, any final action of a board, commission or administrator authorizing or directing employees to proceed with construction of the project, or any written decision or authorization from the MPO that the project may be adopted or approved.

(5) When there is insufficient information to model the projects described in Paragraph (4) of Subsection D of 20.11.3.105 NMAC, the MPO, in consultation with the lead agency for the project, shall make assumptions about the location, timing, design concept and scope for those projects that are disclosed to the MPO as required in Paragraph (4) of Subsection D of 20.11.3.105 NMAC.

(6) The MPO or other consulting agencies shall provide copies of adopted documents and supporting information on the approved MTP or TIP conformity determination or adopted SIP revisions to all agencies listed in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

#### **E. Resolving conflicts:**

(1) The air agency and the MPO (or state DOT when applicable) shall make a good-faith effort to address the major concerns of the other party and reach a resolution. Every reasonable effort shall be made to resolve differences. In the event that the parties cannot reach agreement, the conflict shall be escalated to the governor.

(2) In the event that the parties agree that every reasonable effort has been made to address major concerns but no further progress is possible, the MPO shall promptly notify the director of the air agency in writing of the inability to resolve concerns or agree upon the final decision or action. Notification shall be provided within 30 days and shall be provided by registered mail. The MPO shall cite this paragraph in any such notification to the air agency.

(3) The air agency has 14 calendar days from the date of receipt of notification as required in Paragraph (2) of Subsection E of 20.11.3.105 NMAC to appeal to the governor. Notification shall be provided by registered mail. The air agency shall cite this paragraph in any notification of a conflict that requires action by the governor or his designee. If the air agency appeals to the governor, the final conformity determination shall have the concurrence of the governor. The governor or his designee may issue a written decision on the appeal within 30 calendar days of receipt of the appeal. If the air agency does not appeal to the governor within 14 calendar days from receipt of written notification, the MPO may proceed with the final conformity determination. The governor may delegate his role in this process, but not to the members or staff of: the AQCB, director of the city or county EHD, secretary of the environment department, chief of the state air quality bureau, manager of the city of Albuquerque's air quality division, the environmental improvement board, secretary of the DOT, state highway commission or an MPO.

**F. Public consultation procedures:** Affected agencies making conformity determinations on transportation plans, programs and projects shall establish a proactive public involvement process that provides opportunity for public review and comment by, at a minimum, providing reasonable public access to technical and policy information considered by the agency at the beginning of the public comment period and prior to taking formal action on a conformity determination for the MTP and TIP, consistent with these requirements and those of 23 CFR 450.316(b). Any charges imposed for public inspection and copying shall be consistent with the fee schedule contained in 49 CFR 7.43 and NMSA 14-2-9.B.3. In addition, these agencies shall specifically address in writing all public comments stating that known plans for a regionally significant project, which is not receiving FHWA or FTA funding or approval, have not been properly reflected in the emissions analysis that supports a proposed conformity finding for the MTP or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

[20.11.3.105 NMAC - Rn & A, 20.11.3.202 NMAC, 11/15/10; A, 10/15/12]

### **20.11.3.106 CONTENT OF TRANSPORTATION PLANS AND TIME FRAME OF CONFORMITY DETERMINATIONS:**

**A. Transportation plans adopted after January 1, 1997 in serious, severe or extreme ozone non-attainment areas and in serious CO nonattainment areas.** If the metropolitan planning area contains an urbanized area population greater than

200,000, the transportation plan shall specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The MPO, in developing the transportation plan in consultation with the affected agencies identified in Paragraph (1) of Subsection D of 20.11.3.105 NMAC, may choose any years to be horizon years, subject to the following restrictions:

(a) horizon years may be no more than 10 years apart;

(b) the first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model;

(c) the attainment year must be a horizon year if it is in the time frame of the transportation plan and conformity determination;

(d) the last year of the transportation plan's forecast period shall be a horizon year; and

(e) if the time frame of the conformity determination has been shortened under Subsection D of 20.11.3 NMAC, the last year of the time frame of the conformity determination must be a horizon year.

(2) For these horizon years:

(a) the transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and the consultation requirements specified by 20.11.3.105 NMAC;

(b) the highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years; additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones; each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO; transit facilities, equipment and services envisioned for the future shall be identified in terms of design concept, design scope and operating policies that are sufficient for modeling transit ridership; additions and modifications to the transportation network shall be described sufficiently to demonstrate a reasonable relationship between expected land use and the envisioned transportation system; and

(c) other future transportation policies, requirements, services and activities, including intermodal activities, shall be described.

**B. Two-year grace period for transportation plan requirements in certain ozone and CO areas:** The requirements of Subsection A of 20.11.3.106 NMAC apply to such areas or portions of such areas that have previously not been required to meet these requirements for any existing NAAQS two years from the following:

(1) the effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) the official notice by the census bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or,

(3) the effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

**C. Transportation plans for other areas:** Transportation plans for other areas shall meet the requirements of Subsection A of 20.11.3.106 NMAC at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, the transportation system envisioned for the future shall be sufficiently described within the transportation plans so that a conformity determination can be made according to the criteria and procedures of 20.11.3.109 NMAC through 20.11.3.119 NMAC.

**D. Time frame of conformity determination:**

(1) Unless an election is made under Paragraph (2) or (3) of Subsection D of 20.11.3.106 NMAC, the time frame of the conformity determination shall be through the last year of the transportation plan's forecast period.

(2) For areas that do not have an adequate or approved CAA Section 175A(b) maintenance plan, the MPO may elect to shorten the time frame of the transportation plan and TIP conformity determination, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(a) The shortened time frame of the conformity determination must extend at least to the latest of the following years:

(i) the tenth year of the transportation plan;

(ii) the latest year for which an adequate or approved motor vehicle emissions budget(s) is established in the submitted or applicable implementation plan;  
or

(iii) the year after the completion date of a regionally significant project if the project is included in the TIP or the project requires approval before the subsequent conformity determination.

(b) The conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis, if such a year extends beyond the time frame of the conformity determination.

(3) For areas that have an adequate or approved CAA Section 175A(b) maintenance plan, the MPO may elect to shorten the time frame of the conformity determination to extend through the last year of such maintenance plan after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(4) Any election made by an MPO under Paragraph (2) or (3) of Subsection D of 20.11.3.106 NMAC shall continue in effect until the MPO elects otherwise, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

**E. Savings:** The requirements of 20.11.3.106 NMAC supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

[20.11.3.106 NMAC - Rn & A, 20.11.3.203 NMAC, 11/15/10]

### **20.11.3.107 RELATIONSHIP OF TRANSPORTATION PLAN AND TIP CONFORMITY WITH THE NEPA PROCESS:**

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project shall meet the criteria in 20.11.3.109 NMAC through 20.11.3.119 NMAC for projects not from a TIP before NEPA process completion.

[20.11.3.107 NMAC - Rn & A, 20.11.3.204 NMAC, 11/15/10]

### **20.11.3.108 FISCAL CONSTRAINTS FOR TRANSPORTATION PLANS AND TIPS:**

Transportation plans and TIPs shall be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR Part 450 in order to be found in conformity. The determination that the MTP and TIP are fiscally constrained is made through the

MPO's transportation planning process, which includes the agencies represented in the consultation process described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

[20.11.3.108 NMAC - Rn & A, 20.11.3.205 NMAC, 11/15/10]

**20.11.3.109 CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY OF TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS: GENERAL:**

**A.** In order for each transportation plan, program, and FHWA/FTA project to be found to conform, the MPO and DOT shall demonstrate that the applicable criteria and procedures in 20.11.3 NMAC are satisfied. The MPO and DOT shall comply with all applicable conformity requirements of implementation plans and court orders for the area which pertain specifically to conformity. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs and FHWA/FTA projects), the relevant pollutant(s) and the status of the implementation plan.

**B.** Table 1 in Subsection B of 20.11.3.109 NMAC indicates the criteria and procedures in 20.11.3.110 NMAC through 20.11.3.119 NMAC, which apply for transportation plans, TIPs and FHWA/FTA projects. Subsection C of 20.11.3.109 NMAC explains when the budget, and interim emissions tests are required for each pollutant and NAAQS. Subsection D of 20.11.3.109 NMAC explains when a hot-spot test is required. Subsection E of 20.11.3.109 NMAC addresses conformity requirements for areas with approved or adequate limited maintenance plans. Subsection F of 20.11.3.109 NMAC addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Subsection G of 20.11.3.109 NMAC addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

**TABLE 1. CONFORMITY CRITERIA**

<b>All Actions at all times:</b>	
20.11.3.110 NMAC	Latest planning assumptions
20.11.3.111 NMAC	Latest emissions model
20.11.3.112 NMAC	Consultation
<b>Transportation Plan:</b>	
Subsection B of 20.11.3.113 NMAC	TCMs.
20.11.3.118 or 20.11.3.119 NMAC	Emissions budget or interim emissions
<b>TIP:</b>	

emissions	Subsection C of 20.11.3.113 NMAC	TCMs.
	20.11.3.118 or 20.11.3.119 NMAC	Emissions budget or interim
<b>Project (from a conforming plan and TIP):</b>		
	20.11.3.114 NMAC	Currently conforming plan and TIP
	20.11.3.115 NMAC	Project from a conforming plan and TIP
	20.11.3.116 NMAC	CO, PM <sub>10</sub> and PM <sub>2.5</sub> hot-spots
	20.11.3.117 NMAC	PM <sub>10</sub> and PM <sub>2.5</sub> control measures
<b>Project (Not From a Conforming Plan and TIP):</b>		
	Subsection D of 20.11.3.113 NMAC	TCMs.
	20.11.3.114 NMAC	Currently conforming plan and TIP
	20.11.3.116 NMAC	CO, PM <sub>10</sub> and PM <sub>2.5</sub> hot-spots
	20.11.3.117 NMAC	PM <sub>10</sub> and PM <sub>2.5</sub> control measures
emissions	20.11.3.118 or 20.11.3.119 NMAC	Emissions budget or interim

**C. Regional conformity test requirements for all nonattainment and maintenance areas:** This provision applies one year after the effective date of EPA's nonattainment designation for a NAAQS in accordance with Subsection D of 20.11.3.2 NMAC and until the effective date of revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, in such nonattainment and maintenance areas, conformity determinations shall include a demonstration that the budget or interim emissions tests are satisfied as described in the following:

(1) In all nonattainment and maintenance areas for a NAAQS the budget test shall be satisfied as required by 20.11.3.118 NMAC for conformity determinations for such NAAQS made on or after:

(a) the effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for such NAAQS is adequate for transportation conformity purposes;

(b) the publication date of EPA's approval of such a budget in the federal register; or

(c) the effective date of EPA's approval of such a budget in the federal register, if such approval is completed through direct final rulemaking.

(2) Prior to Paragraph (1) of Subsection C of 20.11.3.109 NMAC applying for a NAAQS, in a nonattainment area that has approved or adequate motor vehicle emissions budgets in an applicable implementation plan or implementation plan submission for another NAAQS of the same pollutant, the following tests must be satisfied:

(a) if the nonattainment area covers the same geographic area as another NAAQS of the same pollutant, the budget test as required by 20.11.3.118 NMAC using the approved or adequate motor vehicle emissions budgets for that other NAAQS;

(b) if the nonattainment area covers a smaller geographic area within an area for another NAAQS of the same pollutant, the budget test as required by 20.11.3.118 NMAC for either:

(i) the nonattainment area, using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where such portion(s) can reasonably be identified through the interagency consultation process required by 20.11.3.105 NMAC; or

(ii) the area designated nonattainment for that other NAAQS, using the approved or adequate motor vehicle emissions budgets for that other NAAQS. If additional emissions reductions are necessary to meet the budget test for the nonattainment area for a NAAQS in such cases, these emissions reductions must come from within such nonattainment area;

(c) if the nonattainment area covers a larger geographic area and encompasses an entire area for another NAAQS of the same pollutant, then either Item (i) or (ii) of Subparagraph (c) of Paragraph (2) of Subsection C of 20.11.3.109 NMAC must be met:

(i) the budget test as required by 20.11.3.118 NMAC for the portion of the nonattainment area covered by the approved or adequate motor vehicle emissions budgets for that other NAAQS; and 2. the interim emissions tests as required by 20.11.3.119 NMAC for one of the following areas: the portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multistate nonattainment or maintenance area;

(ii) the budget test as required by 20.11.3.118 NMAC for the entire nonattainment area using the approved or adequate motor vehicle emissions budgets for that other NAAQS;

(d) if the nonattainment area partially covers an area for another NAAQS of the same pollutant:

(i) the budget test as required by 20.11.3.118 NMAC for the portion of the nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets for that other NAAQS, where they can be reasonably identified through the interagency consultation process required by 20.11.3.105 NMAC; and

(ii) the interim emissions tests as required by 20.11.3.119 NMAC, when applicable, for either: the portion of the nonattainment area not covered by the approved or adequate budgets for that other NAAQS; the entire nonattainment area; or the entire portion of the nonattainment area within an individual state, in the case where separate adequate or approved motor vehicle emissions budgets for that other NAAQS are established for each state of a multistate nonattainment or maintenance area.

(3) In a nonattainment area, the interim emissions tests required by 20.11.3.119 NMAC must be satisfied for a NAAQS if neither Paragraph (1) nor Paragraph (2) of Subsection C of 20.11.3.109 NMAC applies for such NAAQS.

(4) An ozone nonattainment area shall satisfy the interim emissions test for NO<sub>x</sub>, as required by 20.11.3.119 NMAC, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that does not include a motor vehicle emissions budget for NO<sub>x</sub>. The implementation plan for an NAAQS shall be considered to establish a motor vehicle emissions budget for NO<sub>x</sub> if the implementation plan or plan submission contains an explicit NO<sub>x</sub> motor vehicle emissions budget that is intended to act as a ceiling on future NO<sub>x</sub> emissions, and the NO<sub>x</sub> motor vehicle emissions budget is a net reduction from NO<sub>x</sub> emissions levels in the SIP's baseline year.

(5) Notwithstanding Paragraphs (1), (2) and (3) of Subsection C of 20.11.3.109 NMAC, nonattainment areas with clean data for NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for that NAAQS shall satisfy one of the following requirements:

(a) the budget test or the interim emissions tests as required by 20.11.3.118 NMAC and 20.11.3.119 NMAC as described in Paragraph (2) and (3) of Subsection C of 20.11.3.109 NMAC;

(b) the budget test as required by 20.11.3.118 NMAC, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control

strategy implementation plan for the NAAQS for which the area is designated nonattainment (subject to the timing requirements of Paragraph (1) of Subsection C of 20.11.3.109 NMAC; or

(c) the budget test as required by 20.11.3.118 NMAC, using the motor vehicle emissions in the most recent year of attainment as motor vehicle emissions budgets, if the state or local air quality agency requests that the motor vehicle emissions in the most recent year of attainment be used as budgets, and EPA approves the request in conjunction with the rulemaking that determines that the area has attained the NAAQS for which the area is designated nonattainment.

(6) For the PM<sub>10</sub> NAAQS only, the interim emissions tests must be satisfied as required by 20.11.3.119 NMAC for conformity determinations made if the submitted implementation plan revision for a PM<sub>10</sub> nonattainment area is a demonstration of impracticability under CAA Section 189(a)(1)(B)(ii) and does not demonstrate attainment.

**D. Hot-spot conformity test requirements for CO, PM<sub>2.5</sub> and PM<sub>10</sub> nonattainment and maintenance areas:** This provision applies in accordance with Subsection D of 20.11.3.2 NMAC for a NAAQS and until the effective date of any revocation of such NAAQS for an area. In addition to the criteria listed in Table 1 in Subsection B of 20.11.3.109 NMAC that are required to be satisfied at all times, project-level conformity determinations in CO, PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment and maintenance areas shall include a demonstration that the hot-spot tests for the applicable NAAQS are satisfied as described in the following:

(1) FHWA/FTA projects in CO nonattainment or maintenance areas shall satisfy the hot-spot test required by Subsection A of 20.11.3.116 NMAC at all times; until a CO attainment demonstration or maintenance plan is approved by EPA, FHWA/FTA projects shall also satisfy the hot-spot test required by Subsection B of 20.11.3.116 NMAC;

(2) FHWA/FTA projects in PM<sub>10</sub> non-attainment or maintenance areas shall satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC; and

(3) FHWA/FTA projects in PM<sub>2.5</sub> nonattainment or maintenance areas must satisfy the appropriate hot-spot test required by Subsection A of 20.11.3.116 NMAC.

**E. Areas with limited maintenance plans:** Notwithstanding the other subsections of 20.11.3.109 NMAC, an area is not required to satisfy the regional emissions analysis for 20.11.3.118 NMAC or 20.11.3.119 NMAC for a given pollutant and NAAQS if the area has an adequate or approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets

other applicable criteria in Table 1 of Subsection B of 20.11.3.109 NMAC is still required, including the hot-spot requirements for projects in CO PM<sub>10</sub> and PM<sub>2.5</sub> areas.

**F. Areas with insignificant motor vehicle emissions:** Notwithstanding the other subsections of 20.11.3.109 NMAC, an area is not required to satisfy a regional emissions analysis for 20.11.3.118 NMAC or 20.11.3.119 NMAC for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in Table 1 in Subsection B of 20.11.3.109 NMAC is still required, including regional emissions analyses for 20.11.3.118 NMAC or 20.11.3.119 NMAC for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO, PM<sub>10</sub> and PM<sub>2.5</sub> areas in 20.11.3.116 NMAC shall also be satisfied, unless EPA determines that the SIP also demonstrates that projects will not create new localized violations or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this subsection would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

**G. Isolated rural non-attainment and maintenance areas:** This subsection applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of 20.11.3.110 NMAC, 20.11.3.111 NMAC, 20.11.3.112 NMAC, 20.11.3.116 NMAC, 20.11.3.117 NMAC and Subsection D of 20.11.3.113 NMAC. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects shall also satisfy the requirements of Subsection B of 20.11.3.116 NMAC.

(2) Isolated rural nonattainment and maintenance areas are subject to the budget or interim emissions tests as described in Subsection C of 20.11.3.109 NMAC, with the following modifications:

(a) When the requirements of Subsection D of 20.11.3.106 NMAC, 20.11.3.116 NMAC, 20.11.3.118 NMAC and 20.11.3.119 NMAC apply to isolated rural

nonattainment and maintenance areas, references to "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP that are in the rural nonattainment or maintenance area. When the requirements of Subsection D of 20.11.3.106 NMAC apply to isolated rural nonattainment and maintenance areas, references to "MPO" shall be taken to mean the state department of transportation.

(b) In isolated rural nonattainment and maintenance areas that are subject to 20.11.3.118 NMAC, FHWA/FTA projects shall be consistent with motor vehicle emissions budget(s) for the years in the time frame of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects shall satisfy one of the following requirements:

(i) 20.11.3.118 NMAC;

(ii) 20.11.3.119 NMAC (including regional emissions analysis for NO<sub>x</sub> in all ozone nonattainment and maintenance areas, notwithstanding Paragraph (2) of Subsection F of 20.11.3.119 NMAC);

(iii) as demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the time frame of the statewide transportation plan, shall not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area; control measures assumed in the analysis shall be enforceable.

(c) The choice of requirements in Subparagraph (b) of Paragraph (2) of Subsection G of 20.11.3.109 NMAC and the methodology used to meet the requirements of Item (iii) of Subparagraph (b) of Paragraph (2) of Subsection G of 20.11.3.109 NMAC shall be determined through the interagency consultation process required in Subparagraph (h) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC through which the relevant recipients of Title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the state air quality agency and the state DOT shall reach consensus about the option and methodology selected. EPA and DOT shall be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the governor consistent with the procedure in Subsection E of 20.11.3.105 NMAC, which applies for any state air agency comments on a conformity determination.

[20.11.3.109 NMAC - Rn & A, 20.11.3.206 NMAC, 11/15/10; A, 10/15/12]

**20.11.3.110 CRITERIA AND PROCEDURES: LATEST PLANNING ASSUMPTIONS:**

**A.** Except as provided in Subsection A of 20.11.3.110 NMAC, the conformity determination, with respect to all other applicable criteria in 20.11.3.111 NMAC through 20.11.3.119 NMAC, shall be based upon the most recent planning assumptions in force at the time the conformity analysis begins. The conformity determination shall satisfy the requirements of Subsections B through F of 20.11.3.110 NMAC using the planning assumptions available at the time the conformity analysis begins as determined through the interagency consultation process required in Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.105 NMAC. The "time the conformity analysis begins" for a transportation plan or TIP determination is the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan or TIP on travel or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through the interagency consultation procedures described in 20.11.3.105 NMAC.

**B.** Assumptions shall be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC. The conformity determination shall also be based on the latest assumptions about current and future background concentrations.

**C.** The conformity determination for each transportation plan and TIP shall discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

**D.** The conformity determination shall include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time. These assumptions shall be presented to and discussed by the TCTC as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

**E.** The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs and other implementation plan measures that have already been implemented. This information shall be made as part of the interagency consultation procedures described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

**F.** Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by 20.11.3.105 NMAC.

[20.11.3.110 NMAC - Rn & A, 20.11.3.207 NMAC, 11/15/10]

**20.11.3.111 CRITERIA AND PROCEDURES: LATEST EMISSIONS MODEL:**

**A.** The conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans for Bernalillo county is used for the conformity analysis. When options are allowed by EPA, the TCTC, as part of the interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC, shall be responsible for determining the most appropriate emission estimation model to be used.

**B.** EPA shall consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period shall be no less than three months and no more than 24 months after notice of availability is published in the federal register.

(2) The length of the grace period shall depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period shall be longer than three months, EPA shall announce the appropriate grace period in the federal register.

**C.** Transportation plan and TIP conformity analyses for which the emissions analysis was begun during the grace period or before the federal register notice of availability of the latest emission model may continue to use the previous version of the model. Conformity determinations for projects may also be based on the previous model if the analyses were begun during the grace period or before the federal register notice of availability, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document.

[20.11.3.111 NMAC - Rn & A, 20.11.3.208 NMAC, 11/15/10]

**20.11.3.112 CRITERIA AND PROCEDURES: CONSULTATION:**

Conformity shall be determined according to the consultation procedures in 20.11.3 NMAC and in the applicable implementation plan, and according to the public involvement procedures established in compliance with 23 CFR Part 450. Until the implementation plan revision required by 40 CFR 51.390 is fully approved by EPA, the conformity determination shall be made according to Subsection A and Subsection F of 20.11.3.105 NMAC and the requirements of 23 CFR Part 450.

[20.11.3.112 NMAC - Rn & A, 20.11.3.209 NMAC, 11/15/10]

**20.11.3.113 CRITERIA AND PROCEDURES: TIMELY IMPLEMENTATIONS OF TCMS:**

**A.** The transportation plan, TIP or any FHWA/FTA project, which is not from a conforming plan and TIP, shall provide for the timely implementation of TCMs from the applicable implementation plan.

**B.** For transportation plans, this criterion is satisfied if the following two conditions are met.

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan, which are eligible for funding under Title 23 U.S.C. or the Federal Transit Laws, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

**C.** For TIPs, this criterion is satisfied if the following conditions are met.

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under Title 23 U.S.C. or the Federal Transit Laws are on or ahead of the schedule established in the applicable implementation plan or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for federal funding intended for air quality improvement projects, e.g., the congestion mitigation and air quality improvement program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

**D.** For FHWA/FTA projects that are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

#### **20.11.3.114 CRITERIA AND PROCEDURES: CURRENTLY CONFORMING TRANSPORTATION PLAN AND TIP:**

There shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval, or a project must meet the requirements in Subsection F of 20.11.3.104 NMAC during the 12-month lapse grace period.

**A.** Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP shall also lapse if conformity is not determined according to the frequency requirements specified in 20.11.3.104 NMAC.

**B.** This criterion is not required to be satisfied at the time of project approval for a TCM specifically included in the applicable implementation plan, provided that all other relevant criteria of 20.11.3 NMAC are satisfied.

[20.11.3.114 NMAC - Rn & A, 20.11.3.211 NMAC, 11/15/10]

#### **20.11.3.115 CRITERIA AND PROCEDURES: PROJECTS FROM A TRANSPORTATION PLAN AND TIP:**

**A. The project shall come from a conforming plan and program:** If this criterion is not satisfied, the project must satisfy all criteria in Table 1 of Subsection B of 20.11.3.109 NMAC for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of Subsection B of 20.11.3.115 NMAC and from a conforming program if it meets the requirements of Subsection C of 20.11.3.115 NMAC. Special provisions for TCMs in an applicable implementation plan are provided in Subsection D of 20.11.3.115 NMAC.

**B. A project is considered to be from a conforming transportation plan if one of the following conditions applies:**

(1) for projects that are required to be identified in the transportation plan in order to satisfy 20.11.3.106 NMAC (content of transportation plans), the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) for projects that are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and shall not interfere with other projects specifically included in the transportation plan.

**C. A project is considered to be from a conforming program if the following conditions are met:**

(1) the project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions, and the project design concept and scope have not changed significantly from those that were described in the TIP; and

(2) if the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures shall be obtained from the project sponsor or operator as required by Subsection A of 20.11.3.125 NMAC in order for the project to be considered from a conforming program; any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

**D. TCMs:** This criterion is not required to be satisfied for TCMs specifically included in an applicable implementation plan.

**E.** Notwithstanding the requirements of Subsections A, B and C of 20.11.3.115 NMAC, a project shall meet the requirements of Subsection F of 20.11.3.104 during the 12-month lapse grace period.

[20.11.3.115 NMAC - Rn & A, 20.11.3.212 NMAC, 11/15/10]

**20.11.3.116 CRITERIA AND PROCEDURES: LOCALIZED CO, PM<sub>10</sub> AND PM<sub>2.5</sub> VIOLATIONS (hot-spots):**

**A. Subsection A of 20.11.3.116 NMAC applies at all times.** The FHWA/FTA project shall not cause or contribute to any new localized CO, PM<sub>10</sub> or PM<sub>2.5</sub> violations or increase the frequency or severity of any existing CO, PM<sub>10</sub> or PM<sub>2.5</sub> violations, or delay timely attainment of any NAAQS or any required interim emission reductions or other milestones in CO, PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment and maintenance areas. This criterion is satisfied without a hot-spot analysis in PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment and maintenance areas for FHWA/FTA projects that are not identified in Paragraph (1) of Subsection B of 20.11.3.123 NMAC. This criterion is satisfied for all other FHWA/FTA projects in CO, PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project, and the project has been included in a regional emissions analysis that meets applicable 20.11.3.118 NMAC or 20.11.3.119 NMAC requirements. The demonstration shall be performed according to the consultation requirements of Paragraph (1) of Subsection D of 20.11.3.105 NMAC and the methodology requirements of 20.11.3.123 NMAC.

**B. Subsection B of 20.11.3.116 NMAC applies for CO nonattainment areas as described in Paragraph (1) of Subsection D of 20.11.3.109 NMAC.** Each FHWA/FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations shall be eliminated or reduced in severity and number as a result of the project. The demonstration shall be performed according to the consultation requirements of Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC and the methodology requirements of 20.11.3.123 NMAC.

[20.11.3.116 NMAC - Rn & A, 20.11.3.213 NMAC, 11/15/10; A, 10/15/12]

**20.11.3.117 CRITERIA AND PROCEDURES: COMPLIANCE WITH PM<sub>10</sub> and PM<sub>2.5</sub> CONTROL MEASURES:**

The FHWA/FTA project shall comply with any PM<sub>10</sub> and PM<sub>2.5</sub> control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications and estimates for the project those control measures (for the purpose of limiting PM<sub>10</sub> and PM<sub>2.5</sub> emissions from the construction activities or normal use and operation associated with the project) that are contained in the applicable implementation plan.

[20.11.3.117 NMAC - Rn, 20.11.3.214 NMAC, 11/15/10]

**20.11.3.118 CRITERIA AND PROCEDURES: MOTOR VEHICLE EMISSIONS BUDGET:**

**A.** The transportation plan, TIP and project not from a conforming transportation plan and TIP shall be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies as described in Subsections C through G of 20.11.3.109 NMAC. This criterion is satisfied if it is demonstrated that emissions of the pollutants or pollutant precursors described in Subsection C of 20.11.3.118 NMAC are less than or equal to the motor vehicle emissions budget(s) established in the applicable implementation plan or implementation plan submission.

**B.** Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each year for which the applicable (or submitted) implementation plan specifically establishes a motor vehicle emissions budget(s), and for each year for which a regional emissions analysis is performed to fulfill the requirements in Subsection D of 20.11.3.118 NMAC, as follows:

- (1) **Until a maintenance plan is submitted:**

(a) emissions in each year (such as milestone years and the attainment year) for which the control strategy implementation plan revision establishes motor vehicle emissions budget(s) shall be less than or equal to that years motor vehicle emissions budget(s); and

(b) emissions in years for which no motor vehicle emissions budget(s) are specifically established shall be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year; for example, emissions in years after the attainment year for which the implementation plan does not establish a budget shall be less than or equal to the motor vehicle emissions budget(s) for the attainment year.

**(2) When a maintenance plan has been submitted:**

(a) emissions shall be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets; if the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emission budget(s) shall be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan; the interagency consultation process required by 20.11.3.105 NMAC shall determine what shall be considered in order to make such a finding;

(b) for years after the last year of the maintenance plan, emissions shall be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan;

(c) if an approved or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years shall be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years; and

(d) for any analysis years before the last year of the maintenance plan, emissions shall be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.

**C.** Consistency with the motor vehicle emissions budget(s) shall be demonstrated for each pollutant or pollutant precursor in Subsection B of 20.11.3.2 NMAC for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes a motor vehicle emissions budget.

**D.** Consistency with the motor vehicle emissions budget(s) shall be demonstrated by including emissions from the entire transportation system, including all regionally

significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time frame of the transportation plan.

(1) Consistency with the motor vehicle emissions budget(s) shall be demonstrated with a regional emissions analysis that meets the requirements of 20.11.3.122 NMAC and Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(2) The regional emissions analysis may be performed for any years in the time frame of the conformity determination (as described under Subsection D of 20.11.3.106 NMAC) provided they are not more than 10 years apart and provided the analysis is performed for the attainment year (if it is in the time frame of the transportation plan and conformity determination) and the last year of the time frame of the conformity determination. Emissions in years for which consistency with motor vehicle emissions budgets shall be demonstrated, as required in Subsection B of 20.11.3.118 NMAC, may be determined by interpolating between the years for which the regional emissions analysis is performed.

(3) When the time frame of the conformity determination is shortened under Paragraph (2) of Subsection D of 20.11.3.106 NMAC, the conformity determination shall be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year extends beyond the time frame of the conformity determination).

**E. Motor vehicle emissions budgets in submitted control strategy implementation plan revisions and submitted maintenance plans:**

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans shall be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes and the adequacy finding is effective. However, motor vehicle emission budgets in submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

(2) If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of 20.11.3.118 NMAC. Consistency with the previously established motor vehicle emissions budget(s) shall be demonstrated. If there are no previously approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emission tests required by 20.11.3.119 NMAC shall be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination shall remain valid. Projects included in that transportation plan or TIP could still satisfy 20.11.3.114 NMAC and 20.11.3.115 NMAC, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

(4) EPA shall not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(a) the submitted control strategy implementation plan revision or maintenance plan was endorsed by the governor (or his designee) and was subject to a state public hearing;

(b) before the control strategy implementation plan or maintenance plan was submitted to EPA, consultation among federal, state and local agencies occurred; full implementation plan documentation was provided to EPA; and EPA's stated concerns, if any, were addressed;

(c) the motor vehicle emissions budget(s) is clearly identified and precisely quantified;

(d) the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment or maintenance (whichever is relevant to the given implementation plan submission);

(e) the motor vehicle emissions budget(s) is consistent with and clearly related to the emissions inventory and the control measures in the submitted control strategy implementation plan revision or maintenance plan; and

(f) revisions to previously submitted control strategy implementation plans or maintenance plans explain and document any changes to previously submitted budgets and control measures; impacts on point and area source emissions; any changes to established safety margins (see 20.11.3.7 NMAC for definition); and reasons for the changes (including the basis for any changes related to emission factors or estimates of vehicle miles traveled).

(5) Before determining the adequacy of a submitted motor vehicle emissions budget, EPA shall review the state's compilation of public comments and response to comments that are required to be submitted with any implementation plan. EPA shall document its consideration of such comments and responses in a letter to the state indicating the adequacy of the submitted motor vehicle emissions budget.

(6) When the motor vehicle emissions budget(s) used to satisfy the requirements of 20.11.3.118 NMAC are established by an implementation plan submittal that has not yet been approved or disapproved by EPA, the MPO and DOT's conformity determinations shall be deemed to be a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with the motor vehicle emissions budget shall cause or contribute to any new violation of any standard; increase the frequency or severity of any existing violation of any standard; or delay timely attainment of any standard or any required interim emission reductions or other milestones.

**F. Adequacy review process for implementation plan submissions:** EPA will use the procedure listed in Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.118 NMAC to review the adequacy of an implementation plan submission:

(1) When EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan,

(a) EPA will notify the public through EPA's website when EPA receives an implementation plan submission that will be reviewed for adequacy;

(b) the public will have a minimum of 30 days to comment on the adequacy of the implementation plan submission; if the complete implementation plan is not accessible electronically through the internet and a copy is requested within 15 days of the date of the website notice, the comment period will be extended for 30 days from the date that a copy of the implementation plan is mailed;

(c) after the public comment period closes, EPA will inform the state in writing whether EPA has found the submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the state process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under Subparagraph (c) of Paragraph (2) of Subsection F of 20.11.3.118 NMAC;

(d) EPA will publish a federal register notice to inform the public of EPA's finding; if EPA finds the submission adequate, the effective date of this finding will be 15 days from the date the notice is published as established in the federal register notice, unless EPA is taking a final approval action on the SIP as described in Subparagraph (c) of Paragraph (2) of Subsection F of 20.11.3.118 NMAC;

(e) EPA will announce whether the implementation plan submission is adequate or inadequate for use in transportation conformity on EPA's website; the website will also include EPA's response to comments if any comments were received during the public comment period;

(f) if after EPA has found a submission adequate, EPA has cause to reconsider this finding, EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.118 NMAC unless EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission; in all cases where EPA reverses its previous finding to a finding of inadequacy under Paragraph (1) of Subsection F of 20.11.3.118 NMAC, such a finding will become effective immediately upon the date of EPA's letter to the state;

(g) if after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy of that budget, EPA will repeat actions described in Subparagraphs (a) through (e) of Paragraph (1) or Paragraph (2) of Subsection F of 20.11.3.118 NMAC.

(2) When EPA reviews the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan,

(a) EPA's federal register notice of proposed or direct final rulemaking will serve to notify the public that EPA will be reviewing the implementation plan submission for adequacy;

(b) the publication of the notice of proposed rulemaking will start a public comment period of at least 30 days;

(c) EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in Subparagraphs (c) through (e) of Paragraphs (1) of Subsection F of 20.11.3.118 NMAC; if EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication date of EPA's approval in the federal register, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking; EPA will respond to comments received directly and review comments submitted through the state process and include the response to comments in the applicable docket.

[20.11.3.118 NMAC - Rn & A, 20.11.3.215 NMAC, 11/15/10; A, 10/15/12]

### **20.11.3.119 CRITERIA AND PROCEDURES: INTERIM EMISSIONS IN AREAS WITHOUT MOTOR VEHICLE EMISSIONS BUDGETS:**

**A.** The transportation plan, TIP and project not from a conforming transportation plan and TIP shall satisfy the interim emissions test(s) as described in Subsections C through G of 20.11.3.109 NMAC. This criterion applies to the net effect of the action (transportation plan, TIP or project not from a conforming transportation plan and TIP) on motor vehicle emissions from the entire transportation system.

**B. Ozone areas:** The requirements of Subsection B of 20.11.3.119 NMAC apply to all ozone NAAQS areas, except for certain requirements as indicated. This criterion may be met:

(1) in moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC:

(a) the emissions predicted in the "action" scenario are less than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(b) the emissions predicted in the "action" scenario are lower than emissions in the baseline year for that NAAQS as described in Subsection E of 20.11.3.119 NMAC by any nonzero amount;

(2) in marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA Section 182(b)(1) if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC:

(a) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(b) the emissions predicted in the "action" scenario are not greater than emissions in the baseline year for that NAAQS as described in Subsection E of 20.11.3.119 NMAC.

**C. CO areas:** This criterion may be met:

(1) in moderate areas with design value greater than 12.7 ppm and serious CO nonattainment areas that are subject to CAA Section 187(a)(7) if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC:

(a) the emissions predicted in the "action" scenario are less than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(b) the emissions predicted in the "action" scenario are lower than emissions in the baseline year for that NAAQS as described in Subsection E of 20.11.3.119 NMAC by any nonzero amount;

(2) in moderate areas with design value less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC:

(a) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(b) the emissions predicted in the "action" scenario are not greater than emissions in the baseline year for that NAAQS as described in Subsection E of 20.11.3.119 NMAC.

**D. PM<sub>2.5</sub>, PM<sub>10</sub> and NO<sub>2</sub> areas:** This criterion may be met in PM<sub>2.5</sub>, PM<sub>10</sub> and NO<sub>2</sub> nonattainment areas if a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC demonstrates that for each analysis year and for each of the pollutants described in Subsection F of 20.11.3.119 NMAC, one of the following requirements is met:

(1) the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) the emissions predicted in the "action" scenario are not greater than emissions in the baseline year for that NAAQS as described in Subsection E of 20.11.3.119 NMAC; baseline emissions are those estimated to have occurred during calendar year 1990, unless the conformity implementation plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM<sub>10</sub> area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

**E. Baseline year for various NAAQS:** The baseline year is defined as follows:

(1) 1990, in areas designated nonattainment for the 1990 CO NAAQS or the 1990 NO<sub>2</sub> NAAQS.

(2) 1990, in areas designated nonattainment for the 1990 PM<sub>10</sub> NAAQS, unless the conformity implementation plan revision required by 40 CFR 51.390 defines the baseline emissions for a PM<sub>10</sub> area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(3) 2002, in areas designated nonattainment for the 1997 ozone NAAQS or 1997 PM<sub>2.5</sub> NAAQS.

(4) the most recent year for which EPA's Air Emissions Reporting Rule (40 CFR Part 51, Subpart A) requires submission of on-road mobile source emissions inventories, as of the effective date of designations in areas designated nonattainment for a NAAQS that is promulgated after 1997.

**F. Pollutants:** The regional emissions analysis shall be performed for the following pollutants:

- (1) VOC in ozone areas;
- (2) NO<sub>x</sub> in ozone areas, unless the EPA administrator determines that additional reductions of NO<sub>x</sub> would not contribute to attainment;
- (3) CO in CO areas;
- (4) PM<sub>10</sub> in PM<sub>10</sub> areas;
- (5) VOC and NO<sub>x</sub> in PM<sub>10</sub> areas if the EPA regional administrator or the director of the air agency has made a finding that one or both of such precursor emissions from within the area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT;
- (6) NO<sub>x</sub> in NO<sub>2</sub> areas;
- (7) PM<sub>2.5</sub> in PM<sub>2.5</sub> areas;
- (8) re-entrained road dust in PM<sub>2.5</sub> areas only if the EPA regional administrator or the director of the air agency has made a finding that emissions from re-entrained road dust within the area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT;
- (9) NO<sub>x</sub> in PM<sub>2.5</sub> areas, unless the EPA regional administrator and the director of the state air agency have made a finding that emissions of NO<sub>x</sub> from within the area are not a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT; and
- (10) VOC, SO<sub>2</sub> and ammonia in PM<sub>2.5</sub> areas if the EPA regional administrator or the director of the state air agency has made a finding that any of such precursor emissions from within the area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT.

**G. Analysis Years:**

(1) The regional emissions analysis shall be performed for analysis years that are no more than 10 years apart. The first analysis year shall be no more than five years beyond the year in which the conformity determination is being made. The last year of the time frame of the conformity determination (as described under Subsection D of 20.11.3.106 NMAC) shall also be an analysis year.

(2) For areas using Subparagraph (a) of Paragraph (2) of Subsection B, Subparagraph (a) of Paragraph (2) of Subsection C, and Paragraph (1) of Subsection D of 20.11.3.119 NMAC, a regional emissions analysis that satisfies the requirements of 20.11.3.122 NMAC and Subsections G through J of 20.11.3.119 NMAC would not be required for analysis years in which the transportation projects and planning assumptions in the action and "baseline" scenarios are exactly the same. In such a case, Subsection A of 20.11.3.119 NMAC can be satisfied by documenting that the transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the "action" scenario are not greater than the emissions predicted in the "baseline" scenario for such analysis years.

(3) When the time frame of the conformity determination is shortened under Paragraph (2) of Subsection D of 20.11.3.106 NMAC, the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan.

**H. "Baseline" scenario:** The regional emissions analysis required by Subsections B through E of 20.11.3.119 NMAC shall estimate the emissions that would result from the "baseline" scenario in each analysis year. The "baseline" scenario shall be defined for each of the analysis years. The "baseline" scenario is the future transportation system that shall result from current programs; including the following (except that exempt projects list in 20.11.3.126 NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.127 NMAC need not be explicitly considered):

(1) all in-place regionally significant highway and transit facilities, services and activities;

(2) all ongoing travel demand management or transportation system management activities; and

(3) completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first year of the previously conforming transportation plan or TIP; or have completed the NEPA process.

**I. "Action" scenario:** The regional emissions analysis required by Subsections B through E of 20.11.3.119 NMAC shall estimate the emissions that would result from the "action" scenario in each analysis year. The "action" scenario shall be defined for each of the analysis years. The "action" scenario is the transportation system that would

result from the implementation of the proposed action (MTP, TIP or project not from a conforming transportation plan and TIP) and all other expected regionally significant projects in the nonattainment area. The "action" scenario shall include the following (except that exempt projects listed in 20.11.3.126 NMAC and projects exempt from regional emissions analysis as listed in 20.11.3.127 NMAC need not be explicitly considered):

- (1) all facilities, services and activities in the "baseline" scenario;
- (2) completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which shall be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;
- (3) all travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination;
- (4) the incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination, but which have been modified since then to be more stringent or effective;
- (5) completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and
- (6) completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

**J. Projects not from a conforming transportation plan and TIP:** For the regional emissions analysis required by Subsections B through E of 20.11.3.119 NMAC, if the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the "baseline" scenario shall include the project with its original design concept and scope, and the "action" scenario shall include the project with its new design concept and scope.

[20.11.3.119 NMAC - Rn & A, 20.11.3.216 NMAC, 11/15/10; A, 10/15/12]

#### **20.11.3.120 CONSEQUENCES OF CONTROL STRATEGY IMPLEMENTATION PLAN FAILURES:**

## **A. Disapprovals:**

(1) If EPA disapproves any submitted control strategy implementation plan revision (with or without a protective finding), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions as a result of the disapproval are imposed on the nonattainment area under Section 179(b)(1) of the CAA. No new transportation plan, TIP or project may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted and conformity to this submission is determined.

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the first four years of the currently conforming transportation plan and TIP or that meet the requirements of Subsection F of 20.11.3.104 NMAC during the 12-month lapse grace period may be found to conform. This means that beginning on the effective date of a disapproval without a protective finding, no transportation plan, TIP or project not in the first four years of the currently conforming transportation plan and TIP or that meets the requirements of Subsection F of 20.11.3.104 NMAC during the 12-month lapse grace period may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s) adequate pursuant to 20.11.3.118 NMAC or approves the submission, and conformity to the implementation plan revision is determined.

(3) In disapproving a control strategy implementation plan revision, EPA would give a protective finding where a submitted plan contains adopted control measures or written commitments to adopt enforceable control measures that fully satisfy the emissions reductions requirements relevant to the statutory provision for which the implementation plan revision was submitted, such as reasonable further progress or attainment.

**B. Failure to submit and incompleteness:** In areas where EPA notifies the state, MPO and DOT of the state's failure to submit a control strategy implementation plan or submission of an incomplete control strategy implementation plan revision (either of which initiates the sanction process under CAA Sections 179 or 110(m)), the conformity status of the transportation plan and TIP shall lapse on the date that highway sanctions are imposed on the nonattainment area for such failure under Section 179(b)(1) of the CAA, unless the failure has been remedied and acknowledged by a letter from the EPA regional administrator.

**C. Federal implementation plans:** If EPA promulgates a federal implementation plan that contains motor vehicle emissions budget(s) as a result of a state failure, the conformity lapse imposed by 20.11.3.120 NMAC because of that failure is removed.

[20.11.3.120 NMAC - Rn & A, 20.11.3.217 NMAC, 11/15/10]

**20.11.3.121 REQUIREMENTS FOR ADOPTION OR APPROVAL OF PROJECTS BY OTHER RECIPIENTS OF FUNDS DESIGNATED UNDER TITLE 23 U.S.C. OR THE FEDERAL TRANSIT LAWS.**

**A.** Except as provided in Subsection B of 20.11.3.121 NMAC, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project comes from the currently conforming transportation plan and TIP (or meets the requirements of Subsection F of 20.11.3.104 NMAC during the 12-month lapse grace period), and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;

(2) the project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (or meets the requirements of Subsection F of 20.11.3.104 NMAC during the 12-month lapse grace period), even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis; or

(3) a new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of 20.11.3.118 NMAC or 20.11.3.119 NMAC for a project not from a conforming transportation plan and TIP).

**B.** In isolated rural nonattainment and maintenance areas subject to Subsection G of 20.11.3.109 NMAC, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met:

(1) the project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope have not changed significantly; or

(2) a new regional emissions analysis including the project and all other regionally significant projects expected in the nonattainment or maintenance area demonstrates that those projects in the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area would still conform if the project were implemented (consistent with the requirements 20.11.3.118 NMAC or 20.11.3.119 NMAC for projects not from a conforming transportation plan and TIP).

**C.** Notwithstanding Subsection A and Subsection B of 20.11.3.121 NMAC, in nonattainment and maintenance areas subject to Subsection E or Subsection F of 20.11.3.109 NMAC for a given pollutant/precursor and NAAQS, no recipient of federal funds designated under Title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met for that pollutant/precursor and NAAQS:

(1) the project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or

(2) the project was included in the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope have not changed significantly.

[20.11.3.121 NMAC - Rn & A, 20.11.3.218 NMAC, 11/15/10; A, 10/15/12]

### **20.11.3.122 PROCEDURES FOR DETERMINING REGIONAL TRANSPORTATION-RELATED EMISSIONS:**

#### **A. General requirements:**

(1) The regional emissions analysis required by 20.11.3.118 NMAC and 20.11.3.119 NMAC for the transportation plan, TIP or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area. The analysis shall include FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by 20.11.3.105 NMAC. Projects which are not regionally significant are not required to be explicitly modeled, but vehicle miles traveled (VMT) from such projects shall be estimated in accordance with reasonable professional practice and shall be reviewed by the TCTC as part of the interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice and shall be reviewed by the TCTC as part of the interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(2) The emissions analysis may not include for emissions reduction credit any TCMs or other measures in the applicable implementation plan which have been delayed beyond the scheduled date(s) until such time as their implementation has been assured. If the measure has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs or activities which require a regulatory action in order to be implemented may not be included in the emissions analysis unless:

(a) the regulatory action is already adopted by the enforcing jurisdiction;

(b) the project, program or activity is included in the applicable implementation plan;

(c) the control strategy implementation plan submission or maintenance plan submission that establishes the motor vehicle emissions budget(s) for the purposes of 20.11.3.118 NMAC contains a written commitment to the project, program or activity by the agency with authority to implement it; or

(d) EPA has approved an opt-in to a federally enforced program, EPA has promulgated the program (if the control program is a federal responsibility, such as vehicle tailpipe standards), or the Clean Air Act requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date or not implement the program.

(4) Emissions reduction credit from control measures that are not included in the transportation plan and TIP and that do not require a regulatory action in order to be implemented may not be included in the emissions analysis unless the conformity determination includes written commitments to implementation from the appropriate entities.

(a) Persons or entities voluntarily committing to control measures shall comply with the obligations of such commitments.

(b) The conformity implementation plan revision required in 40 CFR 51.390 shall provide that written commitments to control measures that are not included in the transportation plan and TIP shall be obtained prior to a conformity determination and that such commitments shall be fulfilled.

(5) A regional emissions analysis for the purpose of satisfying the requirements of 20.11.3.119 NMAC shall make the same assumptions in both the baseline and "action" scenarios regarding control measures that are external to the transportation system itself, such as vehicle tailpipe or evaporative emission standards, limits on gasoline volatility, vehicle inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel.

(6) The ambient temperatures used for the regional emissions analysis shall be consistent with those used to establish the emissions budget in the applicable implementation plan. All other factors, for example the fraction of travel in a hot stabilized engine mode, shall be consistent with the applicable implementation plan, unless modified after interagency consultation according to Subparagraph (a) of

Paragraph (1) of Subsection D of 20.11.3.105 NMAC to incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(7) Reasonable methods shall be used to estimate nonattainment or maintenance area VMT on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

**B.** Regional emissions analysis in serious, severe and extreme ozone nonattainment areas and serious CO nonattainment areas shall meet the requirements of Paragraphs (1) through (3) of Subsection B of 20.11.3.122 NMAC if their metropolitan planning area contains an urbanized area population over 200,000.

(1) By January 1, 1997, estimates of regional transportation-related emissions used to support conformity determinations shall be made at a minimum using network-based travel models according to procedures and methods that are available and in practice and supported by current and available documentation. These procedures, methods and practices are available from DOT and shall be updated periodically. Agencies shall discuss these modeling procedures and practices through the interagency consultation process as required by Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC. Network-based travel models shall at a minimum satisfy the following requirements:

(a) network-based travel models shall be validated against observed counts (peak and off-peak, if possible) for a base year that is not more than 10 years prior to the date of the conformity determination; model forecasts shall be analyzed for reasonableness and compared to historical trends and other factors, and the results shall be documented;

(b) land use, population, employment and other network-based travel model assumptions shall be documented and based on the best available information; future speeds shall be determined through interagency consultation as described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC;

(c) scenarios of land development and use shall be consistent with the future transportation system alternatives for which emissions are being estimated; the distribution of employment and residences for different transportation options shall be reasonable;

(d) a capacity-sensitive assignment methodology shall be used, and emissions estimates shall be based on a methodology which differentiates between peak and off-peak link volumes and speeds and uses speeds based on final assigned volumes;

(e) zone-to-zone travel impedances used to distribute trips between origin and destination pairs shall be in reasonable agreement with the travel times that are

estimated from final assigned traffic volumes and shall be determined through interagency consultation described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC; where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times shall also be used for modeling mode splits; and

(f) network-based travel models shall be reasonably sensitive to changes in the time(s), cost(s) and other factors affecting travel choices.

(2) Reasonable methods in accordance with good practice shall be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network-based travel model.

(3) Highway performance monitoring system (HPMS) estimates of vehicle miles traveled (VMT) shall be considered the primary measure of VMT within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. For areas with network-based travel models, a factor (or factors) may be developed to reconcile and calibrate the network-based travel model estimates of VMT in the base year of its validation to the HPMS estimates for the same period. These factors may then be applied to model estimates of future VMT. In this factoring process, consideration shall be given to differences between HPMS and network-based travel models, such as differences in the facility coverage of the HPMS and the modeled network description. Locally developed count-based programs and other departures from these procedures are permitted subject to the interagency consultation procedures Subparagraph (a) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

**C. Two-year grace period for regional emissions analysis requirements in certain ozone and CO areas:** The requirements of Subsection B of 20.11.3.122 NMAC apply to such areas or portions of such areas that have not previously been required to meet these requirements for any existing NAAQS two years from the following:

(1) the effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) the official notice by the census bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or

(3) the effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

**D.** In all areas not otherwise subject to Subsection B of 20.11.3.122 NMAC, regional emissions analyses shall use those procedures described in Subsection B of 20.11.3.122 NMAC if the use of those procedures has been the previous practice of the

MPO. Otherwise, areas not subject to Subsection B of 20.11.3.122 NMAC may estimate regional emissions using any appropriate methods that account for VMT growth by, for example, extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for VMT per person. These methods shall also consider future economic activity, transit alternatives and transportation system policies.

**E. PM<sub>10</sub> from construction-related fugitive dust:**

(1) For areas in which the implementation plan does not identify construction-related fugitive PM<sub>10</sub> as a contributor to the nonattainment problem, the fugitive PM<sub>10</sub> emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM<sub>10</sub> nonattainment and maintenance areas with implementation plans that identify construction-related fugitive PM<sub>10</sub> as a contributor to the nonattainment problem, the regional PM<sub>10</sub> emissions analysis shall consider construction-related fugitive PM<sub>10</sub> and shall account for the level of construction activity, the fugitive PM<sub>10</sub> control measures in the applicable implementation plan and the dust-producing capacity of the proposed activities.

**F. PM<sub>2.5</sub> from construction-related fugitive dust:**

(1) For PM<sub>2.5</sub> areas in which the implementation plan does not identify construction-related fugitive PM<sub>2.5</sub> as a significant contributor to the nonattainment problem, the fugitive PM<sub>2.5</sub> emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM<sub>2.5</sub> nonattainment and maintenance areas with implementation plans that identify construction-related fugitive PM<sub>2.5</sub> as a significant contributor to the nonattainment problem, the regional PM<sub>2.5</sub> emissions analysis shall consider construction-related fugitive PM<sub>2.5</sub> and shall account for the level of construction activity, the fugitive PM<sub>2.5</sub> control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

**G. Reliance on previous regional emissions analysis:**

(1) Conformity determinations for a new transportation plan or TIP may be demonstrated to satisfy the requirements of 20.11.3.118 NMAC, *Criteria and Procedures: Motor Vehicle Emissions Budget*, or 20.11.3.119 NMAC, *Criteria and Procedures: Interim Emissions in Areas Without Motor Vehicle Emissions Budgets*, without new regional emissions analysis if the previous regional emissions analysis also applies to the new plan or TIP. This requires a demonstration that:

(a) the new plan or TIP contains all projects that shall be started in the TIP's time frame in order to achieve the highway and transit system envisioned by the transportation plan;

(b) all plan and TIP projects that are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's or TIP's regional emissions at the time of the previous conformity determination;

(c) the design concept and scope of each regionally significant project in the new plan or TIP are not significantly different from that described in the previous transportation plan; and

(d) the previous regional emissions analysis is consistent with the requirements of 20.11.3.118 NMAC (including that conformity to all currently applicable budgets is demonstrated) or 20.11.3.119 NMAC, as applicable.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of 20.11.3.118 NMAC or 20.11.3.119 NMAC without additional regional emissions analysis if allocating funds to the project shall not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan the previous regional emissions analysis is still consistent with the requirements of 20.11.3.118 NMAC (including that conformity to all currently applicable budgets is demonstrated) or 20.11.3.119 NMAC, as applicable, and if the project is either:

(a) not regionally significant; or

(b) included in the conforming transportation plan (even if it is not specifically included in the latest conforming TIP) with design concept and scope adequate to determine its contribution to the transportation plan's regional emissions at the time of the transportation plan's conformity determination, and the design concept and scope of the project is not significantly different from that described in the transportation plan.

(3) A conformity determination that relies on Subsection G of 20.11.3.122 NMAC does not satisfy the frequency requirements of Subsection B or Subsection C of 20.11.3.104 NMAC.

[20.11.3.122 NMAC - Rn & A, 20.11.3.219 NMAC, 11/15/10]

### **20.11.3.123 PROCEDURES FOR DETERMINING LOCALIZED CO, PM<sub>10</sub> AND PM<sub>2.5</sub> CONCENTRATIONS (Hot-Spot Analysis):**

#### **A. CO hot spot analysis:**

(1) The demonstrations required by 20.11.3.116 NMAC (Criteria and Procedures: Localized CO, PM<sub>10</sub> and PM<sub>2.5</sub> Violations) shall be based on quantitative analysis using the applicable air quality models, data bases and other requirements specified in 40 CFR Part 51, Appendix W (guideline on air quality models). These

procedures shall be used in the following cases, unless different procedures developed through the interagency consultation process required in 20.11.3.105 NMAC and approved by the EPA regional administrator are used for:

(a) projects in or affecting locations, areas or categories of sites which are identified in the applicable implementation plan as sites of violation or possible violation;

(b) projects affecting intersections that are at level-of-service D, E or F, or those that shall change to level-of-service D, E or F because of increased traffic volumes related to the project;

(c) any project affecting one or more of the top three intersections in the nonattainment or maintenance area with highest traffic volumes, as identified in the applicable implementation plan or which are identified through the interagency consultation process as described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC; and

(d) any project affecting one or more of the top three intersections in the nonattainment or maintenance area with the worst level of service, as identified in the applicable implementation plan or which are identified through the interagency consultation process as described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(2) In cases other than those described in Paragraph (1) of Subsection A of 20.11.3.123 NMAC, the demonstrations required by 20.11.3.116 NMAC may be based on either:

(a) quantitative methods that represent reasonable and common professional practice as determined through the interagency consultation process, described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC; or

(b) a qualitative consideration of local factors, if this can provide a clear demonstration that the requirements of 20.11.3.116 NMAC are met.

(3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that Subsection A of 20.11.3.116 NMAC is met without further hot-spot analysis for any project described in Paragraphs (1) and (2) of Subsection A of 20.11.3.123 NMAC based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given CO nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

#### **B. PM<sub>10</sub> and PM<sub>2.5</sub> hot-spot analyses:**

(1) The hot-spot demonstration required by 20.11.3.116 NMAC shall be based on quantitative analysis methods for the following types of projects:

(a) new highway projects that have a significant number of diesel vehicles, and expanded highway projects that have a significant increase in the number of diesel vehicles;

(b) projects affecting intersections that are at level-of-service D, E, or F with a significant number of diesel vehicles, or those that will change to level-of-service D, E, or F because of increased traffic volumes from a significant number of diesel vehicles related to the project;

(c) new bus and rail terminals and transfer points that have a significant number of diesel vehicles congregating at a single location;

(d) expanded bus and rail terminals and transfer points that significantly increase the number of diesel vehicles congregating at a single location; and

(e) projects in or affecting locations, areas, or categories of sites which are identified in the PM<sub>10</sub> or PM<sub>2.5</sub> applicable implementation plan or implementation plan submission, as appropriate, as sites of violation or possible violation.

(2) Where quantitative analysis methods are not available, the demonstration required by 20.11.3.116 NMAC for projects described in Paragraph (1) of Subsection B of 20.11.3.123 NMAC shall be based on a qualitative consideration of local factors.

(3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that 20.11.3.116 NMAC is met without further hot-spot analysis for any project described in Paragraph (1) of Subsection B of 20.11.3.123 NMAC based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given PM<sub>2.5</sub> or PM<sub>10</sub> nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

(4) The requirements for quantitative analysis contained in Subsection B of 20.11.3.123 NMAC shall not take effect until EPA releases modeling guidance on this subject and announces in the federal register that these requirements are in effect.

### **C. General requirements:**

(1) Estimated pollutant concentrations shall be based on the total emissions burden that may result from the implementation of the project, summed together with future background concentrations. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project.

(2) Hot-spot analyses shall include the entire project, and may be performed only after the major design features that shall significantly impact concentrations have been identified. The future background concentration shall be estimated by multiplying current background by the ratio of future to current traffic and the ratio of future to

current emission factors as determined through the interagency consultation process described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(3) Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses as determined through the interagency consultation process described in Paragraph (1) of Subsection D of 20.11.3.105 NMAC.

(4) CO, PM<sub>10</sub> or PM<sub>2.5</sub> mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor or operator to implement such measures, as required by Subsection A of 20.11.3.125 NMAC.

(5) CO, PM<sub>10</sub> and PM<sub>2.5</sub> hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site that is affected by construction-related activities shall be considered separately through the interagency consultation process described in Paragraph (1) of Subsection B of 20.11.3.105 NMAC, using established guideline methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

[20.11.3.123 NMAC - Rn & A, 20.11.3.220 NMAC, 11/15/10]

#### **20.11.3.124 USING THE MOTOR VEHICLE EMISSIONS BUDGET IN THE APPLICABLE IMPLEMENTATION PLAN (OR IMPLEMENTATION PLAN SUBMISSION):**

**A.** In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment or maintenance requirement and explicitly states an intent that some or all of this additional amount shall be available to the MPO and DOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) emissions from all sources shall be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) emissions from all sources shall result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year shall be lower than needed to demonstrate attainment; or

(3) emissions shall be lower than needed to provide for continued maintenance.

**B.** A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, unless the implementation plan establishes appropriate mechanisms for such trades.

**C.** If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

**D.** If a nonattainment area includes more than one MPO, the implementation plan may establish motor vehicle emissions budgets for each MPO, or else the MPOs shall collectively make a conformity determination for the entire nonattainment area.

[20.11.3.124 NMAC - Rn, 20.11.3.221 NMAC, 11/15/10]

### **20.11.3.125 ENFORCEABILITY OF DESIGN CONCEPT AND SCOPE AND PROJECT-LEVEL MITIGATION AND CONTROL MEASURES:**

**A.** Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under Title 23 U.S.C. or the Federal Transit Laws, FHWA or FTA shall obtain from the project sponsor or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures that are identified as conditions for NEPA process completion with respect to local PM<sub>10</sub>, PM<sub>2.5</sub> or CO impacts. Before a conformity determination is made, written commitments shall also be obtained for project-level mitigation or control measures that are conditions for making conformity determinations for a transportation plan or TIP and are included in the project design concept and scope which is used in the regional emissions analysis required by 20.11.3.118 NMAC (motor vehicle emissions budget) and 20.11.3.119 NMAC (interim emissions in areas without motor vehicle emissions budgets) or used in the project-level hot-spot analysis required by 20.11.3.116 NMAC.

**B.** Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall comply with the obligations of such commitments.

**C.** The implementation plan revision required in 40 CFR 51.390 shall provide that written commitments to mitigation measures shall be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

**D.** If the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the applicable hot-spot requirements of 20.11.3.116 NMAC, emission budget requirements of 20.11.3.118 NMAC, and interim emissions requirements of 20.11.3.119 NMAC are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under 20.11.3.105 NMAC. The MPO and DOT shall find that the transportation plan and TIP still satisfy the applicable requirements of 20.11.3.118 NMAC or 20.11.3.119 NMAC and that the project still satisfies the requirements of 20.11.3.116 NMAC, and therefore that the conformity determinations for the transportation plan, TIP and project are still valid. This finding is subject to the applicable public consultation requirements in Subsection F of 20.11.3.105 NMAC for conformity determinations for projects.

[20.11.3.125 NMAC - Rn & A, 20.11.3.222 NMAC, 11/15/10]

### **20.11.3.126 EXEMPT PROJECTS:**

Notwithstanding the other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table 2 of 20.11.3.126 NMAC are exempt from the requirement to determine conformity. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 of 20.11.3.126 NMAC is not exempt if the MPO in consultation with other agencies (see Subparagraph (c) of Paragraph (1) of Subsection D of 20.11.3.105 NMAC), the EPA and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs shall ensure that exempt projects do not interfere with TCM implementation. Table 2 follows:

#### **TABLE 2. EXEMPT PROJECTS SAFETY**

Railroad/highway crossing

Projects that correct, improve or eliminate a hazardous location or feature

Safer non-federal-aid system roads

Shoulder improvements

Increasing sight distance

Highway safety improvement program implementation

Traffic control devices and operating assistance other than signalization projects

Railroad/highway crossing warning devices

Guardrails, median barriers, crash cushions

Pavement resurfacing or rehabilitation

Pavement marking

Emergency relief (23 U.S.C. 125)

Fencing

Skid treatments

Safety roadside rest areas

Adding medians

Truck climbing lanes outside the urbanized area

Lighting improvements

Widening narrow pavements or reconstructing bridges (no additional travel lanes)

Emergency truck pullovers

## **MASS TRANSIT**

Operating assistance to transit agencies

Purchase of support vehicles

Rehabilitation of transit vehicles<sup>1</sup>

Purchase of office, shop and operating equipment for existing facilities

Purchase of operating equipment for vehicles (e.g., radios, fare boxes, lifts, etc.)

Construction or renovation of power, signal and communications systems

Construction of small passenger shelters and information kiosks

Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals and ancillary structures)

Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way

Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet<sup>1</sup>

Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR Part 771

## **AIR QUALITY**

Continuation of ride-sharing and van-pooling promotion activities at current levels

Bicycle and pedestrian facilities

## **OTHER**

Specific activities which do not involve or lead directly to construction, such as:

Planning and technical studies

Grants for training and research programs

Planning activities conducted pursuant to Titles 23 and 49 U.S.C.

Federal-aid systems revisions

Engineering to assess social, economic and environmental effects of the proposed action or alternatives to that action

Noise attenuation

Emergency or hardship advance land acquisitions 23 CFR Part 710.503

Acquisition of scenic easements

Plantings, landscaping, etc.

Sign removal

Directional and informational signs

Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures or facilities)

Repair of damage caused by natural disasters, civil unrest or terrorist acts, except projects involving substantial functional, locational or capacity changes

**Note:** <sup>1</sup>In PM<sub>10</sub> and PM<sub>2.5</sub> nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

[20.11.3.126 NMAC - Rn & A, 20.11.3.223 NMAC, 11/15/10]

### **20.11.3.127 PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES:**

Notwithstanding the other requirements of 20.11.3 NMAC, highway and transit projects of the types listed in Table 3 of 20.11.3.127 NMAC are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO, PM<sub>2.5</sub> or PM<sub>10</sub> concentrations shall be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 of 20.11.3.127 NMAC is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see Subparagraph (c) Paragraph (1) of Subsection D of 20.11.3.105 NMAC), the EPA and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason. Table 3 follows:

#### **TABLE 3. PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES**

Intersection channelization projects

Intersection signalization projects at individual intersections

Interchange reconfiguration projects

Changes in vertical and horizontal alignment

Truck size and weight inspection stations

Bus terminals and transfer points

[20.11.3.127 NMAC - Rn & A, 20.11.3.224 NMAC, 11/15/10]

### **20.11.3.128 TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS:**

Traffic signal synchronization projects may be approved, funded and implemented without satisfying the requirements of 20.11.3 NMAC. However, all subsequent regional emissions analyses required by 20.11.3.118 NMAC and 20.11.3.119 NMAC for transportation plans, TIPs or projects not from a conforming plan and TIP shall include such regionally significant traffic signal synchronization projects.

[20.11.3.128 NMAC - Rn & A, 20.11.3.225 NMAC, 11/15/10]

### **20.11.3.129 SPECIAL EXEMPTIONS FROM CONFORMITY REQUIREMENTS FOR PILOT PROGRAM AREAS:**

EPA and DOT may exempt no more than six areas for no more than three years from certain requirements of 20.11.3 NMAC if these areas are selected to participate in a conformity pilot program and have developed alternative requirements that have been approved by EPA as an implementation plan revision in accordance with 40 CFR 51.390. For the duration of the pilot program, areas selected to participate in the pilot program shall comply with the conformity requirements of the pilot area's implementation plan revision for 40 CFR 51.390 and all other requirements in 40 CFR parts 51 and 93 that are not covered by the pilot area's implementation plan revision for 40 CFR 51.390. The alternative conformity requirements in conjunction with any applicable state or federal conformity requirements shall be proposed to fulfill all of the requirements of and achieve results equivalent to or better than Section 176(c) of the Clean Air Act. After the three-year duration of the pilot program has expired, areas will again be subject to all of the requirements of 20.11.3 NMAC and 40 CFR Part 51, Subpart T, or to the requirements of any implementation plan revision that was previously approved by EPA in accordance with 40 CFR 51.390.

[20.11.3.129 NMAC - Rn, 20.11.3.227 NMAC, 11/15/10]

**20.11.3.130-20.11.3.199 [RESERVED]**

**20.11.3.200-20.11.3.227 [RESERVED]**

[Sections 200-227 renumbered to Sections 103-129, 11/15/10]

**20.11.3.228-20.11.3.389 [RESERVED]**

**20.11.3.390 APPLICABLE LAW:**

The federal conformity rules under 40 CFR Part 93 Subpart A, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of CAA Section 176(c) until such time as this conformity implementation plan revision is approved by EPA. Following EPA approval of this revision to the applicable implementation plan (or a portion thereof), the approved (or approved portion of the) criteria and procedures in 20.11.3 NMAC shall govern conformity determinations and the federal conformity regulations contained in 40 CFR Part 93 shall apply only for the portion, if any, of 20.11.3 NMAC conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until 20.11.3 NMAC is adopted.

[20.11.3.390 NMAC - N, 11/15/10]

**PART 4: GENERAL CONFORMITY**

#### **20.11.4.1 ISSUING AGENCY:**

Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.

[12/16/94. . .12/1/95; 20.11.4.1 NMAC – Rn, 20 NMAC 11.04.I.1, 10/1/02; A, 3/14/11]

#### **20.11.4.2 SCOPE:**

The provisions of 20.11.4 NMAC shall apply in all nonattainment and maintenance areas of and within Bernalillo county.

##### **A. Prohibition:** Pursuant to 40 CFR 93.150:

(1) No department, agency or instrumentality of the federal government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity that does not conform to an applicable implementation plan or maintenance plan.

(2) A federal agency must make a determination that a federal action conforms to the applicable implementation plan or maintenance plan in accordance with the requirements of 20.11.4 NMAC before the action is taken.

(3) Reserved.

(4) Notwithstanding any provision of 20.11.4 NMAC, a determination that an action is in conformance with the applicable implementation plan or maintenance plan does not exempt the action from any other requirements of the applicable implementation plan or maintenance plan, the NEPA or the Clean Air Act (CAA).

(5) If an action would result in emissions originating in more than one nonattainment or maintenance area, the conformity must be evaluated for each area separately.

**B. Exempt:** 20.11.4 NMAC does not apply to sources within Bernalillo county, which are located on Indian lands over which the Albuquerque - Bernalillo county air quality control board lacks jurisdiction.

[12/16/94. . .12/1/95; 20.11.4.2 NMAC – Rn, 20 NMAC 11.04.I.2, 10/1/02; A, 3/14/11]

#### **20.11.4.3 STATUTORY AUTHORITY:**

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

[12/16/94. . .12/1/95; 20.11.4.3 NMAC – Rn, 20 NMAC 11.04.I.3, 10/1/02; A, 3/14/11]

**20.11.4.4 DURATION:**

Permanent.

[12/1/95; 20.11.4.4 NMAC – Rn, 20 NMAC 11.04.I.4, 10/1/02]

**20.11.4.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.4.5 NMAC – Rn, 20 NMAC 11.04.I.5 & A, 10/1/02]

**20.11.4.6 OBJECTIVE:**

To implement Section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.) and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States department of transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. Chapter 53). This rule sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to Section 110 and Part D of the CAA.

[12/16/94. . .12/1/95; 20.11.4.6 NMAC – Rn, 20 NMAC 11.04.I.6, 10/1/02; A, 3/14/11]

**20.11.4.7 DEFINITIONS:**

Terms used but not defined in 20.11.4 NMAC shall have the meaning given them by the CAA and EPA's regulations, (40 CFR Chapter I), in that order of priority. In addition to the definitions in 20.11.4.7 NMAC the definitions in 20.11.1.7 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.4 NMAC shall govern.

**A. "Affected federal land manager"** means the federal agency or the federal official charged with direct responsibility for management of an area designated as Class I under the CAA (42 U.S.C. 7472) that is located within 100 km of the proposed federal action.

**B. "Air agency"** means the Air Quality Division (AQD) of the city of Albuquerque environmental health department (EHD). The EHD, or its successor agency or authority, as represented by the department director or his/her designee, is the lead air quality planning agency for the Albuquerque - Bernalillo county nonattainment/maintenance area. The EHD serves as staff to the Albuquerque - Bernalillo county (ABC) air quality

control board (AQCB), also referred to as the ABC/AQCB, and is responsible for implementing AQCB regulations.

**C. "Applicability analysis"** is the process of determining if a federal action must be supported by a conformity determination.

**D. "Applicable implementation plan" or "applicable state implementation plan" or "applicable SIP"** means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under Section 110(k) of the CAA, a federal implementation plan (FIP) promulgated under Section 110(c) of the CAA, or a plan promulgated or approved pursuant to Section 301(d) of the CAA (tribal implementation plan or TIP) and which implements the relevant requirements of the CAA.

**E. "Area-wide air quality modeling analysis"** means an assessment on a scale that includes the entire nonattainment or maintenance area using an air quality dispersion model or photochemical grid model to determine the effects of emissions on air quality, for example, an assessment using EPA's community multiscale air quality (CMAQ) modeling system.

**F. "Cause or contribute to a new violation"** means a federal action that:

(1) Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the federal action were not taken; or

(2) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

**G. "Caused by"** as used in the terms "direct emissions," and "indirect emissions" means emissions that would not otherwise occur in the absence of the federal action.

**H. "Confidential business information" or "CBI"** means information that has been determined by a federal agency, in accordance with its applicable regulations, to be a trade secret, or commercial or financial information obtained from a person and privileged or confidential and it is exempt from required disclosure under the Freedom of Information Act (5 U.S.C.552(b)(4)).

**I. "Conformity determination"** means the evaluation (made after an applicability analysis is completed) that a federal action conforms to the applicable implementation plan or maintenance plan and meets the requirements of 20.11.4 NMAC.

**J. "Conformity evaluation"** means the entire process from the applicability analysis through the conformity determination that is used to demonstrate that the federal action conforms to the requirements of 20.11.4 NMAC.

**K. "Continuing program responsibility"** means a federal agency has responsibility for emissions caused by:

- (1) actions it takes itself; or
- (2) actions of non-federal entities that the federal agency, in exercising its normal programs and authorities, approves, funds, licenses or permits, provided the agency can impose conditions on any portion of the action that could affect the emissions.

**L. "Continuous program to implement"** means that the federal agency has started the action identified in the plan and does not stop the actions for more than an 18-month period, unless it can demonstrate that such a stoppage was included in the original plan.

**M. "Criteria pollutant or standard"** means any pollutant for which there is established a NAAQS at 40 CFR Part 50.

**N. "Direct emissions"** means those emissions of a criteria pollutant or its precursors that are caused or initiated by the federal action and originate in a nonattainment or maintenance area and occur at the same time and place as the action and are reasonably foreseeable.

**O. "Emergency"** means a situation where extremely quick action on the part of the federal agencies involved is needed and where the timing of such federal activities makes it impractical to meet the requirements of 20.11.4 NMAC, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations such as assembling and organizing troops and matériel for the defense of a nation in time of war or national emergency.

**P. "Emissions budgets"** are those portions of the applicable SIP's projected emissions inventories that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, or maintenance for any criteria pollutant or its precursors.

**Q. "Emissions inventory"** means a listing of information on the location, type of source, type and quantity of pollutant emitted as well as other parameters of the emissions.

**R. "Emissions offsets"** for purposes of 20.11.4.158 NMAC are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the state and federal levels, and permanent within the timeframe specified by the program.

**S. "Emissions that a federal agency has a continuing program responsibility for"** means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

**T. "Federal action"** means any activity engaged in by a department, agency, or instrumentality of the federal government, or any activity that a department, agency or instrumentality of the federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or the federal Transit Act (49 U.S.C. 1601 *et seq.*). Where the federal action is a permit, license, or other approval for some aspect of a non-federal undertaking, the relevant activity is the part, portion, or phase of the non-federal undertaking that requires the federal permit, license, or approval.

**U. "Federal agency"** means a federal department, agency, or instrumentality of the federal government.

**V. "Increase the frequency or severity of any existing violation of any standard in any area"** means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.

**W. "Indirect emissions"**

(1) means those emissions of a criteria pollutant or its precursors:

(a) that are caused or initiated by the federal action and originate in the same nonattainment or maintenance area but occur at a different time or place as the action;

(b) that are reasonably foreseeable;

(c) that the agency can practicably control; and

(d) for which the agency has continuing program responsibility.

(2) For the purposes of this definition, even if a federal licensing, rulemaking or other approving action is a required initial step for a subsequent activity that causes emissions, such initial steps do not mean that a federal agency can practically control any resulting emissions.

**X. "Local air quality modeling analysis"** means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadways on a federal facility, which uses an air quality dispersion model, (e.g., industrial source complex model or emission and dispersion model system), to determine the effects of emissions on air quality.

**Y. "Maintenance area"** means an area that was designated as nonattainment and has been re-designated in 40 CFR Part 81 to attainment, meeting the provisions of Section 107(d)(3)(E) of the CAA and has a maintenance plan approved under Section 175A of the CAA.

**Z. "Maintenance plan"** means a revision to the applicable SIP, meeting the requirements of Section 175A of the CAA.

**AA. "Metropolitan planning organization" or "MPO"** means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

**BB. "Milestone"** has the meaning given in Sections 182(g)(1) and 189(c)(1) of the CAA. A milestone consists of an emissions level and date on which it is required to be achieved.

**CC. "Mitigation measure"** means any method of reducing emissions of the pollutant or its precursor taken at the location of the federal action and used to reduce the impact of the emissions of that pollutant caused by the action.

**DD. "National ambient air quality standards" or "NAAQS"** are those standards established pursuant to Section 109 of the CAA and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO<sub>2</sub>), ozone, particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), and sulfur dioxide (SO<sub>2</sub>).

**EE. "NEPA"** is the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

**FF. "Nonattainment Area" or "NAA"** means an area designated as nonattainment under Section 107 of the CAA and described in 40 CFR Part 81.

**GG. "Precursors of a criteria pollutant"** are:

(1) for ozone, nitrogen oxides (NO<sub>x</sub>), unless an area is exempted from NO<sub>x</sub> requirements under Section 182(f) of the CAA, and volatile organic compounds (VOC); and

(2) for PM<sub>10</sub>, those pollutants described in the PM<sub>10</sub> nonattainment area applicable SIP as significant contributors to the PM<sub>10</sub> levels.

(3) For PM<sub>2.5</sub>:

(a) sulfur dioxide (SO<sub>2</sub>) in all PM<sub>2.5</sub> nonattainment and maintenance areas,

(b) nitrogen oxides in all PM<sub>2.5</sub> nonattainment and maintenance areas unless both the department and EPA determine that it is not a significant precursor, and

(c) volatile organic compounds (VOC) and ammonia (NH<sub>3</sub>) only in PM<sub>2.5</sub> nonattainment or maintenance areas where either the department or EPA determines that they are significant precursors.

**HH. "Reasonably foreseeable emissions"** are projected future direct and indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the federal agency based on its own information and after reviewing any information presented to the federal agency.

**II. "Regional water or wastewater projects"** include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs, which affect a large portion of a nonattainment or maintenance area.

**JJ. "Regionally significant action"** means a federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

**KK. "Restricted information"** means information that is privileged or that is otherwise protected from disclosure pursuant to applicable statutes, executive orders, or regulations. Such information includes, but is not limited to: Classified national security information, protected critical infrastructure information, sensitive security information, and proprietary business information.

**LL. "Smoke management program" or "SMP"** establishes a basic framework of procedures and requirements for managing smoke from fires that are managed for resource benefits. The purposes of SMPs are to mitigate the nuisance and public safety hazards (e.g., on roadways and at airports) posed by smoke intrusions into populated areas; to prevent deterioration of air quality and NAAQS violations; and to address visibility impacts in mandatory Class I federal areas in accordance with the regional haze rules.

**MM. "Take or start the federal action"** means the date that the federal agency signs or approves the permit, license, grant or contract or otherwise physically begins the federal action that requires a conformity evaluation under 20.11.4 NMAC.

**NN. "Total of direct and indirect emissions"** means the sum of direct and indirect emissions increases and decreases caused by the federal action (i.e., the "net"

emissions considering all direct and indirect emissions). The portion of emissions which are exempt or presumed to conform under Subsections C, D, E or F of 20.11.4.153 NMAC are not included in the "total of direct and indirect emissions." The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants.

**OO.** "Tribal implementation plan" or "TIP" means a plan to implement the national ambient air quality standards adopted and submitted by a federally recognized indian tribal government determined to be eligible under 40 CFR 49.9 and the plan has been approved by the EPA.

[12/16/94. . .12/1/95; 20.11.4.7 NMAC – Rn, 20 NMAC 11.04.I.7, 10/1/02; A, 3/14/11]

**20.11.4.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.4.8 NMAC - Rn, 20 NMAC 11.04.I.8, 10/1/02]

**20.11.4.9 SAVINGS CLAUSE:**

Any amendment to 20.11.4 NMAC, which is filed, with the state records center shall not affect actions pending for violation of a city or county ordinance or 20.11.4 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part, or regulation section in effect at the time the violation was committed.

[12/16/94. . .12/1/95; 20.11.4.9 NMAC – Rn, 20 NMAC 11.04.I.9, 10/1/02; A, 3/14/11]

**20.11.4.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of 20.11.4 NMAC is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.4 NMAC.

[12/16/94. . .12/1/95; 20.11.4.10 NMAC – Rn, 20 NMAC 11.04.I.10, 10/1/02; A, 3/14/11]

**20.11.4.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.4 NMAC may be viewed at the Albuquerque Environmental Health Department, 400 Marquette Ave. NW, Albuquerque, NM.

[12/1/95; 20.11.4.11 NMAC – Rn, 20 NMAC 11.04.I.11 & A, 10/1/02; A, 3/14/11]

**20.11.4.12-20.11.4.152 [RESERVED]**

**20.11.4.153 APPLICABILITY ANALYSIS:**

**A.** Conformity determinations for federal actions related to transportation plans, programs, and projects developed, funded, or approved under Title 23 U.S.C. or 49 U.S.C. Chapter 53 must meet the procedures and criteria of 40 CFR Part 51, Subpart T, in lieu of the procedures set forth in 20.11.4 NMAC.

**B.** For federal actions not covered by Subsection A of 20.11.4.153 NMAC, a conformity determination is required for each criteria pollutant or precursor where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a federal action would equal or exceed any of the rates in Paragraph (1) or (2) of Subsection B of 20.11.4.153 NMAC.

(1) For purposes of Subsection B of 20.11.4.153 NMAC, the following rates apply in **nonattainment areas**:

<b>Criteria Pollutant or Precursor</b>			<b>Rate (Tons/Year)</b>
<b>Ozone (VOC's or NOx):</b>			
	Serious NAA's		50
	Severe NAA's		25
	Extreme NAA's		10
	Other ozone NAA's outside an ozone transport region		100
	Other ozone NAA's inside an ozone transport region:		
		VOC	50
		NO <sub>x</sub>	100
<b>Carbon monoxide:</b>			
	All NAA's		100
<b>SO<sub>2</sub> or NO<sub>2</sub>:</b>			
	All NAA's		100
<b>PM<sub>10</sub>:</b>			
	Moderate NAA's		100
	Serious NAA's		70
<b>PM 2.5:</b>			
	Direct emissions		100
	SO <sub>2</sub>		100
	NO <sub>x</sub> (unless determined not to be significant precursors)		100

	VOC or ammonia (if determined to be significant precursors)		100
<b>Pb:</b>			
	All NAA's		25

(2) For the purposes of Subsection B of 20.11.4.153 NMAC, the following rates apply in **maintenance areas**:

<b>Criteria Pollutant or Precursor</b>			<b>Rate (Tons/Year)</b>
<b>Ozone (NO<sub>x</sub>, SO<sub>2</sub> or NO<sub>2</sub>):</b>			
	All maintenance areas		100
<b>Ozone (VOC's):</b>			
	Maintenance areas inside an ozone transport region		50
	Maintenance areas outside an ozone transport region		100
<b>Carbon monoxide:</b>			
	All maintenance areas		100
<b>PM<sub>10</sub>:</b>			
	All maintenance areas		100
<b>PM 2.5:</b>			
	Direct emissions		100
	SO <sub>2</sub>		100
	NO <sub>x</sub> (unless determined not to be significant precursors)		100
	VOC or ammonia (if determined to be significant precursors)		100
<b>Pb:</b>			
	All maintenance areas		25

**C. The requirements of 20.11.4 NMAC shall not apply to the following federal actions:**

(1) actions where the total of direct and indirect emissions are below the emissions levels specified in Subsection B of 20.11.4.153 NMAC.

(2) the following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

(a) Judicial and legislative proceedings.

(b) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.

(c) Rulemaking and policy development and issuance.

(d) Routine maintenance and repair activities including repair and maintenance of administrative sites, roads, trails, and facilities.

(e) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.

(f) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

(g) The routine, recurring transportation of matériel and personnel.

(h) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups or for repair or overhaul.

(i) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(j) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or

conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

(k) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.

(l) Planning, studies, and provision of technical assistance.

(m) Routine operation of facilities, mobile assets and equipment.

(n) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

(o) The designation of empowerment zones, enterprise communities, or viticultural areas.

(p) Actions by any of the federal banking agencies or the federal reserve banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.

(q) Actions by the board of governors of the federal reserve system or any federal reserve bank to effect monetary or exchange rate policy.

(r) Actions that implement a foreign affairs function of the United States.

(s) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

(t) Transfers of real property, including land, facilities, and related personal property from a federal entity to another federal entity and assignments of real property, including land, facilities, and related personal property from a federal entity, to another federal entity for subsequent deeding to eligible applicants.

(u) Actions by the department of the treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

(v) Air traffic control activities and adopting approach, departure and enroute procedures for aircraft operations above the mixing height specified in the applicable SIP or TIP. Where the applicable SIP or TIP does not specify a mixing height, the federal agency can use the 3,000 feet above ground level as a default mixing height, unless the agency demonstrates that use of a different mixing height is appropriate because the change in emissions at and above that height caused by the federal action is *de minimis*.

(3) Actions where the emissions are not reasonably foreseeable, such as the following:

(a) Initial outer continental shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

(b) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.

(4) Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan.

**D.** Notwithstanding the other requirements of 20.11.4 NMAC, a conformity determination is not required for the following federal actions (or portion thereof):

(1) The portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review (NSR) program (Section 110(a)(2)(c) and Section 173 of the CAA) or the prevention of significant deterioration (PSD) program (Title I, Part C of the CAA).

(2) Actions in response to emergencies which are typically commenced on the order of hours or days after the emergency and, if applicable, which meet the requirements of Subsection E of 20.11.4.153 NMAC.

(3) Research, investigations, studies, demonstrations, or training (other than those exempted under Paragraph (2) of Subsection C of 20.11.4.153 NMAC), where no environmental detriment is incurred or, the particular action furthers air quality research, as determined by the air agency primarily responsible for the applicable SIP.

(4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).

(5) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from

other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

**E.** Federal actions which are part of a continuing response to an emergency or disaster under Paragraph (2) of Subsection D of 20.11.4.153 NMAC and which are to be taken more than six months after the commencement of the response to the emergency or disaster under Paragraph (2) of Subsection D of 20.11.4.153 NMAC are exempt from the requirements of this regulation only if:

(1) the federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments, or

(2) for actions which are to be taken after those actions covered by Paragraph (1) of Subsection E of 20.11.4.153 NMAC, the federal agency makes a new determination as provided in Paragraph (1) of Subsection E of 20.11.4.153 NMAC and:

(a) provides a draft copy of the written determinations required to affected EPA regional office(s), the affected state(s) or air pollution control agencies, and any federal recognized indian tribal government in the nonattainment or maintenance area; those organizations must be allowed 15 days from the beginning of the extension period to comment on the draft determination; and

(b) within 30 days after making the determination, publish a notice of the determination by placing a prominent advertisement in a daily newspaper of general circulation in the area affected by the action.

(3) If additional actions are necessary in response to an emergency or disaster under Paragraph (2), of Subsection D of 20.11.4.153 NMAC beyond the specified time period in Paragraph (2) of Subsection E of 20.11.4.153 NMAC, a federal agency can make a new written determination as described in Paragraph (2) of Subsection E of 20.11.4.153 NMAC for as many 6-month periods as needed, but in no case shall this exemption extend beyond three 6-month periods except where an agency:

(a) provides information to EPA and the state or tribe stating that the conditions that gave rise to the emergency exemption continue to exist and how such conditions effectively prevent the agency from conducting a conformity evaluation.

(b) Reserved.

**F.** Notwithstanding other requirements of 20.11.4 NMAC, actions specified by individual federal agencies that have met the criteria set forth in either Paragraphs (1), (2) or (3) of Subsection G of 20.11.4.153 NMAC and the procedures set forth in

Subsection H of 20.11.4.153 NMAC are "presumed to conform", except as provided in Subsection J of 20.11.4.153 NMAC. Actions specified by individual federal agencies as "presumed to conform" may not be used in combination with one another when the total direct and indirect emissions from the combination of actions would equal or exceed any of the rates specified in Paragraphs (1) or (2) of Subsection B of 20.11.4.153 NMAC.

**G.** The federal agency must meet the criteria for establishing activities that are "presumed to conform" by fulfilling the requirements set forth in either Paragraphs (1), (2) or (3) of Subsection G of 20.11.4.153 NMAC:

(1) The federal agency must clearly demonstrate using methods consistent with 20.11.4 NMAC that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(a) cause or contribute to any new violation of any standard in any area;

(b) interfere with provisions in the applicable SIP for maintenance of any standard;

(c) increase the frequency or severity of any existing violation of any standard in any area; or

(d) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(i) a demonstration of reasonable further progress;

(ii) a demonstration of attainment; or

(iii) a maintenance plan; or

(2) The federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in Subsection B of 20.11.4.153 NMAC, based, for example, on similar actions taken over recent years.

(3) The federal agency must clearly demonstrate that the emissions from the type or category of actions and the amount of emissions from the action are included in the applicable SIP or maintenance plan, and the state, local or tribal air quality agencies responsible for the SIP(s) or TIP(s) provide written concurrence that the emissions from the actions along with all other expected emissions in the area will not exceed the emission budget in the SIP.

**H.** In addition to meeting the criteria for establishing exemptions set forth in Paragraphs (1), (2) or (3) of Subsection G of 20.11.4.153 NMAC, the following procedures must also be complied with to presume that activities will conform:

(1) the federal agency must identify through publication in the federal register its list of proposed activities that are "presumed to conform" and the basis for the presumptions; the notice must clearly identify the type and size of the action that would be "presumed to conform" and provide criteria for determining if the type and size action qualifies it for the presumption;

(2) the federal agency must notify the EPA region VI office, state, local and tribal air agencies, and, where applicable, the agency designated under Section 174 of the CAA and the MPO and provide at least 30 days for the public to comment on the list of proposed activities "presumed to conform"; If the "presumed to conform" action has regional or national application (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in Subsection B of 20.11.4.153 NMAC in more than one of EPA's regions), the federal agency, as an alternative to sending it to the EPA Region VI Office, can send the draft conformity determination to U.S. EPA, office of air quality planning and standards (OAQPS);

(3) the federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(4) the federal agency must publish the final list of such activities in the federal register.

**I.** Emissions from the following actions are "presumed to conform":

(1) Actions at installations with facility-wide emission budgets meeting the requirements in Section 93.161 provided that the state or tribe has included the emission budget in the EPA-approved SIP or maintenance plan and the emissions from the action along with all other emissions from the installation will not exceed the facility-wide emission budget.

(2) Prescribed fires conducted in accordance with a smoke management program (SMP) which meets the requirements of EPA's *interim air quality policy on wildland and prescribed fires* or, an equivalent replacement EPA policy.

(3) Emissions for actions that the state or tribe identifies in the EPA approved SIP or TIP as "presumed to conform".

**J.** Even though an action would otherwise be "presumed to conform" under Subsection F or I, of 20.11.4.153 NMAC, an action shall not be "presumed to conform" and the requirements of Section 40 CFR 93.151, Subsection A of 20.11.4.2 NMAC,

Sections 13 through 19 and Sections 21 through 23 of 20.11.4 NMAC shall apply to the action if EPA or a third party shows that the action would:

- (1) cause or contribute to any new violation of any standard in any area;
- (2) interfere with provisions in the applicable SIP or TIP for maintenance of any standard;
- (3) increase the frequency or severity of any existing violation of any standard in any area; or
- (4) delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP or TIP for purposes of:
  - (a) a demonstration of reasonable further progress;
  - (b) a demonstration of attainment; or
  - (c) a maintenance plan.

**K.** The provisions of 20.11.4 NMAC shall apply in all nonattainment and maintenance areas except conformity requirements for newly designated nonattainment areas are not applicable until one year after the effective date of the final nonattainment designation for each NAAQS and pollutant in accordance with Section 176(c)(6) of the act.

[20.11.4.153 NMAC - Rn & A, 20.11.4.12 NMAC, 3/14/11]

#### **20.11.4.154 FEDERAL AGENCY CONFORMITY RESPONSIBILITY:**

Any department, agency, or instrumentality of the federal government taking an action subject to 20.11.4 NMAC must make its own conformity determination consistent with the requirements of 20.11.4 NMAC. In making its conformity determination, a federal agency must follow the requirements in Sections 14 through 19 and 21 through 24 of 20.11.4 NMAC and must consider comments from any interested parties. Where multiple federal agencies have jurisdiction for various aspects of a project, a federal agency may choose to adopt the analysis of another federal agency (to the extent the proposed action and impacts analyzed are the same as the project for which a conformity determination is required) or develop its own analysis in order to make its conformity determination.

[20.11.4.154 NMAC - Rn & A, 20.11.4.13 NMAC, 3/14/11]

#### **20.11.4.155 REPORTING REQUIREMENTS:**

**A.** A federal agency making a conformity determination under Sections 13 through 19 and 21 through 23 of 20.11.4 NMAC must provide to the EPA Region VI Office, state and local air agencies, any federally-recognized indian tribal government in the nonattainment or maintenance area, and, where applicable, affected federal land managers, the agency designated under Section 174 of the CAA and the MPO a 30-day notice which describes the proposed action and the federal agency's draft conformity determination on the action. If the action has multi-regional or national impacts (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in Subsection B of 20.11.4.153 NMAC in three or more of EPA's regions), the federal agency, as an alternative to sending it to EPA regional offices, can provide the notice to EPA's office of air quality planning and standards.

**B.** A federal agency must notify the EPA Region VI office, state and local air agencies, any federally-recognized indian tribal government in the nonattainment or maintenance area, and, where applicable, affected federal land managers, the agency designated under Section 174 of the CAA and the MPO, within 30 days after making a final conformity determination under 20.11.4 NMAC.

**C.** The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations, security manuals, or executive orders concerning the use, access, and release of such materials. Subject to applicable procedures to protect restricted information from public disclosure, any information or materials excluded from the draft or final conformity determination or supporting materials may be made available in a restricted information annex to the determination for review by federal and state representatives who have received appropriate clearances to review the information.

[20.11.4.155 NMAC - Rn & A, 20.11.4.14 NMAC, 3/14/11]

#### **20.11.4.156 PUBLIC PARTICIPATION:**

**A.** Upon request by any person regarding a specific federal action, a federal agency must make available, subject to the limitation in Subsection E of 20.11.4.156 NMAC, for review its draft conformity determination under 20.11.4.154 NMAC with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

**B.** A federal agency must make public its draft conformity determination under 20.11.4.154 NMAC by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process. If the action has multi-regional or national impacts (e.g., the action will cause emission increases in excess of the *de minimis* levels identified in Subsection B of 20.11.4.153 NMAC in three or more of

EPA's regions), the federal agency, as an alternative to publishing separate notices, can publish a notice in the federal register.

**C.** A federal agency must document its response to all the comments received on its draft conformity determination under 20.11.4.154 NMAC and make the comments and responses available, subject to the limitation in Subsection E of 20.11.4.156 NMAC, upon request by any person regarding a specific federal action, within 30 days of the final conformity determination.

**D.** A federal agency must make public its final conformity determination under 20.11.4.154 NMAC for a federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination. If the action would have multi-regional or national impacts, the federal agency, as an alternative, can publish the notice in the federal register.

**E.** The draft and final conformity determination shall exclude any restricted information or confidential business information. The disclosure of restricted information and confidential business information shall be controlled by the applicable laws, regulations or executive orders concerning the release of such materials.

[20.11.4.156 NMAC - Rn & A, 20.11.4.15 NMAC, 3/14/11]

#### **20.11.4.157 REEVALUATION OF CONFORMITY:**

**A.** Once a conformity evaluation is completed by a federal agency, that determination is not required to be reevaluated if the agency has maintained a continuous program to implement the action; the determination has not lapsed as specified in Subsection B of 20.11.4.157 NMAC; or any modification to the action does not result in an increase in emissions above the levels specified in Subsection B of 20.11.4.153 NMAC. If a conformity determination is not required for the action at the time NEPA analysis is completed, the date of the finding of no significant impact (FONSI) for an environmental assessment, a record of decision (ROD) for an environmental impact statement, or a categorical exclusion determination can be used as a substitute date for the conformity determination date.

**B.** The conformity status of a federal action automatically lapses five years from the date a final conformity determination is reported under 20.11.4.155 NMAC, unless the federal action has been completed or a continuous program to implement the federal action has been commenced.

**C.** Ongoing federal activities at a given site showing continuous progress are not new actions and do not require periodic re-determination so long as such activities are within the scope of the final conformity determination reported under 20.11.4.155 NMAC.

**D.** If the federal agency originally determined through the applicability analysis that a conformity determination was not necessary because the emissions for the action were below the limits in Subsection B of 20.11.4.153 NMAC and changes to the action would result in the total emissions from the action being above the limits in Subsection B of 20.11.4.153 NMAC, then the federal agency must make a conformity determination.

[20.11.4.157 NMAC - Rn & A, 20.11.4.16 NMAC, 3/14/11]

**20.11.4.158 CRITERIA FOR DETERMINING CONFORMITY OF GENERAL FEDERAL ACTIONS:**

**A.** An action required under 20.11.4.153 NMAC to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in Subsection B of 20.11.4.153 NMAC, or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of Subsection C of 20.11.4.158 NMAC, and meets any of the following requirements:

(1) for any criteria pollutant or precursor, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration or reasonable further progress milestone or in a facility-wide emission budget included in a SIP accordance with 20.11.4.161 NMAC;

(2) for precursors of ozone, or nitrogen dioxide, or PM, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violations in the past, in the area with the federal action) through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

(3) for any directly-emitted criteria pollutant, the total of direct and indirect emissions from the action meet the requirements:

(a) specified in Subsection B of 20.11.4.158 NMAC, based on area-wide air quality modeling analysis and local air quality modeling analysis; or

(b) meet the requirements of Paragraph (5), of Subsection A of 20.11.4.158 NMAC and, for local air quality modeling analysis, the requirement of Subsection B of 20.11.4.158 NMAC.

(4) For CO or directly emitted PM:

(a) where the air agency primarily responsible for the applicable SIP determines that an area-wide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in Subsection B of 20.11.4.158 NMAC, based on local air quality modeling analysis; or

(b) where the air agency primarily responsible for the applicable SIP determines that an area-wide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in Subsection B of 20.11.4.158 NMAC, based on area-wide modeling, or meet the requirements of Paragraph (5) of Subsection A of 20.11.4.158 NMAC or

(5) For ozone or nitrogen dioxide, and for purposes of Subparagraph (b) of Paragraph (3) of Subsection A of 20.11.4.158 NMAC and Subparagraph (b) of Paragraph (4) of Subsection A of 20.11.4.158 NMAC, each portion of the action or the action as a whole meets any of the following requirements:

(a) Where EPA has approved a revision to the applicable implementation plan after the area was designated as nonattainment and the state or tribe makes a determination as provided in Item (i) of Subparagraph (a) of Paragraph (5) of Subsection A of 20.11.4.158 NMAC or where the state or tribe makes a commitment as provided in Item (ii) of Subparagraph (a) of Paragraph (5) of Subsection A of 20.11.4.158 NMAC:

(i) the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the air agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP;

(ii) the total of direct and indirect emissions from the action (or portion thereof) is determined by the air agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the state governor or the governor's designee for SIP actions makes a written commitment to EPA which includes the following: 1. A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the federal action would occur; 2. Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP; 3. A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the federal action, and that local authority to implement additional requirements has been fully pursued; 4. A determination that the responsible federal agencies have required all reasonable

mitigation measures associated with their action; and 5. Written documentation including all air quality analyses supporting the conformity determination;

(iii) Where a federal agency made a conformity determination based on a state's or tribe's commitment under Item (i) of Subparagraph (a) of Paragraph (5) of Subsection A of 20.11.4.158 NMAC, and the state has submitted a SIP or TIP to EPA covering the time period during which the emissions will occur or is scheduled to submit such a SIP or TIP within 18 months of the conformity determination, the state commitment is automatically deemed a call for a SIP or TIP revision by EPA under Section 110(k)(5) of the CAA, effective on the date of the federal conformity determination and requiring response within 18 months or any shorter time within which the state or tribe commits to revise the applicable SIP;

(iv) Where a federal agency made a conformity determination based on a state or tribal commitment under Item (ii) of Subparagraph (a) of Paragraph (5) of Subsection A of 20.11.4.158 NMAC and the state or tribe has not submitted a SIP covering the time period when the emissions will occur or is not scheduled to submit such a SIP within 18 months of the conformity determination, the state or tribe must, within 18 months, submit to EPA a revision to the existing SIP committing to include the emissions in the future SIP revision.

(b) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under 40 CFR Part 51, Subpart T, or 40 CFR Part 93, Subpart A;

(c) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area (or nearby area of equal or higher classification provided the emissions from that area contribute to the violations, or have contributed to violation in the past, in the area with the federal action) through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(d) Where EPA has not approved a revision to the relevant SIP since the area was designated or reclassified, the total of direct and indirect emissions from the action for the future years (described in Subsection D of 20.11.4.159 NMAC) do not increase emissions with respect to the baseline emissions:

(i) the baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed federal action during: 1. The most current calendar year with a complete emission inventory available before an area is designated unless EPA sets another year, or; 2. The emission budget in the applicable SIP; or 3. The year of the baseline inventory in the PM<sub>10</sub> applicable SIP;

(ii) the baseline emissions are the total of direct and indirect emissions calculated for the future years (described in Subsection D of 20.11.4.159 NMAC) using the historic activity levels (described in Item (i) of Subparagraph (d) of Paragraph (5) of Subsection A of 20.11.4.158 NMAC) and appropriate emission factors for the future years; or

(e) Where the action involves regional water or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.

**B.** The area-wide or local air quality modeling analyses must:

(1) meet the requirements in 20.11.4.159 NMAC; and

(2) show that the action does not:

(a) cause or contribute to any new violation of any standard in any area, or

(b) increase the frequency or severity of any existing violation of any standard in any area.

**C.** Notwithstanding any other requirements of 20.11.4.158 NMAC, an action subject to this regulation may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.

**D.** Any analyses required under 20.11.4.158 NMAC must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made.

[20.11.4.158 NMAC - Rn & A, 20.11.4.17 NMAC, 3/14/11]

#### **20.11.4.159 PROCEDURES FOR CONFORMITY DETERMINATION OF FEDERAL ACTIONS:**

**A.** The analyses required under 20.11.4 NMAC must be based on the latest planning assumptions.

(1) All planning assumptions (such as per capita water and sewer use, vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, woodstoves per household, and the geographic distribution of population growth) must be derived from

the estimates of population, employment, travel, and congestion most recently approved by the MPO, or other agency authorized to make such estimates, where available.

(2) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.

**B.** The analyses required under 20.11.4 NMAC must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate, the federal agency may obtain written approval from the regional administrator for EPA region VI for a modification or substitution, of another technique on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

(1) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of the applicable SIP must be used for the conformity analysis as specified in Subparagraph (a) and (b), of Paragraph (1) of Subsection B of 20.11.4.159 NMAC:

(a) the EPA must publish in the federal Register a notice of availability of any new motor vehicle emissions model; and

(b) a grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used unless EPA announces a longer grace period in the federal register. Conformity analyses for which the analysis was begun during the grace period or no more than three months before the federal register notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the *Compilation of Air Pollutant Emission Factors* (AP-42, <http://www.epa.gov/ttn/chiefs/efpac> ) must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

**C.** The air quality modeling analyses required under 20.11.4 NMAC must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the *Guideline on Air Quality Models* (Appendix W to 40 CFR Part 51), unless:

(1) the guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program; and

(2) written approval of the EPA regional administrator is obtained for any modification or substitution.

**D.** The analyses required under 20.11.4 NMAC, must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(1) The attainment year specified in the SIP, or if the SIP does not specify an attainment year, the latest attainment year possible under the act; or

(2) the last year for which emissions are projected in the maintenance plan;

(3) the year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

(4) any year for which the applicable SIP specifies an emissions budget.

[20.11.4.159 NMAC - Rn & A, 20.11.4.18 NMAC, 3/14/11]

#### **20.11.4.160 MITIGATION OF AIR QUALITY IMPACTS:**

**A.** Any measures that are intended to mitigate air quality impacts must be identified (such as the identification and quantification of all emission reductions claimed) and the process for implementation (such as any necessary funding of such measures and tracking of such emission reductions) and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

**B.** Prior to determining that a federal action is in conformity, the federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures, which are identified as conditions for making conformity determinations.

**C.** Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

**D.** In instances where the federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

**E.** When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the

reporting requirements of 20.11.4.155 NMAC and the public participation requirements of 20.11.4.157 NMAC.

**F.** Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitments must be fulfilled.

**G.** After a state or tribe revises its SIP or TIP and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both state or tribal and federally enforceable. Enforceability through the applicable SIP or TIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.

[20.11.4.160 NMAC - Rn & A, 20.11.4.19 NMAC, 3/14/11]

#### **20.11.4.161 CONFORMITY EVALUATION FOR FEDERAL INSTALLATIONS WITH FACILITY-WIDE EMISSION BUDGETS:**

**A.** The state, local or tribal agency responsible for implementing and enforcing the SIP or TIP can in cooperation with federal agencies or third parties authorized by the agency that operate installations subject to federal oversight develop and adopt a facility-wide emission budget to be used for demonstrating conformity under Paragraph (1) of Subsection A of 20.11.4.158 NMAC. The facility-wide budget must meet the following criteria.

- (1) Be for a set time period.
- (2) Cover the pollutants or precursors of the pollutants for which the area is designated nonattainment or maintenance.
- (3) Include specific quantities allowed to be emitted on an annual or seasonal basis.
- (4) The emissions from the facility along with all other emissions in the area will not exceed the emission budget for the area.
- (5) Include specific measures to ensure compliance with the budget, such as periodic reporting requirements or compliance demonstration, when the federal agency is taking an action that would otherwise require a conformity determination.
- (6) Be submitted to EPA as a SIP revision.
- (7) The SIP revision must be approved by EPA.

**B.** The facility-wide budget developed and adopted in accordance with Subsection A of 20.11.4.161 NMAC can be revised by following the requirements in Subsection A of 20.11.4.161 NMAC.

**C.** Total direct and indirect emissions from federal actions in conjunction with all other emissions subject to general conformity from the facility that do not exceed the facility budget adopted pursuant to Subsection A of 20.11.4.161 NMAC are "presumed to conform" to the SIP and do not require a conformity analysis.

**D.** If the total direct and indirect emissions from the federal actions in conjunction with the other emissions subject to general conformity from the facility exceed the budget adopted pursuant to Subsection A of 20.11.4.161 NMAC, the action must be evaluated for conformity. A federal agency can use the compliance with the facility-wide emissions budget as part of the demonstration of conformity, i.e., the agency would have to mitigate or offset the emissions that exceed the emission budget.

**E.** If the SIP for the area includes a category for construction emissions, the negotiated budget can exempt construction emissions from further conformity analysis.

[20.11.4.161 NMAC - N, 3/14/11]

#### **20.11.4.162 EMISSIONS BEYOND THE TIME PERIOD COVERED BY THE SIP:**

If a federal action would result in total direct and indirect emissions above the applicable thresholds which would be emitted beyond the time period covered by the SIP, the federal agency can:

**A.** demonstrate conformity with the last emission budget in the SIP; or

**B.** request the state or tribe to adopt an emissions budget for the action for inclusion in the SIP. The state or tribe must submit a SIP or TIP revision to EPA within 18 months either including the emissions in the existing SIP or establishing an enforceable commitment to include the emissions in future SIP revisions based on the latest planning assumptions at the time of the SIP revision; no such commitment by a state or tribe shall restrict a state's or tribe's ability to require RACT, RACM or any other control measures within the state's or tribe's authority to ensure timely attainment of the NAAQS.

[20.11.4.162 NMAC - N, 3/14/11]

#### **20.11.4.163 TIMING OF OFFSETS AND MITIGATION MEASURES:**

**A.** The emissions reductions from an offset or mitigation measure used to demonstrate conformity must occur during the same calendar year as the emission increases from the action except, as provided in Subsection B of 20.11.4.163 NMAC.

**B.** The state or tribe may approve emissions reductions in other years provided:

(1) The reductions are greater than the emission increases by the following ratios:

- (a) extreme nonattainment areas: 1.5:1
- (b) severe nonattainment areas: 1.3:1
- (c) serious nonattainment areas: 1.2:1
- (d) moderate nonattainment areas: 1.15:1
- (e) all other areas: 1.1:1.

(2) The time period for completing the emissions reductions must not exceed twice the period of the emissions.

(3) The offset or mitigation measure with emissions reductions in another year will not:

- (a) cause or contribute to a new violation of any air quality standard,
- (b) increase the frequency or severity of any existing violation of any air quality standard; or
- (c) delay the timely attainment of any standard or any interim emissions reductions or other milestones in any area.

**C.** The approval by the state or tribe of an offset or mitigation measure with emissions reductions in another year does not relieve the state or tribe of any obligation to meet any SIP or CAA milestone or deadline. The approval of an alternate schedule for mitigation measures is at the discretion of the state or tribe, and they are not required to approve an alternate schedule.

[20.11.4.163 NMAC - N, 3/14/11]

#### **20.11.4.164 INTER-PRECURSOR MITIGATION MEASURES AND OFFSETS:**

Federal agencies must reduce the same type pollutant as being increased by the federal action except the state or tribe may approve offsets or mitigation measures of different precursors of the same criteria pollutant, if such trades are allowed by a state or tribe in a SIP or TIP approved new source review regulation, is technically justified, and has a demonstrated environmental benefit.

[20.11.4.164 NMAC - N, 3/14/11]

#### **20.11.4.165 EARLY EMISSION REDUCTION CREDIT PROGRAMS AT FEDERAL FACILITIES AND INSTALLATION SUBJECT TO FEDERAL OVERSIGHT:**

**A.** Federal facilities and installations subject to federal oversight can, with the approval of the state or tribal agency responsible for the SIP or TIP in that area, create an early emissions reductions credit program. The federal agency can create the emission reduction credits in accordance with the requirements in Subsection B of 20.11.4.165 NMAC and can use them in accordance with Subsection C of 20.11.4.165 NMAC.

**B. Creation of emission reduction credits.**

(1) Emissions reductions must be quantifiable through the use of standard emission factors or measurement techniques. If non-standard factors or techniques to quantify the emissions reductions are used, the federal agency must receive approval from the state or tribal agency responsible for the implementation of the SIP or TIP and from EPA's Region VI Office. The emission reduction credits do not have to be quantified before the reduction strategy is implemented, but must be quantified before the credits are used in the general conformity evaluation.

(2) The emission reduction methods must be consistent with the applicable SIP or TIP attainment and reasonable further progress demonstrations.

(3) The emissions reductions cannot be required by or credited to other applicable SIP or TIP provisions.

(4) Both the state or tribe and federal air quality agencies must be able to take legal action to ensure continued implementation of the emission reduction strategy. In addition, private citizens must also be able to initiate action to ensure compliance with the control requirement.

(5) The emissions reductions must be permanent or the timeframe for the reductions must be specified.

(6) The federal agency must document the emissions reductions and provide a copy of the document to the state or tribal air quality agency and the EPA region VI office for review. The documentation must include a detailed description of the emission reduction strategy and a discussion of how it meets the requirements of Paragraphs (1) through (5) of Subsection B of 20.11.4.165 NMAC.

**C. Use of emission reduction credits.** The emission reduction credits created in accordance with Subsection B of 20.11.4.165 NMAC can be used, subject to the following limitations, to reduce the emissions increase from a federal action at the facility for the conformity evaluation.

(1) If the technique used to create the emission reduction is implemented at the same facility as the federal action and could have occurred in conjunction with the federal action, then the credits can be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in

20.11.4.153 NMAC and as offsets or mitigation measures required by 20.11.4.158 NMAC.

(2) If the technique used to create the emission reduction is not implemented at the same facility as the federal action or could not have occurred in conjunction with the federal action, then the credits cannot be used to reduce the total direct and indirect emissions used to determine the applicability of the regulation as required in 20.11.4.153 NMAC, but can be used to offset or mitigate the emissions as required by 20.11.4.158 NMAC.

(3) Emissions reductions credits must be used in the same year in which they are generated.

(4) Once the emission reduction credits are used, they cannot be used as credits for another conformity evaluation. However, unused credits from a strategy used for one conformity evaluation can be used for another conformity evaluation as long as the reduction credits are not double counted.

(5) Federal agencies must notify the state or tribal air quality agency responsible for the implementation of the SIP or TIP and the EPA region VI office when the emission reduction credits are being used.

[20.11.4.165 NMAC - N, 3/14/11]

## **PART 5: VISIBLE AIR CONTAMINANTS**

### **20.11.5.1 ISSUING AGENCY:**

Albuquerque/Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[3/21/77. . .11/1/95; 20.11.5.1 NMAC - Rn, 20 NMAC 11.05.I.1, 10/1/02]

### **20.11.5.2 SCOPE:**

This Part is applicable to the following:

#### **A. Exempt:**

(1) This Part does not apply to sources within Bernalillo County which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control lacks jurisdiction.

(2) Upon the written request of an affected source, the Director may, on a case by case basis, exempt aircraft engine test facilities and enclosed research and development (R&D) fire test facilities from the opacity requirements of this Part. For

sources required to obtain a Part 42 operating permit, any exemption granted under this subpart shall be effective for the duration of the operating permit. For sources not required to obtain a Part 42 operating permit, any exemption granted under this subpart shall be effective for a period of up to five years. Exemptions granted under this subpart may be renewed by the Director on a case by case basis, upon the written request of the affected source.

**B. Stationary Sources:** Visible emissions and operational limitations shall be applicable to the sources listed in this Part.

**C. Mobile Sources:** Except for the mobile sources listed in this Part, motor vehicles are subject to the visible emission limitations required by 20.11.103 NMAC, and not this Part.

[3/24/82. . . 11/28/89, 11/1/95, 12/1/95; 20.11.5.2 NMAC - Rn, 20 NMAC 11.05.I.2, 10/1/02]

### **20.11.5.3 STATUTORY AUTHORITY:**

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

[11/1/95; 20.11.5.3 NMAC - Rn, 20 NMAC 11.05.I.3, 10/1/02; 20.11.5.3 NMAC - Rn, 20.11.5.5 NMAC, 1/1/03]

### **20.11.5.4 DURATION:**

Permanent.

[11/1/95; 20.11.5.4 NMAC - Rn, 20 NMAC 11.05.I.4 & A, 10/1/02; 20.11.5.4 NMAC - Rn, 20.11.5.3 NMAC, 1/1/03]

### **20.11.5.5 EFFECTIVE DATE:**

November 1, 1995, unless a later date is cited at the end of a section.

[11/28/89, 11/1/95; 20.11.5.5 NMAC - Rn, 20 NMAC 11.05.I.5, 10/1/02; 20.11.5.5 NMAC - Rn, 20.11.5.4 NMAC, 1/1/03]

### **20.11.5.6 OBJECTIVE:**

The objective of this Part is to provide a simple and effective means to assess and reduce air pollution from sources that emit particulate matter, fumes, smoke, or aerosols in order to reduce visible air contaminants.

[11/28/89. . .11/1/95; 20.11.5.6 NMAC - Rn, 20 NMAC 11.05.I.6, 10/1/02]

**20.11.5.7 DEFINITIONS:**

**[RESERVED]**

[11/1/95; 20.11.5.7 NMAC - Rn, 20 NMAC 11.05.I.7, 10/1/02]

**20.11.5.8 VARIANCES:**

**[RESERVED]**

[11/1/95; 20.11.5.8 NMAC - Rn, 20 NMAC 11.05.I.8, 10/1/02]

**20.11.5.9 SAVINGS CLAUSE:**

Any amendment to 20.11.5 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance or Air Quality Control Board Regulation 5. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the ordinance, Part, or regulation section in effect at the time the violation was committed.

[11/1/95; 20.11.5.9 NMAC - Rn, 20 NMAC 11.05.I.9, 10/1/02]

**20.11.5.10 SEVERABILITY:**

If any section, subsection, sentence, phrase, clause, or wording of this Part or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining portions of this Part.

[11/1/95; 20.11.5.10 NMAC - Rn, 20 NMAC 11.05.I.10, 10/1/02]

**20.11.5.11 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[11/1/95; 20.11.5.11 NMAC - Rn, 20 NMAC 11.05.I.11 & A, 10/1/02]

**20.11.5.12 GENERAL STATIONARY SOURCES:**

No person owning or operating any stationary source, not otherwise addressed in this Part, shall cause or allow visible air contaminant emissions that exceed an opacity of 20 percent, 6 minute time-averaged.

[11/28/89. . .11/1/95; 20.11.5.12 NMAC - Rn, 20 NMAC 11.05.I.12 & Repealed; Rn, 20 NMAC 11.05.II.1, 10/1/02]

### **20.11.5.13 SPECIFIC STATIONARY SOURCES:**

The following visible emissions and operational limitations shall be applicable to the sources listed.

**A. Incinerator, Pathological Waste Destructor, or Crematorium:** No person shall cause or allow visible emissions from an incinerator, pathological waste destructor, or crematorium, allowed pursuant to 20.11.68, or 69 NMAC, to exceed 5 percent opacity during any time interval including startup and shutdown.

**B. Stationary Spark Ignition Engine:** Except for the initial 10 seconds from startup, no person shall cause or allow visible emissions from any stationary spark ignition engine to exceed 5 percent opacity, 3 minute time-averaged.

**C. Diesel-Powered Engine:** No person shall cause or allow visible emissions from any stationary diesel-powered engine to exceed 20 percent opacity, 6 minute time-averaged. During the first 20 minutes of cold startup the visible emissions shall not exceed 40 percent opacity, 6 minute time-averaged. Additionally, no increase of load shall be applied so as to cause an emission having an opacity greater than 40 percent during any time interval.

**D. Training:** The operation of equipment specifically designed for the purposes of training certified smoke observers is permissible with no limits on visible emissions providing the equipment is operated so that the emissions do not pose an annoyance to any person, private residence, or business.

[11/28/89. . .11/1/95; 20.11.5.13 NMAC - Rn, 20 NMAC 11.05.II.2, 10/1/02]

### **20.11.5.14 MOBILE SOURCES:**

**A. Motor Vehicles:** Except for the mobile sources listed below, motor vehicles are subject to the visible emission limitations required by 20.11.103 NMAC, and not this Part.

#### **B. Railroad:**

(1) No person shall cause or allow visible emissions from any moving railroad train to exceed 20 percent opacity, 6 minute time-averaged, except the restriction is not applicable in the following conditions:

(a) for a period of four consecutive minutes when a locomotive is loaded after a period of idle.

(b) for a period of one minute during acceleration under load from a throttle position other than idle to a higher throttle position.

(2) The owner or operator of any diesel powered locomotive that has been issued a Notice of Violation of this regulation, but which is not locally available for a compliance inspection, shall submit to the Department an affidavit attesting to those abatement measures which have been completed and shall state in that affidavit that the locomotive has achieved compliance with this regulation, as determined in accordance with EPA Method 9, (40 CFR 60, Appendix A).

**C. Aircraft:** No person shall cause or allow visible emissions from the operation of aircraft to exceed an opacity of 40 percent, 6 minute time-averaged. For the purposes of this regulation skywriting is excluded.

[3/24/82. . .11/28/89, 11/1/95; 20.11.5.14 NMAC - Rn, 20 NMAC 11.05.II.3, 10/1/02]

#### **20.11.5.15 TEST PROCEDURES:**

**A.** Visible emission limitations specified in this Part shall be determined by a certified observer using the standard visual method listed in 40 CFR 60 A, Method 9, or by operation of equipment approved by the Director that is known to produce equivalent or better accuracy.

**B.** Unless otherwise stated herein, emission observations shall be time-averaged over a minimum of 6 minutes. Where condensed water vapor is visible in an exhaust plume, the opacity assessment shall be made at a point consistent with the procedure stipulated in 40 CFR 60 Appendix A, Method 9.

[11/28/89. . .11/1/95; 20.11.5.15 NMAC - Rn, 20 NMAC 11.05.II.4, 10/1/02]

#### **20.11.5.16 CIRCUMVENTION:**

No person shall use any plan, activity, device or contrivance, which the Department determines will, without resulting in an actual reduction of air contaminants, conceal or appear to minimize the effects of an emission, which would otherwise violate this Part. Air introduced for dilution purposes only shall be considered circumvention of this Part.

[3/24/82. . .11/1/95; 20.11.5.16 NMAC - Rn, 20 NMAC 11.05.II.5, 10/1/02]

### **PART 6: EMERGENCY ACTION PLAN**

#### **20.11.6.1 ISSUING AGENCY:**

Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[3/24/82. . .12/1/95; 20.11.6.1 NMAC – Rn, 20 NMAC 11.06.I.1, 10/1/02]

**20.11.6.2 SCOPE:**

This Part is applicable to the Director of the air pollution control agency of Bernalillo County, New Mexico.

[12/1/95; 20.11.6.2 NMAC – Rn, 20 NMAC 11.06.I.2, 10/1/02]

**20.11.6.3 STATUTORY AUTHORITY:**

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

[3/24/82. . .12/1/95; 20.11.6.3 NMAC – Rn, 20 NMAC 11.06.I.3, 10/1/02]

**20.11.6.4 DURATION:**

Permanent.

[12/1/95; 20.11.6.4 NMAC – Rn, 20 NMAC 11.06.I.4, 10/1/02]

**20.11.6.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.6.5 NMAC – Rn, 20 NMAC 11.06.I.5 & A. 10/1/02]

**20.11.6.6 OBJECTIVE:**

To have an air emissions plan to prevent ambient pollution concentrations from substantially endangering the public health.

[12/1/95; 20.11.6.6 NMAC – Rn, 20 NMAC 11.06.I.6, 10/1/02]

**20.11.6.7 DEFINITIONS:**

[RESERVED]

[12/1/95; 20.11.6.7 NMAC - Rn, 20 NMAC 11.06.I.7, 10/1/02]

**20.11.6.8 VARIANCES:**

[RESERVED]

[12/1/95; 20.11.6.8 NMAC - Rn, 20 NMAC 11.06.I.8, 10/1/02]

**20.11.6.9 SAVINGS CLAUSE:**

Any amendment to 20.11.6 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation 27, or 20.11.6 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

[12/1/95; 20.11.6.9 NMAC – Rn, 20 NMAC 11.06.I.9, 10/1/02]

**20.11.6.10 SEVERABILITY:**

In any section, paragraph, sentence, clause, or word of this Part or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.

[12/1/95; 20.11.6.10 NMAC – Rn, 20 NMAC 11.06.I.10, 10/1/02]

**20.11.6.11 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.6.11 NMAC – Rn, 20 NMAC 11.06.I.11 & A, 10/1/02]

**20.11.6.12 APPLICABLE REQUIREMENTS:**

Under the general cognizance of the Board, the Director shall formulate and administer an emergency action plan approved by the Board and designed to provide for taking any emission control actions necessary to prevent ambient pollutant concentrations at any location in the county from reaching levels which would constitute imminent and substantial endangerment to the health of persons, which levels are described by the Director.

[3/24/82 . . . 12/1/95; 20.11.6.12 NMAC – Rn, 20 NMAC 11.06.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.06.II.1, 10/1/02]

**PART 7: VARIANCE PROCEDURE**

**20.11.7.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[3/24/82. . .12/1/95; 20.11.7.1 NMAC - Rn, 20 NMAC 11.07.I.1, 10/1/02; A, 8/1/04]

**20.11.7.2 SCOPE:**

**A.** 20.11.7 NMAC establishes procedures and criteria for obtaining a variance from a limitation or other requirement (together referred to as "limitation" in 20.11.7 NMAC) prescribed under the Air Quality Control Act, a regulation of the Albuquerque-Bernalillo county air quality control board or a permit condition imposed by the department. However, the board cannot grant a variance from federal requirements in 20.11.8 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC, 20.11.62 NMAC, 20.11.63 NMAC and 20.11.64 NMAC. Granting or approval of a variance by the board does not mean automatic approval by the EPA.

**B. Exempt:** 20.11.7 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

[12/1/95; 20.11.7.2 NMAC - Rn, 20 NMAC 11.07.I.2, 10/1/02; A, 8/1/04]

**20.11.7.3 STATUTORY AUTHORITY:**

20.11.7 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5 and 74-2-8; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3, 4 and 8; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3, 9-5-1-4 and 9-5-1-8.

[3/24/82. . .12/1/95; 20.11.7.3 NMAC - Rn, 20 NMAC 11.07.I.3, 10/1/02; A, 8/1/04]

**20.11.7.4 DURATION:**

Permanent.

[12/1/95; 20.11.7.4 NMAC - Rn, 20 NMAC 11.07.I.4, 10/1/02]

**20.11.7.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.7.5 NMAC - Rn, 20 NMAC 11.07.I.5 & A, 10/1/02]

**20.11.7.6 OBJECTIVE:**

The objective of 20.11.7 NMAC is to establish procedures and criteria by which a petitioner may seek a variance from a limitation prescribed under the Air Quality Control Act, a regulation of the Albuquerque-Bernalillo county air quality control board or a

permit condition imposed by the department. However, the board cannot grant a variance from federal requirements in 20.11.8 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC, 20.11.62 NMAC, 20.11.63 NMAC and 20.11.64 NMAC.

[12/1/95; 20.11.7.6 NMAC - Rn, 20 NMAC 11.07.I.6, 10/1/02; A, 8/1/04]

#### **20.11.7.7 DEFINITIONS:**

In addition to the definitions in 20.11.7.7 NMAC, the definitions 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.7 NMAC shall govern.

**A. "Division"** means the air quality division of the city of Albuquerque environmental health department or its successor agency.

**B. "Ex parte contact"** means oral or other communication with a board member or the board hearing officer regarding the merits of a pending variance petition if the contact occurs between the date the petition for variance is filed and the conclusion of the variance procedure, and if the contact is intended to or may affect the board member's or hearing officer's opinion regarding the merits of the pending variance petition.

**C. "Petitioner"** means a person seeking a variance from a limitation of the Air Quality Control Act, the City of Albuquerque Joint Air Quality Control Board ordinance, the Bernalillo County Joint Air Quality Control Board ordinance, a regulation of the Albuquerque-Bernalillo county air quality control board, or a permit condition imposed by the department.

**D. "Prima facie case"** means evidence submitted by the petitioner during a hearing if the evidence is sufficient on its face to entitle the petitioner to prevail, before adverse evidence is presented at the hearing.

[12/1/95; 20.11.7.7 NMAC - Rn, 20 NMAC 11.07.I.7, 10/1/02; A, 8/1/04]

#### **20.11.7.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.7.8 NMAC - Rn, 20 NMAC 11.07.I.8, 10/1/02]

#### **20.11.7.9 SAVINGS CLAUSE:**

Any amendment to 20.11.7 NMAC that is filed with the state records center shall not affect actions pending for violation of the Air Quality Control Act, a city of Albuquerque or county of Bernalillo ordinance, a regulation of the board or any permit condition

imposed by the department. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, regulation or permit condition in effect at the time the violation was committed.

[12/1/95; 20.11.7.9 NMAC - Rn, 20 NMAC 11.07.I.9, 10/1/02; A, 8/1/04]

#### **20.11.7.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of 20.11.7 NMAC is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.7 NMAC.

[12/1/95; 20.11.7.10 NMAC - Rn, 20 NMAC 11.07.I.10, 10/1/02; A, 8/1/04]

#### **20.11.7.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.7 NMAC may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.7.11 NMAC - Rn, 20 NMAC 11.07.I.11 & A, 10/1/02; A, 8/1/04]

#### **20.11.7.12 PETITION FOR VARIANCE - FEE:**

**A.** A person seeking a variance from a regulation of the board or a permit condition imposed by the department shall do so by delivering a written petition for variance to the director and the division manager. The petitioner shall use petition forms obtained from the department. The petition form shall include information regarding how the public may obtain additional information from the division regarding the petition, including information regarding the date, time and place of any variance petition hearing before the board.

##### **B. Petitions shall:**

(1) be delivered to the director and the division manager within 30 consecutive days after the date the petitioner had actual or constructive knowledge of the limitation regarding which the petitioner is seeking a variance;

(2) state the petitioner's name, address, telephone number, and, if available, facsimile number, cellular telephone number and other contact information;

(3) state the date the petition is delivered to the director and the division manager;

(4) describe the facility or activity regarding which the variance is sought, if applicable;

(5) state the address or description of the property upon which the facility is located, if applicable;

(6) identify and provide a citation to the limitation prescribed by the Air Quality Control Act, the regulation of the board or the permit condition imposed by the department regarding which the variance is sought;

(7) state in detail the extent to which the petitioner wishes to vary from the limitation;

(8) state why the petitioner believes the variance is justified and can be approved by the board consistent with the requirements of the Air Quality Control Act, specifically, Subsections A and B of 74-2-8 NMSA 1978, Variances;

(9) state any time periods, limitations and other conditions that must be included in the variance in order to comply with Subsection C of 74-2-8 NMSA 1978; and

(10) be signed by the petitioner or by a person who is authorized to sign on the petitioner's behalf. If the person signing is not the petitioner, the person signing shall state in writing the source of the authority to sign on petitioner's behalf and shall attach the proof of authority to the petition that is delivered to the division manager.

**C.** The fee for filing a variance petition that is required by Subsection J of 20.11.2.18 NMAC shall accompany the copy of the petition that is delivered to the division manager.

**D.** No later than five consecutive days after the petitioner delivers a copy of the variance petition to the director and division manager, the petitioner shall send by certified mail a copy of the variance petition to the president of each city of Albuquerque and county of Bernalillo neighborhood association within one-half mile of the existing or proposed stationary source or location, if any, that is the subject of the petition for variance. When it is considered to be warranted, because of the characteristics and mobility of the pollutant(s) and density of the population, the department and the petitioner may agree that the petitioner will notify by certified mail additional neighborhood associations beyond the one-half mile line. The address of each president shall be obtained from the city of Albuquerque government and the county of Bernalillo government, as applicable. The petitioner shall pay all costs related to the mailing. If the petitioner receives notice from the United States postal service that a certified letter was not delivered, the petitioner shall make a second, good faith effort to determine the valid neighborhood association contact and mailing address, and the petitioner shall mail or hand deliver a copy of the variance petition to that person. The petitioner shall complete a proof of delivery form obtained from the division, attach documentation establishing delivery of a copy of the petition and any additional good faith efforts to deliver, and shall deliver the completed proof of delivery form and related

documentation to the division seven consecutive days before the start of the evidentiary phase of the variance petition hearing.

[3/24/82. . .12/1/95; 20.11.7.12 NMAC - Rn, 20 NMAC 11.07.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.07.II.1, 10/1/02; A, 8/1/04; A, 11/1/04]

**20.11.7.13 ACTION BY THE DIRECTOR:**

**A.** Within 15 consecutive days after receipt of the variance petition, the director shall promptly investigate and evaluate the petition, deliver a written recommendation to each member of the board, and mail a copy of the recommendation to the petitioner by certified mail. The director may deliver a second copy of the recommendation to the petitioner by facsimile or hand delivery. When the circumstances justify, the director may extend the period of time by which the director must submit the director's recommendation to the board. The director shall notify the board and the petitioner in writing of the length of the extension and the reason for the extension. Sufficient reasons for an extension shall include failure by the petitioner to provide technical information necessary for the director to determine whether to recommend that the board grant or deny a variance.

**B. The director's recommendation shall:**

- (1) state the date that the recommendation is made;
- (2) state the director's recommendation; and
- (3) state the director's reason for the recommendation.

[3/24/82. . .12/1/95; 20.11.7.13 NMAC - Rn, 20 NMAC 11.07.II.2, 10/1/02; A, 8/1/04]

**20.11.7.14 PETITIONER, DIRECTOR AND BOARD DEADLINES AND ACTIONS:**

**A.** When the board receives the director's written recommendation, if the director recommends that the board grant a variance in whole or in part, then the board shall hold a public variance hearing. The board shall meet and decide whether to appoint a board hearing officer for the evidentiary phase of the board variance hearing, whether any hearing officer shall provide the board with proposed findings of fact and conclusions of law and a recommended decision, and the date, time and place the board will make a final decision regarding the variance petition. The board shall make a final decision regarding the variance petition no sooner than 20 consecutive days after the petitioner receives the director's recommendation required by 20.11.7.13 NMAC, and no later than 65 consecutive days after the board receives the director's recommendation that the board grant a variance in whole or in part.

**B.** Within 10 consecutive days after the board makes the procedural decisions required by Subsection A of 20.11.7.14 NMAC, the board shall send notice by certified

mail to the petitioner regarding the date, time and place of the evidentiary phase of the hearing, and the date, time and place the board will make a final decision regarding the variance petition. Within the same 10-day period, the board shall deliver a copy of the notice to the division manager. The board may also deliver a second copy of the hearing notice to the petitioner by facsimile or hand delivery.

**C.** When the board receives the director's written recommendation, if the director is opposed to the board granting the variance as requested by the petitioner, the board shall only hold a public variance hearing if the board receives a timely written request for hearing from the petitioner. The petitioner shall deliver a written request for a board variance hearing to the director and the division manager within 15 consecutive days after the petitioner receives the director's recommendation that the board deny the variance. If the petitioner delivers a timely written request for a board variance hearing to the director and the division manager, the board shall meet and decide whether to appoint a board hearing officer for the evidentiary phase of the board variance hearing, whether any hearing officer shall provide the board with proposed findings of fact and conclusions of law and a recommended decision, and the date, time and place the board will make a final decision regarding the variance petition. The board shall make a final decision regarding the variance petition no sooner than 20 consecutive days after the petitioner delivers a timely written request for a board variance hearing as required by Subsection C of 20.11.7.14 NMAC, and no later than 80 consecutive days after the board receives the director's recommendation that the board not grant the variance.

**D.** Within 10 consecutive days after the board makes the procedural decisions required by Subsection C of 20.11.7.14 NMAC, the board shall send notice by certified mail to the petitioner regarding the date, time and place of the evidentiary phase of the hearing, and the date, time and place the board will make a final decision regarding the variance petition. Within the same 10-day period, the board shall deliver a copy of the notice to the division manager. The board may also deliver a second copy of the hearing notice to the petitioner by facsimile or hand delivery.

**E.** If the petitioner fails to deliver a timely request for a board variance hearing as required by Subsection C of 20.11.7.14 NMAC, the petition shall be deemed denied, with prejudice.

[3/24/82. . .12/1/95; 20.11.7.14 NMAC - Rn, 20 NMAC 11.07.II.3, 10/1/02; A, 8/1/04; A, 11/1/04]

#### **20.11.7.15 NOTICE:**

**A.** At least 14 consecutive days before the beginning of the evidentiary phase of a board variance hearing, the board shall publish notice of the subject of the variance hearing in a newspaper of general circulation in Bernalillo county, and shall also publish the date, time and place of the evidentiary phase of the hearing and the date, time and place the board will make a final decision regarding the variance petition.

**B.** The director shall maintain a file of persons who have delivered to the director a written statement of their interest in variance hearings. The director shall make a reasonable effort to mail notice to all persons who have delivered a written statement of interest within the previous 12 months. The director shall mail written notice regarding variance recommendations made by the director, upcoming variance hearings before the board, and variance decisions made by the board.

[3/24/82. . .12/1/95; 20.11.7.15 NMAC - Rn, 20 NMAC 11.07.II.4, 10/1/02; A, 8/1/04]

#### **20.11.7.16 HEARINGS - ACTIONS BY BOARD - WRITTEN ORDER:**

**A.** Board variance hearings shall be public and shall be held at a public facility with public seating available.

**B.** Between the dates the petition for variance is filed and the conclusion of the variance procedure, no ex parte contact shall be made with a board member or the board's hearing officer. No board member or board hearing officer shall knowingly accept or participate in ex parte contact with any person regarding the merits of a pending proceeding unless the petitioner, the department and all other parties are present.

**C.** The board may designate a hearing officer to take evidence at the evidentiary phase of the variance hearing, and may designate a hearing officer to conduct the entire variance hearing. The board may direct the hearing officer to provide the board with proposed findings of fact, proposed conclusions of law and a recommended decision. A board member shall review the hearing officer's proposed findings, conclusions and recommended decision before the board member makes a final decision regarding the variance petition.

**D.** A record shall be made at each variance hearing. If the board directs a hearing officer to hold the evidence phase of a board variance hearing, and if any of the board members who will make a decision regarding the petition for variance are absent during the evidence phase of the hearing, then the absent board members shall be provided with an audio recording or transcription of the evidence phase, and the hearing record will be made available to the absent board members before the absent members make a decision regarding the variance.

**E.** In a board variance hearing, the petitioner has the burden of proof, which requires the petitioner to present a prima facie case. The petitioner shall present the petitioner's case first and must prove by a preponderance of evidence the facts the petitioner is relying on to justify the relief the petitioner seeks in the petition for variance. If the petitioner has not established a prima facie case, the board shall dismiss or deny the petition for variance, and no other person shall be required to present evidence in opposition to the petition. If the petitioner has established a prima facie case, then any person opposed to the relief sought in the petition may present evidence in opposition to the petition to show why the petition should not be granted.

**F.** A petitioner may represent himself at the hearing or be represented by any other individual authorized to represent the petitioner.

**G.** In variance hearings, the technical rules of evidence and rules of civil procedure shall not apply, but the hearings shall be conducted so that all relevant views are amply and fairly presented without undue repetition. The board may require reasonable substantiation of statements or records tendered and may require any view to be stated in writing when the circumstances justify.

**H.** At the hearing, the board shall allow all persons a reasonable opportunity to submit non-technical written and oral evidence and arguments and to introduce non-technical exhibits. Persons ***including the petitioner, but not the division for purposes of this sentence, who want to*** present oral or written technical evidence must deliver a timely statement of intent to present technical evidence as required in Subsection I of 20.11.7.16 NMAC. No later than five business days before the beginning of the evidentiary phase of the board variance hearing begins, if the division wants to present oral or written technical evidence, the division must deliver to the petitioner a statement of intent as required in Paragraphs (1) through (6) of Subsection I of 20.11.7.16 NMAC.

**I.** No later than five business days before the beginning of the evidentiary phase of the board variance hearing begins, any person who wishes to present oral or written technical evidence shall deliver a statement of intent to the director on a form obtained from the division. The statement of intent to present technical evidence shall include:

- (1) the name of the person filing the statement;
- (2) an indication of whether the person filing the statement supports or opposes the petition at issue;
- (3) the name of each witness;
- (4) an estimate of the length of the direct testimony of each witness;
- (5) a list of exhibits, if any, to be offered into evidence at the hearing; and
- (6) a summary or outline of the anticipated direct testimony of each witness.

**J.** The petitioner, the division and any person at the hearing other than a board member may call witnesses and introduce exhibits. The petitioner, the division, board members and any person present at the hearing may cross-examine any person who testifies.

**K.** No variance shall be granted until the board has considered the relative interests of the petitioner, other owners of property likely to be affected by the variance if granted, or any discharge involved, and the interests of the general public.

**L.** The board may grant the requested variance, in whole or in part, or may deny the variance. The decision made by the board shall be by written order and, at the sole discretion of the board, may be issued by the board at the end of the hearing or by the next regularly scheduled board meeting after the variance hearing is closed, or, if the hearing was conducted before a hearing officer, by the next regularly scheduled board meeting after the date the transcript of the hearing and exhibits are available for review by board members who were absent from the hearing. A copy of the board's order shall be mailed to the petitioner by certified mail. The board shall send notice of the board's decision by regular mail to all persons who appeared before, or were represented at the hearing.

**M. Orders of the board shall:**

- (1) state the petitioner's name and address;
- (2) state the date the order is made;
- (3) describe the facility for which the variance is sought, if applicable;
- (4) identify the limitation prescribed under the Air Quality Control Act, the regulation of the board, or the permit condition imposed by the department regarding which the variance was sought;
- (5) state the decision of the board;
- (6) if a variance is granted, state the period of time for which it is granted and specify a compliance schedule, if applicable; and
- (7) state the reasons for the board's decision including whether and for what reasons the board has found, upon presentation of adequate proof, both (a) that compliance with the requirement of the Air Quality Control Act, the board regulation or the permit condition regarding which the variance is being granted either will result in an arbitrary and unreasonable taking of property or will impose an undue economic burden upon a lawful business, occupation or activity, and (b) that the granting of the variance will not either result in a condition injurious to health or safety, or cause or contribute to an air contaminant level in excess of any primary national ambient air quality standards; the order of the board also shall state that the board's decision regarding the variance petition complies with all applicable requirements of NMSA 1978 Section 74-2-8.

**N.** The director shall maintain a file of all variance orders issued by the board. The file shall be open for public inspection.

**O.** The requirements of 20.11.7.16 NMAC shall apply to the stay hearing authorized by Subsection B of 20.11.7.18 NMAC.

[3/24/82. . .12/1/95; 20.11.7.16 NMAC - Rn, 20 NMAC 11.07.II.5, 10/1/02; A, 8/1/04]

**20.11.7.17 EFFECT OF ORDER OF BOARD - FAILURE TO APPEAR AT HEARING:**

**A.** An order of the board is a final administrative decision and bars the petitioner from petitioning for the same variance without specific permission from the board. At a public hearing by the board to consider again petitioner's proposal regarding the same variance, the board may consider, among other things, the development of new information and techniques to be sufficient justification for hearing a second petition.

**B.** If the petitioner or his authorized representative fails to appear at a public hearing on the variance petition, the board shall proceed with the hearing on the basis of the petition.

[3/24/82. . .12/1/95; 20.11.7.17 NMAC - Rn, 20 NMAC 11.07.II.6, 10/1/02; A, 8/1/04]

**20.11.7.18 STAY OF ENFORCEMENT:**

**A.** From the date the petition for variance is delivered to the director and the division manager until the board takes final action on the petition for variance, the petitioner may file a motion for stay with the board, requesting a stay from enforcement action by the department. The board shall only grant the stay of enforcement if the motion for stay establishes:

- (1) the likelihood that the petitioner will prevail on the merits of the petition for variance;
- (2) a showing of irreparable harm to the petitioner unless the stay is granted;
- (3) evidence that no substantial harm will result to other interested persons if the stay is granted; and
- (4) a showing that there will be no resulting harm to the public interest if the stay is granted.

**B.** When the petitioner files the motion for stay with the board, the petitioner shall also deliver a copy of the motion for stay to the department. Within 65 days after the petitioner files the motion for stay and delivers a copy to the department, the board shall hold a hearing on the motion for stay ("stay hearing"). Twenty-one days before the board holds the stay hearing, the board shall deliver to the petitioner and to the department written notice of the date, time and place of the stay hearing before the board. The requirements of 20.11.7.16 NMAC, 20.11.7.17 NMAC, and 2.11.7.19 NMAC shall apply to the stay hearing as if the stay hearing were a variance hearing.

[3/24/82. . .12/1/95; 20.11.7.18 NMAC - Rn, 20 NMAC 11.07.II.7, 10/1/02; A, 8/1/04]

**20.11.7.19 TIMELINESS:**

When the last day for performing an act falls on a Saturday, Sunday or a city of Albuquerque or Bernalillo county legal holiday, the performance of the act is timely if performed on the next succeeding day that is not a Saturday, Sunday or a city of Albuquerque or Bernalillo county legal holiday.

[3/24/82. . .11/27/91; 20.11.7.19 NMAC - Rn, 20 NMAC 11.07.II.8, 10/1/02; A, 8/1/04]

## **PART 8: AMBIENT AIR QUALITY STANDARDS**

### **20.11.8.1 ISSUING AGENCY:**

Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.

[20.11.8.1 NMAC - N, 7/1/04; A, 9/14/09]

### **20.11.8.2 SCOPE:**

**A.** 20.11.8 NMAC is applicable within Bernalillo county.

**B. Exempt:** 20.11.8 NMAC does not apply to sources within Bernalillo county, which are located on Indian lands over which the Albuquerque - Bernalillo county air quality control board lacks jurisdiction.

[20.11.8.2 NMAC - N, 7/1/04; A, 9/14/09]

### **20.11.8.3 STATUTORY AUTHORITY:**

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

[20.11.8.3 NMAC - N, 7/1/04]

### **20.11.8.4 DURATION:**

Permanent.

[20.11.8.4 NMAC - N, 7/1/04]

### **20.11.8.5 EFFECTIVE DATE:**

July 1, 2004, unless a later date is cited at the end of a section. The effective date of a specific section is located at the end of each section within the historical brackets. As

required by the New Mexico Air Quality Control Act, Chapter 74, Article 2, Section 6 NMSA 1978, no regulation or emission control requirement or amendment thereto, or repeal thereof, shall become effective until 30 days after its filing under the State Rules Act, Chapter 14, Article 4 NMSA 1978.

[20.11.8.5 NMAC - N, 7/1/04; A, 9/14/09]

**20.11.8.6 OBJECTIVE:**

To adopt local ambient air quality standards that are identical to the federal National Primary and Secondary Ambient Air Quality Standards codified at 40 CFR Part 50, and to adopt applicable state *Ambient Air Quality Standards* codified at 20.2.3 NMAC.

[20.11.8.6 NMAC - N, 7/1/04; A, 9/14/09]

**20.11.8.7 DEFINITIONS:**

The definitions in 20.11.1 NMAC apply to 20.11.8 NMAC.

[20.11.8.7 NMAC - N, 7/1/04]

**20.11.8.8 SAVINGS CLAUSE:**

Any amendment to *Ambient Air Quality Standards*, 20.11.8 NMAC, which is filed with the state records center, shall not affect actions pending for violation of a city or county ordinance, the air quality regulations for Albuquerque and Bernalillo county or a permit issued by the department. Prosecution for a violation under a prior statute, ordinance, regulation or permit shall be governed and prosecuted under the statute, ordinance or regulation in effect at the time the violation was committed.

[20.11.8.8 NMAC - N, 7/1/04; A, 9/14/09]

**20.11.8.9 SEVERABILITY:**

If any section, paragraph, sentence, clause or word of 20.11.8 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.8 NMAC.

[20.11.8.9 NMAC - N, 7/1/04]

**20.11.8.10 DOCUMENTS:**

Documents incorporated and cited in 20.11.8 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.

[20.11.8.10 NMAC - N, 7/1/04]

**20.11.8.11 INCORPORATION OF FEDERAL AMBIENT AIR QUALITY STANDARDS:**

Except as otherwise provided, the National Primary and Secondary Ambient Air Quality Standards of the United States environmental protection agency including the General Provisions thereto, codified at 40 CFR Part 50 (including appendices), as amended through January 12, 2009, are hereby incorporated into 20.11.8 NMAC. Section 20.11.8.13 NMAC is a summary of the federal and state standards incorporated in 20.11.8 NMAC.

[20.11.8.11 NMAC - N, 7/1/04; A, 9/14/09]

**20.11.8.12 INCORPORATION OF STATE AMBIENT AIR QUALITY STANDARDS:**

Except as otherwise provided, the state *Ambient Air Quality Standards* of the environmental improvement board codified at 20.2.3 NMAC are hereby incorporated into 20.11.8 NMAC. Section 20.11.8.13 NMAC is a summary of the federal and state standards incorporated in 20.11.8 NMAC.

[20.11.8.12 NMAC - N, 7/1/04; A, 9/14/09]

**20.11.8.13 SUMMARY OF FEDERAL AND STATE AMBIENT AIR QUALITY STANDARDS:**

Pollutant	Standards			
	Reference	Federal Primary	Federal Secondary	New Mexico State
<b>Carbon Monoxide (CO)</b>				
8-hour average	40 CFR 50.8	9 ppm	none	8.7 ppm
1-hour average	40 CFR 50.8	35 ppm	none	13.1 ppm
<b>Nitrogen Dioxide (NO<sub>2</sub>)</b>				
24-hour average	20.2.3.111 NMAC	none	none	0.10 ppm
Annual arithmetic mean	40 CFR 50.11	0.053 ppm	0.053 ppm	0.05 ppm
<b>Ozone (O<sub>3</sub>)</b>				
8-hour average	40 CFR 50.10	0.08 ppm	0.08 ppm	none

(The 1997 standard - and the implementation rules for that standard - will remain in place for implementation purposes as EPA undertakes rulemaking to address the transition from the 1997 ozone standard to the 2008 ozone standard).				
8-hour average	40 CFR 50.15	0.075 ppm	0.075 ppm	none
(Effective May 27, 2008)				
<b>Sulfur Dioxide (SO<sub>2</sub>)</b>				
24-hour average	40 CFR 50.4	0.14 ppm	none	0.10 ppm
3-hour average	40 CFR 50.5	none	0.5 ppm	none
Annual (arithmetic mean)	40 CFR 50.4	0.030 ppm	none	0.02 ppm
<b>Particulate Matter (PM<sub>2.5</sub>)</b>				
24-hour average	40 CFR 50.13	35 µg/m <sup>3</sup>	35 µg/m <sup>3</sup>	none
(Effective December 18, 2006)				
Annual (arithmetic mean)	40 CFR 50.7 & 40 CFR 50.13	15.0 µg/m <sup>3</sup>	15.0 µg/m <sup>3</sup>	none
<b>Particulate Matter (PM<sub>10</sub>)</b>				
24-hour average	40 CFR 50.6	150 µg/m <sup>3</sup>	150 µg/m <sup>3</sup>	none
<b>Lead (Pb)</b>				
Rolling 3-month average	40 CFR 50.16	0.15µg/m <sup>3</sup>	0.15µg/m <sup>3</sup>	none
(Effective 1 year after date of area attainment designation)				
<b>Hydrogen Sulfide</b>				
1-hr average	20.2.3.110 NMAC	none	none	0.010 ppm
<b>Total Reduced Sulfur</b>				
1/2-hour average	20.2.3.110 NMAC	none	none	0.003 ppm
<b>Particulate Matter (TSP)</b>				
24-hour average	20.2.3.109 NMAC	none	none	150 µg/m <sup>3</sup>

7-day average	20.2.3.109 NMAC	none	none	110 µg/m <sup>3</sup>
30-day average	20.2.3.109 NMAC	none	none	90 µg/m <sup>3</sup>
Annual geometric mean	20.2.3.109 NMAC	none	none	60 µg/m <sup>3</sup>

[20.11.8.13 NMAC - N, 7/1/04; A, 9/14/09]

**20.11.8.14 INTERPRETATION:**

Except as expressly provided to the contrary in these regulations, whenever two or more parts of these regulations limit, control or regulate the emissions of a particular air contaminant, the more restrictive or stringent shall govern.

[20.11.8.14 NMAC - N, 7/1/04]

**PART 9-19: [RESERVED]**

**PART 20: FUGITIVE DUST CONTROL**

**20.11.20.1 ISSUING AGENCY:**

Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.

[20.11.20.1 NMAC - Rp, 20.11.20.1 NMAC, 3/17/08]

**20.11.20.2 SCOPE:**

**A.** 20.11.20 NMAC is applicable to all sources of fugitive dust in Bernalillo county, unless otherwise exempt.

**B. Exempt:** 20.11.20 NMAC does not apply to sources within Bernalillo county that are:

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

(2) hard rock mining pits and operations contained within the mining pit and permitted pursuant to the state of New Mexico Mining Act; for the purposes of 20.11.20 NMAC, sand and gravel mining operations are not exempt;

(3) emergency maintenance operations that are intended to address an imminent threat to property or persons; however, reasonably available control measures must be employed once the emergency has been addressed, if appropriate, and a

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

(4) stationary source operations subject to 20.11.41 NMAC, *Authority to Construct*, or 20.11.42 NMAC, *Operating Permits*, that produce fugitive dust as defined in 20.11.20 NMAC, but only if the source of fugitive dust is addressed and controlled through permit conditions required by a 20.11.41 NMAC or 20.11.42 NMAC permit; however construction at a stationary source site, whether it involves new construction or a site modification, is subject to 20.11.20 NMAC.

**C. Conditionally Exempt:** The following five sources of fugitive dust emissions in Bernalillo county shall be conditionally exempt from the requirements of 20.11.20 NMAC, unless the department determines that the fugitive dust emitted from a conditionally exempt source's active operations or inactive disturbed surface area may adversely and significantly affect human health within Bernalillo county:

- (1) areas zoned for agriculture and used for growing a crop;
- (2) bicycle trails, hiking paths and pedestrian paths, horse trails or similar paths used exclusively for purposes other than travel by motor vehicles;
- (3) unpaved roadways on privately-owned easements serving residential dwellings;
- (4) lots smaller than three-quarters of an acre used for any purpose; and
- (5) unpaved roadways within properties used for ranching, or properties owned or controlled by the United States department of energy or department of defense, or United States department of agriculture forest service lands or United States department of interior park service lands if the public does not have motor vehicle access to the roadways.

[20.11.20.2 NMAC - Rp, 20.11.20.2 NMAC, 3/17/08]

### **20.11.20.3 STATUTORY AUTHORITY:**

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

[20.11.20.3 NMAC - Rp, 20.11.20.3 NMAC, 3/17/08]

**20.11.20.4 DURATION:**

Permanent.

[20.11.20.4 NMAC - Rp, 20.11.20.4 NMAC, 3/17/08]

**20.11.20.5 EFFECTIVE DATE:**

March 17, 2008, unless a later date is cited at the end of a section.

[20.11.20.5 NMAC - Rp, 20.11.20.5 NMAC, 3/17/08]

**20.11.20.6 OBJECTIVE:**

To ensure that every person shall use reasonably available control measures or other effective measures on an ongoing basis to prevent or abate fugitive dust, if the fugitive dust may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property, as required by 20.11.20 NMAC.

[20.11.20.6 NMAC - Rp, 20.11.20.6 NMAC, 3/17/08]

**20.11.20.7 DEFINITIONS:**

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

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

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

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

**D. "Business day"** means Monday through Friday, except city of Albuquerque holidays.

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

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

**G. "Disturbed surface area" or "surface disturbance"** means the natural or manmade area of the earth's surface that, as a result of anthropogenic activity, may become a source of transported material, track-out, or visible fugitive dust.

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

**I. "Dust suppressant"** means hygroscopic materials, or non-toxic chemical stabilizers used to reduce or control fugitive dust emissions during suspended operations and as a long term reasonably available control measure.

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

**K. "Fugitive dust" or "dust"** means organic or inorganic particulate matter. Water vapor, steam, or particulate matter emissions emanating from a duct or stack of process equipment are not fugitive dust.

**L. "Fugitive dust control construction permit" or "permit"** means a fugitive dust control permit approved by the department and issued pursuant to 20.11.20 NMAC that contains an approved fugitive dust control plan and authorizes active operations to begin when the permit is signed by a division manager, supervisor, scientist, field operations officer or health specialist.

**M. "Fugitive dust control plan" or "plan"** means the part or portion of the fugitive dust control construction permit or programmatic permit application that details the reasonably available control measures and other effective measures the permit applicant commits to use to reduce the quantity of visible fugitive dust, transported material, or track-out leaving the property or area under the control of the permittee and shall include contingency fugitive dust control measures, which shall be a requirement of every fugitive dust control permit.

**N. "Greenwaste"** means organic matter including, grass clippings, leaves, weeds, small shrub or tree limb cuttings, brush, stumps, and soils.

**O. "High wind event"** means a condition announced by the department consisting of wind speeds of approximately 30 miles per hour or greater that, when accompanied by dry soil conditions, that is likely to result in widespread reduced visibility due to blowing fugitive dust and that may result in elevated monitored particulate levels that may cause or contribute to an exceedance or violation of the national ambient air quality standards.

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

**Q. "Large area disturbance"** means a project or development, totaling more than 25 acres upon which active operations have been conducted and includes areas used for storage of bulk material, building or construction materials, machinery or vehicles.

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

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

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

**U. "Paved" or "paving" or "paved roadway"** means asphalt, recycled asphalt, concrete or asphaltic concrete, routinely-maintained asphalt millings, or combinations thereof, that cover a surface traveled or used by motor vehicles.

**V. "Permittee"** means a person and all legal heirs, successors, and assigns who has applied for and obtained a fugitive dust control construction or programmatic permit issued by the department pursuant to 20.11.20 NMAC.

**W. "Person"** means an individual, firm, partnership, corporation, association, organization, company, joint stock association, business trust, owner, or body politic, including a municipality, local, state or federal government agency or political subdivision, and includes an employee, officer, operator, contractor, supplier, installer, user, leaseholder, trustee, receiver, assignee or other person acting in a similar representative capacity with the authority to control transported material or emissions of particulate matter generated at a disturbed surface area or generated by activities associated with a disturbed surface area or inactive disturbed surface area.

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

**Y. "Programmatic permit"** means a fugitive dust control permit valid for up to five years issued to a permittee that performs routine maintenance or routine ongoing active operations on real property, but does not include full depth reconstruction of a roadway or substantial removal and replacement of a manmade facility. A programmatic permit shall include an approved fugitive dust control plan and shall be effective when signed by a division manager, supervisor, scientist, field operations officer or health specialist.

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

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

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

**CC. "Reasonably available control measure" or "control measure"** means a device, system, process modification, apparatus, technique, work practice, or combination thereof, that mitigates fugitive dust and includes the measures in 20.11.20.23 NMAC and any other regulatory control program that results in equivalent protection of a disturbed surface or inactive disturbed surface area, whether or not the purpose of the control measure is to mitigate dust or to meet another requirement of 20.11.20 NMAC or any other statute or regulation.

**DD. "Responsible person"** means the person designated in a fugitive dust control permit application or permit amendment who agrees to be and shall be responsible for complying with 20.11.20 NMAC, and with the permit and plan to the extent specified in the permit.

**EE. "Short cut"** means a non-dedicated roadway or route used by motor vehicle drivers to save time by avoiding use of a dedicated and authorized roadway.

**FF. "Silt"** means bulk material that passes through a 200-mesh screen using the ASTM-D 2487-93, "*classification of soils for engineering purposes (united soil classification system)*" method, or most current ASTM (American society for testing and materials) method. Material that will pass through a 200-mesh screen is 74 microns or less in size.

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

**HH. "Stabilized" or "stabilization"** means ongoing practices that are sufficient to prevent elevated monitored particulate levels that may cause or contribute to an exceedance or violation of the national ambient air quality standards by meeting the objective established in 20.11.20.6 NMAC and the requirements of the general provisions established in 20.11.20.12 NMAC.

**II. "Stockpile"** means the depositing of bulk material by mechanical means for the purpose of creating a pile formation on top of an existing natural or man-made surface.

**JJ. "Stop work order"** means an order issued by the department pursuant to the provisions of 20.11.20 NMAC that requires a person to cease active operations.

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

**LL. "Transfer of permit"** means an agreement approved in writing by the department that meets the conditions outlined in Paragraphs (1) through (6) of Subsection D of 20.11.20.14 NMAC.

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

**NN. "Unpaved roadway"** means an unpaved route traveled by a motorized vehicle.

**OO. "Visible fugitive dust"** means airborne particulate matter from a source, resulting in particulate matter emissions that can be detected by the human eye or a detection method approved by the department. Visible fugitive dust can be an indicator of PM<sub>10</sub>.

**PP. "Visible fugitive dust detection method"** means the method described in 20.11.20.26 NMAC, which is one method used to determine compliance with 20.11.20 NMAC.

[20.11.20.7 NMAC - Rp, 20.11.20.7 NMAC, 3/17/08]

#### **20.11.20.8 VARIANCES:**

A person may request a variance from 20.11.20 NMAC in accordance with the procedures established in 20.11.7 NMAC.

[20.11.20.8 NMAC - Rp, 20.11.20.8 NMAC, 3/17/08]

#### **20.11.20.9 SAVINGS CLAUSE:**

An amendment to *Fugitive Dust Control*, 20.11.20 NMAC, which is filed with the state records center and archives shall not affect actions pending for violation of a city or county ordinance, or prior versions of 20 NMAC 11.20 and 20.11.20 NMAC, *Airborne Particulate Matter*, 20.11.20 NMAC *Fugitive Dust Control*, or a permit. Prosecution for a violation of a prior statute, ordinance, part or permit shall be governed and prosecuted under the statute, ordinance, part or permit wording in effect at the time the violation was committed.

[20.11.20.9 NMAC - Rp, 20.11.20.9 NMAC, 3/17/08]

#### **20.11.20.10 SEVERABILITY:**

If any section, subsection, sentence, phrase, clause or wording of 20.11.20 NMAC or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of remaining portions of 20.11.20 NMAC.

[20.11.20.10 NMAC - Rp, 20.11.20.10 NMAC, 3/17/08]

#### **20.11.20.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.20 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.

[20.10.20.11 NMAC - Rp, 20.11.20.11 NMAC, 3/17/08]

#### **20.11.20.12 GENERAL PROVISIONS:**

**A.** Each person shall use reasonably available control measures or any other effective control measure during active operations or on inactive disturbed surface areas, as necessary to prevent the release of fugitive dust, whether or not the person is required by 20.11.20 NMAC to obtain a fugitive dust control permit. It shall be a violation of 20.11.20 NMAC to allow fugitive dust, track out, or transported material from any active operation, open storage pile, stockpile, paved or unpaved roadway disturbed surface area, or inactive disturbed surface area to cross or be carried beyond the property line, right-of-way, easement or any other area under control of the person generating or allowing the fugitive dust if the fugitive dust may:

- (1) with reasonable probability injure human health or animal or plant life;
- (2) unreasonably interfere with the public welfare, visibility or the reasonable use of property; or
- (3) be visible for a total of 15 minutes or more during any consecutive one hour observation period using the visible fugitive dust detection method in 20.11.20.26 NMAC or an equivalent method approved in writing by the department.

**B.** Failure to comply with 20.11.20.12 NMAC, a fugitive dust control permit, plan, term or condition shall be a violation of 20.11.20 NMAC.

**C.** Prior to issuing a fugitive dust control construction permit authorizing commencement of active operations, the department shall:

(1) document, in the form of photographs in electronic or hard copy formats or video recordings, the conditions of the properties that are closest to the property subject to the permit and any other properties the department believes are appropriate;

(2) maintain the documentation for one year after completion of the permitted project;

(3) include in the permit a requirement that the permittee remedy damage to real properties caused by a violation of the permit; and

(4) make the documentation available as evidence, upon request, to all parties involved in a property damage dispute allegedly caused by fugitive dust.

**D.** A permittee whose violation of 20.11.20 NMAC results in fugitive dust being deposited upon real property beyond the limits of the permitted area shall take all actions necessary to remedy damage caused by a violation proven with credible evidence. Such remedies may include, but not be limited to, compensation, removal of the fugitive dust and/or repair of any damage after obtaining permission from property owners or operators before doing any remedial work on the damaged property. It shall be a separate violation of 20.11.20 NMAC to fail to remove the fugitive dust and repair the damage as specified in a written schedule or any extension agreed to by the permittee and the owner of the damaged property. If the parties cannot agree to a schedule, the department may establish deadlines and failure to comply with the deadlines shall be a separate violation of 20.11.20 NMAC. No violation will occur if the failure to perform the corrective action is for reasons beyond the control of the person performing the work including without limitation acts of God or government preemption in connection with a national emergency or if the owner of the allegedly damaged property refuses to grant reasonable permission and access to conduct the remediation activities.

**E.** Stockpiles shall be no higher than 15 feet above the existing natural or man-made grade that abuts the stockpile, unless otherwise approved in advance and in writing by the department.

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

[20.11.20.12 NMAC - Rp, 20.11.20.12 NMAC, 3/17/08]

### **20.11.20.13 FUGITIVE DUST CONTROL PROGRAMMATIC PERMITS:**

**A.** A fugitive dust control programmatic permit is required for single or multiple facility locations to address real property totaling three-quarters of an acre or more that is subject to routine maintenance, routine surface disturbance activities, or routine ongoing active operations. A programmatic permit application and fugitive dust control plan shall be submitted on forms provided by the department. Programmatic permits are valid for up to five years. The permittee shall pay the annual programmatic permit fee required by 20.11.2 NMAC, *Fees*, for each year covered by the programmatic permit. Receipt of the annual fee by the department shall result in an automatic annual renewal of the programmatic permit. A new programmatic permit application and fugitive dust control plan shall be submitted every five years or sooner if the surface disturbance activities or fugitive dust abatement strategies are modified. A filing and review fee is not required for a programmatic permit.

**B.** A person responsible for sloped (i.e. slopes having a steepness of three-to-one or steeper) and bottom portions of interior and riverside drains and canals used for irrigation purposes, and arroyos and public flood control facilities subject to routine maintenance or repair, sedimentation and water erosion shall obtain either a variance as provided by 20.11.7 NMAC or a programmatic permit as provided by Subsection A of 20.11.20.13 NMAC if the person does not elect to submit an application and obtain a fugitive dust control construction permit pursuant to 20.11.20.14 NMAC.

**C.** No signs or photographic documentation shall be required for the permits or activities subject to 20.11.20.13 NMAC. Appropriate permit application documentation shall be determined by the department.

[20.11.20.13 NMAC - Rp, 20.11.20.13 NMAC, 3/17/08]

### **20.11.20.14 FUGITIVE DUST CONTROL CONSTRUCTION PERMITS:**

**A.** A person who does not elect to obtain or who does not qualify for a fugitive dust control programmatic permit pursuant to 20.11.20.13 NMAC and who plans to conduct active operations that will disturb three-quarters of an acre or more shall comply with either Subsection A or B of 20.11.20.18 NMAC and obtain a fugitive dust control construction permit. No active operations shall commence until a department manager, supervisor, scientist, field operations officer or health specialist signs the fugitive dust control construction permit (permit) and a copy of the signed permit is available at the site of active operations. A permit shall consist of a complete permit application a fugitive dust control plan, any appended documents, any conditions attached to the permit by the department, and a signature and effective date affixed by a department manager, supervisor, scientist, field operations officer or health specialist.

**B.** The permittee shall comply with the terms of the permit unless the department approves a transfer of the permit or issues a new permit for the active or inactive disturbed surface area of operation to a new permittee. If three-quarters of an acre or

more of the real property that is subject to the permit is transferred or sold the new owner is responsible for complying with either 20.11.20.13 NMAC or 20.11.20.14 NMAC unless exempt. Upon receipt of an amended permit signed by a department manager, supervisor, scientist, field operations officer or health specialist, the permittee who transferred or sold the real property no longer will be responsible for control of fugitive dust originating from the real property that has been transferred or sold. Permit amendment fees shall be paid as required by 20.11.20.14 NMAC.

**C.** If a person other than the permittee will be responsible for complying with the permit and 20.11.20 NMAC, then the permittee shall designate the responsible person or persons in the permit application who shall be responsible for active operations and inactive disturbed surface areas to the extent specified in the application. Before a responsible person shall be liable for a violation of the permit or 20.11.20 NMAC, the responsible person shall agree in writing to accept responsibility for compliance with the permit conditions. The responsible person shall be the first person the department attempts to contact regarding a violation of the permit or 20.11.20 NMAC. In addition, the department may approve, in writing, a permit amendment that adds or changes the responsible person who has agreed in writing to be responsible for complying with the permit and plan, to the extent specified in the permit. If the responsible person and permittee fail to comply with the provisions of 20.11.20 NMAC, the owner or operator, if different from the responsible person or permittee, shall be responsible for compliance with the permit.

**D.** An approved permit shall be valid for one year from the date of issuance by the department or until the project expiration date provided in the permit application, whichever is longer, but no more than five years from the date of issuance. If the project plan, expiration date, total disturbed surface area, completion date or the proposed control measures change in any manner, an amended or new permit is required. At least 10 business days before the expiration date, a fugitive dust control permit shall be renewed by the then-current permittee, or the permit shall expire as of the expiration date. Permit amendment or renewal fees shall be paid as required by Subsection H of 20.11.20.14 NMAC. Permits may be transferred to legal heirs, successors, and assigns, who shall become the new permittee. Permit transfers may qualify as an administrative amendment if:

(1) the department has received, on a form provided by the department, a written transfer agreement signed by the current and new permittee, and, if different than the new permittee, by the owner of the real property subject to the permit;

(2) a specific date of the transfer of the permit and plan responsibility, coverage, and liability is established in the transfer agreement;

(3) the department has determined that no change to the permit and plan other than the administrative change is necessary;

(4) the new permittee and owner have submitted the application information required by 20.11.20.15 NMAC if changes have been made to the permit and plan as deemed necessary by the department;

(5) no grounds exist for permit termination, as otherwise provided by 20.11.20 NMAC; and

(6) the transfer agreement has been approved in writing by the department.

**E.** After a permit is issued and before the start of active operations, the permittee shall install and maintain a project sign provided by the department or a project sign that meets the requirement of 20.11.20.14 NMAC. The department will establish uniform design guidelines for the sign to ensure that the sign is reasonably legible to the public. If the required information is provided in an existing project sign that has been established for another purpose, an additional sign shall not be required to comply with 20.11.20 NMAC. At a minimum, the sign shall contain the following:

(1) project name;

(2) permittee name;

(3) phone number of designated responsible person or owner;

(4) subcontractor name (optional);

(5) subcontractor phone number (optional);

(6) air quality division phone number;

(7) fugitive dust control permit number; and

(8) total acres of area to be disturbed.

**F.** The permittee or responsible person shall make the permit available to all employees, agents, sub-contractors, and other persons performing work in the area of active operations or inactive disturbed surface areas to assist in maintaining compliance with 20.11.20 NMAC. The permittee or responsible person shall explain the requirements of the permit to appropriate employees, contractors and agents working at the site. Upon request, the permittee shall provide information regarding how to obtain a copy of the permit from the department.

**G.** It is the responsibility of the permittee or responsible person to ensure that the permit or amended permit contains current contact information and that a copy is maintained at the work site and is provided to the department upon request. Failure to maintain and provide up-to-date contact information shall be a violation of 20.11.20 NMAC.

**H.** The department may amend or renew the permit if requested to do so by the permittee. No fee shall be charged for amending or renewing a permit, unless there will be an increase in the number of acres subject to surface disturbance. Both the department and the permittee must sign an amended permit before it will be effective. The department is not required to sign a renewed permit unless the renewed permit increases the number of acres subject to surface disturbance. An amended or renewed permit that involves an increase in the number of acres subject to surface disturbance shall require payment of fees as required by 20.11.2 NMAC.

[20.11.20.14 NMAC - Rp, 20.11.20.14 NMAC, 3/17/08]

**20.11.20.15 FUGITIVE DUST CONTROL CONSTRUCTION PERMITS; MINIMUM PERMIT APPLICATION REQUIREMENTS:**

Proposed fugitive dust control construction permit applications shall be submitted on forms provided by the department. Fugitive dust control plans may be submitted in any format including a copy of a program that complies with any other statute or regulation so long as the plan provides reasonably available control measures whose purpose is to mitigate fugitive dust and the plan meets the objectives of 20.11.20 NMAC. If extraneous information is supplied that does not apply to mitigation of fugitive dust, then the dust control measures shall be clearly identified in the plan or the permit application shall be deemed incomplete and shall be rejected. An incomplete permit application shall be processed as described in Subsection C of 20.11.20.18 NMAC. Proposed fugitive dust control permit applications shall include the following:

- A.** name, address, telephone number and fax number of permittee;
- B.** owner's name, address, telephone number and fax number if different from permittee;
- C.** if different than the permittee, the name, address, telephone number and fax number of the responsible person who is agreeing to, and shall be responsible for activities on the permitted site; the department shall first attempt to contact the responsible person regarding a violation of the permit;
- D.** anticipated project start date which shall be no fewer than 10 business days from the department's receipt of the permit application for areas containing greater than three quarters of an acre but no greater than 25 acres, and no fewer than 20 business days from the department's receipt of the permit application for areas containing more than 25 acres;
- E.** anticipated project completion date;
- F.** project description;

**G.** project location including, if available, street address, major cross streets or nearby intersection;

**H.** total area of disturbance in acres or square feet;

**I.** a check or money order for the fees due, calculated using the tables provided on the permit application form, payable to the 'city of Albuquerque permits program' (fund 242);

**J.** a description of the sequencing of the active operations, if phasing is used to reduce the total disturbed area at any time;

**K.** estimated total volume of bulk material being handled in cubic yards, including any bulk material being imported, exported or relocated;

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

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

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

**O.** site map (e.g. zone atlas page, aerial photograph);

**P.** type of work being performed and appropriate reasonably available control measures, as described in 20.11.20.23 NMAC, or other effective control measures proposed to be used in the fugitive dust control plan;

**Q.** a statement that effective contingency fugitive dust control measures shall be taken by the permittee if the control measures required by Subsection P of 20.11.20.15 NMAC are not effective in maintaining compliance with 20.11.20 NMAC;

**R.** a commitment to comply with provisions of Subsection B of 20.11.20.16 NMAC if the permittee chooses to preserve the ability to qualify for a high wind affirmative defense;

**S.** high wind contingency measures that will be implemented when high winds occur;

**T.** a description of the actions the permittee will take to mitigate damage caused by fugitive dust if generated by active operations or an inactive disturbed surface area on the permitted site;

**U.** other proposed conditions;

**V.** signature of the permittee, and, if a different person, signature of the owner, operator and/or any responsible person certifying that the information in the fugitive dust control permit application is true, accurate and complete, and certifying that all actions necessary to comply with 20.11.20 NMAC will be taken, including suspending active operations if necessary to comply with the provisions of 20.11.20 NMAC; and

**W.** a statement regarding whether bulk material will be stockpiled at the project site, the dimension of each stockpile, and the reasonably available control measures or other effective control measures that will be used at the stockpile area to comply with 20.11.20 NMAC.

[20.11.20.15 NMAC - Rp, 20.11.20.15 NMAC, 3/17/08]

#### **20.11.20.16 HIGH WIND EVENT REQUIREMENTS; HIGH WIND EVENT AFFIRMATIVE DEFENSE:**

**A. General requirements:** during a high wind event, all persons responsible for fugitive dust control activities on publicly or privately-owned real property where active operations are occurring or inactive disturbed surface areas exist shall use reasonably available control measures or other effective measures to prevent fugitive dust from leaving the property. All such persons shall implement the control measure required by Paragraph (5) of Subsection C, of 20.11.20.16 NMAC.

**B. High wind affirmative defense:** if the department initiates an administrative enforcement action against either a permittee or a responsible person, or both (respondent) alleging a violation of a permit or 20.11.20 NMAC during a high wind event, the respondent may assert an affirmative defense in the enforcement action if the respondent establishes by credible evidence that respondent complied with the requirements established in Subsection C of 20.11.20.16 NMAC. In order to successfully assert the affirmative defense, during the entire duration of a permit the respondent shall utilize the applicable controls described in Subsection C of 20.11.20.16 NMAC, regardless of whether or not a high wind event exists, with the exception of Paragraph (5) of Subsection C of 20.11.20.16 NMAC, which shall be required during a high wind event. The affirmative defense shall not be available if respondent has failed to diligently perform the control measures specified in Paragraphs (1) through (5) of Subsection C of 20.11.20.16 NMAC. The availability of the affirmative defense shall not change the respondent's potential liability for any damage caused by fugitive dust leaving the permitted property, and the affirmative defense shall not change the permittee's obligation to remove fugitive dust originating from the permitted source, or otherwise remedy the damage, as required by Subsection D of 20.11.20.12 NMAC. The

board, its members, and employees and officials of the city of Albuquerque and the county of Bernalillo shall not incur individual liability for damage to persons or property caused by fugitive dust leaving the permitted property.

**C. Mandatory control measures:** to assert a high wind event affirmative defense as described in Subsection B of 20.11.20.16 NMAC, a permittee shall utilize the applicable control measures in Paragraphs (1) and (2) of Subsection C of 20.11.20.16 NMAC on an ongoing basis. Without prior notice to the department, the permittee may use the measure in Paragraph (3) of Subsection C of 20.11.20.16 NMAC in place of the measure in Paragraph (1) of Subsection C of 20.11.20.16 NMAC. After receiving written permission from the department, the permittee may substitute the measures in Paragraph (4) for the measures in Paragraphs (1) and (2), or (2) and (3) of Subsection C of 20.11.20.16 NMAC. All permittees, whether or not they intend to assert a high wind affirmative defense, shall implement the measure in Paragraph (5) of Subsection C of 20.11.20.16 NMAC during a high wind event.

(1) Use of wet suppression sufficient to attain and maintain eighty percent of the optimal moisture content of the soil as determined by a proctor analysis performed by a certified public or private materials testing laboratory. For proctor analyses, either the standard proctor (ASTM D-698) or the modified proctor (ASTM D-1557) may be used. Daily, representative testing of the soil moisture content shall be taken on exposed new surfaces after the top one-half to one inch of the soil is removed at the sampling area. Three times each day, at intervals that are equally spaced throughout the work day, the respondent shall test and record the soil moisture content at three separate representative locations on the permitted property, which will result in a minimum of nine tests each day. To demonstrate compliance, any set of three tests shall average 80 percent of the optimal moisture content of the soil and no individual test shall be less than 70 percent of the optimal moisture content of the soil. Failure to meet the soil moisture content standards as required by Subsection C of 20.11.20.16 NMAC for any set of three tests shall require that the respondent immediately apply necessary control measures at the portion or portions of the representative area where the soil moisture content tested as insufficient, and re-test the same representative locations, as necessary, until the soil moisture content complies with the standards as required by Subsection C of 20.11.20.16 NMAC. The respondent or the department shall use a reasonably accurate commercially-available instrument to determine soil moisture content. Where possible, methods for determining soil moisture content shall be consistent with ASTM standards (e.g. ASTM D-1556-90 - sand cone test, ASTM D2922-91 - nuclear density). All tests for soil moisture content shall be documented and retained for the duration of the permit, and shall be made available to the department upon request.

(2) Use of properly-maintained fabric fencing material around the perimeter of the disturbed surface area with openings no wider than necessary to allow vehicles to enter or exit the area. The fencing material shall be anchored approximately six inches below the surface on the bottom edge, and when installed shall be approximately 24 or more inches above the existing natural or man-made surface. The fence shall be

installed in a durable manner. For example, one durable installation method involves use of steel T-posts spaced approximately eight to 10 feet apart with steel mesh wire used as a reinforcement backing to the fabric. Use of fabric fencing standards associated with the national pollutant discharge system may be approved by the department if they are consistent with the requirements of Paragraph (2) of Subsection C of 20.11.20.16 NMAC. The department may also approve alternative fencing material if it provides equal or better control of fugitive dust. Alternatives may include solid walls or sturdy fences that effectively control fugitive dust. To maintain effectiveness of the fence, fugitive dust that accumulates on either side of the fencing shall be removed promptly.

(3) Use of chemical dust suppressants applied in amounts, frequency and rates recommended by the manufacturer, and maintained as recommended by the manufacturer sufficient to substantially reduce fugitive dust leaving the fugitive dust source while active operations are idle, usually used when active operations are suspended for more than 48 hours.

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

(5) Stopping active operations that are capable of producing fugitive dust.

**D. Active operations during an announced high wind event:** The department shall use national weather service (NWS) data, recorded at either the Albuquerque international airport (Sunport) or Double Eagle II airport, in order to determine forecasted or actual wind speeds when announcing that a high wind event may or will occur. Wind velocity measurements taken in the field by the department, the responsible person, or permittee shall be taken at a representative active operation area on the permitted property or by the department within 200 feet of the permitted property being evaluated to determine whether active operations can be continued, resumed or initiated. Wind measurement results shall be documented and retained throughout the duration of the permit, and shall be made available to the department and the permittee and/or person responsible for controlling fugitive dust at the permitted property. A continuous one-hour wind velocity measurement with an average wind speed of less than 20 miles per hour, along with on-site stable soil conditions and effective dust control measures, as stated in the fugitive dust control plan, shall be sufficient to allow active operations during an announced high wind event. However, fluctuations in average wind speed and high wind gusts may re-occur and can cause ineffective dust control during active operations, which may result in a violation of 20.11.20 NMAC. Therefore, the responsible person or permittee shall continuously assess wind conditions and on-site soil conditions during an announced high wind event and shall maintain the reasonably available control measures which include stopping active operations as required by Paragraph (5) of Subsection C of 20.11.20.16 NMAC.

**E. Limitations on use of affirmative defense:** A respondent may not assert the affirmative defense described in 20.11.20.16 NMAC:

- (1) against an action for injunctive relief; or
- (2) to prohibit the EPA or a citizen's group from taking an enforcement action.

[20.11.20.16 NMAC - Rp, 20.11.20.16 NMAC, 3/17/08]

#### **20.11.20.17 FILING, REVIEW AND INSPECTION FEES:**

The fees required by 20.11.20 NMAC are located in 20.11.2 NMAC, Fees. The filing and review fee portion of the total permit application fee due when a fugitive dust control construction application is filed is non-refundable.

[20.11.20.17 NMAC - Rp, 20.11.20.17 NMAC, 3/17/08]

#### **20.11.20.18 FUGITIVE DUST CONTROL CONSTRUCTION PERMIT APPLICATION PROCESSING:**

**A.** A person who is required to submit a fugitive dust control construction permit (permit) application and plan for active operations that will disturb at least three-quarters of an acre, but no more than 25 acres, shall submit the permit application and plan with the applicable fees to the department no fewer than 10 business days prior to the start of active operations. Within 10 business days of the department receiving the permit application, plan and fees, the department will approve the permit, approve the permit with conditions or deny the permit.

**B.** A person who is required to submit a permit application and plan for active operations that will disturb more than 25 acres shall submit the permit application and plan with the applicable fees to the department no fewer than 20 business days prior to the start of active operations. Within 20 business days of the department receiving the permit application, plan and fees, the department will approve the permit, approve the permit with conditions or deny the permit.

**C.** The fugitive dust control plan may be in any form including a copy of a program that complies with any other statute or regulation so long as the plan provides reasonably available control measures whose purpose is to mitigate fugitive dust and the plan meets the objectives of 20.11.20 NMAC. If the plan does not specifically enumerate the control measures proposed to mitigate fugitive dust, the permit application shall be deemed incomplete and shall be rejected. If an incomplete application is rejected, a new or amended application may be filed and the time limits in Subsections A or B of 20.11.20.18 NMAC shall apply as if the initial application had not been filed.

**D.** If all requirements of 20.11.20 NMAC have been met by the applicant, the department shall issue a permit to the permittee, which shall authorize commencement of active operations. If the department has not approved, denied, or notified the applicant regarding the permit application within 30 business days of the department's receipt of the permit application, plan and fees, then the permit shall be automatically approved and operations may commence if the permittee uses the reasonably available control measures and fugitive dust control plan as submitted in the application. However, if the measures and plan are not effective, the department may initiate an enforcement action for violation of 20.11.20 NMAC.

[20.11.20.18 NMAC - Rp, 20.11.20.18 NMAC, 3/17/08]

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

**A.** No unpaved roadway greater than one-quarter mile in length and no unpaved parking areas may be constructed or allowed to be constructed or reconstructed on any publicly-owned land or privately-owned real property, unless the owner has applied for and received a permit pursuant to 20.11.20.13 NMAC or 20.11.20.14 NMAC. Owners in possession of a valid fugitive dust control permit that wish to construct additional unpaved roadways shall apply for an amendment to their permit which shall include payment of any fees required by 20.11.2 NMAC. In addition, no unpaved short-cut of any length on private or public property may be constructed or be allowed to remain usable when it is evident the short cut is being used by motor vehicle drivers to save time by avoiding use of a dedicated and authorized roadway. A variance from Subsection A of 20.11.20.19 NMAC may be granted by the board in a manner consistent with the variance procedures provided in 20.11.7 NMAC.

**B.** Owners or operators shall use reasonably available control measures on all unpaved roadways and unpaved parking areas and shall comply with the general provisions established in 20.11.20.12 NMAC.

**C. Public unpaved roadway; complaints.** If the department receives a fugitive dust complaint regarding an unpaved public roadway, the department will forward the complaint by hand delivery, inter-office mail delivery or certified mail, return receipt requested, to the governmental agency responsible for maintenance of the roadway. Within 45 calendar days from the date the complaint was received by the responsible agency, the responsible agency shall make a reasonable effort to address the complaint, and the governmental agency shall provide the department with a written report of the actions taken to resolve the complaint. Failure of the responsible agency to submit a timely report shall be a violation of 20.11.20 NMAC.

[20.11.20.19 NMAC - Rp, 20.11.20.19 NMAC, 3/17/08]

#### **20.11.20.20 ABRASIVE PRESSURE BLASTING OPERATIONS:**

A person who performs abrasive pressure blasting operations shall employ reasonably available control measures or other effective control measures at all times to comply with 20.11.20.12 NMAC and shall substantially reduce fugitive dust emissions that are leaving the property where the abrasive pressure blasting operations are taking place. A person who is conducting abrasive pressure blasting operations is not required to obtain a fugitive dust control permit from the department. However, stationary source permitting regulations, such as 20.11.41 NMAC and 20.11.42 NMAC, may apply to pressure blasting operations.

[20.11.20.20 NMAC - Rp, 20.11.20.20 NMAC, 3/17/08]

#### **20.11.20.21 CONTROL OF GREENWASTE MATERIAL:**

To prevent greenwaste from becoming ground up by the abrasive action of tires, which may then be entrained into the atmosphere as particulate matter, all persons causing, directing or authorizing greenwaste to be deposited on publicly-owned real property shall promptly remove or cause the removal of the greenwaste.

[20.11.20.21 NMAC - Rp, 20.11.20.21 NMAC, 3/17/08]

#### **20.11.20.22 DEMOLITION AND RENOVATION ACTIVITIES; FUGITIVE DUST CONTROL CONSTRUCTION PERMIT AND ASBESTOS NOTIFICATION REQUIREMENTS:**

No person shall demolish any building containing over 75,000 cubic feet of space without first delivering to the department a fugitive dust control construction permit application and fugitive dust control plan with the fee required by 20.11.2 NMAC. No active operations shall commence until a department manager, supervisor, scientist, field operations officer or health specialist signs a fugitive dust control construction permit and a copy of the signed permit is available at the site of active operations. Failure to obtain a fugitive dust control construction permit prior to commencement of demolition activities as described in 20.11.20.22 NMAC shall be a violation of 20.11.20 NMAC. All demolition and renovation activities shall employ reasonably available control measures at all times, and, when removing asbestos containing materials (ACM), shall also comply with the federal standards incorporated in 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*. A person who demolishes or renovates any commercial building, residential building containing five or more dwellings, or a residential structure that will be demolished in order to build a nonresidential structure or building shall file an asbestos notification with the department no fewer than 10 calendar days before the start of such activity. Written asbestos notification certifying to the presence of ACM is required even if regulated ACM is not or may not be present in such buildings or structures. Failure to provide proper asbestos notification shall be a violation of the requirements of 20.11.64 NMAC. Knowingly violating provisions of 20.11.64 NMAC is a fourth-degree felony pursuant to the New Mexico Air Quality Control Act, 74-2-14.C.3 NMSA 1978.

[20.11.20.22 NMAC - Rp, 20.11.20.22 NMAC, 3/17/08]

**20.11.20.23 REASONABLY AVAILABLE CONTROL MEASURES FOR FUGITIVE DUST:**

The permittee may include in the permit application one or more of the reasonably available control measures included in 20.11.20.23 NMAC or one or more alternative fugitive dust control measures, including measures taken to comply with any other statute or regulation if the measures will effectively control fugitive dust during active operations or on inactive disturbed surface areas. At minimum, all projects requiring a fugitive dust control construction permit shall utilize paved or gravel entry/exit aprons, steel grates or other devices capable of removing mud and bulk material from vehicle traffic tires, and erect a properly-maintained fabric fencing material around the perimeter of the disturbed surface area with openings no wider than necessary to allow vehicles to enter or exit the area. The fencing material shall be anchored approximately six inches below the surface on the bottom edge, and when installed shall be approximately 30 or more inches above the existing natural or man-made surface. To maintain effectiveness of the entry/exit apron, steel grate or other similar device (device), accumulated materials shall be removed promptly. To maintain effectiveness of the fence, fugitive dust that accumulates on either side of the fencing shall be removed promptly.

**A. Unpaved roadways:**

- (1) paving using recycled asphalt, routinely-maintained asphalt millings, asphaltic concrete, concrete, or petroleum products legal for such use;
- (2) using dust suppressants applied in amounts, frequency and rates recommended by the manufacturer and maintained as recommended by the manufacturer;
- (3) using wet suppression; or
- (4) using traffic controls, including decreased speed limits with appropriate enforcement; other traffic calming methods, vehicle access restrictions and controls; road closures or barricades; and off-road vehicle access controls and closures.

**B. Paved roadways:**

- (1) cleaning up spillage and track out as necessary to prevent pulverized particulates from being entrained into the atmosphere;
- (2) using on-site wheel washes; or

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

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

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

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

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

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

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

**D. Active operations in construction areas and other surface disturbances:**

(1) Short term control measures may include:

(a) wet suppression;

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

(c) watering the site at the end of each workday sufficiently to stabilize the work area;

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

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

(f) stopping active operations during high wind; or

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

(2) Long term control measures may include:

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

(b) reseeding using native grasses as specified in 20.11.20.24 NMAC;

(c) xeriscaping;

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

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

(f) mulching and crimping of straw or hay as specified in Subsection D of 20.11.20.24 NMAC;

(g) installing permanent perimeter and interior walls;

(h) using conventional landscaping techniques; or

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

**E. Bulk material handling:**

(1) using spray bars;

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

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

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

(5) stopping bulk material handling, processing, loading or unloading during high wind conditions;

(6) reducing process speeds; or

(7) reducing drop heights.

**F. Industrial sites:**

- (1) paving roadways and parking area with recycled asphalt, asphaltic concrete, concrete, or petroleum products legal for use;
- (2) performing regularly scheduled vacuum street cleaning or wet sweeping;
- (3) regularly using wet suppression on unpaved areas;
- (4) using dust suppressants applied in amounts, frequency and rates recommended by the manufacturer, and maintained as recommended by the manufacturer;
- (5) installing wind breaks;
- (6) installing enclosures;
- (7) installing on-site anemometers to measure wind speed; the anemometer should trigger a suitable warning mechanism such as a strobe light or an audible alarm (that will not violate any applicable noise ordinance) to notify on-site personnel of high wind conditions;
- (8) increasing wet suppression applications before and during high wind conditions; or
- (9) stopping active operations during high wind conditions.

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

- (1) using constant wet suppression on the debris piles during demolition;
- (2) using water or dust suppressants on the debris pile, applied in amounts, frequency and rates recommended by the manufacturer;
- (3) using enclosures;
- (4) using curtains or shrouds;
- (5) using negative pressure dust collectors; or
- (6) stopping demolition during high wind conditions.

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

- (1) constantly using wet suppression;
- (2) continuous wet sweeping during milling, grinding, or cutting operations;

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

(4) using enclosures; or

(5) using curtains or shrouds.

**I. Pressure blasting operations:**

(1) using non-friable abrasive material;

(2) using curtains, enclosures or shrouds;

(3) using negative pressure dust collectors;

(4) using constant wet suppression;

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

(6) stopping active operations during high wind conditions.

**J. Spray painting and other coatings:**

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

(2) using curtains, enclosures or shrouds.

**K. High wind contingency measures:**

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

(2) using constant wet suppression;

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

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

(5) slowing down process; or

(6) shutting down active operations.

## **L. Stockpile Formation:**

### **(1) Active stockpiles:**

- (a) applying wet suppression on a regular basis;
- (b) utilizing wind breaks (fabric fencing or other materials);
- (c) reducing vehicle speeds or using other traffic calming measures (e.g. sculpted piles); or
- (d) restricting access to stockpile areas during non-work hours.

### **(2) Inactive stockpiles:**

- (a) maintaining a stable outer crust over stockpile area;
- (b) using dust suppressants applied in amounts, frequency and rates recommended by the manufacturer, and maintained as recommended by manufacturer;
- (c) restricting access to stockpile areas; or
- (d) utilizing wind breaks (fabric fencing or other materials).

[20.11.20.23 NMAC - Rp, 20.11.20.23 NMAC, 3/17/08]

## **20.11.20.24 NATIVE GRASS SEEDING AND MULCH SPECIFICATIONS:**

**A.** If the fugitive dust control permit includes provisions to revegetate a disturbed area, the permittee may use the specifications described in 20.11.20.24 NMAC. When properly applied and maintained, these specifications have provided reasonably successful results in the past in Bernalillo county. They are included here as a reference for permittees and others who choose to use native revegetation as a long-term reasonably available control measure. However, use of these specifications does not guarantee success. Failure of any revegetation method as a long-term reasonably available control measure requires re-application or other control method approved by the department. The disturbed area shall maintain compliance with 20.11.20 NMAC.

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

(a) If the area to be seeded is along a recreational trail of any type, the seed mixes for either type of soil listed in Subsection F of 20.11.20.24 NMAC should not include four-wing saltbush and the seeding rate should be reduced by one pound per acre.

(b) Seeds may be pre-mixed by a seed dealer. Each pre-mixed bag of seed should be sealed and labeled by the seed dealer in accordance with federal seed laws and New Mexico department of agriculture labeling laws. The label should include: variety, kind of seed, lot number, purity, germination, percent crop, percent inert, percent weed (including noxious weeds), origin, test data and net weight. Federal seed laws require that analysis shall be no older than five months for seed shipped interstate and no older than nine months for seed shipped intra-state.

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

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

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

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

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

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

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

## **B. Seed bed preparation:**

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

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

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

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

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

## **C. Seeding:**

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

### **(2) Seed application:**

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

(b) **Broadcast seeding:** seed may be applied using the broadcast method when size, irregular shape, or slope exceeding three to one, prevents the use of a seed drill. Seed may be broadcast by hand or by a mechanical seeder provided that the seed is evenly distributed over the seeding area. Areas that are broadcast seeded should be

seeded at a rate that is double the rate used for drill seeding. Areas of broadcast seeding should be hand raked to cover seed.

(c) **Seeding with gravel mulch:** areas to be gravel mulched should be seeded at double the standard seed rate with one-half the seed applied prior to application of gravel and one-half of the seed applied on the surface of the gravel. Water should be applied in a quantity sufficient to wash seed from the surface and into the gravel.

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

#### **D. Hay or straw mulching:**

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

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

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

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

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

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

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

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

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

(f) The crimping operations should be across the slope where practical, but not parallel to prevailing winds. In general, crimping should be in a north-south direction or in tight interlocking "S" curves to avoid straight east-west crimp lines.

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

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

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

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

**E. Protection of native grass seeded area:** the person, owner or operator who has elected to use native seeding as a control measure shall be responsible for protecting and caring for the seeded area until plants are fully established. After project completion, the owner or operator shall repair any damage to seeded areas caused by pedestrian or vehicular traffic or vandalism. During periods of low rainfall, supplemental watering may be required to successfully establish the native grass seed. Because the owner is responsible for the fugitive emissions leaving the property, failure of the reseeding project shall not be a defense to enforcement of 20.11.20 NMAC. The owner or operator may find it necessary to reseed or use other reasonably available control measures to bring the property into compliance. The department strongly recommends that any area being seeded or mulched be adequately fenced and posted to prevent trespass traffic.

**F.** Seed specifications and rates should be used as established by the most recent edition of "*city of Albuquerque standard specifications for public works construction - native grass seeding*" section as updated by the city or as approved in writing by the department.

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

[20.11.20.24 NMAC - Rp, 20.11.20.24 NMAC, 3/17/08]

#### **20.11.20.25 REVIEW MEETING:**

**TIMELY PETITION FOR HEARING BEFORE THE BOARD:** If a permit applicant or permittee (requestor) asks the department to meet informally to review and reconsider the department's decision regarding the applicant's permit application in the manner provided by 20.11.20.25 NMAC, the process shall not extend the 30-day deadline for filing a timely petition for a hearing before the board as provided by 20.11.81 NMAC. If a requestor is adversely affected by, or disagrees with the department's decision regarding the requestor's permit application, the requestor may request an informal review meeting to discuss the department's decision. The request shall be in writing or on a form provided by the department. Within five business days after the requestor receives the department's decision regarding the permit application, the requestor shall deliver the written request to a division manager. Within five business days after a division manager receives the request, a division manager or designee shall hold an informal review meeting with the requestor and an additional division representative (e.g. the person assigned to the permit application review) in an attempt to resolve disagreements. Within two business days after the informal review meeting, a division representative shall mail, hand deliver or deliver by facsimile a statement to the requestor stating whether the department has changed its decision regarding the permit application, and, if so, specifying the change and the reason for the change. A person who participated in a 20.11.20 NMAC permitting action before the department and who is adversely affected by the decision made by the department, may follow the procedures described in 20.11.81 NMAC to petition for a hearing before the board.

[20.11.20.25 NMAC - Rp, 20.11.20.25 NMAC, 3/17/08]

#### **20.11.20.26 VISUAL DETERMINATION OF FUGITIVE DUST EMISSIONS:**

The following method, hereafter called the "visible fugitive dust detection method", is used to visually determine the total amount of time that fugitive dust emissions are visible during a continuous one-hour observation period. If a trained department observer records visible fugitive dust crossing a property line of the property being investigated, for a total of 15 minutes or more during a continuous one-hour period, a violation of 20.11.20 NMAC has occurred. The observer does not have to be certified in procedures found in 40 CFR 60, Method 9, *Visual Determination of the Opacity of Emissions from Stationary Sources* (EPA Method 9). However, the observer shall receive training regarding how to identify a violation of 20.11.20 NMAC that is caused by anthropogenic activities and to distinguish fugitive dust that emanates from a source that is not required by a board regulation other than 20.11.20 NMAC to obtain a permit. Training shall consist of attendance at and completion of the lecture portion of a Method 9 certification course and familiarity with the written materials provided during the course. The method described in Subsections A through D of 20.11.20.26 NMAC does not require the opacity of emissions to be determined during the observation period.

**A.** To correctly perform this method, the observer shall use two stopwatches. One stopwatch shall be used to record the continuous one-hour time period during which the

observation is conducted. This period shall be known as the "observation period." The second stopwatch shall be used to record the total accumulated amount of time that visible fugitive dust is crossing a property line during the observation period. The second stopwatch shall establish the "visible fugitive dust emission time".

**B.** Prior to the observation, the observer shall:

- (1) determine the location of potential fugitive dust source(s) and the location of the downwind property line for the source;
- (2) sketch the location of the fugitive dust source(s), and, when available during the observation, record the observer's location on a copy of the fugitive dust control permit map or aerial photograph;
- (3) sketch or photograph the location of the downwind property line and physical features that help define the property line;
- (4) sketch or photograph the observer's location during the observations;
- (5) sketch the position of the sun relative to the observer;
- (6) document that the visible fugitive dust is not originating from an upwind source other than the source being evaluated; and
- (7) maintain a minimum distance of at least 15 feet from the visible fugitive dust being observed, and a maximum distance of no more than one-quarter mile away.

**C.** The observer shall record:

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

**D.** The observer shall record the time of day when the observation begins. The observer shall start the first stopwatch to begin recording the observation period and shall observe along the property line. With the second stopwatch, the observer shall record the length of time visible fugitive dust is crossing the property line. The observer

shall stop the second stopwatch when the visible fugitive dust is no longer detected crossing the property line. The observer shall continue this procedure during the continuous one-hour observation period or until the visible fugitive dust emission time totals 15 minutes or greater during the continuous one-hour observation period, which is a violation of 20.11.20 NMAC. The observer shall record the time of day when the observation ends. If the observer determines that the visible fugitive dust being observed is of an intensity that may cause immediate danger to human health or safety, then, before the observation period is completed, the observer shall attempt to immediately contact the responsible person, permittee or owner.

[20.11.20.26 NMAC - Rp, 20.11.20.26 NMAC, 3/17/08]

#### **20.11.20.27 ENFORCEMENT:**

**A.** All persons shall use control measures that are effective in maintaining compliance with 20.11.20 NMAC. Violation of a fugitive dust control permit or fugitive dust control plan approved by the department is a violation of 20.11.20 NMAC. If a violation occurs or is occurring, the department may issue a verbal warning, issue a written warning, initiate an administrative enforcement action and assess an administrative civil penalty, and take all other actions authorized by law and equity, including issuing a stop work order as authorized by 20.11.20.27 NMAC.

**B.** If the department determines a person has violated or is violating a requirement or prohibition of 20.11.20 NMAC, the department may initiate an administrative enforcement action and assess an administrative civil penalty for a past or current violation, or both, as authorized by 74-2-12.A.(1) NMSA. As also authorized by 74-2-12.A.(2) NMSA and 74-2-12.1 NMSA, the department may commence a civil action in New Mexico district court for appropriate relief, including a temporary or permanent injunction. In addition, as authorized by 74-2-14 NMSA, the department also may commence or cause a criminal action to be commenced.

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

**D.** If a person (requestor) asks the department for an informal review meeting to consider the department's decision regarding an administrative compliance order in the manner provided by 20.11.20.27 NMAC, the process shall not extend the 30-day deadline for submitting a written request to the department director requesting a public hearing as provided by 74-2-12.C NMSA. If a person receives an administrative compliance order from the department, that person ("requestor") may request an informal review meeting to discuss the administrative compliance order. The request shall be in writing or on a form provided by the department. The requestor shall deliver the written request for an informal review meeting to the director and a division manager within five business days after the requestor has received the administrative compliance

order. Within five business days of receiving the request, a division manager or designee shall hold an informal review meeting with the requestor and a division representative (e.g. division manager, compliance officer, or person issuing the order) in an attempt to resolve the administrative compliance order. Within two business days after the informal review meeting, a division representative shall mail, hand deliver or deliver by facsimile a statement to the requestor with the department's final decision regarding the administrative compliance order and the reasons for the decision. If the requestor is adversely affected by the final decision made by the department, the requestor may follow the procedures described in Subsection E of 20.11.20.27 NMAC.

**E.** A person who receives an administrative compliance order and chooses not to sign the compliance order or similar document as requested by the department, and comply with its terms, may request a hearing consistent with 74-2-12.C NMSA. The decision following the hearing may be appealed consistent with 74-2-9.A NMSA.

**F.** Payment of an administrative civil penalty shall not prevent the department from taking additional enforcement actions, if the violation is repeated or an additional violation occurs. Payment of an administrative civil penalty for a prior or additional violation shall not be a defense to a subsequent action taken by the department to resolve an additional violation. Actions by the department may include suspension or revocation of a permit, as provided by 74-2-12.B NMSA, and issuance of a stop work order.

**G.** The permittee or responsible person as identified in the permit shall take all actions required by the permit to prevent a violation of 20.11.20 NMAC, including stopping active operations, if necessary. If the permittee or responsible person as identified in the permit fails to take all required actions, the owner or operator, if different, shall take all actions required to prevent or satisfactorily resolve a violation of 20.11.20 NMAC, including stopping active operations, if necessary.

**H.** The department may issue a stop work order, which shall suspend all active operations except for the required application of reasonably available control measures. The department also may revoke a permit issued by the department if the permittee fails to implement the reasonably available control measures required by the fugitive dust control permit.

**I.** If a person fails to obtain a permit as required by 20.11.20 NMAC, the department may issue a stop work order which shall require all active operations at a site to stop except for application of reasonably available control measures.

**J.** The stop work order, which shall be effective 24 hours after the person, permittee, owner, operator, or responsible person named in a permit receives the stop work order, unless an earlier deadline for stopping work or other activities is imposed by the department for good reason. The stop work order shall remain in effect until the person, permittee, owner, operator, or responsible person named in the permit demonstrates to the satisfaction of the department that the activities of the person,

permittee, owner, operator or responsible person named in the permit comply with the provisions of 20.11.20 NMAC.

[20.11.20.27 NMAC - Rp, 20.11.20.27 NMAC, 3/17/08]

#### **20.11.20.28 PUBLIC OUTREACH AND TRAINING:**

**A.** The department shall provide or approve public education regarding reducing fugitive dust. The department shall maintain an electronic information system using the Internet in order to provide access to the general public and regulated business community regarding fugitive dust control programs, activities, regulations, regulatory requirements, forms and information.

**B.** The department shall implement a program to provide training at no cost to individuals who are or may be required to comply with provisions of 20.11.20 NMAC. Approximately twice per year, the department shall provide or approve training workshops on fugitive dust and its control to persons who conduct or participate in projects involving active operations and to other interested persons. When a person attends the training and successfully passes a test, the department or approved trainer shall issue a certificate stating that the person has successfully completed the training.

[20.11.20.28 NMAC - Rp, 20.11.20.28 NMAC, 3/17/08]

#### **20.11.20.29 COMPLAINTS:**

The department shall respond to complaints from residents, businesses and others in a timely manner, but in no case shall the initial response take longer than three business days.

[20.11.20.29 NMAC - Rp, 20.11.20.29 NMAC, 3/17/08]

### **PART 21: OPEN BURNING**

#### **20.11.21.1 ISSUING AGENCY:**

Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.

[6/14/71. . .12/1/95; 20.11.21.1 NMAC - Rn, 20 NMAC 11.21.I.1, 10/1/02; A, 7/11/11]

#### **20.11.21.2 SCOPE:**

**A.** 20.11.21 NMAC is applicable to sources within Bernalillo county.

**B. Exempt:** 20.11.21 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque - Bernalillo county air quality control board lacks jurisdiction.

[12/1/95; 20.11.21.2 NMAC - Rn, 20 NMAC 11.21.I.2, 10/01/02; A, 12/31/03; A, 7/11/11]

**20.11.21.3 STATUTORY AUTHORITY:**

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

[6/14/71. . .12/1/95; 20.11.21.3 NMAC - Rn, 20 NMAC 11.21.I.3, 10/1/02; A, 12/31/03; A, 7/11/11]

**20.11.21.4 DURATION:**

Permanent.

[12/1/95; 20.11.21.4 NMAC - Rn, 20 NMAC 11.21.I.4, 10/1/02]

**20.11.21.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.21.5 NMAC - Rn, 20 NMAC 11.21.I.5 & A, 10/1/02]

**20.11.21.6 OBJECTIVE:**

To ensure that all persons conduct open burning in a manner that prevents or abates emissions from fires in the open, which, as a general class, produce visible emissions and noxious byproducts of combustion.

[3/24/82. . .12/1/95; 20.11.21.6 NMAC - Rn, 20 NMAC 11.21.I.6, 10/1/02; A, 12/31/03]

**20.11.21.7 DEFINITIONS:**

In addition to the definitions in Section 20.11.21.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.21 NMAC shall govern.

**A. "Agricultural burning"** means the burning of crop residues for field preparation or that is otherwise used for the production of a crop.

**B. "Alternative to burning"** means a treatment employing manual, mechanical, chemical, or biological methods to manage vegetation or fuel loads, or land management practices that treat vegetation (fuel) without using fire. A treatment or practice may only be considered an alternative if it has successfully been used to take the place of fire for at least three consecutive years. Suggested alternatives to burning are listed in Section 20.11.21.18 NMAC.

**C. "Biomass utilization"** means any method of removing and taking biomass material to a landfill, burn facility, a power generation facility, an ethanol production facility, a redistribution facility, a fiberboard or particleboard facility, using the material as compost or mulch, using it as animal bedding, for erosion control, etc.

**D. "Broadcast burn"** means the controlled application of fire to wildland fuels in their natural or modified state over a predetermined area. Broadcast burns do not include the burning of wildland fuels that have been concentrated in piles by manual or mechanical methods.

**E. "Burn down"** means that period of time, not to exceed three (3) hours, after a no-burn period is announced by the director, within which period a person operating a solid fuel heating device must cease combustion within any solid fuel heating device by withholding fuel or modifying the air-to-fuel ratio.

**F. "Burner"** means the person who is responsible for or in control of a prescribed fire project that is regulated under 20.11.21 NMAC.

**G. "Burn project"** means, in prescribed fires or in wildland fire use, a burn regulated by 20.11.21.15 NMAC on an area that is contiguous and is being treated or managed for the same land management objectives.

**H. "Class I area"** means all international parks, national wilderness areas which exceed 5,000 acres, national memorial parks which exceed 5,000 acres, and national park areas which exceed 6,000 acres in size and which were in existence on the date of enactment of the Clean Air Act Amendments of 1977. The extent of the areas designated as class I shall conform to any changes in the boundaries of such areas, which occurred subsequent to the date of the enactment of the Clean Air Act Amendments of 1977 or 1990.

**I. "Department"** means the Albuquerque environmental health department, which is the administrative agency of the Albuquerque - Bernalillo county air quality control board.

**J. "Director"** means the administrative head of the Albuquerque environmental health department or a designated representative(s).

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

**L. "Emission reduction technique" or "ERT"** means a control strategy used to reduce smoke from a prescribed fire that results in less smoke than would have been produced if the emission reduction technique were absent. A control strategy used for a period of fewer than three years is an emission reduction technique; if the control strategy replaces fire for three consecutive years or more, the control strategy is an alternative to burning.

**M. "Environmentally non-essential burning"** means the open burning of any unwanted combustible material which could otherwise reasonably be altered, destroyed, reduced or removed to a suitable disposal site without the potential to cause environmental harm or damage.

**N. "Environmentally poor burning substances"** include but are not limited to: refuse, paper, rubbish, books, magazines, fiberboard, packaging, rags, fabrics, animal waste, waste oil, liquid or gelatinous hydrocarbons, tar, paints and solvents, chemically treated wood, plastic or rubber, office records, sensitive or classified wastes, hazardous or toxic substances, interiors of wrecked vehicle bodies or other materials which are difficult to burn without producing significant amounts of noxious or toxic fumes or dense smoke.

**O. "Health alert"** means an air pollution alert, warning or emergency issued by the department.

**P. "Hot torch"** means a wand or burner fueled by propane, butane or compressed natural gas.

**Q. "Hot torch burning"** means burning of individual weeds at the point of the hot torch.

**R. "No-burn period"** means a period of time, declared by the director, during which no person with authority or power to control the operation of a solid fuel heating device shall allow the operation of a solid fuel heating device to continue, following a burn down period, within the wood smoke impacted area, unless the device is a wood heater that has been emission certified by the EPA. Exemptions may be granted by the director per 20.11.22.2 NMAC. No-burn periods may be declared any time from October 1 through February 28. The director shall declare a no-burn period after reviewing available meteorological data, air pollution monitoring data and other relevant information and determining that expected atmospheric conditions will not adequately disperse wood smoke.

**S. "Open burning"** means the combustion of any substance which is not confined in a device having controllable fuel/air mixture capable of achieving nearly complete combustion, and from which combustion products are discharged into the open air without passing through a stack, duct, chimney, or vent.

**T. "PB-I" or "level I prescribed burn"** means a smoke management burn project that emits less than one ton of PM<sub>10</sub> emissions per day or burns less than 5,000 cubic feet pile volume of vegetative material per day.

**U. "PB-II" or "level II prescribed burn"** means a smoke management burn project that emits one ton or more of PM<sub>10</sub> emissions per day or burns 5,000 cubic feet or more pile volume of vegetative material per day.

**V. "Pile"** means vegetative materials that have been relocated and heaped together either by hand or machinery.

**W. "Pile volume"** means the gross volume of a pile, including the air space between solid constituents, as calculated from the overall dimensions and shape of the pile.

**X. "PM<sub>10</sub> emissions" or "PM<sub>10</sub>"** means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air, as measured by the reference method in 40 CFR Part 50, Appendix J, or equivalent method approved by the EPA.

**Y. "Population"** means the total number of individuals occupying an area. Locations for individuals within an area include, but are not limited to, open campgrounds, single-family dwellings, hospitals, schools in use, villages, and open places of employment.

**Z. "Prescribed fire" or "prescribed burn" or "PB"** means any fire ignited by any person to meet specific non-agricultural land management objectives. For the purposes of 20.11.21 NMAC, wildland fire use is considered a prescribed fire.

**AA. "Public notification"** means any method that communicates burn information to the burners, air regulators, Bernalillo county fire department, the local fire authority, and to the general public.

**BB. "Research and development activities"** means scientific experimentation using open burning to prove a concept or produce information useful in planning.

**CC. "Vegetative material"** means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, shavings, grass, grass clippings, weeds, leaves, conifer needles, bushes, shrubs, clippings from bushes and shrubs, and agricultural plant residue.

**DD. "Ventilation index"** means a technical rating used to establish the potential for smoke or other pollutants to ventilate away from its source.

**EE. "Ventilation index category"** means a category in the ventilation index that is determined as provided in Section 20.11.21.17 NMAC and is rated as excellent, very good, good, fair or poor.

**FF. "Wildfire"** means an unplanned or unwanted fire that burns vegetative material in a natural or modified state.

**GG. "Wildland"** means an area in which there is minimal development, except for roads, railroads, power lines and similar utilities and transportation facilities. Structures, if any, are widely scattered.

**HH. "Wildland fire use"** means the management of wildfire within a wildland that is ignited by natural forces, such as by lightning or volcanic eruption, following a decision to allow the wildfire to burn to accomplish specific pre-stated resource objectives in predefined geographic areas, also known as fire use, wildfire use, prescribed natural fire, and fire for resource benefit.

**II. "Winter pollution advisory season" or "no-burn season"** means the period from October 1st through February 28th each year when no-burn calls are made. The no-burn call is a control strategy designed to protect the air quality in Bernalillo county. This strategy helps mitigate particulate matter and carbon monoxide build up during the colder months of the year when temperature inversions trap pollutants closer to ground level.

**JJ. "Wood smoke impacted area"** means that portion of Bernalillo county that is the most adversely affected by the burning of wood during atmospheric conditions that the director concludes may not adequately disperse wood smoke. The wood smoke impacted area is bounded on the north and south by the Bernalillo county line, on the west by the universal transverse meridian (UTM) line 337000mE and on the east by the UTM line 367000mE, Zone 13.

[1/3/85. . .6/16/92, 12/1/95; 20.11.21.7 NMAC - Rn, 20 NMAC 11.21.I.7, 10/1/02; A, 12/31/03; A, 7/11/11]

#### **20.11.21.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.21.8 NMAC - Rn, 20 NMAC 11.21.I.8, 10/1/02]

#### **20.11.21.9 SAVINGS CLAUSE:**

Any amendment to 20.11.21 NMAC, that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance or 20.11.21 NMAC. Prosecution for a violation under a prior statute, ordinance or regulation shall be

governed and prosecuted under the statute, ordinance or regulation in effect at the time the violation was committed.

[12/1/95; 20.11.21.9 NMAC - Rn, 20 NMAC 11.21.I.9 & A, 10/1/02; A, 12/31/03; A, 7/11/11]

#### **20.11.21.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of 20.11.21 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.21 NMAC.

[12/1/95; 20.11.21.10 NMAC - Rn, 20 NMAC 11.21.I.10, 10/1/02; A, 7/11/11]

#### **20.11.21.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.21 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.21.11 NMAC - Rn, 20 NMAC 11.21.I.11 & A, 10/1/02; A, 7/11/11]

#### **20.11.21.12 OPEN BURNING PROHIBITED:**

**A.** Open burning on private or public property (including burning of environmentally poor burning substances and vegetative materials), is prohibited in Bernalillo county unless authorized under Section 13, 14, or 15 of 20.11.21 NMAC. In addition to complying with 20.11.21 NMAC, every person who plans to conduct open burning shall obtain all applicable permits and comply with all applicable restrictions of the Bernalillo county fire department and the Albuquerque fire department, prior to burning.

**B.** Compliance with 20.11.21 NMAC shall not relieve any person from complying with all other applicable statutes, ordinances and regulations.

**C.** Open burning allowed under Sections 13, 14, or 15 of 20.11.21 NMAC shall be suspended during declared "no burn periods" during the winter pollution advisory season or when an air pollution health alert is issued. A waiver from the no burn restriction may be granted for extenuating circumstances by following the process in Subsection D of 20.11.21.12 NMAC. A no burn waiver may be rescinded in the event of a health alert.

**D.** The burner may apply for a waiver by submitting a written application for waiver to the department at least two weeks prior to the planned burn event. The burner shall document the reasons for requesting the waiver in the application for a waiver. The department shall notify the burner no later than one week prior to the planned burn event whether the waiver is granted or denied, and, if denied, the reasons for the denial.

The department shall consider each waiver request on a case-by-case basis. An applicant for a waiver may challenge the department's denial of a waiver by following the procedures established in 20.11.21.21 NMAC. A person adversely affected by the department's granting of a waiver may challenge the department's decision by following the procedures established in Subsection B of 20.11.21.21 NMAC.

[1/3/85, 12/1/95; 20.11.21.12 NMAC - Rn, 20 NMAC 11.21.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.21.II.1, 10/1/02; A, 12/31/03; A, 7/11/11]

**20.11.21.13 CONDITIONALLY ALLOWED OPEN BURNING WITH A PERMIT:**

**A.** Open burning may be allowed for the purposes described in Table I if, prior to burning, an open burning permit has been obtained from: 1. the Albuquerque environmental health department (as required by Subsections B and C of 20.11.21.13 NMAC); and 2. the Bernalillo county fire department or the Albuquerque fire department as applicable.

**Table I**

**OPEN BURNING PERMITS FOR MULTIPLE AND SINGLE EVENTS**

Permit Basis		Purpose and Conditions
Multiple Event	Single Event	
X	X	1. Timber and forest management (permit required for burns one-quarter acre through 10 acres in size, or up to 1000 cubic feet of pile volume per day).
	X	2. Disease control of dead animals and plants.
X	X	3. Research and development activities (single-event permit required for burns of 2,000 gallons or more liquid fuel or 5,000 pounds or more solid fuel).
Up to 2,000 lbs	Greater than 2,000 lbs	4. Disposal of explosives by burning, to avoid hazards of transport or handling.
Up to 2,000 lbs	Greater than 2,000 lbs	5. <i>Above-ground</i> detonation of more than 20 pounds of explosives.
Up to 35,000 lbs	Greater than 35,000 lbs	6. <i>Below-ground</i> detonation of more than 20 pounds of explosives.

Permit Basis		Purpose and Conditions
Multiple Event	Single Event	
X	X	7. Ignition of rocket motors containing more than 4,000 pounds fuel (single-event permit required for motors containing more than 8,000 pounds fuel).
X		8. Fire fighter and rescue training (fuel and conditions appropriate for the activity). No environmentally poor burning substances may be burned unless essential to simulate the needed training conditions. Training burns shall comply with 20.11.64.11 NMAC and 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants, Subpart M, <i>National Emission Standard for Asbestos</i> .
X	X	9. Hot torch burning of weeds along ditches, channels, public rights of way, or other <i>public property</i> .
X	X	10. Agricultural burning (permit required for burns one-quarter acre through 10 acres in size, or up to 1000 cubic feet of pile volume per day).
	X	11. Any special condition which would otherwise be prohibited but for which there is an unusual need where burning would best serve the public interest overall.

**B.** A person seeking a multiple or single event permit for the purposes described in Table I shall deliver the following information to the department in letter form or by a department approved electronic notification method at least five business days in advance of the single or multiple event burn:

- (1) the requestor's name, address, and telephone number;
- (2) location where burning is to be conducted;
- (3) type and quantity of ignitable material and fuel; and
- (4) additional required information:
  - (a) date(s) when the burning is to be conducted;
  - (b) for multiple burn events, the estimated number, character, and schedule of fires to be conducted;

(c) general description of method to ignite, maintain, control, and terminate the burning;

(d) reasons why the requestor believes the burning is necessary;

(e) what alternatives to burning have been considered and why they were not chosen instead of burning; and

(f) for multiple event permits, the number and character of similar fires conducted during the previous permit cycle for which renewed approval is sought.

(5) In the event of an emergency necessitating a single event permit, the above process may be handled by telephone if the department is in agreement and the information is promptly delivered to the department in writing. In case of such emergency, the five-business-day notice requirement may be waived at the discretion of the department. Information supplied to the department relative to planned burning shall be construed to be part of the conditions of the permit issued pursuant thereto. Any later need to deviate from the original plan must be reported to and approved by the department in order to maintain the validity of the permit.

**C.** Upon receipt of a request for a single event or multiple event open burning permit, the department shall evaluate the application and decide whether to grant the permit, deny the permit or grant the permit with additional conditions that the department believes to be in the best interest of the local community and consistent with the board's intent, to eliminate "environmentally non-essential burning". Multiple event permits shall only be renewed by the department following a re-evaluation of all the information provided in the renewal request. The department shall consider the need to burn, anticipated atmospheric conditions and other factors the department determines are relevant.

**D.** After evaluation of the applicant's request, the department shall respond to the applicant at least 24 hours in advance of the scheduled open burn event in writing or by a department-approved electronic notification method advising the applicant of its findings, including any additional conditions deemed necessary. In an emergency, preliminary information regarding the department's decision should first be telephoned to the applicant if possible, to expedite issues of immediate need.

**E.** If an applicant for a permit under 20.11.21.13 NMAC is not satisfied with either the conditions or denial of the applicant's request, the applicant may request an administrative hearing on the merits before the board consistent with 20.11.21.21 NMAC.

**F.** Any multiple or single event permit issued under this 20.11.21.13 NMAC may be revoked or suspended if the applicant fails to comply with the permit provisions therein, and the permittee may be subject to enforcement actions.

**G.** For permits issued pursuant to 20.11.21.13 NMAC: Single-event permits shall only be valid for one month and multiple-event permits shall only be valid for one year, unless stipulated otherwise in the permit.

[12/1/95; 20.11.21.13 NMAC - Rn, 20 NMAC 11.21.II.2, 10/1/02; A, 12/31/03; A, 7/11/11]

**20.11.21.14 CONDITIONALLY ALLOWED OPEN BURNING NOT REQUIRING A PERMIT FROM THE ENVIRONMENTAL HEALTH DEPARTMENT:**

Open burning is allowed for the purposes set forth in Table II if: 1. the burn complies with the time requirements specified in Table II; and 2. prior to burning, the person planning to conduct open burning obtains all permits and complies with all restrictions required by the Bernalillo county fire department and the Albuquerque fire department, as applicable (e.g. 25 feet from any structure; pile size no greater than three feet in diameter and two feet high; no offensive or objectionable smoke or odor emissions; atmospheric conditions or local circumstances that make such fires hazardous, etc.).

**Table II**

**CONDITIONALLY ALLOWED OPEN BURNING**

<b>Type of Burning</b>	<b>Time Restrictions</b>
1. Cooking food.	No limit on time of day
2. Recreational or ceremonial bonfires.	
3. Dead and dry weed removal on private residential, commercial or industrial property, and hot torch weed control on private residential property.	11 AM to 3 PM October through March  6 AM to 5 PM April through September
4. Small-scale fire extinguisher training (fewer than 50 participants).	No limit on time of day

[1/3/85. . .12/1/95; 20.11.21.14 NMAC - Rn, 20 NMAC 11.21.II.3, 10/1/02; A, 12/31/03; A, 7/11/11]

**20.11.21.15 SMOKE MANAGEMENT; PRESCRIBED BURNS; WILDLAND FIRE USE; WILDFIRES UNDER SUPPRESSION:**

20.11.21.15 NMAC applies to all persons who intend to use prescribed fire to burn more than 10 acres or more than 1,000 cubic feet of pile volume of vegetative material per day. Specified portions of 20.11.21.15 NMAC also apply to the land manager or owner of property on which a wildfire occurs.

**A. Materials allowed to be burned:** Only vegetative material shall be burned, with the following exceptions:

(1) auxiliary fuel or incendiary devices may be used to start the burning authorized by 20.11.21.15 NMAC, provided that:

(a) no oil heavier than No. 2 diesel shall be used; and

(b) no more than the minimum amount of auxiliary fuel necessary to start the fire shall be used.

(2) Polyethylene sheeting may be burned with the vegetative materials, provided that:

(a) the sheeting has been covering piled vegetative material for at least one month prior to burning;

(b) the amount of sheeting burned is no more than the minimum necessary to cover the pile;

(c) removal of the sheeting before burning is impractical; and

(d) the burner is able to provide evidence, such as purchase records or package labeling, that establish the sheeting is polyethylene and not some other form of plastic.

**B. Requirements for PB-I:** For any burn project expected to produce less than one ton of PM<sub>10</sub> emissions per day or burn less than 5,000 cubic feet pile volume per day, all of the following requirements shall apply.

(1) The burner shall burn only under appropriate dispersion conditions. In order to accomplish this objective, the burner shall follow either Subparagraph (a) **or** (b) of Paragraph (1) of Subsection B of 20.11.21.15 NMAC.

(a) The burner shall:

(i) ignite burns only during the hours from one hour after sunrise until one hour before sunset; the burner may apply for a waiver of this requirement by submitting a written application for waiver to the department at least two weeks prior to the planned burn project; the burner shall document the reasons for requesting the waiver in the application for a waiver; the department shall notify the burner no later than one week prior to the planned burn project whether the waiver is granted or denied, and, if denied, the reasons for the denial; the department shall consider each waiver request on a case-by-case basis; and

(ii) conduct burn projects at least 300 feet from any occupied dwelling, workplace, or place where people congregate, which is on property other than the burn project location; the burner may apply for a waiver of this requirement by submitting a written application for waiver to the department at least two weeks prior to the planned

burn project; the burner shall document the reasons for requesting the waiver in the application for a waiver; the department shall notify the burner no later than one week prior to the planned burn project whether the waiver is granted or denied, and, if denied, the reasons for the denial; and the department shall consider each waiver request on a case-by-case basis; **or**

(b) The burner shall:

(i) only burn during times when the ventilation index category is rated "good" or better, as determined by using the methodology outlined in 20.11.21.17 NMAC, unless a waiver has been granted by the department; the burner may apply for a waiver of this requirement by submitting a written application for waiver to the department no later than 10:00 a.m. one business day prior to the planned burn project; the burner shall document the reasons for requesting the waiver in the application for a waiver; the department shall notify the burner no later than 3:00 p.m. one business day prior to the planned burn project whether the waiver is granted or denied, and, if denied, the reasons for the denial; the department shall consider each waiver request on a case-by-case basis; and

(ii) conduct visual monitoring and document the results in writing; the results shall evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, and the duration of the smoke plume(s), and corresponding time-of-day information; use of onsite instruments to record the wind speed and direction is encouraged; no later than six months after the burn project, the burner shall submit records of these results to the department; for burn projects planned to be conducted within a one mile radius of a population, the department may require the burner to notify the department no later than two business days prior to the planned burn project so that the department may determine whether to conduct instrument monitoring, in addition to the visual monitoring conducted by the burner; and the need for instrument monitoring by the department shall be determined by the department on a case-by-case basis.

(2) The burner shall notify the local fire authorities prior to igniting a burn.

(3) The burner shall register the burn project with the department (on a registration form obtained from the department), no later than 10:00 a.m. one business day prior to the planned ignition of the burn project. The department shall provide the burner with a registration number for the burn project. Prior to igniting the burn project, if the burner has not received the registration number, the burner shall make a good faith effort to contact the department to obtain the registration number. If the burner is not able to obtain a registration number before igniting the burn, the burner shall obtain a registration number from the department as soon as possible. For burn projects longer than seven consecutive days, the burner shall notify the department every seven days when burning is to be conducted under that burn project registration. The burner shall not burn more area or volume than the burner has included in the registration form submitted to the department.

(4) The burner shall submit a completed burn project tracking form to the department (on a tracking form obtained from department), no later than two weeks following completion of the burn project.

(5) For burn projects conducted within a one-mile radius of a population, the burner shall comply with the following additional requirements:

(a) the burner shall conduct visual monitoring and document the results; the results shall evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, the duration of the smoke plume(s), and corresponding time-of-day information; use of onsite instruments to record the wind speed and direction is encouraged; documentation through use of photographs, with the date, time, and other relevant information noted on the photographs, is also encouraged; and no later than six months after the burn project, the burner shall submit records of these results to the department; and

(b) The burner shall conduct public notification of any population(s) within a one-mile radius of the burn project at least two days prior to, but no earlier than 30 days in advance of igniting a burn project; and the method of notification shall be an advertisement in a newspaper of general circulation in the area where the burn will take place, or other means, as approved by the department to ensure that adequate notice is provided to the affected public.

(6) An applicant for a waiver may challenge the department's denial of a waiver by following the procedures established in 20.11.21.21 NMAC. A person adversely affected by the department's granting of a waiver may challenge the department's decision by following the procedures established in Subsection B of 20.11.21.21 NMAC.

**C. Requirements for PB-II:** For any burn project expected to produce emissions greater than or equal to one ton of PM<sub>10</sub> emissions per day or expected to burn 5,000 cubic feet pile volume per day or more, all of the following requirements shall apply.

(1) The burner shall review smoke management educational material supplied by the department or complete a department-approved smoke management training program prior to initiating burning.

(2) The burner shall consider alternatives to burning and shall document the alternatives considered and the rationale for not utilizing alternatives provided in 20.11.21.18 NMAC on a form obtained from department.

(3) The burner shall implement at least one emission reduction technique included in 20.11.21.19 NMAC and shall document the techniques implemented on a form obtained from the department. The burner may apply for a waiver of this requirement by submitting a written application to the department at least two weeks

prior to the planned burn project. The burner shall document the reasons for requesting the waiver in the application for a waiver. The department shall notify the burner no later than 10:00 a.m. one week prior to the planned burn project whether the waiver is granted or denied, and, if denied, the reasons for the denial. The department shall consider each waiver request on a case-by-case basis.

(4) The burner shall only burn during times when the ventilation index category is "good" or better, as determined by using the methodology outlined in 20.11.21.17 NMAC, unless a waiver has been granted by the department. The burner may apply for a waiver of this requirement by submitting a written application to the department no later than 10:00 a.m. one business day prior to the planned burn. The burner shall document the reasons for requesting the waiver in the application for a waiver. The department shall notify the burner no later than 3:00 p.m. one business day prior to the planned burn whether the waiver is granted or denied, and, if denied, the reasons for the denial. The department shall consider each waiver request on a case-by-case basis.

(5) The burner shall conduct visual monitoring and shall document the results. The results shall evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, and the duration of the smoke plume(s). Use of onsite instruments to record the wind speed and direction is encouraged. Documentation through use of photographs, with the date, time, and other relevant information noted on the photographs, is also encouraged. No later than six months after the burn project, the burner shall submit records of these results to the department.

(6) The burner shall notify the local fire authorities prior to igniting a burn.

(7) The burner shall register a burn project with the department on a registration form obtained from the department at least two weeks prior to planned ignition of the burn. The department shall provide the burner with a registration number for the burn project. Prior to igniting the burn project, if the burner has not received the registration number, the burner shall make a good faith effort to contact the department to obtain the registration number. If the burner is not able to obtain a registration number before igniting the burn, the burner shall obtain a registration number from the department as soon as possible. For burn projects longer than seven consecutive days, the burner shall notify the department every seven days when burning is to be conducted under that burn project registration. The burner shall not burn more area or volume than the burner has included in the registration form submitted to the department.

(8) The burner shall notify the department of the intent to burn on a specific date no later than 10:00 a.m. one business day prior to the planned burn project. The notification may be made up to a seven days prior to igniting the burn. The department shall notify the burner of the receipt of the notification by 11:00 a.m. on the day the department receives the notification. If the department has not notified the burner by

11:00 a.m., and prior to igniting the burn, the burner shall make a good faith effort to contact the department to verify that the department received the notification. The burner shall not burn more area or volume than the burner included in the registration. The department shall notify the burner no later than 3:00 p.m. one business day prior to the start of the burn project if a modification of the burn is being required by the department.

(9) The burner shall complete and submit to the department a fire activity tracking form, using a form obtained from the department no later than two weeks following the end of the burn project.

(10) The department may require the burner to notify the department no later than two business days prior to the planned burn so the department may determine whether to conduct instrument monitoring in addition to visual monitoring conducted by the burner. The need for instrument monitoring by the department shall be determined by the department on a case-by-case basis.

(11) The burner shall conduct public notification at least two business days prior to, and no earlier than 30 days prior to igniting a burn. The method of notification shall be an advertisement in a newspaper of general circulation in the area where the burn will take place, or other means, as approved by the department to ensure that adequate notice is provided to the affected public.

(12) An applicant for a waiver may challenge the department's denial of a waiver by following the procedures established in 20.11.21.21 NMAC. A person adversely affected by the department's granting of a waiver may challenge the department's decision by following the procedures established in Subsection B of 20.11.21.21 NMAC.

**D. Wildland fire use:** For wildland fire use exceeding 10 acres in size, the following requirements shall apply:

(1) The burner shall register the burn project with the department on forms obtained from the department no later than one business day following the decision to manage a wildland fire use burn. The department shall provide the burner with a registration number for the burn project. Each day the wildland fire use burn project is burning, the burner shall notify the department daily by 10:00 a.m. on the status of the burn project.

(2) The burner shall notify the local fire authorities of the decision to manage a wildland fire use burn. For wildland fire use burns within Bernalillo county, the burner shall conduct public notification no later than one calendar day after the decision to manage the burn as a wildland fire use burn. The notification shall be appropriate to the population being notified.

(3) The burner shall conduct visual monitoring and shall document the results. The results shall evaluate the smoke dispersion by recording characteristics of the smoke (e.g., color, density), including the general compass direction of dispersion, the patterns of vertical dispersion, and the duration of the smoke plume(s). Use of onsite instruments to record the wind speed and direction is encouraged. Documentation through use of photographs, with the date, time, and other relevant information noted on the photographs, is also encouraged. No later than six months after the burn project, the burner shall submit records of these results to the department.

(4) The burner shall complete and submit to the department a fire activity tracking form obtained from the department no later than two weeks following the end of the burn project.

**E. Wildfire under suppression:** For all wildfires exceeding 100 acres in size, the land manager or owner of property on which the wildfire occurs shall complete a fire activity tracking form obtained from the department and submit it to the department no later than six weeks following the cessation of fire fighting activities on the wildfire.

[20.11.21.15 NMAC - N, 12/31/03; A, 7/11/11]

#### **20.11.21.16 CALCULATION OF PM<sub>10</sub> EMISSIONS FOR PRESCRIBED BURNS:**

To determine whether a prescribed burn has the potential to produce more than one ton of PM<sub>10</sub> emissions per day, use the emission factors listed below (adapted from AP-42) or any alternative method approved in writing by the department.

**A.** To calculate the quantity of PM<sub>10</sub> emissions in tons generated by a prescribed burn project or a wildfire, multiply the number of acres estimated to be burned:

- (1) by 0.04348 tons per acre for forest; and
- (2) by 0.02941 tons per acre for shrub land; and
- (3) by 0.01 tons per acre for grass land; and
- (4) by 0.01538 tons per acre for field crops.

**B.** For shrub and forest piles, multiply the number of cubic feet of piled material estimated to be burned by 0.0002 tons per cubic foot.

**C.** For all other prescribed burn projects or a wildfire uses that do not fall into the categories listed in this section, contact the department for assistance in determining a methodology to estimate emissions that is consistent with EPA methodologies.

[20.11.21.16 NMAC - N, 12/31/03]

### 20.11.21.17 DETERMINATION OF VENTILATION INDEX CATEGORY:

A. PB-I and PB-II prescribed burns are allowed to be ignited only with a ventilation index category rated "good" or better, unless a waiver has been granted by the department. The ventilation index category may be obtained by contacting the department, or the burner may make the determination by calculating and documenting the ventilation index category using the following methodology:

(1) using a computer with internet access, enter the national weather fire forecast website at <http://www.srh.noaa.gov/abq/?n=forecasts-fireweather> or successor universal resource locator (URL) internet address;

(2) select the appropriate zone for the location of the burn project within the New Mexico map showing the various zones;

(3) examine the forecast and find the reference elevation to be used to determine the general ventilation index category for the Bernalillo county zone (e.g., Albuquerque - 5,300 feet above mean sea level or Mountainair - 6,500 feet above mean sea level);

(4) record the mixing height for "today" or "tomorrow" as appropriate;

(5) calculate the mixing height at the burn location by adding the forecasted mixing height and the reference elevation obtained above. From the sum of these two items, subtract the elevation of the burn location; and

(6) calculate the ventilation index for the prescribed burn by multiplying the mixing height at the burn location by the average forecasted transport wind speed.

B. Once the ventilation index for the prescribed burn has been calculated, refer to the following table to see if the ventilation index for the burn project is acceptable to ignite the burn:

Category	Knot-Feet
Excellent - Acceptable	Greater than or equal to 150,000
Very Good - Acceptable	100,000 - 149,999
Good - Acceptable	60,000 - 99,999
Fair - Not Acceptable	40,000 - 59,999
Poor - Not Acceptable	Less than or equal to 40,000

[20.11.21.17 NMAC - N, 12/31/03; A, 7/11/11]

### 20.11.21.18 ALTERNATIVES TO BURNING:

As required by Subsection C of 20.11.21.15 NMAC, burners engaged in PB-II prescribed burns are required to consider the use of alternatives to burning, which

include department-approved alternatives, as well as those listed in 20.11.21.18 NMAC. An effort will be made by the department to remove administrative barriers to the utilization of alternatives to burning.

**A. Manual/handwork** - Handwork involves picking up and moving limbs and brush, as well as cutting downed and standing materials using hand tools or chainsaws. Manual work involves lifting, cutting, and carrying forest materials, and is generally limited to materials of roughly nine inches or less in diameter. Larger materials can be handled, but efficiency, production rate and safety decrease rapidly as size increases. If the fuels requiring treatment exceed the nine-inch-diameter threshold, handwork is not a good option.

(1) **Cut and scatter** - Hand crews cut and scatter material to change the vertical and horizontal continuity of the fuel load. This technique increases the surface fuel load by redistributing ladder fuels onto the ground surface. It is appropriate where stand density is generally low and existing surface fuels are shallow.

(2) **Pile** - Cut material is piled, redistributing the fuel load rather than reducing it. Piling can be used in denser stand conditions than scattering can, because the piles can be situated to avoid fuel-loading problems. Drawbacks to piling include: slower decomposition than when scattered, labor intensive and dense stand conditions can result in a high number of piles.

**B. Mechanical treatments** - Employ equipment as the primary means of modifying or removing fuels. Generally, treatment areas must be within one-quarter mile of a road and have slopes less than 40 percent.

(1) **Pile** - Cut material is piled, redistributing the fuel load rather than reducing it.

(2) **Fuel modification** - Machinery is used to process the material into smaller pieces that can then be redistributed on the ground surface or removed from the site. Because materials processed in this fashion can be much more densely packed than materials that are scattered by hand or piled by hand, the available oxygen supply is reduced, thereby inhibiting spread of fire and flame height.

(i) **Masticate/mow** - Mastication involves the processing of standing or downed material where it occurs. Mastication is more suitable for denser stand conditions than is scattering or piling, and the redistributed fuel load decomposes more rapidly. It is most appropriate for treating both green and dead ladder fuels and the higher surface fuels. Mowing is primarily appropriate to treat grassland and light shrub land habitats. Like mastication, mowing processes the vegetation material on site and in place.

(ii) **Chip/grind/cut** - Material is placed into a piece of equipment and discharged, often through a chute. Because of this feature, material can be processed

more selectively and transported off site for either disposal or utilization. It is the method of choice when biomass utilization is an option.

(iii) **Crush** - Another form of mastication; this technique is useful primarily for shrub land habitats dominated by brittle species.

(3) **Tree removal** - Numerous approaches to tree removal have been developed as the timber industry has evolved to operate in a variety of habitats and under myriad political and economic constraints.

(i) **Bole removal** - This is traditional harvesting. Trees are felled either by hand or mechanically and removed from the site for processing. Bole removal eliminates the vertical continuity of the fuel load, but increases surface fuels with the addition of leaf/needle and limb materials. Overall biomass is reduced.

(ii) **Whole tree yarding** - Trees are felled either by hand or mechanically. The entire tree is then brought intact to a staging area where they are processed. This method removes the vertical continuity of the fuel load, removes biomass, and adds very little to the surface fuel load. Moreover, the removal of leaf/needle and limb material is more important than bole removal in the context of fire behavior. Only suitable for trees 9-18 inches in diameter in order to avoid damage to soil and water quality caused by felling trees greater than 18 inches in diameter.

(iii) **Cut-to-length logging** - Utilizes specialized equipment to cut and process entire trees on site in the forest. While much of the biomass either remains onsite or must be addressed through secondary treatments, an important advantage of this technique is its efficacy in treating material of very small diameter.

**C. Chemical** - Chemical treatments entail the application of herbicides. Chemical treatments do not remove fuel, but kill existing vegetation or inhibit growth (i.e. maintenance of defensible fuel profile zones).

**D. Grazing** - Involves the use of livestock, primarily cattle and goats, to manage the growth and composition of brush and grasses. While it is of limited utility in forested habitats, it can be an effective technique in rural residential areas, in the wild land-urban interface and in selected grassland and shrub land habitats.

[20.11.21.18 NMAC - N, 12/31/03; A, 7/11/11]

#### **20.11.21.19 EMISSIONS REDUCTION TECHNIQUES:**

Emissions reductions techniques (ERTs) are control strategies that help reduce smoke from prescribed fires. ERTs are used in conjunction with fire and do not replace fire. In addition to department-approved ERTs, other ERTs are included below.

##### **A. Reducing the area burned.**

(1) **Burn concentrations** - Sometimes concentrations of fuels can be burned rather than using fire on 100 percent of an area requiring treatment. The fuel loading of the areas burned using this technique tends to be high.

(2) **Isolate fuels** - Large logs, snags, deep pockets of duff, sawdust piles, squirrel middens or other fuel concentrations that have the potential to smolder for long periods of time can be isolated from burning. Eliminating these fuels from burning is often faster, safer and less costly than mop-up, and allows targeted fuels to remain following the prescribed burn. This can be accomplished by several techniques including:

(a) constructing a fireline around fuels of concern;

(b) not lighting individual or concentrated fuels;

(c) using natural barriers or snow;

(d) scattering the fuels; and

(e) spraying with foam or other fire retardant material.

(3) **Mosaic burning** - Landscapes often contain a variety of fuel types that are noncontinuous and vary in fuel moisture content. Prescribed fire prescriptions and lighting patterns can be assigned to use this fuel and fuel moisture non-homogeneity to mimic natural wildfire and create patches of burned and non-burned areas or burn only selected fuels. Areas or fuels that do not burn do not contribute to emissions.

**B. Mechanical treatments** - Mechanically removing fuels from a site reduces emissions proportionally to the amount of fuel removed. Treatments may include but are not limited to the following methods.

(1) **Firewood sales** - Firewood sales may result in sufficient removal of woody debris making on site burning unnecessary. This technique is particularly effective for piled material where the public has easy access.

(2) **Whole tree harvesting** - Whole trees can be removed through harvesting or thinning techniques and virtually eliminate the need for burning.

(3) **Mulch/chips** - Mechanical processing of dead and live vegetation into wood chips or shredded biomass is effective in reducing emissions if the material is removed from the site or biologically decomposed.

(4) **Fuel for power generation** - Vegetative biomass can be removed and used to provide electricity in regions with cogeneration facilities.

(5) **Biomass utilization** - Vegetative material can be used for many miscellaneous purposes including pulp for paper, methanol/ethanol production, wood pellets, garden bedding, furniture, specialty crafts, compost, mulch and fiberboard/particleboard.

**C. Chemical pre-treatments** - Broad spectrum and selective herbicides can be used to reduce or remove live vegetation, or alter species diversity respectively. Herbicides can be applied before burning to kill vegetation, which can create a much drier fuel, which in turn burns more efficiently.

**D. Site conversion** - Natural site productivity can be decreased by changing the vegetation composition.

**E. Land use change** - Changing wildlands / shrublands / rangelands / croplands to another land use category may result in elimination of the need to burn and vice versa.

**F. Reduce fuel loading** - Some or all of the fuel can be permanently removed from the site, biologically decomposed, or prevented from being produced. Overall, emissions can be reduced when fuel is permanently excluded from burning.

(1) **Mechanically removing fuel** - Mechanically removing fuels from a site reduces emissions proportionally to the amount of fuel removed.

(2) **Burn more frequently at low intensity** - This method prevents the fuels from building up and causing greater emissions.

(3) **Schedule burning before green up** - Burning in cover types with a grass or herbaceous fuel bed component can produce fewer emissions if burning takes place before these fuels green-up for the year.

(4) **Under burn before fall leaf drop** - When deciduous trees and shrubs drop their leaves, this ground litter contributes extra volume to the fuel bed.

(5) **Ungulates** - Grazing and browsing live grassy or brushy fuels by sheep, cattle or goats can reduce fuels prior to burning or reduce the burn frequency.

(6) **Isolating pockets of fuel** - See explanation under reducing the area burned.

**G. Reduce fuel consumption** - Emission reductions can be achieved when significant amounts of fuel are at or above the moisture of extinction, and therefore are unavailable for combustion.

(1) **Having high moisture content in non-target fuels** - This can result in only the fuels targeted being dry enough to burn.

(2) **High moisture in large woody fuels** - Burning when large-diameter woody fuels (three- plus inch diameter or greater) are wet can result in lower fuel consumption and less smoldering.

(3) **Moist litter or duff** - The organic layer that forms from decayed and partially decayed material on the forest floor often burns during the inefficient smoldering phase. Consequently, reducing the consumption of this material can be effective at reducing emissions.

(4) **Mass ignition/shortened fire duration/aerial ignition** - "Mass" ignition can occur through a combination of dry fine-fuels and rapid ignition, which can be achieved using a helitorch. The conditions necessary to create a true mass ignition situation include rapid ignition of a large open area with continuous dry fuels.

(5) **Burn before large fuels cure** - Living trees contain very high internal fuel moistures, which take a number of months to dry after harvest. If an area can be burned within 3-4 drying months of timber harvest, many of the large fuels will still contain a significant amount of live fuel moisture.

(6) **Rapid mop-up** - Rapidly extinguishing a fire can reduce fuel consumption and smoldering emissions somewhat, although this technique is not particularly effective at reducing total emissions and can be expensive.

(7) **Burn before precipitation** - Scheduling a prescribed fire before a precipitation event will often limit the consumption of large woody material, snags, stumps, and organic ground matter, thus reducing the potential for a long smoldering period and reducing the average emission factor.

**H. Minimizing emissions by minimizing the emission factor** - Using burning techniques that create a more efficient burn.

(1) **Burning fuels in piles or windrows** - Keeping piles dry and free of dirt and other debris generates greater heat and therefore, the piles burn more efficiently. The piles or windrows can be made mechanically or by hand.

(2) **Utilizing a backing fire** - Flaming combustion is cleaner than smoldering combustion. A backing fire takes advantage of this relationship by causing more fuel consumption to take place in the flaming phase than would occur if a heading fire were used.

(3) **Rapid mop-up** - See above.

(4) **Mass ignition/shortened fire duration/aerial ignition** - See above.

(5) **Dry conditions** - Burning under dry conditions increases combustion efficiency and fewer emissions may be produced.

**I. Air curtain incinerator (ACI)** - Use of an air curtain incinerator improves combustion and reduces emissions by introducing high velocity air into a combustion environment. As the air continuously rotates in and over the environment, a "curtain" is created over the fire thus trapping smoke and particulate matter. Constant airflow into and over the combustion environment allows temperatures to remain high, resulting in relatively complete combustion of all emission products. ACIs can burn a wider variety of materials from green fuel to red slash and produce lower smoke emissions as compared to pile or broadcast burning. They also reduce risk of an escaped fire since the fire is contained and can be quickly extinguished if necessary.

[20.11.21.19 NMAC - N, 12/31/03; A, 7/11/11]

#### **20.11.21.20 AMBIENT AIR QUALITY STANDARD EXCEEDENCE:**

The director shall have the authority to suspend any open burning allowed under 20.11.21 NMAC in the event of ongoing or projected violations of the federal, state, or local ambient air quality standards.

[20.11.21.20 NMAC - Rn, 20.11.21.15 NMAC & A, 12/31/03; A, 7/11/11]

#### **20.11.21.21 REVIEW MEETING, HEARING ON THE MERITS REGARDING PERMIT APPLICATIONS AND PERMITS:**

**A.** If a permit applicant is adversely affected by or disagrees with the division's proposed decision regarding the applicant's permit application, the applicant may request an informal review meeting to discuss the division's proposed decision. The request shall be in writing or on a form obtained from the division. Within 15 working days of the applicant receiving the proposed decision, the applicant shall deliver the request to the director and the division manager. Unless a timely request for an informal review meeting is received by the director, the division's proposed decision regarding the permit application shall be final. Within 10 working days after receiving the request, the director shall hold an informal review meeting with the applicant and a division representative (e.g., division manager or the person issuing the proposed decision regarding the permit application) in an attempt to resolve disagreements. Within two working days after the informal review meeting, the division representative shall issue a final decision regarding the permit application. If the permit applicant or permittee is adversely affected by the final decision made by the division representative, the permit applicant or permittee may follow the procedures described in Subsection B of 20.11.21.21 NMAC.

**B.** A person adversely affected by the decision of the division regarding a permit application or permit ("petitioner") may file a petition for a hearing on the merits before the board as provided by 20.11.81 NMAC, *Adjudicatory Procedures - AQCB*. Unless a timely petition for a hearing on the merits is received by the director, the decision of the division regarding the permit application or permit shall be final.

[20.11.21.21 NMAC - N, 12/31/03; A, 7/11/11]

## **PART 22: WOODBURNING**

### **20.11.22.1 ISSUING AGENCY:**

Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[11/27/91. . .12/1/95; 20.11.22.1 NMAC – Rn, 20 NMAC 11.22.I.1, 10/1/02]

### **20.11.22.2 SCOPE:**

This Part is applicable to woodburning sources within Bernalillo County.

**A. Exempt:** This Part does not apply to sources within Bernalillo County, which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control lacks jurisdiction.

**B. Case-by-Case Exceptions:** The following exemptions may be granted by the Director.

(1) A sole source exemption if the Director determines that a solid fuel heating device is the sole source of heat for the building in which it is situated. New sole source exemptions shall not be issued after December 31, 1990 unless approved in writing by the Director for good cause. Sole source exemptions issued prior to December 31, 1990 may be renewed annually.

(2) A temporary exemption for a specified period in the event of failure of the oil, natural gas, electricity or propane heating system.

(3) An economic or health exemption for economic or health reasons if the Director determines that the applicant qualifies for financial assistance according to the economic guidelines established under the Food Stamps, Medicaid or low income energy assistance programs as administered by the Income Support Division of the New Mexico Human Services Department, or equivalent program, as determined by the Director, or if the Director determines that failure to grant an exemption would endanger the health of the applicant.

**C. Exemption Conditions:** In no event shall an exemption be issued for more than 150 days. All exemptions shall be effective for only one no-burn season, unless a different period is specified in the exemption. An exemption only exempts a person from the requirements of Section 20.11.22.13 NMAC; a person holding an exemption must comply with all other provisions of this Part. An exemption may include conditions, which will be established by the Director and will be stated in the exemption. A violation of an exemption condition is a violation of this Part and also may be cause for

revocation of the exemption by the Director. Each person seeking an exemption shall do so by filing an acceptable written application with the Director on the form required by the Director. Applications shall include:

- (1) the applicant's name and mailing address;
- (2) the address for which the exemption is sought;
- (3) the reasons for seeking the exemption; and
- (4) the supporting documentation required by the Director to verify the applicant's qualification for an exemption.

**D.** Following receipt of the application for exemption, the Director shall either grant the exemption, grant the exemption subject to conditions, or deny the exemption. The applicant shall be notified in writing of the decision of the Director.

**E.** In the event an applicant for an exemption is not satisfied with the Director action, the decision may be appealed to the Board. Such appeal shall be in writing and shall be submitted to the Director within 15 days after the Director mails or delivers the decision letter to the applicant of the Director's decision. The appeal shall be considered by the Board at the next regularly scheduled business meeting at which a quorum is present. The decision of the Board shall be final.

[11/27/91. . .12/1/95; 20.11.22.2 NMAC – Rn, 20 NMAC 11.22.I.2, 10/1/02]

**20.11.22.3 STATUTORY AUTHORITY:**

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

[11/27/91. . .12/1/95; 20.11.22.3 NMAC – Rn, 20 NMAC 11.22.I.3, 10/1/02]

**20.11.22.4 DURATION:**

Permanent.

[12/1/95; 20.11.22.4 NMAC – Rn, 20 NMAC 11.22.I.4, 10/1/02]

**20.11.22.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.22.5 NMAC – Rn, 20 NMAC 11.22.I.5, & A, 10/1/02]

#### **20.11.22.6 OBJECTIVE:**

The objective of this Part is to reduce the levels of carbon monoxide and particulate matter in the ambient air during atmospheric conditions that the Director concludes may not adequately disperse wood smoke, and to minimize the adverse health effects and nuisance effects that result from woodburning.

[11/27/91. . .12/1/95; 20.11.22.6 NMAC – Rn, 20 NMAC 11.22.I.6, 10/1/02]

#### **20.11.22.7 DEFINITIONS:**

In addition to the definitions in Section 20.11.22.7 NMAC the definition in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this Part shall govern.

**A. "Burn Down"** means that period of time, not to exceed three (3) hours, after a no-burn period is announced by the Director, within which period a person operating a solid fuel heating device must cease combustion within any solid fuel heating device by withholding fuel or modifying the air-to-fuel ratio.

**B. "Inappropriate Fuel"** includes but is not limited to: leaves, grass clippings, green plants, refuse, paper, rubbish, books, magazines, fiberboard, packaging, rags, fabrics, animal waste, waste oil, liquid or gelatinous hydrocarbons, tar, paints and solvents, chemically soaked wood, wood with a moisture content or greater than 30%, plastic or rubber, office records, sensitive or classified wastes, or other materials which are difficult to burn without producing vast amounts of noxious and toxic fumes or dense smoke.

**C. "New Wood Heater" means:**

(1) a wood heater that is sold at retail; is obtained as a result of a bargain or exchange; or is new and is given away for the first time by the manufacturer, the manufacturer's dealer or agency, or a retailer; and

(2) a wood heater which has not been used to an extent which has resulted in the heater being considered "used" or "second hand" within the ordinary meaning of those terms.

**D. "Sole Source"** means one or more solid fuel heating devices installed for the purpose of space heating and which constitute the only source of heat in a building. No solid fuel heating device(s) shall be the sole source of heat in a building if the building is equipped with a furnace or heating system which was designed to utilize oil, natural gas, electricity or propane to heat the building and the furnace or heating system at one time was permanently installed in the building, whether or not the furnace or system presently is connected with or disconnected from its energy source.

**E. "Solid Fuel Heating Device"** means any fireplace, wood heater, wood stove, wood fired boiler, coal fired furnace, coal stove or similar device burning any solid fuel and used inside a building for aesthetic, cooking (excluding commercial cooking) or heating purposes.

**F. "Wood Heater"** means an enclosed woodburning appliance, including a fireplace insert, capable of and intended for space heating or domestic water heating that meets all of the following criteria:

(1) an air-to-fuel ratio in the combustion chamber averaging less than 35-to-1 as determined by the test procedure described in 40 CFR Part 60.534,

(2) a usable firebox volume of less than 0.56 cubic meters,

(3) a minimum burn rate less than 5 kg/hr as determined by the test procedure described in 40 CFR Part 60.534, and

(4) a maximum weight of 800 kg, excluding devices and fixtures that are normally sold separately, such as flue pipe, chimney and masonry components that are not an integral part of the appliance or heat distribution ducting.

**G. "Wood smoke Impacted Area"** means that portion of Bernalillo County that is the most adversely affected by the burning of wood during atmospheric conditions that the Director concludes may not adequately disperse wood smoke. The wood smoke impacted area is delimited on the north and south by the Bernalillo County lines, on the west by the universal transverse meridian (UTM) line 337000mE and on the east by the UTM line 367000mE, Zone 13.

[11/27/91. . .12/1/95; 20.11.22.7 NMAC – Rn, 20 NMAC 11.22.I.7, 10/1/02]

#### **20.11.22.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.22.8 NMAC - Rn, 20 NMAC 11.22.I.8, 10/1/02]

#### **20.11.22.9 SAVINGS CLAUSE:**

Any amendment to 20.11.22 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, or Board Regulation 34, or 20.11.22 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

[12/16/94. . .12/1/95; 20.11.22.9 NMAC – Rn, 20 NMAC 11.22.I.9, 10/1/02]

#### **20.11.22.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of this Part or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.

[12/16/94. . .12/1/95; 20.11.22.10 NMAC – Rn, 20 NMAC 11.22.I.10, 10/1/02]

#### **20.11.22.11 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.22.11 NMAC – Rn, 20 NMAC 11.22.I.11, & A, 10/1/02]

#### **20.11.22.12 SALE OF NEW WOOD HEATERS - CERTIFICATION REQUIRED:**

No person shall sell, offer for sale, advertise for sale or barter for, exchange or give away any new wood heater unless the wood heater has been emission certified and labeled in accordance with 40 CFR Part 60.530 through 60.539b.

[11/27/91; 20.11.22.12 NMAC – Rn, 20 NMAC 11.22.II.1& Repealed, 10/1/02, Rn, 20 NMAC 11.22.II.1, 10/1/02]

#### **20.11.22.13 NO-BURN PERIODS:**

From October 1 through February 28, following a burn down period, no person with authority or power to control the operation of a solid fuel heating device shall allow the operation of a solid fuel heating device within the wood smoke impacted area during a no-burn period which as declared by the Director unless an exemption has been obtained or unless the device is a wood heater that has been emission certified by the EPA. No-burn periods shall be declared by the Director upon review of available meteorological data and a determination that expected atmospheric conditions will not adequately disperse wood smoke.

[11/27/91; 20.11.22.13 NMAC – Rn, 20 NMAC 11.22.II.2, 10/1/02]

#### **20.11.22.14 NOTICE REQUIRED:**

Notice of no-burn periods shall be sufficient if published in a newspaper of general circulation within Bernalillo County, or if presented orally at least three (3) times during a six (6) hour period by at least two (2) radio or television stations operating within Bernalillo County, or if presented to the general public in the form of a recorded telephone message, the telephone number for which is published in the telephone directory or newspaper of general circulation within Bernalillo County.

[11/27/91; 20.11.22.14 NMAC – Rn, 20 NMAC 11.22.II.3, 10/1/02]

#### **20.11.22.15 VISIBLE EMISSION LIMITATIONS:**

**A.** Certified wood heaters may be operated during a no-burn period provided that no visible emissions are produced after a twenty (20) minute period following start up or refueling. To determine compliance with this standard, the Director shall observe the point at which the certified wood heater releases emissions into the ambient air. If the emission point is producing any visible emissions twenty (20) minutes or longer after the initial observation, a violation of this Part has occurred.

**B.** During a period in which the Director has not declared a no-burn, no person shall operate a solid fuel heating device in a manner which produces emission into the atmosphere if the emissions exceed 30 % opacity twenty (20) minutes or longer after ignition or refueling of the solid fuel burning device. Visible emission opacity shall be determined by an observer certified by the Director. To determine opacity the observer shall:

(1) Use the standard visual method listed in 40 CFR 60, Appendix A, Method 9; or

(2) Use equipment approved by the Director and the EPA if, under the circumstances, the Director and the EPA determines the equipment is as accurate as, or is more accurate than use of the Method 9 procedure.

(3) If condensed water vapor is visible in an exhaust plume, the opacity assessment shall be made at a point consistent with the procedure stipulated in 40 CFR 60, Appendix A, Method 9.

[11/27/91. . .20.11.22.15 NMAC – Rn, 20 NMAC 11.22.II.4, 10/1/02]

#### **20.11.22.16 MISFUELING OF SOLID FUEL HEATING DEVICES PROHIBITED:**

**A.** No person shall use a fuel in a solid fuel heating device unless the fuel is a fuel recommended by the solid fuel heating device manufacturer. The person using the solid fuel heating device shall comply with all the manufacturers' installation and operation instructions; failure to do so is a violation of this Part.

**B.** No person shall burn inappropriate fuel in a solid fuel heating device.

[11/27/91; 20.11.22.16 NMAC – Rn, 20 NMAC 11.22.II.5, 10/1/02]

### **PART 23: STRATOSPHERIC OZONE PROTECTION**

#### **20.11.23.1 ISSUING AGENCY:**

Albuquerque/Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[3/26/91. . .12/1/95; 20.11.23.1 NMAC – Rn, 20 NMAC 11.23.I.1, 10/1/02]

**20.11.23.2 SCOPE:**

**A.** This Part is applicable to persons engaged in the sale, servicing, or wrecking of automotive air conditioning systems, or automotive air conditioning refrigerants.

**B. Exempt:** This Part does not apply to sources within Bernalillo County, which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control lacks jurisdiction.

[12/1/95; 20.11.23.2 NMAC – Rn, 20 NMAC 11.23.I.2, 10/1/02]

**20.11.23.3 STATUTORY AUTHORITY:**

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

[3/26/91. . .12/1/95; 20.11.23.3 NMAC – Rn, 20 NMAC 11.23.I.3, 10/1/02]

**20.11.23.4 DURATION:**

Permanent.

[12/1/95; 20.11.23.4 NMAC – Rn, 20 NMAC 11.23.I.4, 10/1/02]

**20.11.23.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.23.5 NMAC – Rn, 20 NMAC 11.23.I.5 & A, 10/1/02]

**20.11.23.6 OBJECTIVE:**

The objective of this Part is to prevent or reduce deterioration of the stratospheric ozone layer.

[3/26/91. . .12/1/95; 20.11.23.6 NMAC – Rn, 20 NMAC 11.23.I.6, 10/1/02]

**20.11.23.7 DEFINITIONS:**

In addition to the definitions in Section 20.11.23.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this Part shall govern.

**A. "Approved Motor Vehicle Refrigerant Recycling or Recovery Equipment"** means equipment models that have been certified to meet the Society of Automotive Engineers (SAE) standard for the extraction and reclamation of refrigerant from motor vehicle air conditioners (SAE standard J-1990) or other equipment as approved by the Director.

**B. "Chlorofluorocarbons or CFCs"** means the family of substances containing carbon, fluorine and chlorine, and having no hydrogen atoms and no double bonds. This includes but is not limited to the Freon used in air conditioning and refrigeration units.

**C. "Refrigeration Unit"** means automotive air conditioners and refrigerators and freezers, including both those intended to be household appliances and those, which are commercial and industrial models.

**D. "Wrecker of Vehicles"** means any person actively engaged in the business of acquiring vehicles, required to be registered under Motor Vehicle Code, Articles 1 through 8 of Chapter 66 NMSA 1978, for the purpose of dismantling such vehicles as scrap material or the resale of reclaimable parts.

[3/26/91. . .12/1/95; 20.11.23.7 NMAC – Rn, 20 NMAC 11.23.I.7, 10/1/02]

#### **20.11.23.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.23.8 NMAC – Rn, 20 NMAC 11.23.I.8, 10/1/02]

#### **20.11.23.9 SAVINGS CLAUSE:**

Any amendment to 20.11.23 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation 37, or 20.11.23 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

[12/1/95; 20.11.23.9 NMAC – Rn, 20 NMAC 11.23.I.9, 10/1/02]

#### **20.11.23.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of this Part or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise

invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.

[12/1/95; 20.11.23.10 NMAC – Rn, 20 NMAC 11.23.I.10, 10/1/02]

#### **20.11.23.11 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.23.11 NMAC – Rn, 20 NMAC 11.23.I.11 & A, 10/1/02]

#### **20.11.23.12 AUTOMOTIVE AIR CONDITIONING REFRIGERANTS:**

**A.** No person shall sell, offer for sale, or advertise for sale CFCs that can be used as a refrigerant in an automotive air conditioning system to any person who does not possess and provide evidence of having approved motor vehicle refrigerant recycling or recovery equipment.

**B.** No person shall repair, service, or attempt to repair or service automotive air conditioning systems unless approved motor vehicle refrigerant recycling or recovery equipment is used.

**C.** Wreckers of vehicles shall not allow CFC emissions to the ambient air and must use approved motor vehicle refrigerant recycling or recovery equipment prior to vehicle demolition.

[3/26/91; 20.11.23.12 NMAC – Rn, 20 NMAC 11.23.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.23.II.1, 10/1/02]

### **PART 24-38: [RESERVED]**

### **PART 39: PERMIT WAIVERS AND AIR QUALITY NOTIFICATIONS FOR CERTAIN SOURCE CATEGORIES**

#### **20.11.39.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.

[20.11.39.1 NMAC - N, 12/21/17]

#### **20.11.39.2 SCOPE:**

**A. Applicability:** 20.11.39 NMAC applies to the following stationary source categories in the city of Albuquerque and Bernalillo county.

(1) Emergency stationary reciprocating internal combustion engines (ES-RICE) as defined in 20.11.39.7 NMAC, except as otherwise provided in this Part.

(2) Gasoline dispensing facilities (GDF) as defined in 20.11.39.7 NMAC, except as otherwise provided in this Part.

**B. Exemptions:**

(1) 20.11.39 NMAC does not apply to stationary sources within Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

(2) 20.11.39 NMAC does not apply to:

(a) stationary sources that, in the aggregate, constitute a major source under the applicable provisions of 20.11.42 NMAC, which are located on one or more contiguous or adjacent properties, and which are under common control of the same person;

(b) any non-emergency stationary RICE engines;

(c) sources which contain emission units:

(i) other than ES-RICE and GDFs, as defined in 20.11.39.7; and

(ii) that require a construction permit pursuant to 20.11.41 NMAC;

(d) Part 39 sources that are part of a Title V permit; or

(e) Part 39 sources located at a single family private residence.

[20.11.39.2 NMAC - N, 12/21/17]

**20.11.39.3 STATUTORY AUTHORITY:**

20.11.39 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-5, 74-2-5.1, 74-2-6 and 74-2-7; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994, Sections 9-5-1-4, 9-5-1-5, 9-5-1-6 and 9-5-1-7; and the Joint Air Quality Control Board Ordinance, Bernalillo County Code, Article II, Sections 30-33, 30-34, 30-35 and 30-36.

[20.11.39.3 NMAC - N, 12/21/17]

**20.11.39.4 DURATION:**

Permanent.

[20.11.39.4 NMAC - N, 12/21/17]

**20.11.39.5 EFFECTIVE DATE:**

December 21, 2017, unless a later date is cited at the end of a section.

[20.11.39.5 NMAC - N, 12/21/17]

**20.11.39.6 OBJECTIVE:**

**A.** To provide a procedure by which certain sources may qualify for waivers of source registration requirements pursuant to 20.11.40 NMAC or construction permit requirements pursuant to 20.11.41 NMAC;

**B.** To establish an alternative regulatory mechanism, other than those provided in 20.11.40 NMAC and 20.11.41 NMAC, by which to require some sources in certain source categories to comply with applicable air quality standards and regulations; and,

**C.** To authorize the department to issue Air Quality Notifications (AQN) for sources in certain source categories.

[20.11.39.6 NMAC - N, 12/21/17]

**20.11.39.7 DEFINITIONS:**

The definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.39 NMAC shall govern. Definitions provided in the applicable federal standards referenced below shall apply to source categories subject to those federal standards which are incorporated by reference into board regulations.

**A. "Air quality notification" or "AQN"** means a document issued by the department to the owner or operator of a source in a source category to which this Part applies to require that source to comply with applicable regulatory requirements.

**B. "Emergency stationary RICE" or "ES-RICE"** means stationary reciprocating internal combustion engines that serve solely as a secondary source of mechanical or electrical power during the loss of commercial power and which meet one of the following criteria:

**(1)** emergency stationary reciprocating internal combustion engines not subject to 40 CFR Part 60, Subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, 40 CFR Part 60, Subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines or 40 CFR Part 63, Subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, which emit more than 2,000 pounds per year of any regulated air contaminant and which would

otherwise be subject to 20.11.40 NMAC, Source Registration or 20.11.41 NMAC, Construction Permits;

(2) compression ignition emergency stationary internal combustion engines as defined in 40 CFR Part 60, Subpart IIII which are subject to that regulation;

(3) spark ignition emergency stationary internal combustion engines as defined in 40 CFR Part 60, Subpart JJJJ which are subject to that regulation; or

(4) emergency stationary reciprocating internal combustion engines as defined in 40 CFR Part 63, Subpart ZZZZ which are subject to that regulation.

**C. "Gasoline dispensing facility" or "GDF"** means a gasoline dispensing facility as defined in 40 CFR Part 63 Subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Gasoline Dispensing Facilities, as incorporated by reference in 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources.

**D. "Part 39 source"** means a stationary source eligible to receive an AQN pursuant to Part 39.

**E. "Prior authorization"** means a registration or construction permit for a Part 39 source which was issued pursuant to either 20.11.40 NMAC or 20.11.41 NMAC if such Part 39 source would have been eligible to receive an AQN pursuant to Part 39 had it been in effect at the time the registration or construction permit was issued.

**F. "Qualified small business"** means a business that meets all of the following requirements:

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

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

(3) a source that emits less than 50 tons per year of any individual regulated air pollutant, or less than 75 tons per year of all regulated air pollutants combined; and

(4) a source that is not a major source or major stationary source.

[20.11.39.7 NMAC - N, 12/21/17]

#### **20.11.39.8 VARIANCES:**

A person may request a variance from 20.11.39 NMAC, in accordance with the procedures in 20.11.7 NMAC, Variance Procedure, except that no variances shall be granted from any applicable federal requirement.

[20.11.39.8 NMAC - N, 12/21/17]

**20.11.39.9 SAVINGS CLAUSE:**

Any amendment to 20.11.39 NMAC that is filed with the state records center and archives shall not affect actions pending for violation of the state act, a city or county ordinance, a prior version of 20.11.39 NMAC, another board regulation or a permit issued by the department. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance or regulation in effect at the time the violation was committed.

[20.11.39.9 NMAC - N, 12/21/17]

**20.11.39.10 SEVERABILITY:**

If for any reason any section, paragraph, sentence, clause, wording or application of 20.11.39 NMAC or any federal or New Mexico standards incorporated herein is held unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity or application of the remaining provisions of 20.11.39 NMAC.

[20.11.39.10 NMAC - N, 12/21/17]

**20.11.39.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.39 NMAC may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM, 87102. Information on internet access to these documents may be obtained by contacting the department at (505) 768-2601.

[20.11.39.11 NMAC - N, 12/21/17]

**20.11.39.12 PERMIT WAIVERS:**

**A.** Part 39 sources qualify for waivers from construction permit requirements pursuant to 20.11.41 NMAC. Owners and operators of Part 39 sources shall apply for an AQN rather than a construction permit when submitting an application to the department. If an owner or operator of a source establishes that it is a Part 39 source and demonstrates that the owner or operator will comply with all applicable regulations set out in Section 13 of this Part, the department shall waive compliance from further source registration or construction permitting requirements pursuant to 20.11.40 or 20.11.41 NMAC. This Part shall not waive any permit requirements for sources which are not ES-RICE or GDF.

**B.** Except as noted in Subsection C of 20.11.39.15 NMAC, no public notice is required if the department waives further permitting requirements for a Part 39 source. No department hearing shall be held for a Part 39 source.

**C.** The department's issuance of an AQN is not a permitting action and is not subject to petition to the Albuquerque-Bernalillo county air quality control board pursuant to Section 7 of the Air Quality Control Act, ROA Section 9-5-1-7 or Bernalillo County Ordinance Section 30-36.

[20.11.39.12 NMAC - N, 12/21/17]

### **20.11.39.13 REQUIREMENTS FOR SOURCE CATEGORIES TO WHICH PART 39 APPLIES:**

**A. General requirements:** All sources in any source category listed in this section shall comply with the following general requirements, in addition to any specific requirements for a source category.

**(1)** All Part 39 sources shall comply with any federal regulations which are incorporated by reference into board regulations and which apply to that source category.

**(2)** No owner or operator of a source in a source category to which this part applies shall construct or operate a Part 39 source without having first applied to the department for and received an AQN.

**(3)** The owner or operator of each Part 39 source shall submit an annual emissions report to the department by March 15 of each year.

**(a)** For their annual emission report, GDFs granted an AQN shall submit a report of their annual gasoline throughput for the previous January through December.

**(b)** For their annual emission report, ES-RICE granted an AQN shall submit a report of their annual operating hours for the previous January through December.

**(c)** In addition to the information required in Subparagraphs (a) and (b) in Paragraph (3) of Subsection A of 20.11.39.13 NMAC, each emission report shall provide:

**(i)** the AQN number;

**(ii)** the name, address, if any, and physical location of the Part 39 source;

**(iii)** the name, telephone number, and email address of the person to contact regarding the emissions report; and

(iv) a certification signed by the owner, or operator, or a responsible official or designated representative, attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and telephone number and email address of the of the certifying official.

(d) When the department receives the emission report, the department may request other relevant information as deemed necessary.

(e) The owner or operator shall submit to the department a complete, correct and current emissions report in the format specified by the department; the report shall state accurately all information required by Paragraph (3) of Subsection A of 20.11.39.47 NMAC.

(f) The department shall provide a complete copy of an owner or operator's submitted emissions report when requested in writing by the owner or operator.

(4) Nothing in 20.11.39 NMAC relieves any owner or operator of any source from the responsibility to comply with any applicable requirement in local, state, or federal law.

(5) No Part 39 source shall emit any regulated air pollutant in quantities which would constitute a major source under the applicable provisions of 20.11.42 NMAC.

**B. Emergency stationary RICE:** These sources shall comply with the appropriate regulations identified below, as amended.

(1) **Emergency stationary RICE** not subject to the federal emissions standards listed in paragraphs (2) through (4) in Subsection B of 20.11.39.13 NMAC shall comply with all applicable board and federal regulations identified in the AQN.

(2) **Emergency stationary RICE** subject to 40 CFR Part 60 Subpart IIII, Standards of Performance for Stationary Compression Ignition Internal Combustion Engines shall comply with all applicable requirements in that federal regulation, incorporated by reference in 20.11.63 NMAC, New Source Performance Standards for Stationary Sources, as amended, and all applicable board regulations identified in the AQN.

(3) **Emergency stationary RICE** subject to 40 CFR Part 60 Subpart JJJJ, Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, shall comply with all applicable requirements in that federal regulation, as incorporated by reference in 20.11.63 NMAC, New Source Performance Standards for Stationary Sources, as amended, and all applicable board regulations identified in the AQN.

(4) **Emergency stationary RICE** subject to 40 CFR Part 63 Subpart ZZZZ, National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating

Internal Combustion Engines, as incorporated by reference in 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, as amended, and all applicable board regulations identified in the AQN.

**C. Gasoline dispensing facilities:** These sources shall comply with 20.11.65.15 NMAC and all applicable requirements in 40 CFR Part 63 Subpart CCCCCC, National Emission Standards for Hazardous Air Pollutants for Gasoline Dispensing Facilities, as incorporated by reference in 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, as amended.

[20.11.39.13 NMAC - N, 12/21/17]

#### **20.11.39.14 AIR QUALITY NOTIFICATION APPLICATION:**

Each owner or operator of a Part 39 source shall apply for an AQN with the department in compliance with the requirements of this section.

**A.** A person applying to the department for an AQN shall submit a completed application provided by the department. The department shall reject any incomplete application for an AQN.

**B.** The following information is required for the department to determine that an application for an AQN is complete:

(1) the name, street address and post office address, if any, of the owner and any operators of the source;

(2) the name, street addresses and post office addresses, if any, of the applicant, if different from the owner or operators;

(3) sufficient attachments, including calculations, computations and all other analyses used by the applicant to provide information to describe the potential emission rate and nature of all regulated air contaminants that the source may emit and control measures used to comply with all applicable federal standards;

(4) for GDFs:

(a) the anticipated annual gasoline throughput;

(b) the total number of refueling positions;

(c) for each refueling position, identify whether it dispenses gasoline only, diesel only, both, or is for heavy duty truck diesel refueling;

(5) for ES-RICE, a statement that the engine will only be used for emergency purposes, other than as allowed by applicable regulations;

(6) any other relevant information that the department may reasonably require;

(7) the signature of the applicant, with the date it was signed, certifying that the information represented in the application and attachments, if any, is true, accurate and complete and that the owner and all operators will comply with all applicable requirements in board regulations for that source category; and

(8) a check, money order or other approved means of payment for the appropriate application fee required by 20.11.39.19 NMAC.

C. The department shall not require any Part 39 source to submit air dispersion modeling with its AQN application.

[20.11.39.14 NMAC - N, 12/21/17]

#### **20.11.39.15 AQN APPLICATION REVIEW:**

Upon the receipt of any application for an AQN, the department shall review the application as follows.

A. Within 45 days after the department has received a complete application for an AQN as required by 20.11.39.14 NMAC, the department shall issue or deny the AQN. If the AQN is issued, the department shall send a copy of the AQN to the applicant by electronic mail, or such other means as may be necessary. If the AQN is denied, the department shall send a notice of denial to the applicant by electronic mail, or such other means as may be necessary.

B. If the department determines that the application for the AQN is incomplete, that Part 39 does not authorize the source to receive an AQN, or that some other action is necessary, up to and including denial of an AQN, the department shall inform the applicant by electronic mail, or such other means as may be necessary.

C. On the first business day of each month, the department shall publish on its website a list of all AQNs issued within the previous month; including the name and location of each AQN issued. The department shall publish a current list of all active AQNs on its website quarterly. The department website shall prominently display information enabling members of the public to contact the department in regard to any AQN issued.

[20.11.39.15 NMAC - N, 12/21/17]

#### **20.11.39.16 TRANSFER OF PRIOR AUTHORIZATIONS TO AQNS:**

Prior authorizations shall remain in force, unless an owner or operator satisfies Subsection A or B.

**A.** The owner or operator of a prior authorization applies for a transfer to an AQN by submitting an AQN application.

**B.** The owner or operator submits a change in the information in a prior authorization, e.g., an application for an administrative permit revision, an application for a technical permit revision, or an application for a permit modification.

**C.** The department shall process transfer of a prior authorization to an AQN as set forth below.

**(1)** The department shall review the application within 30 days of receipt. If the application is complete and if the source is a Part 39 source which would have been eligible to receive an AQN had AQNs been available when the prior authorization was issued, the department shall issue an AQN and cancel the previous prior authorization. The department shall send a copy of the AQN by electronic mail, or such other means as may be necessary. The department shall retain the original of the AQN.

**(2)** If the department determines that the application is incomplete, or some other action is necessary, the department shall inform the owner or operator of a prior authorization by electronic mail, or such other means as may be necessary.

**(3)** Upon being issued an AQN, the owner or operator shall comply with all requirements of Part 39 and the AQN.

[20.11.39.16 NMAC - N, 12/21/17]

#### **20.11.39.17 COMPLIANCE AND ENFORCEMENT:**

**A.** All owners or operators of Part 39 sources within Albuquerque-Bernalillo county shall comply with the requirements in 20.11.39 NMAC, whether set forth in their AQN or not.

**B.** The department issues AQNs relying on the accuracy and completeness of information provided in the application. Inaccurate or incomplete information in an application is a violation of 20.11.39 NMAC.

**C.** Any knowing and willful false statement in an AQN application is a violation of 20.11.39 NMAC.

**D.** An ES-RICE which has been issued an AQN pursuant to Paragraph (2) of Subpart B of 20.11.39.7 NMAC shall be operated for emergency use only or as necessary for exercising or maintenance of the engine.

**E.** The director may issue a compliance order requiring compliance and assessing a civil penalty not to exceed \$15,000.00 per day of noncompliance for any violation of any applicable board regulations by a Part 39 source. The director may also commence a

civil action in district court for appropriate relief, including a temporary and permanent injunction.

**F.** The department may conduct scheduled and unscheduled inspections to ensure compliance with any applicable board regulations.

**G.** Upon presentation of credentials, the department:

(1) shall have a right of entry to, upon, or through any premises on which a Part 39 source is located or on which any records required to be maintained by any applicable board regulations;

(2) may at any reasonable time have access to and copy any records required to be established and maintained by any applicable board regulations;

(3) may inspect any monitoring equipment and method required by any applicable board regulations; and

(4) may sample any emissions that are required to be sampled pursuant to any applicable board regulations.

**H.** Any credible evidence may be used to establish whether an owner or operator of a Part 39 source has violated any applicable board regulations. Credible evidence and testing shall include, but is not limited to:

(1) compliance methods specified in any applicable board regulations; or

(2) other testing, monitoring or information-gathering methods that produce information comparable to that produced by any CFR method and approved by the department and EPA.

**I.** An owner or operator of a Part 39 source who violates an applicable board regulation may be subject to enforcement action as authorized in Sections 74-2-12, -12.1 and -14 NMSA 1978, and revised ordinances of Albuquerque Section 9-5-1-15, -98 and -99, or Bernalillo County Code, Article II, Sections 30-42 and -43.

[20.11.39.18 NMAC - N, 12/21/17]

#### **20.11.39.18 AMENDING AN AIR QUALITY NOTIFICATION:**

Owners and operators of sources to which this part applies shall notify the department within 30 days of any change in information in an effective AQN as follows.

**A. Administrative Amendments:**

(1) When information required by Paragraphs (1) or (2) of Subsection B of 20.11.39.14 NMAC changes, the owner or operator shall notify the department in writing of the new information within 30 days of the change. Failure to timely notify the department as required by this subsection is a violation of Part 39.

(2) The department shall notify the owner or operator within 30 days that it has received the changed information and shall issue an amended AQN by electronic mail or such other means as may be necessary.

(3) The owner or operator shall not be required to pay a fee for notifying the department of the change or receiving an amended AQN.

#### **B. Technical Amendments:**

(1) When an owner or operator proposes to change the operation of a Part 39 source which was described in information required by Paragraphs (3) or (6) of Subsection B of 20.11.39.14 NMAC, the owner or operator shall submit an application for an amended AQN at least 30 days prior to making any change and shall pay the appropriate fee with the application. Failure to timely apply to the department as required by this subsection is a violation of Part 39. No change shall be made until the department issues an amended AQN or denies the amended AQN.

(2) Within 45 days after the department has received a complete application for an amended AQN, the department shall issue or deny the amended AQN. If the amended AQN is issued, the department shall send a copy of the amended AQN to the applicant by electronic mail, or such other means as may be necessary. If the amended AQN is denied, the department shall send a notice of denial to the applicant by electronic mail, or such other means as may be necessary.

(3) If the department determines that the application for an amended AQN is incomplete, that Part 39 does not authorize the source to receive an amended AQN, or that some other action is necessary, up to and including denial of an amended AQN, the department shall inform the applicant by electronic mail, or such other means as may be necessary.

(4) The department shall not require any Part 39 source to submit air dispersion modeling with its application for an amended AQN.

[20.11.39.18 NMAC - N, 12/21/17]

#### **20.11.39.19 FEES:**

##### **A. General requirements:**

(1) Any person who submits any AQN application shall pay fees as set forth below.

(2) The department shall not review or issue an AQN until the owner or operator provides documentary proof satisfactory to the department that all applicable fees have been paid as required by 20.11.39 NMAC.

(3) All fees required to be paid at the time of submittal shall be paid by check, money order or other means approved by the department payable to the "City of Albuquerque Air Quality Permit Fund" and either be delivered in person to the Albuquerque Environmental Health Department, 3rd floor, Suite 3023 or 3047, Albuquerque - Bernalillo County Government Center, south building, One Civic Plaza NW, Albuquerque, NM, or mailed to Attn: Air Quality Program, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or on-line payment method approved by the department. The person delivering or filing a submittal shall attach a copy of the receipt of payment to the submittal as proof of payment.

(4) Failure of the owner or operator of a Part 39 source to pay a required fee is a violation of 20.11.39 NMAC.

(5) No fee or portion of a fee required by 20.11.39 NMAC shall be refunded.

(6) All money received by the department pursuant to this section shall be deposited by the city of Albuquerque in the city's permit fund.

**B. Application review fees:** Each person applying for an AQN shall pay a fee as follows.

(1) **New AQN applications:** An owner or operator who submits an application for a new AQN subject to 20.11.39 NMAC shall pay an application review fee of \$549.00, as adjusted, at the time the AQN application is delivered to the department.

(2) **Technical AQN amendments:** An owner or operator of a Part 39 source who applies for a technical amendment of an AQN shall submit a fee of \$300.00, as adjusted, with the application.

(3) **Transfer of prior authorization to AQN:** An owner or operator of a Part 39 source who applies to transfer a prior authorization to an AQN shall submit a fee of \$300.00, as adjusted, with the application.

(4) **Qualified small business fee:** All qualified small businesses shall pay half of the fees in Subsection B of 20.11.39.19 NMAC.

**C. Annual fees:** Each person with a valid AQN shall pay an annual emission fee upon receiving an invoice from the department as follows.

**(1) Annual fees for ES-RICE AQNs:** The owner or operator of a source with an ES-RICE AQN shall pay annual fee of \$400.00, as adjusted, for each active ES-RICE AQN; or

**(2) Annual fees for GDF AQNs:** The owner or operator of a source with a GDF AQN shall pay an annual fee for each AQN based on the annual gasoline throughput from January through December of the previous year. For owners or operators of GDF AQNs that have not yet submitted an annual emission inventory, the annual fee shall be based on the estimate of annual gasoline throughput that the owner or operator provided in the AQN application. The department may recover annual fees in the following year if the annual fee was underestimated based on the AQN application. For AQNs that were required to submit an annual emission inventory within the previous 12 months, the annual fee shall be based on the amount of gasoline throughput reported in the source's most recently submitted annual emissions inventory. If the source has not submitted the most recent required annual emission inventory, the department may rely on the most recent throughput information in its records to issue an invoice, but may issue a supplemental invoice if appropriate. The fee schedule is as follows:

**(a)** \$400.00, as adjusted, for annual gasoline throughput less than 1,200,000 gallons per year.

**(b)** \$700.00, as adjusted, for annual gasoline throughput greater than or equal to 1,200,000 gallons per year and less than 2,000,000 gallons per year.

**(c)** \$1,000.00, as adjusted, for annual gasoline throughput greater than or equal to 2,000,000 gallons per year and less than 3,000,000 gallons per year.

**(d)** \$1,300.00, as adjusted, for annual gasoline throughput greater than or equal to 3,000,000 gallons per year and less than 4,000,000 gallons per year.

**(e)** \$1,600.00, as adjusted, for annual gasoline throughput greater than or equal to 4,000,000 gallons per year and less than 5,000,000 gallons per year.

**(f)** \$1,900.00, as adjusted, for annual gasoline throughput greater than or equal to 5,000,000 gallons per year and less than 6,000,000 gallons per year.

**(g)** \$2,200.00, as adjusted, for annual gasoline throughput greater than or equal to 6,000,000 gallons per year and less than 7,000,000 gallons per year.

**(h)** \$2,500.00, as adjusted, for annual gasoline throughput greater than or equal to 7,000,000 gallons per year and less than 8,000,000 gallons per year.

**(i)** \$2,800.00, as adjusted, for annual gasoline throughput greater than or equal to 8,000,000 gallons per year and less than 9,000,000 gallons per year.

(j) \$3,100.00, as adjusted, for annual gasoline throughput greater than or equal to 9,000,000 gallons per year and less than 10,000,000 gallons per year.

(k) \$3,400.00, as adjusted, for annual gasoline throughput greater than or equal to 10,000,000 gallons per year and less than 11,000,000 gallons per year.

(l) \$3,700.00, as adjusted, for annual gasoline throughput greater than or equal to 11,000,000 gallons per year and less than 12,000,000 gallons per year.

(m) \$4,000.00, as adjusted, for annual gasoline throughput greater than or equal to 12,000,000 gallons per year and less than 13,000,000 gallons per year.

(n) \$4,300.00, as adjusted, for annual gasoline throughput greater than or equal to 13,000,000 gallons per year and less than 14,000,000 gallons per year.

(o) \$4,700.00, as adjusted, for annual gasoline throughput greater than or equal to 14,000,000 gallons per year.

**D. Consumer price index adjustments:** Beginning January 1, 2019, and every January 1 thereafter, an increase based on the consumer price index shall be applied to all fees required by 20.11.39.19 NMAC. The fees shall be adjusted by an amount equal to the increase in the consumer price index for the immediately-preceding year. Fee adjustments equal to or less than 50 cents (\$0.50) shall be rounded down to the next lowest whole dollar. The department shall post the fee rates on the city of Albuquerque environmental health department website.

[20.11.39.19 NMAC - N, 12/21/17]

#### **20.11.39.20 AQN CANCELLATION:**

An owner or operator who receives an AQN must construct the source and begin its intended operations within two years of the date of the issuance of the AQN. AQNs for sources which have not been constructed and begun operations within two years shall be void.

[20.11.39.18 NMAC - N, 12/21/17]

### **PART 40: SOURCE REGISTRATION**

#### **20.11.40.1 ISSUING AGENCY:**

Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[3/21/77. . .12/1/95; 20.11.40.1 NMAC – Rn, 20 NMAC 11.40.I.1, 10/1/02]

#### **20.11.40.2 SCOPE:**

**A. This Part is applicable to any stationary source located in Bernalillo County.**

**B. Exempt:** This Part does not apply to sources within Bernalillo County, which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control Board lacks jurisdiction.

[12/1/95; 20.11.40.2 NMAC – Rn, 20 NMAC 11.40.I.2, 10/1/02]

#### **20.11.40.3 STATUTORY AUTHORITY:**

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

[3/21/77. . .12/1/95; 20.11.40.3 NMAC – Rn, 20 NMAC 11.40.I.3, 10/1/02]

#### **20.11.40.4 DURATION:**

Permanent.

[12/1/95; 20.11.40.4 NMAC – Rn, 20 NMAC 11.40.I.4, 10/1/02]

#### **20.11.40.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.40.5 NMAC – Rn, 20 NMAC 11.40.I.5 & A, 10/1/02]

#### **20.11.40.6 OBJECTIVE:**

By January 1, 1974, any person owning or operating any commercial or industrial stationary source, which emits more than two thousand pounds of any air contaminant per year or any amount of a hazardous air pollutant, must obtain a Registration Certificate for the source from the Director. Any person owning or operating any commercial or industrial stationary source constructed after September 1, 1973, and meeting the emission requirements of this section, must obtain a Registration Certificate for the source from the Director within one hundred and eighty days after the initial startup date of the source.

[3/21/77; 20.11.40.6 NMAC – Rn, 20 NMAC 11.40.I.6, 10/1/02]

#### **20.11.40.7 DEFINITIONS:**

**[RESERVED]**

[12/1/95; 20.11.40.7 NMAC – Rn, 20 NMAC 11.40.I.7, 10/1/02]

**20.11.40.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.40.8 NMAC – Rn, 20 NMAC 11.40.I.8, 10/1/02]

**20.11.40.9 SAVINGS CLAUSE:**

Any amendment to 20.11.40 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation 22, or 20.11.40 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

[12/1/95; 20.11.40.9 NMAC – Rn, 20 NMAC 11.40.I.9, 10/1/02]

**20.11.40.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of this Part or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.

[12/1/95; 20.11.40.10 NMAC – Rn, 20 NMAC 11.40.I.10, 10/1/02]

**20.11.40.11 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.40.11 NMAC – Rn, 20 NMAC 11.40.I.11 & A, 10/1/02]

**20.11.40.12 NOTICE OF INTENT:**

**[RESERVED]**

[12/1/95; 20.11.40.12 NMAC – Rn, 20 NMAC 11.40.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.40.II.1, 10/1/02]

**20.11.40.13 REGISTRATION CERTIFICATE:**

Any person seeking a Registration Certificate shall do so by filing a written application with the Director.

**A. Applications shall:**

- (1) Be made on forms furnished by the Director.
- (2) State the operator's name and mailing address.
- (3) State the owner's name and mailing address.
- (4) State the name and address of the source.
- (5) State the date of the application.
- (6) Describe the nature and amounts of any air contaminants emitted from the source.
- (7) Describe the nature of all processes and equipment which produce air contaminant emissions.
- (8) Describe the nature and effectiveness of any air pollution control equipment used.
- (9) State the type, quantity and purpose of any fuel used.
- (10) State the normal operating schedule of the source in terms of hours per day, days per week, weeks per month, and months per year.
- (11) Contain such other relevant information as the Director may require.
- (12) Be signed by the applicant or his authorized representative.
- (13) Be accompanied by a one-time registration fee of \$25.

**B.** Upon the receipt of the information and fee required to be submitted by Section 20.11.40.13 NMAC, the Director shall issue the Registration Certificate.

**C.** Whenever a change in the information required in Section 20.11.40.13 NMAC occurs, the person owning or operating such source shall, within 15 days, notify the Director in writing of the details and date of such change. Such person may be subject to Parts 20.11.2 and 20.11.41 NMAC.

**D. The Director May:**

(1) Exempt from the requirement contained in Section 20.11.40.13 NMAC for any stationary source or class of stationary sources.

(2) Reduce the informational requirements contained in Section 20.11.40.13 NMAC for any stationary source or class of stationary sources.

(3) Provide for the filing of a single application and issuance of a single Registration Certificate for two or more stationary sources owned or operated by the same person and encompassed within any circle 300 feet in diameter.

(4) Extend the deadline for registration of any source or class of sources.

[3/24/82; 20.11.40.13 NMAC – Rn, 20 NMAC 11.40.II.2, 10/1/02]

#### **20.11.40.14 FEES:**

The total of all registration fees paid to the Director on or before the effective date of this Part shall be applied to the prescribed fee due under this Part. No fee is refundable.

[3/24/82. . .12/1/95; 20.11.40.14 NMAC – Rn, 20 NMAC 11.40.II.3, 10/1/02]

#### **20.11.40.15 RECORDS:**

Any records or other information furnished to the Director relating to the Director relating to business matters, processes or production techniques unique to the applicant and considered to be confidential shall be clearly labeled as being confidential by the applicant and shall not be made a part of any public record unless the applicant expressly agrees to its publication.

[3/24/82; 20.11.40.15 NMAC – Rn, 20 NMAC 11.40.II.4, 10/1/02]

### **PART 41: CONSTRUCTION PERMITS**

#### **20.11.41.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.

[20.11.41.1 NMAC - Rp, 20.11.41.1 NMAC, 1/1/14]

#### **20.11.41.2 SCOPE:**

20.11.41 NMAC applies to every person who intends to construct, operate, modify, relocate or make a technical revision to a source that is subject to 20.11.41 NMAC or who has authority to operate a source that triggers the emission thresholds in Subsection B of 20.11.41.2 NMAC, except as otherwise provided.

**A. Applicability:** Every stationary source subject to 20.11.41 NMAC shall obtain an air quality construction permit from the department as required by 20.11.41 NMAC before:

- (1) commencing construction of a new stationary source;
- (2) operating a stationary source that was required by 20.11.41 NMAC to obtain a construction permit before commencing construction or modification, but the stationary source has no active construction permit; or
- (3) modification of a stationary source.

**B. Emission thresholds that require a construction permit before commencing construction, modification or operation of a stationary source subject to 20.11.41 NMAC:**

(1) If a person proposes to construct or operate a new stationary source that will emit one or more regulated air contaminants for which a federal, state or board ambient air quality standard exists and if the source will emit, when calculated at the contaminant's potential emission rate, 10 pounds per hour or more or 25 tons per year or more of any single regulated air contaminant, then the person shall apply for and obtain a construction permit as required by 20.11.41 NMAC before the person commences construction or operation of the source.

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

(3) If a person proposes to construct a new stationary source or proposes a modification of a stationary source permit, and if the source will emit, when calculated at the air contaminant's potential emission rate, two tons per year or more of a single hazardous air pollutant (HAP) as defined by Section 112(b) of the federal Clean Air Act, or five tons or more per year of any combination of HAP, then the proposed or existing source shall apply for and obtain a construction permit or construction permit modification as required by 20.11.41 NMAC before the person commences construction.

(4) If a stationary source was not required to obtain a construction permit pursuant to 20.11.41 NMAC because the source was operating before August 31, 1972, and if operations of the source have ceased for five or more consecutive years, and if an air contaminant proposed to be emitted by the source triggers the emission

thresholds in Paragraphs (1) or (3) of Subsection B of 20.11.41.2 NMAC, then the owner or operator of the source shall apply for and obtain a construction permit as required by 20.11.41 NMAC before the person constructs, modifies or operates the source.

**(5)** If a person proposes to construct a new stationary source or proposes to modify an existing stationary source and if the source will emit, when calculated at the contaminant's potential emission rate, five tons per year or more of lead (Pb) or any combination of lead and its compounds, then the person shall apply for and obtain a construction permit or construction permit modification as required by 20.11.41 NMAC before the person commences construction, modification or operation.

**(6)** If a stationary source was constructed after August 31, 1972 and the source is subject to an existing or new board regulation that includes an equipment emission limitation, the source shall apply for and obtain a construction permit or construction permit modification as required by 20.11.41 NMAC.

**C. Source classifications; source types:** If a person proposes to construct a new stationary source, modify an existing stationary source, construct a portable or temporary stationary source, or proposes a technical permit revision and any of the following conditions apply, the person shall apply for and obtain a construction permit, a construction permit modification or technical permit revision approval pursuant to 20.11.41 NMAC before commencing construction or modification of:

**(1)** any equipment or process that is subject or becomes subject to 20.11.63 NMAC, New Source Performance Standards for Stationary Sources, or 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources;

**(2)** any stationary source that meets the applicability requirements of 20.11.41 NMAC; however, if the source is also a major stationary source or a major modification as defined in 20.11.60 NMAC, Permitting in Nonattainment Areas, then the source shall in addition be subject to 20.11.60 NMAC;

**(3)** any stationary source that meets the applicability requirements of 20.11.41 NMAC; however, if the source is also a major stationary source or a major modification as defined in 20.11.61 NMAC, Prevention of Significant Deterioration, then the source shall in addition be subject to 20.11.61 NMAC; and

**(4)** a major source of HAP as defined in 40 CFR Part 63.

**D. Sources that become subject to new NSPS or NESHAP:** If a person is operating a source that becomes subject to a new NSPS or NESHAP, the person shall apply for and obtain a construction permit as required by 20.11.41 NMAC.

**E. Additional permit requirements:**

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

**(2)** Although more than one air quality regulation adopted by the board may apply to a stationary source, including 20.11.39, 20.11.40, 20.11.60, 20.11.61, 20.11.63, and 20.11.64 NMAC, nothing in 20.11.41 NMAC shall be construed to require more than one permit application for each unit proposed for construction or modification. Definitions and provisions included in specific federal program regulations shall apply to permit review of any regulated air contaminant and source regulated by the federal NSPS, NESHAP, prevention of significant deterioration, visibility or nonattainment requirements.

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

#### **F. Exemptions:**

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

**(2)** The following sources and activities shall not be reported in the permit application. Emissions from such activities shall not be included in the calculation of the facility-wide potential emission rate under Paragraphs (1)-(5) of Subsection B and Subsection C of 20.11.41.2 NMAC. The following activities may be commenced or changed without a permit or permit modification under 20.11.41 NMAC if the emissions and activities are not subject to any requirement under a local board regulation, the New Mexico Air Quality Control Act, NMSA 1978, NSPS or NESHAP:

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

**(b)** activities for maintenance of equipment or pollution control equipment, either inside or outside of a building, including cutting, welding, painting and grinding;

**(c)** exhaust emissions from forklifts, courier vehicles, front end loaders, graders, carts, and maintenance trucks;

**(d)** use of firefighting equipment and firefighting training provided the emissions are not subject to any requirement of a NSPS or NESHAP;

**(e)** government military activities such as field exercises, explosions, weapons testing and demolition to the extent that such activities do not result in visible emissions entering publicly accessible areas;

**(f)** use of portable aerospace ground equipment (such as power generators, compressors, heaters, air conditions, lighting units) if the equipment is used in direct support of aircraft operations, and on or in the immediate vicinity of an airfield;

**(g)** use of portable support equipment such as power generation equipment, compressors, heaters, air conditioning and lighting equipment used for activities that include, but are not limited to maintenance and repair if the equipment is used fewer than 12 consecutive months at the same location and the equipment does not directly support an otherwise regulated portable stationary source (such as a screening plant, sand and gravel processing equipment, hot mix asphalt plant, concrete plant or soil vapor extraction system);

**(h)** gases used to calibrate plant instrumentation, including continuous emission monitoring (CEM) systems;

**(3)** An applicant for a permit is not required to obtain a permit for the following new or modified sources and activities at a facility, but is required to report the following on permit application forms available from the department: fuel burning equipment that is used solely for heating buildings for personal comfort or for producing hot water for personal use and that:

**(a)** uses gaseous fuel and has a design rate of five million BTU per hour or less; or

**(b)** uses distillate oil, but not including waste oil, and has a design rate of one million BTU per hour or less.

**(4)** After a permit has been issued, construction of the sources or commencement of the sources and activities described in Paragraph (3) of Subsection F of 20.11.41.2 NMAC shall comply with the administrative permit revision procedures in Subsection A of 20.11.41.28 NMAC. Emissions from the sources and activities described in Paragraph (3) of Subsection F of 20.11.41.2 NMAC shall not be included in the facility-wide potential emission rate calculation that is described in Subsections B and C of 20.11.41.2 NMAC.

**G. Permissive waiver:** An owner or operator of an emergency stationary reciprocating internal combustion engine or gasoline dispensing facility, as defined in 20.11.39 NMAC, may apply for an air quality notification pursuant to that Part. If the department grants an air quality notification, then the applicability requirements in

Paragraphs (1), (2) and (4) of Subsection B and in Paragraph (1) of Subsection C of 20.11.41.2 NMAC shall not apply to the source that received the air quality notification.

[20.11.41.2 NMAC - Rp, 20.11.41.2 NMAC, 1/1/14; A, 12/21/17]

**20.11.41.3 STATUTORY AUTHORITY:**

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

[20.11.41.3 NMAC - Rp, 20.11.41.3 NMAC, 1/1/14]

**20.11.41.4 DURATION:**

Permanent.

[20.11.41.4 NMAC - Rp, 20.11.41.4 NMAC, 1/1/14]

**20.11.41.5 EFFECTIVE DATE:**

January 1, 2014, unless a later date is cited at the end of a section.

[20.11.41.5 NMAC - Rp, 20.11.41.5 NMAC, 1/1/14]

**20.11.41.6 OBJECTIVE:**

To establish the requirements for obtaining a construction permit, construction permit modification, relocation and administrative and technical permit revision.

[20.11.41.6 NMAC - Rp, 20.11.41.6 NMAC, 1/1/14]

**20.11.41.7 DEFINITIONS:**

In addition to the definitions in 20.11.41 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.41 NMAC shall govern.

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

**B. "Administrative permit revision" or "administrative revision"** means a revision to a construction permit for a source that is requested and approved pursuant to Subsection A of 20.11.41.28 NMAC.

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

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

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

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

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

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

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

(3) any standard or other requirement:

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

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

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

(d) that applies to consumer and commercial products under Section 183(e) of the federal act; or

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

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

(5) any national or New Mexico ambient air quality standard;

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

(7) any regulation adopted by the board in accordance with the city of Albuquerque and county of Bernalillo joint air quality control board ordinances pursuant to the Air Quality Control Act, and the laws and regulations in effect pursuant to the Air Quality Control Act.

H. **"Board"** means the Albuquerque-Bernalillo county air quality control board or its successor board pursuant to the state act.

I. **"Commence", "commencement", "commencing" or "commences"** means an owner or operator has undertaken a continuous program of construction or modification, has entered into a binding contractual obligation to undertake and complete a continuous program of construction within a reasonable time, or has acquired the right to operate a source that is subject to 20.11.41 NMAC and plans to commence operating the source.

J. **"Conflict of interest"** for the purposes of accelerated review, means any direct or indirect relationship between the qualified outside firm and the applicant or other interested person that would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of the qualified outside firm in review of the application. A conflict of interest does not include any gifts, gratuities, financial or contractual relationship that totals less than \$100 in value for the 12 month period preceding the department's receipt of the application. A conflict of interest includes:

(1) gifts or gratuities of value that have been exchanged between the qualified outside firm and the applicant;

(2) the qualified outside firm having provided goods or services to the applicant within one year before the start, or during the term, of the accelerated review process;

(3) an express or implied contractual relationship that exists between the qualified outside firm and the applicant, and the qualified outside firm has provided

goods or services to the applicant as a result of the relationship within five years before the start of the accelerated review process; or

(4) a current financial relationship between the qualified outside firm and the applicant; current financial relationships include, but are not limited to:

(a) the qualified outside firm owes anything of value to, or is owed anything of value by the applicant; and

(b) the qualified outside firm has provided goods or services to the applicant and has issued a warranty or guarantee for the work that is still in effect during the time the contracted work for accelerated review is being performed;

(5) a director, officer or employee of the qualified outside firm that will perform services under a contract pursuant to 20.11.41.32 NMAC, and has one or more personal, business or financial interests or relationships with the applicant or any director, officer or employee of the applicant that would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under a contract;

(6) a director, officer or employee of the qualified outside firm was a director, officer or employee of the applicant within one year before the start of the accelerated review process;

(7) a communication that has occurred between the qualified outside firm and the applicant regarding the substance of the application before a qualified outside firm has been selected to perform accelerated review of an application except as allowed by the department; direct communication between the qualified outside firm and the applicant may take place after the qualified outside firm has been selected by the department;

(8) an affiliate of the applicant has any of the above described relationships with the qualified outside firm;

(9) an affiliate of the qualified outside firm has any of the above described relationships with the applicant; and

(10) an affiliate of the applicant has any of the above described relationships with any affiliate of the qualified outside firm.

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

**L. "Days"** means consecutive days except as otherwise specifically provided.

**M. "Department"** means the Albuquerque environmental health department, which is the administrative agency of the Albuquerque-Bernalillo county air quality control board.

**N. "Emergency"** means unforeseen circumstances resulting in an imminent and substantial endangerment to health, safety, or welfare and that require immediate action.

**O. "Emission limitation"** means a requirement established by EPA, the state implementation plan (SIP), the state act, local ordinance, permit or board regulation that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous reduction.

**P. "Emission unit" or "unit"** means any article, machine, equipment, contrivance, process or process line that emits or reduces, or may emit or reduce, the emissions of any air contaminant, except from motor vehicles.

**Q. "EPA"** means the United States environmental protection agency.

**R. "Federal clean air act", "CAA" or "federal act"** means the federal Clean Air Act, 42 U.S.C. Section 7401 through 7671 et seq., as amended.

**S. "Federally enforceable"** means all limitations and conditions that are enforceable by the administrator of the EPA, including all requirements adopted pursuant to 40 CFR Parts 60, 61 and 63; all requirements included in any applicable state implementation plan; and any permit requirements imposed pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

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

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

- (1) a change in ownership of the source;
- (2) routine maintenance, repair or replacement;

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

(4) unless previously limited by enforceable permit conditions:

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

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

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

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

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

**X. "New Mexico ambient air quality standards" or "NMAAQS"** means the ambient air quality standards promulgated by the New Mexico environmental improvement board.

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

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

**AA. "North American industry classification system" or "NAICS"** means the industry classification system that is used by the statistical agencies of the United States, is issued by the federal office of management and budget and replaced the standard industrial classification (SIC) system.

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

**CC. "Owner"** means the person or persons who own a source.

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

**EE. "Permit"** means a construction permit for a source or a construction permit modification, relocation, or administrative or technical permit revision that has been issued or approved by the department pursuant to 20.11.41 NMAC. A permit includes constraints, emissions limitations and other conditions and authorizes a person to commence construction, modification, relocation, or technical revision to the permitted source or operation; or commence operation of a facility that contains a source that is subject to 20.11.41 NMAC.

**FF. "Permittee"** means the person who has applied for and has obtained a construction permit for a source that has been issued a permit pursuant to 20.11.41 NMAC.

**GG. "Portable stationary source"** means a source that can be relocated to another operating site with limited dismantling and reassembly, including, as an example, movable sand and gravel processing operations, concrete plants, asphalt plants and soil vapor extraction systems.

**HH. "Potential emission rate"** means the emission rate of a source at its maximum capacity to emit a regulated air contaminant under its physical and operational design, provided any physical or operational limitation on the capacity of the source to emit a regulated air contaminant, (including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed), shall be treated as part of its physical and operational design, but only if the limitation or the effect the limitation would have on emissions is enforceable by the department pursuant to the state act or the federal act.

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

**JJ. "Public information hearing" or "PIH"** means the hearing provided by the department pursuant to 20.11.41.15 NMAC during which attendees can ask questions, provide comments and provide information; a PIH is not a hearing on the merits that results in a final decision at the close of the hearing.

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

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

**MM. "Shutdown"** means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units.

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

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

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

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

**RR. "Technical permit revision" or "technical revision"** means a revision to a construction permit pursuant to Subsection B of 20.11.41.28 NMAC.

[20.11.41.7 NMAC - Rp, 20.11.41.7 NMAC, 1/1/14]

## **20.11.41.8 VARIANCES:**

A person may request a variance from 20.11.41 NMAC in accordance with the procedures established in 20.11.7 NMAC, *Variance Procedure*.

[20.11.41.8 NMAC - Rp, 20.11.41.8 NMAC, 1/1/14]

**20.11.41.9 SAVINGS CLAUSE:**

Any amendment to 20.11.41 NMAC that is filed with the state records center and archives shall not affect actions pending for violation of the state act, a city or county ordinance, a prior version of 20.11.41 NMAC, another board regulation or a permit issued by the department. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance or regulation in effect at the time the violation was committed.

[20.11.41.9 NMAC - Rp, 20.11.41.9 NMAC, 1/1/14]

**20.11.41.10 SEVERABILITY:**

If for any reason any section, paragraph, sentence, clause, wording or application of 20.11.41 NMAC or any federal or New Mexico standards incorporated herein is held unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity or application of remaining provisions of 20.11.41 NMAC.

[20.11.41.10 NMAC - Rp, 20.11.41.10 NMAC, 1/1/14]

**20.11.41.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.41 NMAC may be viewed at the Albuquerque environmental health department, One Civic Plaza NW, Albuquerque, NM 87102. Permit applications, supporting documentation, preliminary determinations made by the department, and draft permits, if completed, shall be available for public inspection at the department's air quality division office at One Civic Plaza NW, Albuquerque, New Mexico 87102.

[20.11.41.11 NMAC - Rp, 20.11.41.11 NMAC, 1/1/14]

**20.11.41.12 FEES FOR PERMIT APPLICATION REVIEW:**

An application for a permit shall be accompanied by a check or money order in the amount required by 20.11.2 NMAC, *Fees*. No application shall be complete until the entire fee has been paid. Checks shall be made payable to the city of Albuquerque as required by 20.11.2 NMAC, *Fees*.

[20.11.41.12 NMAC - Rp, 20.11.41.12 NMAC, 1/1/14]

### **20.11.41.13 APPLICATION FOR PERMIT:**

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

**B. Applicant's public notice requirements:** If the applicant is applying for a permit or permit modification, then before the applicant submits the application required by Subsection E of 20.11.41.13 NMAC, the applicant shall comply with the public notice requirements of Paragraphs (1) and (2) of Subsection B of 20.11.41.13 NMAC. If the applicant is applying for a portable stationary source relocation, then the department may require that the applicant comply with these same notice requirements. The applicant shall:

(1) provide public notice by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions that are within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be located; contact information shall be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department; the public notice shall include all information required by Subsection C of 20.11.41.13 NMAC; the applicant may submit a written request to the department proposing an alternative approach to providing public notice if the proposed source or modification is located at a site with large property boundaries or campus-like facilities; the applicant shall obtain prior written approval from the department before using an alternative approach to providing public notice;

(2) prior to submitting the application, post and maintain a weather-proof sign provided by the department, posted at the more visible of either the proposed or existing facility entrance or, if approved in advance and in writing by the department, at another location on the property that is accessible to the public; the applicant shall list all information required by Subsection C of 20.11.41.13 NMAC, on the sign; the applicant shall keep the sign posted until the department takes final action on the permit application; if an applicant can establish to the department's satisfaction that the applicant is prohibited by law from posting, at either location required by Paragraph (2) of Subsection B of 20.11.41.13 NMAC, the department may waive the posting requirement and may impose different notification requirements.

**C. Additional public notice requirements:** The public notice specified in Paragraphs (1) and (2) of Subsection B of 20.11.41.13 NMAC shall include the following:

- (1) the applicant's name and address, and the names and addresses of the owner or operator of the source or proposed source;
- (2) the actual or estimated date the application will be submitted to the department;
- (3) the exact location of the source or proposed source;
- (4) a description of the source and related facility, if any; the nature of the business; the process or the change for which the permit is being requested, including a preliminary estimate of the maximum quantities of each regulated air contaminant the source will emit if the permit is issued and the proposed construction or modification is completed; and, if the source is being modified, the net change in emissions;
- (5) the maximum and normal operating schedules proposed for the source or facility; and
- (6) the current address of the applicant to which comments and inquiries may be directed.

**D.** A person who is seeking a construction permit pursuant to 20.11.41 NMAC shall complete a permit application and file one complete original and one duplicate copy with the department. A person who is seeking a general construction permit shall complete the applicable general construction form pursuant to Subsection C of 20.11.41.31 NMAC and file one complete original form and a duplicate copy with the department. All applications shall be submitted with the fee required by 20.11.2 NMAC.

**E. Application contents:** The following are the minimum elements that shall be included in the permit application before the department can determine whether the application is administratively complete and ready for technical review. It is not necessary to include an element if the department has issued a written waiver regarding the element and the waiver accompanies the application. However, the department shall not waive any federal requirements. The permit application shall include:

- (1) a completed permit application form provided by the department;
- (2) the name, street address and post office address, if any, of the applicant and the names, street addresses and post office addresses, if any, of the owner and all operators of the source if different than the applicant;
- (3) the date the application was submitted to the department;
- (4) sufficient attachments, including calculations, computations, EPA-approved air dispersion model as required, or models executed under a protocol as required that has been approved in advance and in writing by the department, and all other analyses used by the applicant to provide information to describe the potential

emission rate and nature of all regulated air contaminants that the source may emit, and the actual emissions that the source will emit under routine operations after construction, modification, relocation or technical revision, and estimates of potential emissions during malfunction, startup and shutdown;

**(5)** an operational and maintenance strategy detailing:

**(a)** the steps the applicant will take if a malfunction occurs that may cause emission of a regulated air contaminant to exceed a limit that is included in the permit;

**(b)** the nature of emissions during routine startup or shutdown of the source and the source's air pollution control equipment; and

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

**(6)** a map, such as a 7.5 minute topographic quadrangle map published by the United States geological survey or a map of equivalent or greater scale, detail and precision, including a city of Albuquerque or county of Bernalillo zone atlas map that shows the proposed location of each process equipment unit involved in the proposed construction, modification, relocation or technical revision of the source;

**(7)** an aerial photograph showing the proposed location of each process equipment unit involved in the proposed construction, modification, relocation or technical revision of the source except for federal agencies or departments involved in national defense or national security as confirmed and agreed to by the department in writing;

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

**(9)** a full description of air pollution control equipment, including all calculations and the basis for all control efficiencies presented, manufacturer's specifications sheets, and site layout and assembly drawings; UTM (universal transverse mercator) coordinates shall be used to identify the location of each emission unit;

**(10)** a description of the equipment or methods proposed by the applicant to be used for emission measurement;

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

**(12)** any other relevant information as the department may reasonably require;

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

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

(15) documentary proof that the applicant has complied with all public notice requirements, as required by Subsections B and C of 20.11.41.13 NMAC; documentary proof shall include proof of delivery of certified mail or e-mail of the public notice required by Paragraph (1) of Subsection B of 20.11.41.13 NMAC and a photograph of each notice posted as required by Paragraph (2) of Subsection B of 20.11.41.13 NMAC.

#### **F. Changing, supplementing or correcting applications:**

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

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

#### **G. Protection of confidential information:**

(1) All records, reports or information relating to permit applications obtained by the department or the board from any person shall be available to the public for inspection and copying, unless a person has made a satisfactory showing to the department or the board, as confirmed and agreed to by the department in writing, that specific items or information or parts thereof, if made public, would divulge: confidential business records, methods or processes entitled to protection as trade secrets; information pertaining to national defense; or information pertaining to national security. If the items or information are specifically marked by the person as confidential at the time of submittal, the department and the board shall then protect the items and

information listed in Subparagraphs (a) and (b) of Paragraph (1) of Subsection G of 20.11.41.13 NMAC as confidential and not to be made a part of any public record unless the person expressly agrees, in writing, to its inspection, copying, or publication:

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

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

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

(3) The department shall review all claims of confidentiality made by any person pursuant to 20.11.41 NMAC and shall notify the person of the department's determination by certified mail or electronic mail in a timely manner and shall include the reasons for the decision. The burden of proof for claims of confidentiality shall be upon the person submitting such claim.

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

(5) The department shall protect information claimed and subsequently found to be confidential in accordance with the provisions of 74-2-11 NMSA 1978 and 18 U.S.C. Section 1905, except that any such record, report or information may be disclosed:

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

(b) in any proceeding pursuant to the federal act or the state act, when relevant.

[20.11.41.13 NMAC - Rp, 20.11.41.13 NMAC, 1/1/14; A, 12/13/17]

#### **20.11.41.14 PUBLIC NOTICE BY DEPARTMENT - PUBLIC PARTICIPATION:**

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

**B.** If the department makes an affirmative administrative completeness determination then:

(1) the department shall make the permit application and all supporting documentation available for public inspection at the department's air quality division office at One Civic Plaza NW, Albuquerque, NM 87102;

**(2)** the department shall publish the public notice on the web site of the city of Albuquerque environmental health department; the notice shall state:

**(a)** the applicant's name and address;

**(b)** the proposed or existing location;

**(c)** a brief description of the source and related facility, if any;

**(d)** a brief preliminary summary of proposed emissions and the proposed net emissions increase if a permit modification is proposed;

**(e)** the ambient air quality impact as determined by air dispersion modeling, if required by the department;

**(f)** the location where the permit application and the department's analysis if completed, are available for public review; the notice shall clearly state that any person who does not express such interest in writing prior to the end of the initial 30 day comment period will not receive notification of the availability of the analysis and so alert such a person of the need to express interest in writing if they desire to review and comment on the analysis;

**(g)** that the public has 30 days to submit written comments and evidence to the department regarding the proposed permit or to request a PIH regarding the application or both; the notice shall specify the date by which all comments and evidence or a request for a PIH shall be submitted;

**(h)** that the department shall hold a PIH pursuant to 20.11.41.15 NMAC if the director determines there is significant public interest and a significant air quality issue is involved; and

**(i)** that any person who does not participate in the permitting action will not receive notification of the department's decision regarding the proposed permit, unless the person has delivered a written request for notice to the department;

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

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

(5) the department shall send notice of the department's action regarding the permit application and the reasons for the action to every person who participated in the permitting action; a request to inspect or copy shall not be considered participation for the purposes of Paragraph (5) of Subsection B of 20.11.41.14 NMAC; the applicant shall be notified by certified mail or electronic mail; all other interested persons who participated shall be notified by regular mail or electronic mail;

(6) the department shall provide a copy of the public notice by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions, that are within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be located; contact information, if available, shall be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department;

(7) the department shall mail a copy of the public notice by regular or electronic mail to every person who submits a written request for a copy to the department;

(8) the department shall mail a copy of the public notice by regular or electronic mail to the state of New Mexico environment department within five days after the department deems the application complete; the department shall also mail a copy of the public notice by regular or electronic mail to EPA Region VI, if requested; and

(9) the department shall mail a copy of the public notice by regular or electronic mail to all municipalities, Indian tribes and counties that are within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be located.

**C.** If a person expresses in writing an interest in the permit application, the department shall:

(1) notify that person of the date that the department's analysis was or will be available for review and where the analysis may be obtained; and

(2) not issue the permit until at least 30 days after the department's analysis is available for review. During the 30 day period, any person may submit written comments or request a PIH.

[20.11.41.14 NMAC - Rp, 20.11.41.14 NMAC, 1/1/14; A, 12/13/17]

#### **20.11.41.15 PUBLIC INFORMATION HEARING (PIH):**

**A.** Before the department makes a final decision regarding a permit application, the department shall hold a PIH if the director determines that there is significant public interest and a significant air quality issue is involved. A PIH is not an adjudicatory

hearing on the merits. The PIH shall be held no fewer than 30 days before the deadline for the department to make a final decision regarding the permit application. The hearing officer shall determine whether to require attendees to be sworn before they can ask questions, provide comments or provide information. During the PIH, attendees can ask questions, provide comments and provide information regarding the requested air quality permitting action, but no final decision shall be made by the department at the close of the hearing.

**B.** The department shall make all arrangements and pay all expenses of the hearing including:

(1) arranging for a location for the PIH, which shall be held near the proposed source if reasonably feasible;

(2) providing an English-Spanish and Spanish-English translator at the PIH if determined to be necessary by the department;

(3) providing a hearing officer; the hearing officer shall preside over the PIH; shall give all attendees present at the hearing a reasonable opportunity to ask questions, provide comments and provide information regarding the requested air quality permitting action and to examine attendees commenting at the hearing; but shall not make a recommendation or a final decision regarding the permit application;

(4) requesting that the applicant present its proposal and to answer questions from attendees at the PIH;

(5) no fewer than 30 days before the PIH, providing a copy of the public notice by certified mail or electronic mail to the applicant, the designated representative(s) of the recognized neighborhood associations and recognized neighborhood coalitions that are within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be located; contact information, if available, shall be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department; the notice shall contain the information required by Paragraphs (1) and (3)-(5) of Subsection C of 20.11.41.13 NMAC, and the name of the contact person, the department and the address to which comments and inquiries may be directed; the notice of the PIH shall be in English and Spanish if the department determines notice in Spanish is necessary; if a PIH notice is returned to the department undelivered, the department shall promptly confirm the address through the appropriate local government entity, and, if an address is available, shall provide a second copy of applicant's PIH notice to the president or vice president of the neighborhood association or neighborhood coalition;

(6) publishing public notice of the PIH in the newspaper with the largest general circulation in Bernalillo county no fewer than 30 days before the PIH; the notice shall include the date, time, and location of the PIH, the number of the proposed permit,

and a statement that a final decision has not been made by the department regarding the proposed permit;

(7) mailing notice of the PIH to all interested persons who have submitted written comments or evidence to the department and to all interested persons who have delivered to the department a written request for notice regarding the application; a request to inspect or copy shall not be considered a written comment for the purposes of Paragraph (7) of Subsection B of 20.11.41.15 NMAC;

(8) requiring department staff to attend the PIH; be present during the applicant's requested presentation and the comments and questions by the attendees; and answer questions regarding the application and the permitting process; and

(9) recording the PIH and including the recording in the administrative record for the permit application; the department shall provide a duplicate of the recording to any person who requests a copy; the person requesting shall reimburse the department for the cost of the copy before the department makes the copy; the person making the request for a copy may instead provide the department with recording media that meets the department specifications, and the department will not impose a charge for copying; if a person requests a transcript of the hearing (the requestor), the department shall obtain an estimate of the cost of the transcription and inform the requestor; the requestor shall pay the estimated cost before the department orders the transcription; if the actual cost of the transcription is more than the estimate, the requestor shall pay the additional amount before the department provides the transcription; if the actual cost of the transcription is less than the estimate, the department shall reimburse the difference.

[20.11.41.15 NMAC - Rp, 20.11.41.15 NMAC, 1/1/14; A, 12/13/17]

#### **20.11.41.16 PERMIT DECISION AND AIR BOARD HEARING ON THE MERITS:**

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

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

(2) If the application is deemed administratively incomplete or the department determines a different type of permit application is required, the department shall send a letter by certified mail or electronic mail to the applicant stating what additional information or fees are necessary before the department can deem the application administratively complete. The department may require information that is necessary to perform a thorough review of the application including: technical clarifications, emission calculations, emission factor usage, additional application review fees if any are

required by 20.11.2 NMAC and new or additional air dispersion modeling. The letter shall state a reasonable deadline for the applicant to deliver the information, fees or air dispersion modeling. The applicant shall deliver the requested information, fees or air dispersion modeling by the deadline set by the department. The department may extend the deadline for good cause as determined by the department. If the department does not receive the additional information, fees or modeling by the deadline, the department may deny the application. If the department has ruled an application administratively incomplete three times, the department shall deny the permit application and send a letter by certified mail or electronic mail to the applicant stating that the permit application has been denied. Fees submitted for processing an application that has been denied shall not be refunded. If the department has denied the application, the applicant may submit a new application and the fee required for a new application.

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

**B.** Within 90 days after the department has deemed the application administratively complete, the department shall issue the permit, issue the permit subject to conditions or deny the permit as authorized by the state act, unless the director grants an extension for not more than 90 days for good cause, including scheduling a PIH. If an extension of the 90 day deadline is needed to review and make a decision regarding the application, then 90 days after the department has deemed the application administratively complete, the department shall notify the applicant by certified mail or electronic mail that an extension of time is required. The notification shall specify in detail the grounds for the extension.

**C.** The department shall issue the permit, issue the permit subject to conditions or deny the requested permit or permit modification based on information contained in the department's administrative record of the permit application. The administrative record shall consist of the application, all other evidence submitted by the applicant, all evidence or written comments submitted by interested persons, all other evidence considered by the department, a statement of matters officially noticed and, if a PIH has been held, the PIH hearing record. The applicant has the burden of demonstrating that a permit should be issued.

**D.** Every person who participated in a permitting action before the department shall be notified by the department of the action taken and the reasons for the action. A request to inspect or copy information contained in the department's administrative record of the permit application shall not be considered participation for purposes of Subsection D of 20.11.41.16 NMAC. The department shall notify the applicant by certified mail as required by the state act. Applicants that request expedited receipt of the notification instead of receiving notice by certified mail may deliver a written request to the department and have an authorized representative of the applicant pick up the notification at the department. The authorized representative shall acknowledge receipt of the notification in writing. The department shall notify all other participating persons

by regular mail sent to the legible address the participating person has provided to the department. Notification by mail shall be deemed complete and received three days after mailing postage paid to the participating person's address provided to the department.

**E.** A person who participated in a permitting action before the department and who is adversely affected by the permitting action may file a petition for hearing before the board. A request to inspect or copy shall not be considered participation for the purposes of Subsection E of 20.11.41.16 NMAC. The petition shall be in writing and shall be delivered to the board within 30 days from the date notice is given of the department's action. The petition shall conform to the requirements of Subsection B of 20.11.81.14 NMAC. The petitioner shall certify that a copy of the petition has been mailed or hand delivered to the applicant if the petitioner is not the applicant. A hearing before the board shall be conducted as required by 20.11.81 NMAC. Unless a timely request for a hearing is made, the decision of the department shall be final.

**F.** If a timely request for a hearing is made, the board shall hold an adjudicatory hearing on the merits within 60 days of receipt of the petition as required by the state act at NMSA 1978, Section 74-2-7(I) and 20.11.81 NMAC. In the hearing before the board, the burden of proof shall be on the petitioner as required by the state act at NMSA 1978, Section 74-2-7(K).

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

[20.11.41.16 NMAC - Rp, 20.11.41.15 NMAC, 1/1/14]

#### **20.11.41.17 BASIS FOR PERMIT DENIAL:**

After the department has deemed a permit application administratively complete, the department may deny the application if:

**A.** the department determines the proposed construction, modification or technical revision will not meet an applicable standard, rule, regulation, provision or requirement of the federal act, the state act or a board regulation;

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

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

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

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

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

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

**H.** the estimated emissions of air contaminants submitted by the applicant have not been appropriately identified or quantified;

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

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

[20.11.41.17 NMAC - Rp, 20.11.41.16 NMAC, 1/1/14]

#### **20.11.41.18 APPLICANTS' ADDITIONAL LEGAL RESPONSIBILITIES:**

The issuance of a permit does not relieve any person from responsibility for complying with applicable provisions of the federal act, the state act or a regulation of the board.

[20.11.41.18 NMAC - Rp, 20.11.41.17 NMAC, 1/1/14]

#### **20.11.41.19 PERMIT CONDITIONS:**

**A.** The contents of a permit application specifically identified by the department shall become terms and conditions of the permit.

**B.** The department shall impose conditions upon a permit as authorized by the state act and as the department determines to be appropriate, including:

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

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

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

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

(3) compliance with applicable NSPS and NESHAP;

(4) imposition of reasonable restrictions and limitations to prevent or abate air pollution not relating to emission limits or emission rates; examples include monitoring, recordkeeping and reporting; reporting administrative revisions; notifications; posting of permit; and substitution of equipment not resulting in an increase in emissions;

(5) any combination of the above; and

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

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

(1) a schedule of construction;

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

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

(4) safe access to each port;

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

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

(7) periodic testing pursuant to 20.11.41.22 NMAC, *Performance Testing*;

(8) maintaining records of the nature and amount of emission;

(9) periodic reports to the department regarding the nature and amounts of emissions;

(10) maintaining records of air pollution control equipment performance; and

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

D. Every term or condition included in a permit is enforceable to the same extent as a regulation of the board.

[20.11.41.19 NMAC - Rp, 20.11.41.18 NMAC, 1/1/14]

#### **20.11.41.20 PERMIT CANCELLATION, SUSPENSION OR REVOCATION:**

A. The department shall cancel any permit for any source that ceases operation for five years or more, or permanently. Reactivation of any source after the five year period shall require a new permit.

B. The department may cancel a permit if the construction or modification is not commenced within two years from the date of issuance or, if during the construction or modification, work is suspended for a total of one year, such cancellation shall be subject to the following procedures:

(1) at least 30 days before canceling a permit, the department shall notify the permittee by certified mail of the impending cancellation; upon cancellation, the department shall notify the permittee by certified mail of the cancellation of the permit and the reasons therefor; construction, modification and, if required, interim operation shall cease upon the effective date of cancellation contained in the notice of cancellation; a permittee who has received notice that a permit is or will be cancelled may request a hearing before the board; the request must be made in writing to the board within 30 days after the notice of the department's action has been received by the permittee; unless a timely request for hearing is made, the decision of the department shall be final; and

(2) if a timely request for hearing is made, the board shall hold a hearing within 60 days after receipt of the request; the department shall notify the requestor by certified mail of the date, time and place of the hearing; in the hearing, the burden of proof shall be upon the requestor; the board may designate a hearing officer to take evidence in the hearing; based upon the evidence presented at the hearing, the board shall sustain, modify or reverse the action of the department; the hearing shall be conducted pursuant to 20.11.81 NMAC.

C. As authorized by the state act at NMSA 1978, Section 74-2-12, a violation of a requirement of the state act, a board regulation or a condition of a permit that has been issued pursuant to 20.11.41 NMAC may result in suspension or revocation of the

permit. If the department initiates an enforcement action to suspend or revoke a permit, the department and the permittee shall comply with the procedures required by 20.11.80 NMAC, *Adjudicatory Procedures – Administrative Enforcement Hearings by Director*.

[20.11.41.20 NMAC - N, 1/1/14]

**20.11.41.21 PERMITTEE’S OBLIGATION TO INFORM THE DEPARTMENT AND DELIVER AN ANNUAL EMISSIONS INVENTORY:**

**A.** After a permit is issued pursuant to 20.11.41 NMAC, the permittee shall inform the department by letter, facsimile or electronic mail of:

(1) the date of anticipated initial startup of the source no fewer than 30 days before the anticipated initial startup date;

(2) the date of anticipated initial startup of a portable stationary source no fewer than two days before the anticipated initial startup date;

(3) the date of actual initial startup of the source or portable stationary source no more than 15 days after actual startup has occurred;

(4) the date a portable stationary source leaves or returns to Bernalillo county;

(5) any change of ownership, operator or permittee no more than 15 days after the change has occurred; and

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

**B.** The permittee shall submit an annual emissions inventory to the department as required by 20.11.47 NMAC, *Emissions Inventory Requirements*.

[20.11.41.21 NMAC - Rp, 20.11.41.20 NMAC, 1/1/14]

**20.11.41.22 PERFORMANCE TESTING:**

**A.** Within 60 days after achieving the maximum production rate at which the newly constructed or modified stationary source will be operated, but not later than 180 days after initial startup of the newly constructed or modified source, the owner or operator of the source may be required to conduct a performance test at the permittee’s expense and in accordance with methods and under operating conditions approved by the department and to furnish the department with a written report of the results of the test. No more than 30 days after the test is completed, the permittee shall deliver the written report of the test results to the department. The permittee shall allow a representative of

the department to be present at the test. The department may require the permittee to repeat the performance tests at the permittee's expense until compliance is demonstrated and testing is performed in a technically satisfactory manner as determined by the department.

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

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

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

(3) the test was technically unsatisfactory.

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

[20.11.41.22 NMAC - Rp, 20.11.41.21 NMAC, 1/1/14]

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

**A.** Portable aerospace ground equipment exempted by Subparagraph (f) of Paragraph (2) of Subsection F of 20.11.41.2 NMAC and portable support equipment exempted by Subparagraph (g) of Paragraph (2) of Subsection F of 20.11.41.2 NMAC are not subject to the requirements of 20.11.41.23 NMAC.

**B.** The permittee of a portable stationary source may submit a written request to the department seeking approval to temporarily relocate and operate the portable stationary source. Temporary relocations shall not exceed a total of 365 consecutive days.

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

**D.** The permittee of a portable stationary source shall submit a relocation application no fewer than 45 days before the date the permittee proposes to commence operations at a new location within Bernalillo county. The permittee shall operate the portable

stationary source at the proposed new location as required by the permit conditions unless the department imposes additional or more restrictive operational requirements or conditions in writing during the approval process. The relocation application shall:

(1) be submitted on forms provided by the department with fee required by 20.11.2 NMAC;

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

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

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

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

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

**E.** The department may take into consideration the proposed duration of operation, the proposed location, the nature and amount of emissions, anticipated public concerns and other relevant factors in determining whether to require public notice as specified in Subsection B of 20.11.41.13 NMAC. At a minimum, at the time the relocation application is submitted, the permittee shall provide proof that a weather-proof sign provided by the department has been posted at the more visible of either the proposed or existing facility entrance or other location on the property boundary. The applicant shall list on the sign all information required by Subsection C of 20.11.41.13 NMAC. The weather-proof sign shall remain posted and maintained until the department makes a final decision regarding the location request.

**F.** The department may hold a PIH for good cause.

**G.** The department may deny the request to relocate the portable stationary source if the relocation application does not include all information required by Subsection D of

20.11.41.23 NMAC, or if the relocation application is submitted to the department fewer than 45 days before the proposed relocation date.

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

**I.** No more than 45 days after the department receives the relocation application, the department shall approve the relocation, deny the relocation, approve the relocation with conditions or hold a PIH regarding the relocation request. The department shall notify the permittee by certified mail regarding the department's decision.

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

[20.11.41.23 NMAC - N, 1/1/14]

#### **20.11.41.24 EMERGENCY PERMITS:**

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

**B.** In order to ensure that the public emergency is not worsened by excess emissions or inadequate air pollution control equipment, the department shall verify that the source, when operating in accordance with the permit to be issued, can and will meet all applicable standards, emission limitations and conditions before the department authorizes startup.

**C.** If the department makes an affirmative administrative completeness determination regarding a request for an emergency permit and the department decides to issue the emergency permit, then the department shall:

**(1)** make the request for an emergency permit, the issued emergency permit and all supporting documents available for public inspection at the department's air quality division office at One Civic Plaza NW, Albuquerque, New Mexico 87102;

**(2)** publish public notice in the newspaper with the largest general circulation in Bernalillo county; the notice shall state:

**(a)** the applicant's name and address, the proposed or existing location, a brief description of the source, a brief summary of proposed emissions and ambient air quality impacts as determined by air dispersion modeling if required by the department, the department's approval of the request for an emergency permit and that the department has issued the emergency permit;

**(b)** the location where the request for the emergency permit, the emergency permit and the department's analysis are available for public review;

**(c)** that the public has 30 days to submit written comment and evidence to the department regarding the emergency permit, the deadline for submitting written comments and evidence; and

**(d)** that the department shall hold a PIH pursuant to 20.11.41.15 NMAC if the director determines there is significant public interest and a significant air quality issue is involved;

**(3)** provide the notice required by Paragraph (2) of Subsection C of 20.11.41.24 NMAC by regular mail or electronic mail to all individuals and organizations identified on a list maintained by the department of persons who within the previous 12 months have delivered to the department a written request for notice of all applications filed pursuant to 20.11.41 NMAC;

**(4)** provide a copy of the public notice required by Paragraph (2) of Subsection C of 20.11.41.24 NMAC by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions, that are within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be located; contact information, if available, shall be obtained from the most current records of the city of Albuquerque office of neighborhood coordination and the county of Bernalillo zoning, building and planning department; and

**(5)** allow all interested persons 30 days from the date the public notice is published to deliver to the department written comment and evidence regarding the emergency permit.

**D.** If a person violates a board regulation or permit condition, including failure to apply in a timely manner for a permit, permit modification, relocation or technical revision, then the violation shall not qualify as an emergency for the purposes of 20.11.41.24 NMAC.

**E.** The following requirements shall not apply to emergency permits processed pursuant to 20.11.41.24 NMAC: Subsection B of 20.11.41.13 NMAC and Subsections A and B of 20.11.41.16 NMAC.

F. The permittee shall not commence emergency construction, modification or relocation until the department has issued an emergency permit.

[20.11.41.24 NMAC - Rp, 20.11.41.22 NMAC, 1/1/14]

#### **20.11.41.25 NONATTAINMENT AREA REQUIREMENTS:**

**A. Applicability:** 20.11.41.25 NMAC applies to:

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

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

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

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

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

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

(a) 20.11.60.15, *Baseline for Determining Credit for Emission and Air Quality Offsets*;

(b) 20.11.60.18 NMAC, *Emission Offset Ratio*; and

(c) 20.11.60.25 NMAC, *Air Quality Benefit*.

**C.** An existing source that is subject to 20.11.41.25 NMAC shall demonstrate a net air quality benefit of at least a 20 percent reduction in ambient impact for each applicable contaminant. The 20 percent reduction shall be calculated by subtracting the projected source impact from the existing source impact and dividing the result by the existing source impact. The net air quality benefit shall also comply with 20.11.60.25 NMAC, *Air Quality Benefit*.

[20.11.41.25 NMAC - Rp, 20.11.41.24 NMAC, 1/1/14]

#### **20.11.41.26 COMPLIANCE CERTIFICATION:**

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

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

[20.11.41.26 NMAC - Rp, 20.11.41.25 NMAC, 1/1/14]

#### **20.11.41.27 ENFORCEMENT:**

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

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

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

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

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

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

**(2)** other testing, monitoring or information gathering methods that produce information comparable to information produced by any method authorized by Subsection A of 20.11.41.27 NMAC or Paragraph (1) of Subsection B of 20.11.41.27 NMAC, as determined by the department.

[20.11.41.27 NMAC - Rp, 20.11.41.26 NMAC, 1/1/14]

## **20.11.41.28 ADMINISTRATIVE AND TECHNICAL PERMIT REVISIONS:**

### **A. Administrative permit revision:**

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

**(a)** correct a typographical error;

**(b)** identify a change in ownership, name, address or contact information of any person identified in the permit; or

**(c)** incorporate a change in the permit if the change is limited to retiring an emission unit at the facility, which shall be effective when the department receives written notice that the emission unit has ceased operation; and

**(d)** incorporate a change in the permit to include a source or activity at the facility if the facility or activity is exempted by Paragraph (3) of Subsection F of 20.11.41.2 NMAC.

**(2)** An administrative permit revision shall:

**(a)** not be subject to Subsection B of 20.11.41.13 NMAC, *Applicant's Public Notice Requirements*;

**(b)** not be subject to 20.11.41.14 NMAC, *Public Notice by Department - Public Participation*;

**(c)** be subject to 20.11.41.12 NMAC, *Fees for Permit Application Review*; and

**(d)** be submitted on forms provided by the department.

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

## **B. Technical permit revision:**

**(1)** A technical permit revision may be requested by a permittee provided that it does not require air dispersion modeling and meets one or more of the following criteria:

**(a)** to incorporate a change in the permit if the change only involves a change in monitoring, record keeping or reporting requirements, if the department determines the change does not reduce the enforceability of the permit;

**(b)** to incorporate a change in the permit that only involves additional equipment with no increase in potential emission rate;

**(c)** to incorporate a change in the permit if the change only involves incorporating permit conditions, including emissions limitations, but only if the source existed on August 31, 1972, and the source has been in regular operation since that date;

**(d)** if the permittee wishes to impose a voluntary reduction of an emission limitation that was included as a specific permit conditions pursuant to Subsection B of 20.11.41.19 NMAC, *Permit Conditions*;

**(e)** to incorporate a change at a facility by replacing an emissions unit for which an allowable emissions limit has been established in the permit, but only if the replacement emissions unit as determined by the department:

**(i)** is equivalent to the replaced emissions unit and serves the same function within the facility and process;

**(ii)** has the same or lower capacity and potential emission rates;

**(iii)** has the same or higher control efficiency and stack parameters that are at least as effective in dispersing air pollutants;

**(iv)** would not result in an increase of the potential emission rate of any other equipment at the facility;

**(v)** is subject to the same or lower allowable emissions limits as the current permit prior to making the replacement and to all other original permit conditions prior to making the technical permit revision request;

**(vi)** will not cause or contribute to a violation of any NAAQS and NMAAQS when operated under applicable permit conditions;

**(vii)** will not require additional permit conditions to ensure the enforceability of the permit, such as additional record keeping or reporting in order to establish compliance; and

**(viii)** does not emit a regulated air contaminant not previously emitted;

**(f)** to reduce the potential emission rate of a unit or source, by incorporating terms and conditions in the permit, such as a cap on hours of operation, limitations on throughput of a specific product or products, or limitations on equipment capacity; or

**(g)** to incorporate a change in the permit that only involves the addition of air pollution control equipment or the substitution of a different type of air pollution control equipment to existing equipment if the requested addition or substitution shall not result in an increase in the potential emission rate.

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

**(a)** not be subject to 20.11.41.13 NMAC, *Applicant's Public Notice Requirements*;

**(b)** be subject to 20.11.41.12 NMAC, *Fees for Permit Application Review*;

**(c)** not be subject to 20.11.41.14 NMAC, *Public Notice by Department - Public Participation*; and

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

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

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

**(a)** the proposed revision does not meet the criteria included in Subsection B of 20.11.41.28 NMAC;

**(b)** in the judgment of the department, the revision would require a decision on a significant or complex issue, or involve a substantive change; or

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

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

[20.11.41.28 NMAC - N, 1/1/14; A, 12/13/17]

#### **20.11.41.29 PERMIT MODIFICATION:**

A person who proposes to modify a stationary source shall comply with all requirements of 20.11.41 NMAC. Applications for permit modifications shall be processed in accordance with all requirements established by 20.11.41 NMAC for permit applications, including public notice, review, fees and hearing procedures.

[20.11.41.29 NMAC - N, 1/1/14]

#### **20.11.41.30 PERMIT REOPENING, REVISION AND REISSUANCE:**

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

**(1)** additional applicable requirements of the federal Act or the state act become applicable to the source, including excess emission requirements under the Title IV acid rain program;

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

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

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

**(5)** the terms and conditions of a permit have not been or are not being met, as determined by the department.

**B.** The department shall notify the permittee by certified mail no fewer than 60 days before the date the department reopens the permit, except a shorter time period may be specified by the department in case of an emergency. The notification shall include a description of the reason or grounds for the reopening, the revisions required and any information that shall be submitted to the department by the permittee. The permittee shall submit all required additional information to the department no later than 30 days after receipt of the notification from the department. A permittee may request additional time to provide required information by delivering a written request to the department. The extension of time shall be effective if approved in writing by the department.

**C.** A permit that has been reopened and reissued may be appealed pursuant to 20.11.81 NMAC.

[20.11.41.30 NMAC - N, 1/1/14]

### **20.11.41.31 GENERAL CONSTRUCTION PERMITS:**

**A. General construction permits:** General construction permits are issued to groups of sources that have similar operations, processes and emissions, are subject to the same or substantially similar requirements and have general construction permit forms that were approved by the department following the process described in Subsections B or C of 20.11.41.31 NMAC. A source that is required to obtain a permit pursuant to 20.11.41 NMAC but does not qualify for a general construction permit shall obtain a construction permit as required by 20.11.41.13 NMAC. A general construction permit shall not be issued for a major modification or a major stationary source as defined in either 20.11.60 NMAC, *Permitting in Nonattainment Areas*, or 20.11.61 NMAC, *Prevention of Significant Deterioration*, or for a major source as defined in 20.11.42 NMAC, *Operating Permits*.

#### **B. Approval of general construction permit form and revised general construction permit form:**

**(1)** The department shall provide notice of a proposed general construction permit form or revised general construction permit form (hereafter, "general construction form") by publication in the newspaper with the largest general circulation in Bernalillo county. The notice shall:

**(a)** provide a description of the groups of sources with similar operations, processes and emissions that are subject to the same or substantially similar requirements and would be able to use the proposed form within Bernalillo county to apply for an air quality permit if the form is approved;

**(b)** state the reason the department proposes approval of the general construction permit form;

**(c)** specify the notification period that the applicant will be required to provide to the public if the proposed form is approved by the department; and stipulate that an applicant shall use the form to apply for a permit; and public notice requirements that shall be met by the source as required by the 'general construction form' shall include at a minimum:

**(i)** provide public notice by certified mail or electronic mail to the designated representative(s) of the recognized neighborhood associations and recognized coalitions, as shown in the most current records of the city of Albuquerque office of neighborhood coordination and the Bernalillo County zoning, building and planning department, within one-half mile of the exterior boundaries of the property on which the source is or is proposed to be located; the applicant may submit a written request to the department proposing an alternative approach to providing public notice if the proposed source or modification is located at a site with large property boundaries or campus-like facilities; the applicant shall obtain prior written approval from the department for any alternative approach to provide public notice; the public notice shall include all the information required by Subsection C of 20.11.41.13 NMAC; and

**(ii)** prior to submitting the application, post and maintain a weather-proof sign provided by the department, posted at the more visible of either the proposed or existing facility entrance or another location on the property that is accessible to the public, if approved in advance and in writing by the department; the applicant shall list on the sign all information required by Subsection C of 20.11.41.13 NMAC; the applicant shall keep the sign posted until the department takes final action on the permit application; if an applicant can establish to the department's satisfaction that the applicant is prohibited by law from posting at either location required by Paragraph (2) of Subsection B of 20.11.41.13 NMAC, the department may waive the posting requirement and may impose different notification requirements;

**(d)** provide a brief summary of the procedure that will be followed if an individual application is submitted on the proposed form;

**(e)** describe the location where the proposed general construction permit form may be obtained;

**(f)** state that the public has 30 days to submit written comments and evidence to the department regarding the proposed general construction permit form; and

**(g)** state that the department shall hold a PIH pursuant to 20.11.41.15 NMAC if the director determines there is significant public interest and a significant air quality issue is involved.

**(2)** The department shall provide the notice required by Paragraph (1) of Subsection B of 20.11.41.31 NMAC by regular mail or electronic mail to all individuals and organizations identified on a list maintained by the department of persons who have

stated in writing a desire to receive notices of all applications filed pursuant to 20.11.41 NMAC.

**(3)** Each general construction permit form shall:

**(a)** describe which sources may qualify to apply for the general construction permit; and

**(b)** specify the contents required for a complete application for the general construction permit; in the general construction permit form, the department may provide for an application that deviates from the requirements of 20.11.41.13 NMAC, if the application includes:

**(i)** all information necessary to determine qualification for, and to assure compliance with, the general construction permit; and

**(ii)** applicant's public notice requirements pursuant to Subparagraph (c) of Paragraph (1) of Subsection B of 20.11.41.31 NMAC and a statement that any person may provide written comment to the department within 15 days of receipt of the public notice;

**(c)** contain permit terms and conditions that apply to all sources that are issued the general construction permit, including:

**(i)** sufficient terms and conditions to assure that all sources permitted and operating in accordance with the general construction permit will meet all applicable requirements of the federal act, the state act and board regulations, including 20.11.63 NMAC, *New Source Performance Standards For Stationary Sources*, and 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants For Stationary Sources*, and will not cause or contribute to air contaminant levels in excess of any NAAQS or NMAAQs; and

**(ii)** monitoring, record keeping and reporting requirements appropriate to the source and sufficient to ensure compliance with the general construction permit; at a minimum, the general construction permit shall specify where the records shall be maintained, how long the records shall be retained and that all records or reports shall be made available upon request by the department; and

**(iii)** as determined appropriate by the department, terms and conditions to address and report emissions that occur during upsets, startups and maintenance; and

**(d)** specify that every document, including every application form, report, compliance certification and supporting data, that is submitted pursuant to 20.11.41.31 NMAC shall contain a certification that meets the requirements of Paragraph (13) of Subsection E of 20.11.41.13 NMAC.

**(4)** Before the department makes a final decision regarding a general construction permit form, the department shall hold a PIH if the director determines that there is significant public interest and a significant air quality issue is involved. A PIH is not an adjudicatory hearing on the merits. During the PIH, attendees can ask questions, provide comments and provide information regarding the general construction permit form, but no final decision shall be made by the department at the close of the hearing. The department shall make all arrangements and pay all expenses of the hearing including:

**(a)** arranging a location for the PIH;

**(b)** providing a hearing officer; the hearing officer shall preside over the PIH, shall give all attendees present at the hearing a reasonable opportunity to ask questions, provide comments and provide information regarding the general construction permit form and to examine attendees commenting at the hearing, but shall not make a final recommendation or a final decision regarding the permit application;

**(c)** publishing public notice of the PIH in the newspaper with the largest general circulation in Bernalillo county no fewer than 10 days before the PIH; the notice shall include the date, time, and location of the PIH, a description of the general construction permit form, and a statement that a final decision has not been made by the department regarding the general construction permit form;

**(d)** mailing notice of PIH to all interested persons who have submitted written comments or evidence to the department and to all interested persons who have delivered to the department a written request for notice regarding the general construction permit form; a request to inspect or copy shall not be considered a written comment for the purposes of Subparagraph (d) of Paragraph (4) of Subsection B of 20.11.41.31 NMAC;

**(e)** requiring department staff to attend the PIH and be present during comments and questions by the attendees; and

**(f)** recording the PIH and including the recording in the administrative record regarding the general construction permit form; the department shall provide a duplicate of the recording to any person who requests a copy; the person requesting shall reimburse the department for the cost of the copy before the department makes the copy; the person making the request for a copy may instead provide the department with recording media that meets the department specifications, and the department will not impose a charge for copying; if a person requests a transcript of the hearing (the requestor), the department shall obtain an estimate of the cost of the transcription and inform the requestor; the requestor shall pay the estimated cost to the department before the department orders the transcription; if the actual cost of the transcription is more than the estimate, the requestor shall pay the additional amount before the department provides the transcription to the requestor; if the actual cost of the transcription is less than the estimate, the department shall reimburse the difference.

(5) The department may adopt the proposed general construction permit form or a substantially similar form if the requirements of Subsection B of 20.11.41.31 NMAC have been met.

**C. Transition schedule for general construction permit form revision:** When the department revises a general construction permit form, the department shall include a reasonable transition schedule before an existing source must comply.

**D. Non-substantive changes:** The department may make non-substantive changes to a general construction form without complying with Subsection B of 20.11.41.31 NMAC. Examples of non-substantive changes include correcting typographical or grammatical errors or adding clarification to instructions. When the department makes a non-substantive change to the form the department may change the date of the form to identify the new version.

[20.11.41.31 NMAC - N, 1/1/14]

#### **20.11.41.32 ACCELERATED REVIEW OF APPLICATION:**

**A. Request for accelerated review of application:** As provided by the state act at NMSA 1978 Section 74-2-7(B)(8) and (9), an applicant may request accelerated review if the applicant complies with the following requirements and all other requirements of 20.11.41.32 NMAC:

- (1) 20.11.41.12 NMAC, *Fees for Permit Application Review;*
- (2) 20.11.41.13 NMAC, *Application for Permit;*
- (3) 20.11.41.15 NMAC, *Public Information Hearing;*
- (4) 20.11.41.16 NMAC, *Permit Decisions and Air Board Hearing on the Merits;*
- (5) 20.11.41.18 NMAC, *Applicant's Additional Legal Responsibilities;*
- (6) 20.11.41.19 NMAC, *Permit Conditions;*
- (7) 20.11.41.20 NMAC, *Permit Cancellation, Suspension or Revocation;*
- (8) 20.11.41.21 NMAC, *Permittee's Obligation to Inform the Department and Deliver an Annual Emissions Inventory;*
- (9) 20.11.41.22 NMAC, *Performance Testing;*
- (10) 20.11.41.23 NMAC, *Temporary Relocation of Portable Stationary Sources;*

- (11) 20.11.41.24 NMAC, *Emergency Permits*;
- (12) 20.11.41.25 NMAC, *Nonattainment Area Requirements*;
- (13) 20.11.41.26 NMAC, *Compliance Certification*;
- (14) 20.11.41.27 NMAC, *Enforcement*;
- (15) 20.11.41.28 NMAC, *Administrative and Technical Permit Revisions*;
- (16) 20.11.41.29 NMAC, *Permit Modification*;
- (17) 20.11.41.30 NMAC, *Permit Reopening, Revision and Reissuance*;
- (18) 20.11.41.31 NMAC, *General Construction Permits*; and
- (19) 20.11.41.33 NMAC, *Significant Ambient Concentrations - Nonattainment*.

**B. Public notice provided by the department:** The department shall provide the public notice as required by Paragraphs (1) through (9) of Subsection B of 20.11.41.14 NMAC.

**C. Qualified outside contractors:**

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

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

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

(b) qualified to assist the department in review of permit applications, as determined by the department.

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

**D. Requests for accelerated review:**

(1) An applicant for a permit pursuant to 20.11.41 NMAC may request accelerated permit review of the application by a qualified outside contractor. Applications for accelerated review shall be preceded by a pre-application meeting

between the applicant and the department. Requests for accelerated review shall not be granted unless there is at least one qualified outside contractor under contract with the department as required by Paragraph (3) of Subsection C of 20.11.41.32 NMAC. If there are no persons under contract to provide accelerated review, the department shall review the application in accordance with 20.11.41.16 NMAC.

**(2)** A request for accelerated permit review shall be submitted with the permit application and a certified check or money order in the amount of the accelerated review filing fee as required by 20.11.2 NMAC. The department shall notify the applicant of the names and addresses of the qualified outside contractors. The applicant shall deliver a copy of the application, by mail or hand delivery, to each qualified outside contractor identified by the department, unless the applicant is aware of a conflict of interest.

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

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

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

**(a)** a statement of interest;

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

**(c)** an estimate of:

**(i)** the cost for the review;

**(ii)** the schedule for the review; and

**(d)** a notarized affidavit attesting that no conflict of interest exists regarding the specific permit application.

**(6)** The department shall review the submittals and determine which persons qualify to review a specific application.

**(7)** If no qualified outside person meets the requirements of Paragraph (5) of Subsection D of 20.11.41.32 NMAC, the department shall impose the accelerated review filing fee and the permit application review fee required by 20.11.2 NMAC and review the application on an accelerated schedule without the assistance of a qualified outside contractor and as required by 20.11.41.16 NMAC.

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

**(9) Applicant's responsibilities for response to bid summary:**

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

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

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

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

**(10) Department's selection of qualified outside contractor:**

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

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

**E. Disclosure of conflict of interest during accelerated review:**

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

(a) deny the application pursuant to Subsection F of 20.11.41.17 NMAC;

(b) terminate accelerated review and review the application pursuant to 20.11.41.16 NMAC; or

(c) allow accelerated review to continue after elimination of the conflict.

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

#### **F. Issuance of a permit after accelerated review:**

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

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

(3) The department shall not issue the permit until the applicant has paid both the accelerated review processing fee and the permit review fee required by 20.11.2 NMAC.

[20.11.41.32 NMAC - N, 1/1/14; A, 12/13/17]

#### **20.11.41.33 SIGNIFICANT AMBIENT CONCENTRATIONS – NONATTAINMENT:**

<b>Table 1.</b>						
<b>Pollutant</b>	<b>Averaging Time</b>					
	<b>Annual</b>	<b>24-hr</b>	<b>8-hr</b>	<b>3-hr</b>	<b>1-hr</b>	<b>1/2-hr</b>
<b>TSP</b>	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>	--	--	--	--
<b>PM<sub>10</sub></b>	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>	--	--	--	--
<b>SO<sub>2</sub></b>	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>	--	25 µg/m <sup>3</sup>	--	--
<b>H<sub>2</sub>S</b>	--	--	--	--	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>
<b>CO</b>	--	--	0.5 mg/m <sup>3</sup>	--	2.0 mg/m <sup>3</sup>	--
<b>NO<sub>2</sub></b>	1.0 µg/m <sup>3</sup>	5.0 µg/m <sup>3</sup>	--	--	--	--
<b>Non-Methane Hydrocarbons</b>	--	--	--	5.0 µg/m <sup>3</sup>	--	--

[20.11.41.33 NMAC - Rp, 20.11.41.27 NMAC, 1/1/14]

**20.11.41.34 PERMIT STREAMLINING SOURCE CLASS CATEGORIES:**

[RESERVED]

[20.11.41.34 NMAC - N, 1/1/14]

**PART 42: OPERATING PERMITS**

**20.11.42.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.

[3/1/94. . .12/1/95; 20.11.42.1 NMAC - Rn, 20 NMAC 11.42.I.1, 10/1/02; A, 8/10/09]

**20.11.42.2 SCOPE:**

**A. 20.11.42 NMAC sources:** Operating permits must be obtained from the department for the following sources:

- (1) any major source;
- (2) any source, including an area source, subject to a standard or other requirement promulgated under Section 111 - *Standards of Performance for New Stationary Sources*, or Section 112 - *National Emission Standards for Hazardous Air Pollutants*, of the federal act, but not including any source which:

(a) is exempted under Subparagraph (b), of Paragraph (1), of Subsection C of 20.11.42.2 NMAC; **or**

(b) would be required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r), *Prevention of Accidental Releases* of the federal act;

(3) any acid rain source; and

(4) any source in a source category so designated by the administrator, in whole or in part, by regulation, after notice and comment.

**B. Requirement for a permit:**

(1) A 20.11.42 NMAC source may operate after the time that it is required to submit a timely and complete application under 20.11.42 NMAC only if:

(a) the source is in compliance with an operating permit issued by the department or EPA; or

(b) a timely permit (including permit renewal) application has been submitted consistent with Subsection A of 20.11.42.12 NMAC; the ability to operate under these circumstances shall cease if the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application.

(2) Revocation or termination of a permit by the department terminates the permittee's right to operate.

(3) The submittal of a complete operating permit application shall not protect any source from any applicable requirement, including any requirement that the source have a pre-construction permit under Title I of the federal act or board regulations.

**C. Source category exemptions and deferrals:**

(1) **The following source categories are exempted from the obligation to obtain an operating permit:**

(a) all sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA - *Standards of Performance for New Residential Wood Heaters*;

(b) all sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M - *National Emission Standard for Hazardous Air Pollutants for Asbestos*, Section 61.145, *Standard for Demolition and Renovation*;

(c) except as required under Section 20.11.42.14 NMAC, any source that would be required to obtain a permit solely because of emissions of radionuclides; and

(d) any source in a source category exempted by the administrator, by regulation, after notice and comment.

(2) Non-major sources, including those subject to Sections 111 or 112 of the federal act are exempt from the obligation to obtain a 20.11.42 NMAC permit until the administrator completes a rulemaking requiring such sources to obtain operating permits.

(3) Any source exempted from the requirement to obtain an operating permit may opt to apply for a permit under 20.11.42 NMAC.

**D. Reserved.**

**E. Indian tribal jurisdiction:** The requirements of 20.11.42 NMAC do not apply to sources within Indian tribal jurisdiction. For the operation of sources in that jurisdiction, the applicant shall make such applications to the tribal authority or to the administrator, as appropriate.

[3/1/94. . .12/1/95; 20.11.42.2 NMAC - Rn, 20 NMAC 11.42.I.2, 10/1/02; A, 8/10/09]

### **20.11.42.3 STATUTORY AUTHORITY:**

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

[3/1/94. . .12/1/95; 20.11.42.3 NMAC - Rn, 20 NMAC 11.42.I.3, 10/1/02]

### **20.11.42.4 DURATION:**

Permanent.

[12/1/95; 20.11.42.4 NMAC - Rn, 20 NMAC 11.42.I.4, 10/1/02]

### **20.11.42.5 EFFECTIVE DATE:**

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

[3/1/94; 20.11.42.5 NMAC - Rn, 20 NMAC 11.42.I.5, 10/1/02; A, 8/10/09]

[The effective date for interim approval of the operating permit program for Albuquerque-Bernalillo County, by the administrator, is March 13, 1995]

#### **20.11.42.6 OBJECTIVE:**

To assure that major air pollution sources within Bernalillo county obtain an operating permit setting forth minimum requirements and conditions of operation pursuant to Title V of the Clean Air Act Amendments of 1990 (42 U.S.C. 7401, et seq.).

[3/1/94. . .12/1/95; 20.11.42.6 NMAC - Rn, 20 NMAC 11.42.1.6, 10/1/02; A, 8/10/09]

#### **20.11.42.7 DEFINITIONS:**

In addition to the definitions in 20.11.42.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.42 NMAC shall govern.

**A. "Acid rain source"** has the meaning given to "affected source" in the regulations promulgated under Title IV of the federal act, and includes all sources subject to Title IV.

**B. "Affected programs"** means the state of New Mexico and Indian tribes and pueblos that are within 50 miles of the source.

**C. "Air pollutant"** means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter, which is emitted into or otherwise, enters the ambient air. Such term includes any precursors to the formation of any air pollutant; to the extent the administrator has identified such precursor or precursors for the purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N<sub>2</sub>), oxygen (O<sub>2</sub>) and ethane.

**D. "Air pollution control equipment"** means any device, equipment, process or combination thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

**E. "Applicable requirement"** means all of the following, as they apply to emissions units at a 20.11.42 NMAC source (including requirements that have been promulgated or approved by the board or EPA through rulemaking at the time of permit issuance but have future-effective compliance dates):

(1) any standard or other requirement provided for in the New Mexico state implementation plan approved by EPA, or promulgated by EPA through rulemaking, under Title I of the federal act to implement the relevant requirements of the federal act, including any revisions to that plan promulgated in 40 CFR, Part 52;

(2) any term or condition of any pre-construction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the federal act, unless that term or condition is determined by the department to be no longer pertinent;

(3) any standard or other requirement under Section 111 of the federal act, including Section 111(d);

(4) any standard or other requirement under Section 112 of the federal act, including any requirement concerning accident prevention under Section 112(r)(7) of the federal act;

(5) any standard or other requirement of the acid rain program under Title IV of the federal act or the regulations promulgated thereunder;

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

(7) any standard or other requirement under Section 126(a)(1) and (c) of the federal act;

(8) any standard or other requirement governing solid waste incineration under Section 129 of the federal act;

(9) any standard or other requirement for consumer and commercial products, under Section 183(e) of the federal act;

(10) any standard or other requirement for tank vessels under Section 183(f) of the federal act;

(11) any standard or other requirement of the program to control air pollution from outer continental shelf sources, under Section 328 of the federal act;

(12) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act, unless the administrator has determined that such requirements need not be contained in a Title V permit;

(13) any national ambient air quality standard, or any increment or visibility requirement under Part C of Title I of the federal act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal act; and

(14) any regulation adopted by the board in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act, 74-2-5.B NMSA 1978.

**F. "Department"** means the Albuquerque environmental health department or its successor agency or authority, as represented by the department director or his or her designee.

**G. "Draft permit"** means a version of a permit, for which the department offers for public participation under Subsection B of 20.11.42.13 NMAC or affected program review under Subsection C of 20.11.42.13 NMAC.

**H. "Emission limitation"** means a requirement established by EPA, the board, or the department, that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

**I. "Emissions allowable under the permit"** means:

(1) any federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emission limit (including a work practice standard); or

(2) any federally enforceable emissions cap that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject.

**J. "Emissions unit"** means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any air pollutant listed pursuant to Section 112(b) of the federal act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the federal act.

**K. "Federal act"** means the federal Clean Air Act, as amended, 42 U.S.C. Section 7401, et seq.

**L. "Federally enforceable"** means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the New Mexico state implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR 51.165 and 40 CFR 51.166.

**M. "Final permit"** means the version of an operating permit issued by the department that has met all review requirements of Section 20.11.42.13 NMAC.

**N. "Fugitive emissions"** are those emissions, which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**O. "General permit"** means an operating permit that meets the requirements of Subsection D of 20.11.42.12 NMAC.

**P. "Greenhouse gases" or "GHGs"** means the air pollutant defined in § 86.1818–12(a) of Chapter I of Title 40 of the CFR, as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

**Q. "Hazardous air pollutant"** means an air contaminant that has been classified as a hazardous air pollutant pursuant to the federal act.

**R. "Insignificant activities"** means those activities listed by the department and approved by the administrator as insignificant on the basis of size, emissions or production rate.

**S. "Major source"** means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all of the pollutant emitting activities at such source belong to the same major group (i.e., all have the same two-digit code), as described in the *standard industrial classification manual, 1987*, and that is described in paragraphs (1), (2), or (3) below.

(1) A major source under Section 112 of the federal act, which is defined as:

(a) for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant which has been listed pursuant to Section 112 (b) of the federal act, 25 tons per year or more of any combination of such hazardous air pollutants, or such lesser quantity as the administrator may establish by rule; notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(b) for radionuclides, "major source" shall have the meaning specified by the administrator by rule.

(2) A major stationary source of air pollutants, as defined in Section 302 of the act, that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the act, unless the source belongs to one of the following categories of stationary sources:

(a) coal cleaning plants (with thermal dryers);

- (b) kraft pulp mills;
- (c) portland cement plants;
- (d) primary zinc smelters;
- (e) iron and steel mills;
- (f) primary aluminum ore reduction plants;
- (g) primary copper smelters;
- (h) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) hydrofluoric, sulfuric, or nitric acid plants;
- (j) petroleum refineries;
- (k) lime plants;
- (l) phosphate rock processing plants;
- (m) coke oven batteries;
- (n) sulfur recovery plants;
- (o) carbon black plants (furnace process);
- (p) primary lead smelters;
- (q) fuel conversion plant;
- (r) sintering plants;
- (s) secondary metal production plants;
- (t) chemical process plants - the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- (u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) taconite ore processing plants;

(x) glass fiber processing plants;

(y) charcoal production plants;

(z) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(aa) any other stationary source category, which as of August 7, 1980, is being regulated under Section 111 or 112 of the federal act.

(3) A major stationary source as defined in Part D of Title I of the federal act, including:

(a) for ozone non-attainment areas, sources with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate", 50 tons per year or more in areas classified as "serious", 25 tons per year or more in areas classified as "severe", and 10 tons per year or more in areas classified as "extreme"; except that the references in Paragraph (3) of Subsection S of 20.11.42.7 NMAC to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the federal act, that requirements under Section 182(f) of the act do not apply;

(b) for ozone transport regions established pursuant to Section 184 of the federal act, sources with the potential to emit 50 tons per year or more of volatile organic compounds;

(c) for carbon monoxide non-attainment areas:

(i) that are classified as "serious"; and

(ii) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the administrator, sources with the potential to emit 50 tons per year or more of carbon monoxide; and

(d) for particulate matter (PM<sub>10</sub>) non-attainment areas classified as "serious", sources with the potential to emit 70 tons per year or more of PM<sub>10</sub>.

**T. "Operating permit" or "permit"** means any permit or group of permits covering a source that is issued, renewed, modified or revised pursuant to 20.11.42 NMAC.

**U. "Operator"** means the person(s) responsible for the overall operation of a facility.

V. **"Owner"** means the person(s) who owns a facility or part of a facility.

W. **"Permit modification"** means a revision to an operating permit that meets the requirements of significant permit modifications, minor permit modifications, or administrative permit amendments, as defined in Subsection E of 20.11.42.13 NMAC.

X. **"Permittee"** means the owner, operator or responsible official at a permitted 20.11.42 NMAC source, as identified in any permit application or modification.

Y. **"Person"** includes any individual, partnership, corporation, association, state or political subdivision of a state, and any agency, department or instrumentality of the United States, and any of their officers, agents or employees.

Z. **"Potential to emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

AA. **"Proposed permit"** means the version of a permit that the department proposes to issue and forwards to the administrator for review in compliance with Subsection C of 20.11.42.13 NMAC.

BB. **"Regulated air pollutant"** means the following:

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

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

(3) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;

(4) any class I or II substance subject to any standard promulgated under or established by Title VI of the federal act;

(5) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act, including:

(a) any pollutant subject to requirements under Section 112(j) of the federal act; if the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the federal act, any pollutant for which a subject source would be a

major source shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the federal act; and

(b) any pollutant for which the requirements of Section 112(g)(2) of the federal act have been met, but only with respect to the individual source subject to a Section 112(g)(2) requirement; or

(6) any other pollutant "subject to regulation" as defined in Subsection II of 20.11.42.7 NMAC.

**CC.** "Renewal" means the process by which a permit is reissued at the end of its term.

**DD.** "Responsible official" means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(b) the delegation of authority to such representatives is approved in advance by the department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, state, federal or other public agency: either a principal executive officer or ranking elected official. For the purposes of 20.11.42 NMAC, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

(4) For an acid rain source:

(a) the designated representative (as defined in Section 402(26) of the federal act) in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated thereunder are concerned; and

(b) the designated representative for any other purposes under 40 CFR, Part 70.

**EE. "Section 502(b)(10) changes"** are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

**FF. "Shutdown"** means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose.

**GG. "Startup"** means the setting into operation of any air pollution control equipment, process equipment or process for any purpose.

**HH. "Stationary source" or "source"** means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the federal act.

**II. "Subject to regulation"** means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the administrator in Subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "Greenhouse gases" (GHGs), shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO<sub>2</sub> equivalent emissions.

(2) The term "tpy CO<sub>2</sub> equivalent emissions" (CO<sub>2</sub>e) shall represent an aggregate amount of GHGs emitted by the regulated activity, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 CFR Part 98, *Global Warming Potentials*, and summing the resultant value for each gas to compute a tpy CO<sub>2</sub>e. For purposes of Paragraph (2) of Subsection II of 20.11.42.7 NMAC, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

**JJ. "Subsidiary"** means a business concern which is owned or controlled by, or is a partner of, the applicant or permittee.

**KK. "Title I modification"** means any modification under Sections 111 or 112 of the federal act and any physical change or change in method of operations that is

subject to the pre-construction regulations promulgated under Parts C and D of the federal act.

[3/1/94. . .12/1/95; 20.11.42.7 NMAC - Rn, 20 NMAC 11.42.I.7, 10/1/02; A, 2/1/03; A, 8/10/09; A, 1/10/11; A, 5/13/13]

#### **20.11.42.8 VARIANCES:**

In accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-8 NMSA 1978, applicants and permittee's may seek a variance from the non-federally enforceable provisions of 20.11.42 NMAC.

[3/1/94. . .12/1/95; 20.11.42.8 NMAC - Rn, 20 NMAC 11.42.I.8, 10/1/02; A, 8/10/09]

#### **20.11.42.9 SAVINGS CLAUSE:**

Any amendment to 20.11.42 NMAC, which is filed, with the state records center shall not affect actions pending for violation of a city or county ordinance, or 20.11.42 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or regulation section in effect at the time the violation was committed.

[12/16/94. . .12/1/95; 20.11.42.9 NMAC - Rn, 20 NMAC 11.42.I.9, 10/1/02; A, 8/10/09]

#### **20.11.42.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of 20.11.42 NMAC is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.42 NMAC.

[12/16/94. . .12/1/95; 20.11.42.10 NMAC - Rn, 20 NMAC 11.42.I.10, 10/1/02; A, 8/10/09]

#### **20.11.42.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.42 NMAC may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.42.11 NMAC - Rn, 20 NMAC 11.42.I.11 & A, 10/1/02; A, 8/10/09]

#### **20.11.42.12 PERMIT REQUIREMENTS:**

##### **A. Permit applications:**

(1) **Duty to apply.** For each 20.11.42 NMAC source, the owner or operator shall submit a timely and complete permit application in accordance with 20.11.42 NMAC.

(2) **Timely application.**

(a) **A timely application is:**

(i) for first time applications, one that is submitted within 12 months after the source commences operation as a 20.11.42 NMAC source;

(ii) for purposes of permit renewal, one that is submitted at least 12 months prior to the date of permit expiration;

(iii) for the acid rain portion of permit applications for initial phase II acid rain sources under Title IV of the federal act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(b) Reserved.

(3) **Completeness of application.**

(a) To be deemed complete, an application must provide all information required pursuant to Paragraph (4), of Subsection A of 20.11.42.12 NMAC, except that applications for permit modifications need supply such information only if it is related to the proposed change.

(b) If, while processing an application, regardless of whether it has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

(c) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application or in a supplemental submittal shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide further information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(d) The applicant's ability to operate without a permit, as set forth in Subparagraph (b), of Paragraph (1), of Subsection B of 20.11.42.2 NMAC, shall be in effect from the date a timely application is submitted until the final permit is issued or disapproved, provided that the applicant adequately submits any requested additional information by the deadline specified by the department.

(4) **Content of application.** Any person seeking a permit under 20.11.42 NMAC shall do so by filing a written application with the department. The applicant shall submit three copies of the permit application, or more, as requested by the department. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under 20.11.2 NMAC, *Fees*. Fugitive emissions shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. All applications shall:

(a) be made on forms furnished by the department, which for the acid rain portions of permit applications and compliance plans shall be on nationally-standardized forms to the extent required by regulations promulgated under Title IV of the federal act;

(b) state the company's name and address (and, if different, plant name and address), together with the names and addresses of the owner(s), responsible official and the operator of the source, any subsidiaries or parent companies, the company's state of incorporation or principal registration to do business and corporate or partnership relationship to other permittee's subject to 20.11.42 NMAC, and the telephone numbers and names of the owners' agent(s) and the site contact(s) familiar with plant operations;

(c) state the date of the application;

(d) include a description of the source's processes and products (by standard industrial classification code) including any associated with alternative scenarios identified by the applicant, and a map, such as the 7.5 minute topographic quadrangle map published by the United States geological survey or the most detailed map available showing the exact location of the source; the location shall be identified by latitude and longitude or by UTM coordinates;

(e) for all emissions of all air pollutants for which the source is major and all emissions of regulated air pollutants, provide all emissions information, calculations and computations for the source and for each emissions unit, except for insignificant activities (as defined in Subsection R of 20.11.42.7 NMAC); this shall include:

(i) a process flow sheet of all components of the facility which would be involved in routine operations and emissions;

(ii) identification and description of all emission points in sufficient detail to establish the basis for fees and applicability of requirements of the state and federal acts;

(iii) emissions rates in tons per year, pounds per hour and other terms necessary to establish compliance consistent with the applicable standard reference test method;

(iv) specific information such as that regarding fuels, fuel use, raw materials, or production rates, to the extent it is needed to determine or regulate emissions;

(v) identification and full description, including all calculations and the basis for all control efficiencies presented, of air pollution control equipment and compliance monitoring devices or activities;

(vi) the maximum and standard operating schedules of the source, as well as any work practice standards or limitations on source operation which affect emissions of regulated pollutants;

(vii) an operational plan defining the measures to be taken to mitigate source emissions during startups, shutdowns and emergencies;

(viii) other relevant information as the department may reasonably require or which are required by any applicable requirements (including information related to stack height limitations developed pursuant to Section 123 of the federal act); and

(ix) for each alternative operating scenario identified by the applicant, all of the information required in Items (i) through (viii) above, as well as additional information determined to be necessary by the department to define such alternative operating scenarios;

(f) provide a list of insignificant activities (as defined in Subsection R of 20.11.42.7 NMAC) at the source, their emissions, to the extent required by the department, and any information necessary to determine applicable requirements;

(g) provide a citation and description of all applicable air pollution control requirements, including:

(i) sufficient information related to the emissions of regulated air pollutants to verify the requirements that are applicable to the source; and

(ii) a description of or reference to any applicable test method for determining compliance with each applicable requirement;

(h) provide an explanation of any proposed exemptions from otherwise applicable requirements;

(i) provide other specific information that may be necessary to implement and enforce other requirements of the state or federal acts or to determine the applicability of such requirements, including information necessary to collect any fees owed under 20.11.2 NMAC, *Fees*;

(j) for applications which:

(i) are required pursuant to the transition schedule in Subparagraph (b), of Paragraph (2), of Subsection A of 20.11.42.12 NMAC; or

(ii) for subsequent applications or modifications, where emissions or anticipated emissions have increased since modeling for a modification or new source construction was reviewed under 20.11.41 NMAC or 20.11.42 NMAC: submit a dispersion modeling analysis, using EPA approved models and procedures, showing whether emissions from the source would cause air pollutant concentrations in excess of any New Mexico ambient air quality standard for nitrogen oxides, sulfur oxides, total suspended particulates or non-methane hydrocarbons, or any national ambient air quality standard; air pollutants that are not emitted in significant amounts (as defined in 40 CFR 52.21(b)(23)(i)) during routine operations need not be modeled; the department may waive modeling with respect to ozone if the department determines that emissions from the source are not likely to cause ozone concentrations in excess of the national ambient air quality standard;

(k) provide certification of compliance, including:

(i) a certification, by a responsible official consistent with Paragraph (5), of Subsection A of 20.11.42.12 NMAC of the source's compliance status for each applicable requirement;

(ii) a statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods;

(iii) a statement that the source will continue to be in compliance with applicable requirements for which it is in compliance, and will, in a timely manner or at such schedule expressly required by the applicable requirement, meet additional applicable requirements that become effective during the permit term;

(iv) a schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department; and

(v) a statement indicating the source's compliance status with any enhanced monitoring and compliance certification requirements of the federal act;

(l) for sources that are not in compliance with all applicable requirements at the time of permit application, provide a compliance plan that contains:

(i) a description of the compliance status of the source with respect to all applicable requirements;

(ii) a narrative description of how the source will achieve compliance with such requirements for which it is not in compliance;

(iii) a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with such applicable requirements; the schedule of compliance shall be at least as stringent as that contained in any consent decree or administrative order to which the source is subject, and the obligations of any consent decree or administrative order shall not be in any way diminished by the schedule of compliance; any such schedule of compliance shall be supplemental to, and shall not prohibit the department from taking any enforcement action for noncompliance with, the applicable requirements on which it is based;

(iv) a schedule for submission of certified progress reports no less frequently than every six months; and

(v) for the portion of each acid rain source subject to the acid rain provisions of Title IV of the federal act, the compliance plan content requirements specified in this paragraph, except as specifically superseded by regulations promulgated under Title IV of the federal act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(5) **Certification.** Any document, including any application form, report, or compliance certification, submitted pursuant to 20.11.42 NMAC shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

#### **B. Confidential information protection:**

(1) All confidentiality claims made regarding material submitted to the department under 20.11.42 NMAC shall be reviewed in accordance with the provisions of the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-11 NMSA 1978 and the New Mexico Inspection of Public Records Act, Section 14-2-1, et seq. NMSA 1978.

(2) In the case where an applicant or permittee has submitted information to the department under a claim of confidentiality, the department may also require the applicant or permittee to submit a copy of such information directly to the administrator.

(3) An operating permit is a public record, and not entitled to protection under Section 114(c) of the federal act.

#### **C. Permit content:**

(1) **Permit conditions.**

(a) The department shall specify conditions upon a permit, including emission limitations and sufficient operational requirements and limitations, to assure compliance with all applicable requirements at the time of permit issuance or as specified in the approved schedule of compliance. The permit shall:

(i) for major sources, include all applicable requirements for all relevant emissions units in the major source;

(ii) for any non-major source subject to Section 20.11.42.2 NMAC, include all applicable requirements which apply to emissions units that cause the source to be subject to 20.11.42 NMAC;

(iii) specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(iv) include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit; and

(v) include a provision to ensure that the permittee pays fees to the department consistent with the fee schedule in 20.11.2 NMAC, *Fees*;

(vi) for purposes of the permit shield, identify any requirement specifically identified in the application or significant permit modification that the department has determined is not applicable to the source, and state the basis for any such determination.

(b) Each permit issued shall, additionally, include provisions stating that:

(i) the permittee shall comply with all terms and conditions of the permit; any permit noncompliance is grounds for enforcement action; in addition, noncompliance with federally enforceable permit conditions constitutes a violation of the federal act;

(ii) it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

(iii) the permit may be modified, reopened and revised, revoked and reissued, or terminated for cause in accordance with Subsection F of 20.11.42.13 NMAC;

(iv) the filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition;

(v) the permit does not convey any property rights of any sort, or any exclusive privilege;

(vi) within the period specified by the department, the permittee shall furnish any information that the department may request in writing to determine whether cause exists for reopening and revising, revoking and reissuing, or termination of the permit or to determine compliance with the permit; upon request, the permittee shall also furnish to the department copies of records required by the permit to be maintained.

(c) The terms and conditions for all alternative operating scenarios identified in the application and approved by the department:

(i) shall require that the permittee maintain a log at the permitted facility which documents, contemporaneously with any change from one operating scenario to another, the scenario under which the facility is operating; and

(ii) shall, for each such alternative scenario, meet all applicable requirements and the requirements of 20.11.42 NMAC.

(d) The department may impose conditions regulating emissions during startup and shutdown.

(e) All permit terms and conditions which are required under the federal act or under any of its applicable requirements, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal act. The permit shall specifically designate as not being federally enforceable under the federal act any terms or conditions included in the permit that are not required under the federal act or under any of its applicable requirements.

(f) The issuance of a permit, or the filing or approval of a compliance plan, does not relieve any person from civil or criminal liability for failure to comply with the provisions of the Air Quality Control Act, the federal act, federal regulations thereunder, any applicable regulations of the board, and any other applicable law or regulation.

(g) The department may include part or all of the contents of the application as terms and conditions of the permit or permit modification. The department shall not apply permit terms and conditions upon emissions of regulated pollutants for which there are no applicable requirements, unless the source is major for that pollutant.

(h) Fugitive emissions from a source shall be included in the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(i) The acid rain portion of operating permits for acid rain sources shall:

(i) state that, where an applicable requirement of the federal act is more stringent than an applicable requirement of regulations promulgated under Title IV of the federal act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator;

(ii) contain a permit condition prohibiting emissions exceeding any allowances that the acid rain source lawfully holds under Title IV of the federal act or the regulations promulgated thereunder; no permit modification under this regulation shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit modification under any other applicable requirement; no limit shall be placed on the number of allowances held by the acid rain source; the permittee may not use allowances as a defense to noncompliance with any other applicable requirement; any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the federal act.

(2) **Permit duration.** The department shall issue operating permits for a fixed term not to exceed five years.

(3) **Monitoring.**

(a) Each permit shall contain all emissions monitoring requirements, and analysis procedures or test methods, required to assure and verify compliance with the terms and conditions of the permit and applicable requirements, including any procedures and methods promulgated by the administrator.

(b) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of record keeping designed to serve as monitoring), the permit shall require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to Paragraph (5), of Subsection C of 20.11.42.12 NMAC. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

(c) The permit shall also contain specific requirements concerning the use, maintenance, and, when appropriate, installation of monitoring equipment or methods.

(4) **Record keeping.**

(a) The permit shall require record keeping sufficient to assure and verify compliance with the terms and conditions of the permit, including:

(i) the date, place as defined in the permit, and time of sampling or measurements;

- (ii) the date(s) analyses were performed;
- (iii) the company or entity that performed the analyses;
- (iv) the analytical techniques or methods used;
- (v) the results of such analyses; and
- (vi) the operating conditions existing at the time of sampling or measurement.

(b) Records of all monitoring data and support information shall be retained for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

(5) **Reporting.** The permit shall require reporting sufficient to assure and verify compliance with the terms and conditions of the permit and all applicable requirements, including:

(a) submittal of reports of any required monitoring at least every six months; the reports shall be due to the department within 45 days of the end of the permittee's reporting period; all instances of deviations from permit requirements, including emergencies, must be clearly identified in such reports; all required reports must be certified by a responsible official consistent with Paragraph (5), of Subsection A of 20.11.42.12 NMAC;

(b) prompt reporting of all deviations (including emergencies) from permit requirements, including the date, time, duration and probable cause of such deviations, the quantity and pollutant type of excess emissions resulting from the deviation, and any corrective actions or preventive measures taken; such reports shall include telephone, verbal, e-mail or facsimile communication within 24 hours of the start of the next business day and written notification within 10 days;

(c) submittal of compliance certification reports at least every 12 months (or more frequently if so specified by an applicable requirement) certifying the source's compliance status with all permit terms and conditions and all applicable requirements relevant to the source, including those related to emission limitations or work practices; the reports shall be due to the department within 30 days of the end of the permittee's reporting period; such compliance certifications shall be submitted to the administrator as well as to the department and shall include:

- (i) the identification of each term or condition of the permit that is the basis of the certification;

- (ii) the compliance status of the source;
- (iii) whether compliance was continuous or intermittent;
- (iv) the method(s) used for determining the compliance status of the source, currently and during the reporting period identified in the permit; and
- (v) such other facts as the department may require to determine the compliance status of the source;

(d) such additional provisions as may be specified by the administrator to determine the compliance status of the source.

(6) **Compliance.** To assure and verify compliance with the terms and conditions of the permit and with 20.11.42 NMAC, permits shall also:

(a) require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives of the department to perform the following:

(i) enter upon the permittee's premises where a source is located or emission related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) have access to and copy any records that must be kept under the conditions of the permit;

(iii) inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(iv) sample or monitor any substances or parameters for the purpose of assuring compliance with the permit or applicable requirements or as otherwise authorized by the federal act;

(b) require that sources required under Subparagraph (k), of Paragraph (4), of Subsection A of 20.11.42.12 NMAC to have a schedule of compliance submit progress reports to the department at least semiannually, or more frequently if specified in the applicable requirement or by the department; such progress reports shall be consistent with the schedule of compliance and requirements of Subparagraph (k), of Paragraph (4), of Subsection A of 20.11.42.12 NMAC, and shall contain:

(i) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;

(c) include such other provisions as the department may require.

(7) **Operational flexibility.**

(a) **Section 502(b)(10) changes.**

(i) The permittee may make Section 502(b)(10) changes, as defined in Section 20.11.42.7 NMAC, without applying for a permit modification, if those changes are not Title I modifications and the changes do not cause the facility to exceed the emissions allowable under the permit (whether expressed as a rate of emissions or in terms of total emissions).

(ii) For each such change, the permittee shall provide written notification to the department and the administrator at least seven days in advance of the proposed changes. Such notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(iii) The permittee and department shall attach each such notice to their copy of the relevant permit.

(iv) If the written notification and the change qualify under this provision, the permittee is not required to comply with the permit terms and conditions it has identified that restrict the change. If the change does not qualify under this provision, the original terms of the permit remain fully enforceable.

(b) **Emissions trading within a facility.**

(i) The department shall, if an applicant requests it, issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit in addition to any applicable requirements. Such terms and conditions shall include all terms and conditions required under Subsection C of 20.11.42.12 NMAC to determine compliance. If applicable requirements apply to the requested emissions trading, permit conditions shall be issued only to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval.

(ii) The applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no

replicable procedures to enforce the emissions trades. The permit shall require compliance with all applicable requirements.

(iii) For each such change, the permittee shall provide written notification to the department and the administrator at least seven days in advance of the proposed changes. Such notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(iv) The permittee and department shall attach each such notice to their copy of the relevant permit.

**(8) Off-permit changes.**

(a) Permittees are allowed to make, without a permit modification, changes that are not addressed or prohibited by the operating permit, if:

(i) each such change meets all applicable requirements and shall not violate any existing permit term or condition;

(ii) such changes are not subject to any requirements under Title IV of the federal act and are not Title I modifications;

(iii) such changes are not subject to permit modification procedures under Subsection E of 20.11.42.13 NMAC; and

(iv) the permittee provides contemporaneous written notice to the department and EPA of each such change, except for changes that qualify as insignificant activities; such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted and any applicable requirement that would apply as a result of the change.

(b) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

**(9) Permit shield.**

(a) Except as provided in 20.11.42 NMAC, the department shall expressly include in a 20.11.42 NMAC permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(i) such applicable requirements are included and are specifically identified in the permit; or

(ii) the department, in acting on the permit application or significant permit modification, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(b) A 20.11.42 NMAC permit that does not expressly state that a permit shield exists for a specific provision shall be presumed not to provide a shield for that provision.

(c) Nothing in 20.11.42.12 NMAC or in any 20.11.42 NMAC permit shall alter or affect the following:

(i) the provisions of Section 303 of the federal act - *Emergency Powers*, including the authority of the administrator under Section 303, or the provisions of the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act, 74-2-10 NMSA 1978;

(ii) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) the applicable requirements of the acid rain program, consistent with Section 408(a) of the federal act;

(iv) the ability of EPA to obtain information from a source pursuant to Section 114 of the federal act, or the department to obtain information in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act 74-2-13 NMSA 1978.

(d) The permit shield shall remain in effect if the permit terms and conditions are extended past the expiration date of the permit pursuant to Paragraph (4), of Subsection A of 20.11.42.13 NMAC.

(e) The permit shield may extend to terms and conditions that allow emission increases and decreases as part of emissions trading within a facility pursuant to Subparagraph (b), of Paragraph (7), of Subsection C of 20.11.42.12 NMAC, and to all terms and conditions under each operating scenario included pursuant to Subparagraph (e), of Paragraph (1), of Subsection C of 20.11.42.12 NMAC.

(f) The permit shield shall not extend to *administrative permit amendments* under Paragraph (1), of Subsection E of 20.11.42.13 NMAC, to *minor permit modifications* under Paragraph (2), of Subsection E of 20.11.42.13 NMAC, to *Section 502(b)(10) changes* under Subparagraph (a), of Paragraph (7) of Subsection C of 20.11.42.12 NMAC, or to permit terms or conditions for which notice has been given to reopen or revoke all or part under Subsection F of 20.11.42.13 NMAC.

#### **D. General permits:**

**(1) Issuance of general permits.**

(a) The department may, after notice and opportunity for public participation and EPA and affected program review, issue a general permit covering numerous similar sources. Such sources shall be generally homogenous in terms of operations, processes and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements.

(b) Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit.

**(2) Authorization to operate under a general permit.**

(a) The owner or operator of a 20.11.42 NMAC source which qualifies for a general permit must:

(i) apply to the department for coverage under the terms of the general permit;

(ii) apply for an operating permit consistent with Subsection A of 20.11.42.12 NMAC.

(b) The department may, in the general permit, provide for applications which deviate from the requirements of Paragraph (4), of Subsection A of 20.11.42.12 NMAC, provided that such applications meet the requirements of the federal act and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The department shall review the application for authorization to operate under a general permit for completeness within 30 days after its receipt of the application.

(c) The department shall authorize qualifying sources which apply for coverage under the general permit to operate under the terms and conditions of the general permit. The department shall take final action on a general permit authorization request within 90 days of deeming the application complete.

(d) The department may grant a request for authorization to operate under a general permit without repeating the public participation procedures required under Subsection B of 20.11.42.13 NMAC. Such an authorization shall not be a permitting action for purposes of administrative review under the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-7.H NMSA 1978.

(e) Authorization to operate under a general permit shall not be granted for acid rain sources unless provided for in regulations promulgated under Title IV of the federal act.

(f) The permittee shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit.

#### **E. Emergency provision:**

(1) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.

(2) An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the permittee has demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) an emergency occurred and that the permittee can identify the cause(s) of the emergency;

(b) the permitted facility was at the time being properly operated;

(c) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

(d) the permittee fulfilled notification requirements under Subparagraph (b), of Paragraph (5), of Subsection C of 20.11.42.12 NMAC; this notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(3) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(4) This provision is in addition to any emergency or upset provision contained in any applicable requirement, except that 20.11.42 NMAC sources shall not be subject to the provisions of 20.11.90.12 NMAC for permit terms and conditions issued under 20.11.42 NMAC.

[3/1/94. . .12/1/95; 20.11.42.12 NMAC - Rn, 20 NMAC 11.42.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.42.II.1, 10/1/02; A, 8/10/09; A, 1/10/11; A, 5/13/13]

#### **20.11.42.13 PERMIT PROCESSING:**

## **A. Action on permit applications:**

(1) A permit (including permit renewal) or permit modification shall only be issued if all of the following conditions have been met:

(a) the department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under Subsection D of 20.11.42.12 NMAC;

(b) except for administrative and minor permit modifications, the department has complied with the requirements for public participation procedures under Subsection B of 20.11.42.13 NMAC;

(c) except for administrative amendments, the department has complied with the requirements for notifying and responding to affected programs under Subsection C of 20.11.42.13 NMAC;

(d) the conditions of the permit provide for compliance with all applicable requirements; and

(e) the administrator has received a copy of the proposed permit and any notices required under Subsection C of 20.11.42.13 NMAC, and has not objected to issuance of the permit within the time period specified within that subsection.

(2) The department shall, within 60 days after its receipt of an application for a permit or significant permit modification, review such application for completeness. Unless the department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. When additional information is requested by the department prior to ruling an application complete, receipt of such information shall be processed as a new application for purposes of 20.11.42.13 NMAC. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

(3) The department shall take final action on each permit application (including a request for permit renewal) within 12 months after an application is ruled complete by the department, except that:

(a) for sources in operation on or before the effective date of 20.11.42 NMAC and which submit to the department timely and complete applications in accordance with Subsection A of 20.11.42.12 NMAC, the department shall take final action on one-third of such applications annually over a period not to exceed three years after such effective date;

(b) any complete permit application containing an early reduction demonstration under Section 112(i)(5) of the federal act shall be acted on within nine months of deeming the application complete; and

(c) the acid rain portion of permits for acid rain sources shall be acted upon in accordance with the deadlines in Title IV of the federal act and the regulations promulgated thereunder.

(4) If a timely and complete application for a permit renewal is submitted, consistent with Subsection A of 20.11.42.12 NMAC, but the department has failed to issue or disapprove the renewal permit before the end of the term of the previous permit, then the permit shall not expire and all the terms and conditions of the permit shall remain in effect until the renewal permit has been issued or disapproved.

(5) Permits being renewed are subject to the same procedural requirements, including those for public participation, affected program, and EPA review that apply to initial permit issuance.

(6) The department shall state within the draft permit the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions with dates of latest amendments).

(7) The department shall grant or disapprove the permit based on information contained in the department's administrative record. The administrative record shall consist of the application, any additional information submitted by the applicant, any evidence or written comments submitted by interested persons, any other evidence considered by the department, and, if a public hearing is held, the evidence submitted at the hearing.

(8) If the department grants or disapproves a permit or permit modification, the department shall notify the applicant by certified mail of the action taken and the reasons therefore. If the department grants a permit or modification, the department shall mail the permit or modification, including all terms and conditions, to the applicant by certified mail.

(9) **Voluntary discontinuation.** Upon request by the permittee, the department shall permanently discontinue a 20.11.42 NMAC permit. Permit discontinuance terminates the permittee's right to operate the source under the permit. The department shall confirm the permit discontinuance by certified letter to the permittee.

(10) No permit shall be issued by failure of the department to act on an application or renewal.

## **B. Public participation:**

(1) Proceedings for all permit issuances (including renewals), significant permit modifications, reopenings, revocations and terminations, and all modifications to the department's list of insignificant activities, shall include public notice and provide an opportunity for public comment. The department shall provide 30 days for public and affected program comment. The department may hold a public hearing on the draft permit for any reason it deems appropriate, and shall hold such a hearing in the event of significant public interest. The department shall give notice of any public hearing at least 30 days in advance of the hearing.

(2) Public notice and notice of public hearing shall be given by publication in a newspaper of general circulation, to persons on a mailing list developed by the department (including those who request in writing to be on the list), and by other means if necessary to assure adequate notice to the affected public.

(3) The public notice shall identify:

(a) the affected facility;

(b) the names and addresses of the applicant or permittee and its owners;

(c) the name and address of the department;

(d) the activity or activities involved in the permit action;

(e) the emissions change(s) involved in any permit modification;

(f) the name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, and relevant supporting materials;

(g) a brief description of the comment procedures required by the department;  
and

(h) as appropriate, a statement of procedures to request a hearing, or the time and place of any scheduled hearing.

(4) Notice of public hearing shall identify:

(a) the affected facility;

(b) the names and addresses of the applicant or permittee and its owners;

(c) the name and address of the department;

(d) the activity or activities involved in the permit action;

(e) the name, address and telephone number of a person from whom interested persons may obtain additional information;

(f) a brief description of hearing procedures; and

(g) the time and place of the scheduled hearing.

(5) The time, date, and place of the hearing shall be determined by the department. The department shall appoint a hearing officer. A transcript of the hearing shall be made at the request of either the department or the applicant and at the expense of the person requesting the transcript. At the hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

(6) The department shall keep a record of the commenters and also of the issues raised during the public participation process so that the administrator may fulfill his or her obligation under Section 505(b)(2) of the federal act to determine whether a citizen petition may be granted. Such records shall be available to the public upon request.

(7) The department shall provide such notice and opportunity for participation by affected programs as is provided for by Subsection C of 20.11.42.13 NMAC.

### **C. Review by the administrator and affected programs:**

(1) **Notification.** The department shall not issue an operating permit (including permit renewal or reissuance), minor permit modification, or significant permit modification until affected programs and the administrator have had an opportunity to review the proposed permit as required under 20.11.42.13 NMAC. Permits for source categories waived by the administrator from this requirement and any permit terms or conditions, which are not required under the federal act or under any of its requirements, are not subject to administrator review or approval.

(a) Within five days of notification by the department that the application has been determined complete, the applicant shall provide a copy of the complete permit application (including the compliance plan and all additional materials submitted to the department) directly to the administrator. The permit or permit modification shall not be issued without certification to the department of such notification. The department shall provide to the administrator a copy of each draft permit, each proposed permit, each final operating permit, and any other relevant information requested by the administrator.

(b) The department shall provide notice of each draft permit to any affected program on or before the time that the department provides this notice to the public under Subsection B of 20.11.42.13 NMAC, except to the extent that minor permit modification procedures require the timing of the notice to be different.

(c) The department shall keep for five years such records and submit to the administrator such information as the administrator may reasonably require in order to ascertain whether the program complies with the requirements of the federal act or related applicable requirements.

**(2) Responses to objections.**

(a) No permit for which an application must be transmitted to the administrator under 20.11.42 NMAC shall be issued by the department if the administrator, after determining that issuance of the proposed permit would not be in compliance with applicable requirements, objects to such issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(b) If the administrator does not object in writing under Subparagraph (a) above, any person may, within 60 days after the expiration of the administrator's 45-day review period, petition the administrator to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in Subsection B of 20.11.42.13 NMAC, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the administrator objects to the permit as a result of a petition filed under this subparagraph, the department shall not issue the permit until the administrator's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to the administrator's objection.

(c) The department, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under Paragraph (2), of Subsection E of 20.11.42.13 NMAC), shall notify the administrator and any affected program in writing of any refusal by the department to accept all recommendations for the proposed permit that the affected program submitted during the public or affected program review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on federally enforceable applicable requirements.

**D. Petitions for review of final action:**

**(1) Hearing before the board.**

(a) Any person who participated in a permitting action before the department and who is adversely affected by such permitting action may file a petition for hearing before the board. For the purposes of 20.11.42.13 NMAC, permitting action shall include the failure of the department to take final action on an application for a permit (including renewal) or permit modification within the time specified in 20.11.42 NMAC.

(b) The petition shall be made in writing to the board within 30 days from the date notice is given of the department's action and shall specify the portions of the permitting action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered as required by this subparagraph, and attach a copy of the permitting action for which review is sought. Unless a timely request for hearing is made, the decision of the department shall be final. The petition shall be copied simultaneously to the department upon receipt of the appeal notice. If the petitioner is not the applicant or permittee, the petitioner shall mail or hand-deliver a copy of the petition to the applicant or permittee. The department shall certify the administrative record to the board.

(c) If a timely request for hearing is made, the board shall hold a hearing within 90 days of receipt of the petition in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-7 NMSA 1978.

**(2) Judicial review.**

(a) Any person who is adversely affected by an administrative action taken by the board pursuant to Paragraph (1), of Subsection D of 20.11.42.13 NMAC may appeal to the court of appeals in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-9 NMSA 1978. Petitions for judicial review must be filed no later than 30 days after the administrative action.

(b) The judicial review provided for by Subsection D of 20.11.42.13 NMAC shall be the exclusive means for obtaining judicial review of the terms and conditions of the permit.

**E. Permit modifications:**

**(1) Administrative permit amendments.**

(a) An administrative permit amendment is one that:

- (i) corrects typographical errors;
- (ii) provides for a minor administrative change at the source, such as a change in the address or phone number of any person identified in the permit;
- (iii) incorporates a change in the permit solely involving the retiring of an emissions unit;
- (iv) requires more frequent monitoring or reporting by the permittee; or

(v) any other type of change which has been determined by the department and the administrator to be similar to those in this paragraph.

(b) Changes in ownership or operational control of a source may be made as administrative amendments provided that:

(i) a written agreement, containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee, has been submitted to the department, and either the department has determined that no other change in the permit is necessary, or changes deemed necessary by the department have been made;

(ii) the new owners have submitted the application information required in Subparagraph (b), of Paragraph (4), Subsection A of 20.11.42.12 NMAC;

(iii) no grounds exist for permit termination, as set out in Items (ii) and (iii), of Subparagraph (c), of Paragraph (1), of Subsection F of 20.11.42.13 NMAC; and

(iv) the permittee has published a public notice of the change in ownership of the source in a newspaper of general circulation in the area where the source is located.

(c) The department may incorporate administrative permit amendments without providing notice to the public or affected programs, provided that it designates any such permit modifications as administrative permit amendments and submits a copy of the revised permit to the administrator.

(d) The department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request. The permittee may implement the changes outlined in Items (i) through (iv), of Subparagraph (a), of Paragraph (1), of Subsection E of 20.11.42.13 NMAC immediately upon submittal of the request for the administrative amendment. The permittee may implement the changes outlined in Item (v), of Subparagraph (a), of Paragraph (1), of Subsection E of 20.11.42.13 NMAC or Subparagraph (b), of Paragraph (1), Subsection E of 20.11.42.13 NMAC above upon approval of the administrative amendment by the department.

**(2) Minor permit modifications.**

(a) Minor permit modification procedures may be used only for those permit modifications that:

(i) do not violate any applicable requirement;

(ii) do not involve relaxation of existing monitoring, reporting, or record keeping requirements in the permit;

(iii) do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(iv) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject; such terms and conditions include any federally enforceable emissions cap assumed to avoid classification as a Title I modification and any alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the federal act;

(v) are not Title I modifications; and

(vi) are not required by the department to be processed as a significant modification pursuant to Paragraph (3), Subsection E of 20.11.42.13 NMAC.

(b) A permittee shall not submit multiple minor permit modification applications that may conceal a larger modification that would not be eligible for minor permit modification procedures. The department may, at its discretion, require that multiple related minor permit modification applications be submitted as a significant permit modification.

(c) An application requesting the use of minor permit modification procedures shall meet the requirements of Paragraphs (3) and (4), of Subsection A of 20.11.42.12 NMAC and shall include:

(i) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) the applicant's suggested draft permit;

(iii) certification by a responsible official, consistent with Paragraph (5), of Subsection A of 20.11.42.12 NMAC, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(iv) if the requested permit modification would affect existing compliance plans or schedules, related progress reports, or certification of compliance requirements, an outline of such effects.

(d) The department shall, within 30 days after its receipt of an application for a minor permit modification, review such application for completeness. Unless the department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within 30 days of receipt of an application, the application shall be deemed complete. If the application is

judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

(e) Within five working days of notification by the department that the minor permit modification application has been ruled complete, the applicant shall meet its obligation under Paragraph (1), of Subsection C of 20.11.42.13 NMAC to notify the administrator and affected programs of the requested permit modification. The department promptly shall send any notice required under Subparagraph (b), of Paragraph (1), of Subsection C of 20.11.42.13 NMAC and Paragraph (2), of Subsection C of 20.11.42.13 NMAC to the administrator and affected programs.

(f) The permittee may make the change proposed in its minor permit modification application immediately after such application is deemed complete. After the permittee makes the change allowed by the preceding sentence, and until the department takes any of the actions specified in Subparagraph (g), of Paragraph (2), of Subsection E of 20.11.42.13 NMAC below, the permittee must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the permittee need not comply with the existing permit terms and conditions it seeks to modify. If the permittee fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(g) The department may not issue a final minor permit modification until after the administrator's 45-day review period of the proposed permit modification or until EPA has notified the department that the administrator will not object to issuance of the permit modification, although the department may approve the permit modification prior to that time. Within 90 days of ruling the application complete under minor permit modification procedures or within 15 days after the end of the administrator's 45-day review period under, whichever is later, the department shall:

- (i) issue the permit modification as it was proposed;
- (ii) disapprove the permit modification application;
- (iii) determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
- (iv) revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by Paragraph (1), of Subsection C of 20.11.42.13 NMAC.

**(3) Significant permit modifications.**

(a) A significant permit modification is:

(i) any revision to an operating permit that does not meet the criteria under the provisions for administrative permit amendments under Paragraph (1), of Subsection E of 20.11.42.13 NMAC or for minor permit modifications under Paragraph (2), of Subsection E of 20.11.42.13 NMAC above;

(ii) any modification that would result in any relaxation in existing monitoring, reporting or record keeping permit terms or conditions;

(iii) any modification for which action on the application would, in the judgment of the department, require decisions to be made on significant or complex issues; and

(iv) changes in ownership which do not meet the criteria of Subparagraph (b), of Paragraph (1), of Subsection E of 20.11.42.13 NMAC.

(b) For significant modifications which are not required to undergo pre-construction permit review and approval, changes to the source which qualify as significant permit modifications shall not be made until the department has issued the operating permit modification.

(c) For significant modifications which have undergone pre-construction permit review and approval, the permittee shall:

(i) before commencing operation, notify the department in writing of any applicable requirements and operating permit terms and conditions contravened by the modification, emissions units affected by the change, and allowable emissions increases resulting from the modification; and

(ii) within 12 months after commencing operation, file a complete operating permit modification application.

(d) Where an existing operating permit would specifically prohibit such change, the permittee must obtain an operating permit modification before commencing operation or implementing the change.

(e) Significant permit modifications shall meet all requirements of 20.11.42 NMAC for permit issuance, including those for applications, public participation, review by affected programs and review by the administrator.

(f) The department shall complete review on the majority of significant permit modification applications within nine months after the department rules the applications complete.

(4) **Modifications to acid rain sources.** Administrative permit amendments and permit modifications for purposes of the acid rain portion of the permit shall be governed by regulations promulgated by the administrator under Title IV of the federal act.

**F. Permit reopening, revocation or termination:**

(1) **Action by the department.**

(a) Each permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised for any of the following, and may be revoked and reissued for (iii) or (iv) of the following:

(i) additional applicable requirements under the federal act become applicable to a major source with a remaining permit term of three or more years; such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement; no such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms or conditions have been extended past the expiration date of the permit pursuant to Paragraph (4), Subsection A of 20.11.42.13 NMAC;

(ii) additional requirements (including excess emissions requirements) become applicable to a source under the acid rain program promulgated under Title IV of the federal act; upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;

(iii) the department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit; or

(iv) the department or the administrator determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.

(b) Proceedings to reopen and revise, or revoke and reissue, a permit shall affect only those parts of the permit for which cause to reopen or revoke exists. Units for which permit conditions have been revoked shall not be operated until permit reissuance. Reopenings shall be made as expeditiously as practicable.

(c) A permit, or an authorization to operate under a general permit, may be terminated when:

(i) the permittee fails to meet the requirements of an approved compliance plan;

(ii) the permittee has been in significant or repetitious non-compliance with the operating permit terms or conditions;

(iii) the applicant or permittee has exhibited a history of willful disregard for environmental laws of any state or tribal authority, or of the United States;

(iv) the applicant or permittee has knowingly misrepresented a material fact in any application, record, report, plan, or other document filed or required to be maintained under the permit;

(v) the permittee fails to pay fees required under the fee schedule in 20.11.2 NMAC;

(vi) the permittee falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the permit;

(vii) the administrator has found that cause exists to terminate the permit.

(d) The department shall, by certified mail, provide a notice of intent to the permittee at least 30 days in advance of the date on which a permit is to be reopened or revoked, or terminated, except that the department may provide a shorter time period in the case of an emergency.

(2) **Action by the administrator.** Within 90 days, or longer if the administrator extends this period, after receipt of written notification that the administrator has found that cause exists to terminate, modify or revoke and reissue a permit the department shall forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. Within 90 days from receipt of an administrator objection to a proposed determination, the department shall address and act upon the administrator's objection.

(3) **Compliance orders.** Notwithstanding any action which may be taken by the department or the administrator under Paragraph (1) and (2), of Subsection F of 20.11.42.13 NMAC, a compliance order issued in accordance with the joint air quality control board ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-12 NMSA 1978 may include a suspension or revocation of any permit or portion thereof.

**G. Citizen suit:** Pursuant to Section 304 of the federal act, 42 USC 7604, any person may commence certain civil actions under the federal act.

**H. Enforcement:** Notwithstanding any other provision in the New Mexico state implementation plan approved by the administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of any such plan.

(1) **Presumptively credible evidence.** Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at the source:

(a) a monitoring method approved for the source pursuant to 20.11.42 NMAC and incorporated into an operating permit; or

(b) compliance methods specified in the applicable plan.

(2) **Presumptively credible testing, monitoring, or information gathering methods.** The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

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

(b) other testing, monitoring or information gathering methods that produce information comparable to that produced by any method in Paragraphs (1) or (2), of Subsection H of 20.11.42.13 NMAC.

[3/1/94. . .12/1/95; 20.11.42.13 NMAC - Rn, 20 NMAC 11.42.II.2, 10/1/02; A, 8/10/09]

#### **20.11.42.14 RADIONUCLIDES:**

**[RESERVED]**

[12/1/95; 20.11.42.14 NMAC - Rn, 20 NMAC 11.42.II.3 & A, 10/1/02]

### **PART 43: STACK HEIGHT REQUIREMENTS**

#### **20.11.43.1 ISSUING AGENCY:**

Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[6/18/86. . .12/1/95; 20.11.43.1 NMAC – Rn, 20 NMAC 11.43.I.1, 10/1/02]

#### **20.11.43.2 SCOPE:**

This Part applies to sources with emission stacks, which are located in Bernalillo County, New Mexico.

**A. Exempt:** This Part does not apply to sources within Bernalillo County, which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control lacks jurisdiction.

**B. Existing Stacks:** The provisions of 20.11.43.13 NMAC shall not apply to:

(1) stack heights in existence, or dispersion techniques implemented, on or before December 31, 1970 except where air contaminants are being emitted from such stacks or using such dispersion techniques by sources as defined in Section 111(a)(3) of the Clean Air Act (CAA) which were constructed, or reconstructed, or for which major modifications as defined in 40 CFR Sections 51.165 (a)(1)(v)A, 51.166 b(2)i and 52.21 b(2)i were carried out after December 31, 1970, or;

(2) coal fired steam electric generating units subject to the provisions of Section 118 of the CAA, which commenced operation before July 1, 1957 and the stacks were constructed under a contract awarded before February 8, 1974.

[3/16/89. . .12/1/95; 20.11.43.2 NMAC – Rn, 20 NMAC 11.43.I.2, 10/1/02]

**20.11.43.3 STATUTORY AUTHORITY:**

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

[6/18/86. . .12/1/95; 20.11.43.3 NMAC – Rn, 20 NMAC 11.43.I.3, 10/1/02]

**20.11.43.4 DURATION:**

Permanent.

[12/1/95; 20.11.43.4 NMAC – Rn, 20 NMAC 11.43.I.4, 10/1/02]

**20.11.43.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.43.5 NMAC – Rn, 20 NMAC 11.43.I.5 & A, 10/1/02]

**20.11.43.6 OBJECTIVE:**

The objective of this Part is to adopt local requirements that are identical to those required by federal new source review regulations assuring uniform procedures and formulae in determining, on a case-by-case basis, what stack heights or other dispersion techniques are creditable under the term "good engineering practice".

[3/16/89. . .12/1/95; 20.11.43.6 NMAC – Rn, 20 NMAC 11.43.I.6, 10/1/02]

**20.11.43.7 DEFINITIONS:**

For purposes of this Part, the definitions in 40 CFR Sections 51.100f, z, and ff through kk (1987), as well as 40 CFR 60.15b (1987) are hereby incorporated as regulations of the Board. In addition to the definitions in 20.11.43.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this Part shall govern.

[3/16/89. . .12/1/95; 20.11.43.7 NMAC – Rn, 20 NMAC 11.43.I.7, 10/1/02]

#### **20.11.43.8 VARIANCES:**

Because sources subject to the federal stack height regulation cannot be granted variances from these requirements, insofar as variation from the requirements of this Part are concerned, such sources can not utilize the provisions of 20.11.7 NMAC, Variances Procedures, nor 9-5-1-4 ROA 1994; nor Bernalillo County Ordinance 94-5, all of which were adopted pursuant to Section 74-2-8 NMSA 1978.

[3/16/89. . .12/1/95; 20.11.43.8 NMAC – Rn, 20 NMAC 11.43.I.8, 10/1/02]

#### **20.11.43.9 SAVINGS CLAUSE:**

Any amendment to 20.11.43 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation 33, or 20.11.43 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

[12/1/95; 20.11.43.9 NMAC – Rn, 20 NMAC 11.43.I.9, 10/1/02]

#### **20.11.43.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of this Part or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.

[12/1/95; 20.11.43.10 NMAC – Rn, 20 NMAC 11.43.I.10, 10/1/02]

#### **20.11.43.11 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.43.11 NMAC – Rn, 20 NMAC 11.43.I.11 & A, 10/1/02]

#### **20.11.43.12 PUBLIC NOTICE:**

**A.** Before the Department issues a permit pursuant to 20.11.41, 60, or 61 NMAC which contains a new, or revised emission limitation that is based on a good engineering stack height that exceeds the height allowed by 40 CFR Part 51, section 51.100 (ii) 1 or 2, 1987, the Department shall notify the public of the availability of the demonstration study. Such notice shall be given in the manner specified in the applicable regulation for the permit application. Interested parties shall have 30 days from the date of the notice to submit comments on the demonstration and to request a public hearing.

**B.** If the Director determines there is significant public interest a public hearing shall be held. If a public hearing is held, the Department shall give notice of the time, date and place of the hearing. The hearing shall be held within 45 days of the notice. The hearing may be combined with any other public hearing to be held on the permit application.

**C.** After the hearing, the Department shall make its final decision on the new or revised emission limitation.

[12/1/95; 20.11.43.12 NMAC – Rn, 20 NMAC 11.43.I.12 & Repealed, 10/1/02; ;Rn, 20 NMAC 11.43.II.1, 10/1/02]

#### **20.11.43.13 CREDIT LIMITATIONS:**

Except as otherwise provided, in evaluating air quality impacts for a proposed new source or modification of an existing source requiring a permit pursuant to 20.11.41 NMAC/ Authority to Construct; 20.11.61 NMAC, Prevention of Significant Deterioration; or 20.11.60 NMAC, Permitting in Nonattainment Areas, the Department shall give no credit for reductions in emissions due to so much of a source's stack height that exceeds good engineering practice or due to any other dispersion technique.

[3/16/89. . .12/1/95; 20.11.43.13 NMAC – Rn, 20 NMAC 11.43.II.2, 10/1/02]

#### **PART 44: EMISSIONS TRADING [REPEALED]**

[This part was repealed on June 15, 2007.]

#### **PART 45: STATIONARY SOURCE CONFORMITY [REPEALED]**

[This part was repealed on June 15, 2007.]

#### **PART 46: SULFUR DIOXIDE EMISSIONS INVENTORY REQUIREMENTS; WESTERN BACKSTOP SULFUR DIOXIDE TRADING PROGRAM**

##### **20.11.46.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, P.O. Box 1293, Albuquerque, New Mexico, 87103.

[20.11.46.1 NMAC - N, 12/31/03]

**20.11.46.2 SCOPE:**

**A.** 20.11.46 NMAC is applicable to all geographic areas within Bernalillo county, New Mexico and within the jurisdiction of the Albuquerque-Bernalillo county air quality control board.

**B. Exempt:** 20.11.46 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

[20.11.46.2 NMAC - N, 12/31/03; A, 9/15/08]

**20.11.46.3 STATUTORY AUTHORITY:**

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

[20.11.46.3 NMAC - N, 12/31/03; A, 9/15/08]

**20.11.46.4 DURATION:**

Permanent, except as provided in Section 20.11.46.5 NMAC.

[20.11.46.4 NMAC - N, 12/31/03]

**20.11.46.5 EFFECTIVE DATE:**

December 31, 2003, except where a later date is cited at the end of a section, or as provided in 20.11.46.10 NMAC. However, if the EPA disapproves the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque-Bernalillo County, New Mexico*, then 20.11.46 NMAC will no longer be effective on the date of official notification by the EPA to the Governor of New Mexico that the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque-Bernalillo County, New Mexico* has been disapproved.

[20.11.46.5 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

**20.11.46.6 OBJECTIVE:**

**A.** 20.11.46 NMAC implements the western backstop (WEB) sulfur dioxide (SO<sub>2</sub>) trading program provisions required under the federal Regional Haze Rule, 40 CFR 51.309, and the *concomitant* Albuquerque-Bernalillo county element of the state of New Mexico's regional haze implementation plan.

**B.** Nothing in 20.11.46 NMAC waives any requirement otherwise in effect or subsequently required under another program, including regulations governing new sources.

[20.11.46.6 NMAC - N, 12/31/03; A, 5/16/11]

#### **20.11.46.7 DEFINITIONS:**

In addition to the definitions in 20.11.46.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.46 NMAC shall govern.

**A. "Account certificate of representation"** means the completed and signed submission required to designate an account representative for a WEB source or an account representative for a general account.

**B. "Account representative"** means the individual who is authorized through an account certificate of representation to represent owners and operators of the WEB source with regard to matters under the WEB trading program or, for a general account, who is authorized through an account certificate of representation to represent the persons having an ownership interest in allowances in the general account with regard to matters concerning the general account.

**C. "Act"** means the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

**D. "Actual emissions"** means the total annual SO<sub>2</sub> emissions determined in accordance with 20.11.46.16 NMAC, *monitoring, record keeping and reporting*, or determined in accordance with 20.11.46.9 NMAC, *emission tracking requirements for sulfur dioxide emission inventories*, for sources that are not subject to 20.11.46.16 NMAC.

**E. "Air quality control board" or "AQCB"** means the Albuquerque-Bernalillo county air quality control board.

**F. "Allocate"** means to assign allowances to a WEB source, in accordance with Section C1 of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*.

**G. "Allowance"** means the limited authorization under the WEB trading program to emit one ton of SO<sub>2</sub> during a specified control period or any control period thereafter

subject to the terms and conditions for use of unused allowances as established by 20.11.46 NMAC.

**H. "Allowance limitation"** means the tonnage of SO<sub>2</sub> emissions authorized by the allowances available for compliance deduction for a WEB source for a control period under 20.11.46.19 NMAC, *compliance*, on the allowance transfer deadline for that control period.

I. Reserved

J. Reserved

**K. "Allowance transfer deadline"** means the deadline established in Subsection B of 20.11.46.17 NMAC when allowance transfers must be submitted for recording in a WEB source's compliance account in order to demonstrate compliance for that control period.

**L. "Compliance account"** means an account established in the WEB EATS under Subsection A of 20.11.46.15 NMAC for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation.

**M. "Compliance certification"** means a submission to the department by the account representative as required under Subsection B of 20.11.46.19 NMAC to report a WEB source's compliance or noncompliance with 20.11.46 NMAC.

**N. "Control period"** means the period beginning January 1 of each year and ending on December 31 of the same year, inclusive.

**O. "Emission report" or "inventory"** means a listing, by source, of the amount of air pollutants discharged into the atmosphere.

P. Reserved

**Q. "Emission unit" or "unit"** means any part of a stationary source that emits or would have the potential to emit any pollutant regulated pursuant to the Clean Air Act.

**R. "Existing source"** means, a stationary source that commenced operation before the program trigger date.

**S. "Fugitive emissions"** are those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**T. "General account"** means an account established in the WEB EATS under 20.11.46.15 NMAC, *Establishment of Accounts*, for the purpose of recording allowances held by a person that are not to be used to show compliance with an allowance limitation.

**U. "Milestone"** means the maximum level of stationary source regional SO<sub>2</sub> emissions for each year from 2003 to 2018, established according to the procedures in Section A of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*.

**V. "New source set-aside"** means a pool of allowances that are available for allocation to new sources in accordance with the provisions of Section C1.3 of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*.

**W. "New WEB source"** means a WEB source that commenced operation on or after the program trigger date.

**X. "Owner or operator"** means any person who is an owner or who operates, controls or supervises a WEB source, and includes but is not limited to, any holding company, utility system or plant manager.

**Y. "Part"** means an air quality control regulation under Title 20, Chapter 11 of the New Mexico administrative code, unless otherwise noted, as adopted or amended by the AQCB.

**Z. "Potential to emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design if the limitation is enforceable by the EPA administrator.

**AA. "Program trigger date"** means the date that the department determines that the WEB trading program has been triggered in accordance with the provisions of Section A2 of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*.

**BB. "Program trigger years"** means the years shown in Table 3, column 3, under Part C of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico* for the applicable milestone if the WEB trading program is triggered as described in Section A of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*.

**CC. "Renewable energy resource"** means a resource that generates electricity by non-nuclear and non-fossil technologies that result in low or no air emissions. This term includes electricity generated by wind energy technologies; solar photovoltaic and solar thermal technologies; geothermal technologies; technologies based on landfill gas and biomass sources, and new low-impact hydropower that meet the low-impact hydropower institute criteria. Biomass includes agricultural, food and

wood wastes. The term does not include pumped storage or biomass from municipal solid waste, black liquor, or treated wood.

**DD.** "Retired source" means a WEB source that has received a retired source exemption as provided in Subsection E of 20.11.46.11 NMAC. Any retired source resuming operations under Subsection E of 20.11.46.11 NMAC, must submit its exemption as part of its registration materials.

**EE.** "Serial number" means, when referring to allowances, the unique identification number assigned to each allowance by the tracking systems administrator, in accordance with Subsection B of 20.11.46.14 NMAC.

**FF.** "SO<sub>2</sub> emitting unit" means any equipment that is located at a WEB source and that emits SO<sub>2</sub>.

**GG.** Reserved

**HH.** "Special reserve compliance account" means an account established in the WEB EATS under Subsection A of 20.11.46.15 NMAC for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation for emission units that are monitored for SO<sub>2</sub> in accordance with Paragraph (2) of Subsection A of 20.11.46.16 NMAC.

**II.** "Stationary source" means any building, structure, facility or installation that emits or may emit any air pollutant subject to regulation under the Clean Air Act.

**JJ.** "Submit" means sent to the appropriate authority under the signature of the account representative. For purposes of determining when something is submitted, an official U.S. postal service postmark, or equivalent electronic time stamp, shall establish the date of submittal.

**KK.** "Ton" means 2000 pounds and, for any control period, any fraction of a ton equaling 1000 pounds or more shall be treated as one ton and any fraction of a ton equaling less than 1000 pounds shall be treated as zero tons.

**LL.** "Tracking system administrator" means the person designated by the department as the administrator of the WEB EATS.

**MM.** "WEB source" means a stationary source that meets the applicability requirements of 20.11.46.11 NMAC, *WEB trading program applicability*.

**NN.** "Western backstop sulfur dioxide (SO<sub>2</sub>) trading program" or "WEB trading program" means all sections of 20.11.46 NMAC, but not Section 20.11.46.9 NMAC, *emission tracking requirements for sulfur dioxide emission inventories*, triggered as a backstop in accordance with the provisions in the *Section 309 Regional Haze State*

*Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico, to ensure that regional SO<sub>2</sub> emissions are reduced.*

**OO. "WEB Emissions and allowance tracking system" or "WEB EATS"** means the central database where SO<sub>2</sub> emissions for WEB sources as recorded and reported in accordance with 20.11.46 NMAC are tracked to determine compliance with allowance limitations, and the system where allowances under the WEB trading program are recorded, held transferred and deducted.

**PP. "WEB EATS account"** means an account in the WEB EATS established for purposes of recording, holding, transferring and deducting allowances.

[20.11.46.7 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

#### **20.11.46.8 VARIANCES:**

No variances will be granted from requirements of 20.11.46 NMAC.

[20.11.46.8 NMAC - N, 12/31/03; A, 9/15/08]

#### **20.11.46.9 EMISSION TRACKING REQUIREMENTS FOR SULFUR DIOXIDE EMISSION INVENTORIES:**

Beginning with the 2003 emission inventory, all stationary sources with actual emissions of one hundred (100) tons per year or more of SO<sub>2</sub> in the year 2000, or in any subsequent year, shall submit an annual inventory of SO<sub>2</sub> emissions. A source that meets these criteria, and then emits less than 100 tons per year in a later year shall submit a SO<sub>2</sub> inventory for tracking compliance with the regional SO<sub>2</sub> milestones until the western backstop sulfur dioxide trading program has been fully implemented and emission tracking has occurred under 20.11.46.16 NMAC, *monitoring, record keeping and reporting.*

**A.** All sources meeting the criteria immediately above in 20.11.46.9 NMAC will be subject to the following federally enforceable provisions:

- (1) submit an annual inventory of SO<sub>2</sub> emissions;
- (2) document the emissions monitoring/estimation methodology used to calculate their SO<sub>2</sub> emissions, and demonstrate that the selected methodology is acceptable under the inventory program;
- (3) include emissions from start up, shut down, and upset conditions in the annual total inventory;
- (4) use 40 CFR Part 75 methodology for reporting emissions for all sources subject to the federal acid rain program;

(5) maintain all records used in the calculation of the emissions, including but not limited to the following:

- (a) amount of fuel consumed;
- (b) percent sulfur content of fuel and how the content was determined;
- (c) quantity of product produced;
- (d) emissions monitoring data;
- (e) operating data; and
- (f) how the emissions are calculated;

(6) maintain records of any physical changes to facility operations or equipment, or any other changes that may affect the emissions projections; and

(7) retain records for a minimum of 10 years from the date of establishment, or if the record was the basis for an adjustment to the milestone, five years after the date of an implementation plan revision, whichever is longer.

#### **B. Reporting requirements.**

(1) Except as provided in Paragraph (2) of Subsection B of 20.11.46.9 NMAC, the owner or operator shall submit the emission report by April 1 each year immediately following the year for which the source is required to report emissions data.

(2) Sources for which a date for submitting an annual emission report is specified in a current operating permit issued under 20.11.42 NMAC, *operating permits*, shall submit such report on the date specified in the permit. The department shall provide a copy of the previous emissions report upon request by the owner or operator of such source.

#### **C. Emissions report contents shall include:**

- (1) the name, address, and physical location of the stationary source;
- (2) the name and telephone number of the person to contact regarding the emissions report;
- (3) a certification signed by the owner, or operator, or a responsible official as defined in 20.11.42 NMAC attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and

telephone number of the certifying official; for sources subject to 20.11.42 NMAC, the certification shall be made as required under 20.11.42 NMAC;

(4) smelters shall submit an annual report of sulfur input, in tons per year;

(5) for each emission point additional information may be required by the department:

(a) stack and exhaust gas parameters;

(b) type of control equipment and estimated control efficiency;

(c) schedule of operation;

(d) estimated actual emissions, including fugitive emissions and emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime, of sulfur oxides, in tons per year, and a description of the methods utilized to make such estimates, including calculations;

(e) the annual process or fuel combustion rates; and

(f) the fuel heat, sulfur, and ash content.

**D.** The department shall retain emission inventory records for non-utilities for 1996 and 1998 until the year 2018 to ensure that changes in emissions monitoring techniques can be tracked.

[20.11.46.9 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

#### **20.11.46.10 WEB TRADING PROGRAM TRIGGER:**

**A.** Except as provided in Subsection B of 20.11.46.10 NMAC, Sections 20.11.46.11 NMAC through 20.11.46.22 NMAC shall become effective on the program trigger date that is established in accordance with the procedures outlined in Part C of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*.

**B.** 20.11.46.20 NMAC, *special penalty provisions for the year 2018 milestone*, shall become effective on January 1, 2018 and shall remain effective until the provisions of 20.11.46.20 NMAC, *special penalty provisions for the year 2018 milestone*, have been fully implemented.

[20.11.46.10 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

#### **20.11.46.11 WEB TRADING PROGRAM APPLICABILITY:**

**A. General applicability:** 20.11.46 NMAC applies to any stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and which are under the control of the same person or persons under common control, belonging to the same industrial grouping, and that are described in Paragraphs (1) through (4) of Subsection B of 20.11.46.11 NMAC. A stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code as described in the *standard industrial classification manual*, 1987, or three-digit code as described in the North American Industry Classification System (NAICS), 2007).

**B. The following are WEB sources.**

(1) All BART-eligible sources as defined in 40 CFR 51.301 that are subject to BART due to SO<sub>2</sub> emissions.

(2) All stationary sources not meeting the criteria of Paragraph (1) of Subsection B of 20.11.46.11 NMAC, that have actual SO<sub>2</sub> emissions of 100 tons or more per year in the program trigger years or any subsequent year. The fugitive emissions of a stationary source shall not be considered in determining whether it is a WEB source unless the source belongs to one of the following categories of stationary source:

- (a) coal cleaning plants (with thermal dryers);
- (b) kraft pulp mills;
- (c) portland cement plants;
- (d) primary zinc smelters;
- (e) iron and steel mills;
- (f) primary aluminum ore reduction plants;
- (g) primary copper smelters;
- (h) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (i) hydrofluoric, sulfuric, or nitric acid plants;
- (j) petroleum refineries;
- (k) lime plants;

- (l) phosphate rock processing plants;
  - (m) coke oven batteries;
  - (n) sulfur recovery plants;
  - (o) carbon black plants (furnace process);
  - (p) primary lead smelters;
  - (q) fuel conversion plants;
  - (r) sintering plants;
  - (s) secondary metal production plants;
  - (t) chemical process plants;
  - (u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
  - (v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
  - (w) taconite ore processing plants;
  - (x) glass fiber processing plants;
  - (y) charcoal production plants;
  - (z) fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
  - (aa) any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the Clean Air Act.
- (3) A new source that begins operation after the program trigger date and has the potential to emit 100 tons or more of SO<sub>2</sub> per year.
- (4) The department may determine on a case-by-case basis, with concurrence from the EPA administrator, that a source defined in Paragraph (2) of Subsection B of 20.11.46.11 NMAC is not a WEB source if the source:
- (a) had actual SO<sub>2</sub> emissions of less than 100 tons per year, in each of the previous five years; and

(b) had actual SO<sub>2</sub> emissions of 100 tons or more in a single year due to a temporary emission increase that was caused by a sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, failure of process equipment, or a failure to operate in a normal or usual manner; and

(c) took timely and reasonable action to minimize the temporary emission increase; and

(d) has corrected the failure of air pollution control equipment, process equipment, or process by the time of the department's determination under 20.11.46.11 NMAC; or

(e) had to switch fuels or feedstocks on a temporary basis and as a result of an emergency situation or unique and unusual circumstances besides cost of such fuels or feedstocks.

(5) A temporary emission increase due to poor maintenance or careless operation does not meet the criteria of 20.11.46.11 NMAC.

**C. Duration of program participation:** Except as provided for in Subsection D of 20.11.46.11 NMAC, once a source is subject to the WEB trading program, it will remain in the program every year thereafter.

**D. Application for retired source exemption:**

(1) Any WEB source that is permanently retired shall apply for a retired source exemption. The WEB source may be considered permanently retired only if all SO<sub>2</sub> emitting units at the source are permanently retired. The application shall contain the following information:

(a) identification of the WEB source, including plant name and an appropriate identification code in a format specified by the department;

(b) name of account representative;

(c) description of the status of the WEB source, including the date that the WEB source was retired;

(d) signed certification that the WEB source is permanently retired and will comply with the requirements of Subsection D of 20.11.46.11 NMAC; and

(e) verification that the WEB source has a general account where any unused allowances or future allocations will be recorded.

(2) **Notice:** The retired source exemption becomes effective when the department notifies the source that the retired source exemption has been granted.

(3) **Responsibilities of retired sources.** A retired source shall be exempt from 20.11.46.16 NMAC, *monitoring, record keeping and reporting* and 20.11.46.19 NMAC, *compliance*, except as provided below.

(a) A retired source shall not emit any SO<sub>2</sub> after the date the retired source exemption is issued.

(b) A WEB source shall submit SO<sub>2</sub> emissions reports, as required by Subsection H of 20.11.46.16 NMAC for any time period the source was operating prior to the effective date of the retired source exemption. The retired source shall be subject to the compliance provisions of 20.11.46.19 NMAC, *compliance*, including the requirement to hold allowances in the source's compliance account to cover all SO<sub>2</sub> emissions prior to the date the source was permanently retired.

(c) A retired source that is still in existence but no longer emitting SO<sub>2</sub> shall, for a period of five years from the date the records are created, retain records demonstrating that the source is permanently retired for purposes of 20.11.46 NMAC.

(4) **Resumption of operations.**

(a) Before resuming operation, the retired source shall submit registration materials as follows:

(i) if the source is required to obtain a new source review permit or operating permit under 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC or 20.11.61 NMAC prior to resuming operation, then the source shall submit registration information as described in 20.11.46.13 NMAC and a copy of the retired source exemption with the application required under 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC or 20.11.61 NMAC;

(ii) if the source is not required to obtain a new source review permit or operating permit under 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC or 20.11.61 NMAC prior to resuming operation, then the source shall submit registration information as described in Subsection A of 20.11.46.13 NMAC and a copy of the retired source exemption to the department at least 90 days prior to resumption of operation.

(b) The retired source exemption shall automatically expire on the day the source resumes operation.

(5) **Loss of future allowances:** A WEB source that is permanently retired and that does not apply to the department for a retired source exemption within 90 days of the date that the source is permanently retired shall forfeit any unused and future allowances. The abandoned allowances shall be retired by the tracking system administrator.

[20.11.46.11 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

#### **20.11.46.12 ACCOUNT REPRESENTATIVE FOR WEB SOURCES:**

Each WEB source must identify one account representative and may also identify an alternate account representative who may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative will be deemed to be a representation, action, inaction or submission by the account representative.

##### **A. Identification and certification of an account representative.**

(1) The account representative and any alternate account representative shall be appointed by written agreement that makes the representations, actions, inactions or submissions of the account representative and any alternate account representative, binding on the owners and operators of the WEB source. A copy of the agreement shall be provided to the department.

(2) The account representative shall submit to the department and the tracking system administrator a signed and dated account certificate of representation (certificate) that contains the following elements:

(a) identification of the WEB source by plant name, state, and an appropriate identification code in a format specified by the department;

(b) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(c) a list of owners and operators of the WEB source;

(d) information to be part of the emission tracking system database that is established in accordance with Part C of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*; and the specific data elements shall be as specified by the department to be consistent with the data system structure, and may include basic facility information that may appear in other reports and notices submitted by the WEB source, such as county location, industrial classification codes, and similar general facility information; and

(e) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on the owners and operators of the WEB source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB trading program on behalf of the owners and operators of the WEB source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department regarding the WEB trading program."

(3) Upon receipt by the department of the complete certificate, the account representative and any alternate account representative represents and, by their representations, actions, inactions, or submissions, legally binds each owner and operator of the WEB source in all matters pertaining to the WEB trading program. The owners and operators shall be bound by any decision or order issued by the department regarding the WEB trading program.

(4) No WEB EATS account shall be established for the WEB source until the tracking system administrator has received a complete certificate. Once the account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

#### **B. Requirements and responsibilities.**

(1) The responsibilities of the account representative include, but are not limited to, the transferring of allowances, and the submission of monitoring plans, registrations, certification applications, SO<sub>2</sub> emissions data and compliance reports as required by 20.11.46 NMAC, and representing the source in all matters pertaining to the WEB trading program.

(2) Each submission under this program shall be signed and certified by the account representative for the WEB source. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of the owners and operators of the WEB source for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

#### **C. Changing the account representative or owners and operators.**

(1) **Changes to the account representative or the alternate account representative.** The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the department and the tracking system administrator under Paragraph (3) of Subsection A of 20.11.46.12 NMAC, with the change taking effect upon receipt of such certificate by the department. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the tracking system administrator receives the superseding certificate shall be binding on the new account representative and the owners and operators of the WEB source.

**(2) Changes in owners and operators.**

(a) Within 30 days of any change in the owners and operators of the WEB source, including the addition of a new owner or operator, the account representative shall submit a revised certificate amending the list of owners and operators to include such change.

(b) In the event a new owner or operator of a WEB source is not included in the list of owners and operators submitted in the certificate, such new owner or operator shall be deemed to be subject to and bound by the certificate, the representations, actions, inactions, and submissions of the account representative of the WEB source, and the decisions, orders, actions, and inactions of the department as if the new owner or operator were included in such list.

[20.11.46.12 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

**20.11.46.13 REGISTRATION:**

**A. Deadlines.**

(1) Each source that is a WEB source on or before the program trigger date shall register by submitting the initial certificate required in Subsection A of 20.11.46.12 NMAC to the department no later than 180 days after the program trigger date.

(2) Any existing source that becomes a WEB source after the program trigger date shall register by submitting the initial certificate required in Subsection A of 20.11.46.12 NMAC to the department no later than September 30 of the year following the inventory year in which the source exceeded the emission threshold (100 tons SO<sub>2</sub>).

(3) Any new WEB source shall register by submitting the initial certificate required in Subsection A of 20.11.46.12 NMAC to the department prior to the commencement of operation.

**B. Integration into permits.**

(1) Any allocation, transfer or deduction of allowance to or from the compliance account of a WEB source shall not require revision of the WEB source's operating permit under 20.11.42 NMAC.

(2) After 20.11.46 NMAC is effective, a WEB source that is not required to have a permit under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC, must at all times possess a valid 20.11.42 NMAC permit that includes the requirements of 20.11.46 NMAC. If the WEB source does not possess a Title V permit under 20.11.42 NMAC, it may satisfy the requirements of Paragraph (2) of Subsection B of 20.11.46.13 NMAC by obtaining or modifying a permit under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61

NMAC that incorporates the requirements of 20.11.46 NMAC. The source must at all times possess a valid permit that includes these requirements.

[20.11.46.13 NMAC - N, 12/31/03; A, 5/16/11]

#### **20.11.46.14 ALLOWANCE ALLOCATIONS:**

**A.** The tracking system administrator shall record the allowances for each WEB source in the compliance account for a WEB source once the allowances are allocated by the department under Section C1 of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*. If applicable, the tracking system administrator shall also record a portion of the SO<sub>2</sub> allowances in a WEB source's special reserve compliance account to account for any allowances to be held by the source that conducts monitoring in accordance with Paragraph (2) of Subsection A of 20.11.46.16 NMAC. Under no circumstances shall allocations be made that would exceed the allocations available.

**B.** The tracking system administrator shall assign a serial number to each allowance in accordance with Section C1.2 of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*.

**C.** All allowances shall be allocated, recorded, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances shall be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

**D.** An allowance is not a property right, and is a limited authorization to emit one ton of SO<sub>2</sub> valid only for the purpose of meeting the requirements of 20.11.46 NMAC. No provision of this WEB trading program or other law should be construed to limit the authority of the United States or the department to terminate or limit such authorization.

**E. Early reduction bonus allocation:** Any non-utility WEB source that installs new control technology and that, between 2008 and the program trigger year, reduces its permitted annual SO<sub>2</sub> emissions to a level that is below the floor level allocation established for that source in Section C1 of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*, or any utility that reduces its permitted annual SO<sub>2</sub> emissions to a level that is below best available control technology (BACT), may apply to the department for an early reduction bonus allocation. The bonus allocation shall be available for reductions that occur between 2008 and the program trigger year. The application shall be submitted no later than 90 days after the program trigger date. Any WEB source that applies and receives early reduction bonus allocations shall retain the records referenced below for a minimum of five years after the early reduction bonus allowance is certified in accordance with Section C1.1(a)(3) of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*. The

application for an early reduction bonus allocation shall contain the following information:

(1) copies of all permits or other enforceable documents that include annual SO<sub>2</sub> emissions limits for the WEB source during the period the WEB source qualifies for an early reduction credit; and such permits or enforceable documents shall require monitoring for SO<sub>2</sub> emissions that meets the requirements in Paragraphs (1) and (3) of Subsection A of 20.11.46.16 NMAC and monitoring provisions that were in effect one year prior to the beginning of the credit generating period;

(2) Reserved;

(3) demonstration that the floor level established for the source in accordance with Section C1 of the implementation plan element was calculated using data that are consistent with the new monitoring methodology under Paragraph (1) of Subsection A of 20.11.46.16 NMAC; and if new monitoring techniques change the floor level for the source, then a demonstration of the new floor level based on new monitoring techniques shall be included in the application.

**F. Request for allowances for new WEB sources or modified WEB sources.**

(1) A new WEB source may apply to the department for an allocation from the new source set-aside, as outlined in Section C1.3 of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*. Under no circumstances shall allocations be made that would exceed the allocations available.

(a) A new WEB source is eligible for an annual floor allocation equal to the lower of the permitted annual SO<sub>2</sub> emission limit for that source, or SO<sub>2</sub> annual emissions calculated based on a level of control equivalent to BACT and assuming 100% utilization of the WEB source, beginning of the first full calendar year of operation.

(b) Reserved

(2) An existing WEB source that has increased production capacity through a permitted change in operations under 20.11.41 NMAC, 20.11.60 NMAC or 20.11.61 NMAC, may apply for an allocation from the new source set-aside, as outlined in the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*. An existing WEB source is eligible for an annual allocation equal to:

(a) the permitted annual SO<sub>2</sub> emissions limit for a new unit; or

(b) the permitted annual SO<sub>2</sub> emission increase for the WEB source due to the replacement of an existing unit with a new unit or the modification of an existing unit that increased production capacity of the WEB source.

(3) A source that has received a retired source exemption under Subsection D of 20.11.46.11 NMAC is not eligible for an allocation from the new source set-aside.

(4) The application for an allocation from the new source set-aside shall contain the following information:

(a) for an existing WEB source, documentation that shows the permitted production capacity of the source before and after the new permit;

(b) for a new WEB source or a new unit, documentation of the actual date of the commencement of operation and a copy of the permit.

[20.11.46.14 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

### **20.11.46.15 ESTABLISHMENT OF ACCOUNTS:**

**A. WEB EATS accounts:** All WEB sources shall open a compliance account. Any person may open a general account for the purpose of holding and transferring allowances. In addition, if a WEB source conducts monitoring under Paragraph (2) of Subsection A of 20.11.46.16 NMAC, the WEB source shall open a special reserve compliance account for allowances associated with units monitored under those provisions. To open either type of account, an application that contains the following information shall be submitted:

(1) the name, mailing address, e-mail address, telephone number, and facsimile number of the account representative; for a compliance account, include a copy of the account certificate of representation of the account representative and any alternate as required in Paragraph (2) of Subsection A of 20.11.46.12 NMAC; and for a general account, include the account certificate of representation of the account representative and any alternate as required in Paragraph (2) of Subsection C of 20.11.46.15 NMAC;

(2) the WEB source or organization name;

(3) the type of account to be opened; and

(4) identification of the specific units that are being monitored under Paragraph (2) of Subsection A of 20.11.46.16 NMAC and that must demonstrate compliance with the allowance limitation in the special reserve compliance account; and

(5) a signed certification of truth and accuracy by the account representative according to Paragraph (2) of Subsection A of 20.11.46.12 NMAC and for compliance accounts and for general accounts, a certification of truth and accuracy by the account representative according to Subsection D of 20.11.46.15 NMAC.

**B. Account representative for general accounts:** For a general account, one account representative shall be identified and an alternate account representative may be identified and may act on behalf of the account representative. Any representation, action, inaction or submission by the alternate account representative shall be deemed to be a representation, action, inaction or submission by the account representative.

**C. Identification and certification of an account representative for general accounts.**

(1) The account representative and any alternate account representative shall be appointed by a written agreement that makes the representations, actions, inactions or submissions of the account representative and any alternate account representative binding on all persons who have an ownership interest with respect to allowances held in the general account. A copy of the signed agreement shall be provided to the department.

(2) The account representative shall submit to the department and the tracking system administrator a signed and dated account certificate of representation (certificate) that contains the following elements:

(a) the name, address, e-mail (if available), telephone and facsimile number of the account representative and any alternate;

(b) the organization name;

(c) the following certification statement: "I certify that I was selected as the account representative or alternate account representative, as applicable, by an agreement binding on all persons who have an ownership interest in allowances in the general account with regard to matters concerning the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB trading program on behalf of said persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the department regarding the general account."

(3) Upon receipt of the complete certificate by the tracking system administrator and the department, of the complete certificate, which the account representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each person who has an ownership interest in allowances held in the general account with regard to all matters concerning the general account. Such persons shall be bound by any decision or order issued by the department.

(4) No WEB EATS general account shall be established until the tracking system administrator has received a complete certificate. Once the account is established, the account representative shall make all submissions concerning the account, including the deduction or transfer of allowances.

**D. Requirements and responsibilities for general accounts:** Each submission for the general account shall be signed and certified by the account representative for the general account. Each submission shall include the following truth and accuracy certification statement by the account representative: "I am authorized to make this submission on behalf of all persons who have an ownership interest in allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

**E. Changing the account representative for general accounts:** The account representative or alternate account representative may be changed at any time by sending a complete superseding certificate to the department and the tracking system administrator under Paragraph (2) of Subsection C of 20.11.46.15 NMAC, with the change taking effect upon receipt of such certificate by the tracking system administrator and the department. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous account representative or alternate prior to the time and date when the tracking system administrator and the department receives the superseding certificate shall be binding on the new account representative and all persons having ownership interest with respect to allowances held in the general account.

**F. Changes to the account:** Any change to the information required in the application for an existing account under Subsection A of 20.11.46.15 NMAC shall require a revision of the application.

[20.11.46.15 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

#### **20.11.46.16 MONITORING, RECORD KEEPING AND REPORTING:**

##### **A. General requirements for monitoring methods:**

(1) For each SO<sub>2</sub> emitting unit at a WEB source the owner or operator shall comply with the following, as applicable, to monitor and record SO<sub>2</sub> mass emissions:

(a) if a unit is subject to 40 CFR Part 75 under a requirement separate from the WEB trading program, the unit shall meet the requirements contained in 40 CFR Part 75 with respect to monitoring, recording and reporting SO<sub>2</sub> mass emissions;

(b) if a unit is not subject to 40 CFR Part 75 under a requirement separate from the WEB trading program, a unit shall use one of the following monitoring methods, as applicable:

(i) a continuous emission monitoring system (CEMS) for SO<sub>2</sub> and flow that complies with all applicable monitoring provisions in 40 CFR Part 75;

(ii) if the unit is a gas- or oil-fired combustion device, the excepted monitoring methodology in Appendix D to 40 CFR Part 75, or, if applicable, the low mass emissions (LME) provisions (with respect to SO<sub>2</sub> mass emissions only) of 40 CFR 75.19;

(iii) one of the optional WEB protocols, if applicable, in 20.11.46.21 NMAC, *SO<sub>2</sub> monitoring of fuel gas combustion devices* or 20.11.46.22 NMAC, *protocol WEB 2: predictive flow monitoring systems for kilns with positive pressure fabric filter*; or

(iv) a petition for site-specific monitoring that the source submits for approval by the department and approval by the EPA in accordance with Paragraph (5) of Subsection H of 20.11.46.16 NMAC;

(c) a permanently retired unit shall not be required to monitor under Section 20.11.46.15 NMAC if such unit was permanently retired and had no emissions for the entire period for which the WEB source implements Subparagraph (c) of Paragraph (1) of Subsection A of 20.11.46.16, and the account representative certifies in accordance with Subsection B of 20.11.46.19 NMAC that these conditions were met; and in the event that a permanently retired unit recommences operation, the WEB source shall meet the requirements of 20.11.46.16 NMAC in the same manner as if the unit was a new unit.

(2) Notwithstanding Paragraph (1) of Subsection A of 20.11.46.16 NMAC, the WEB source with a unit that meets one of the conditions of Subparagraph (a) of Paragraph (2) of Subsection A of 20.11.46.16 NMAC may elect to have the provisions of Paragraph (2) of Subsection A of 20.11.46.16 NMAC apply to that unit.

(a) Any of the following units may implement Paragraph (2) of Subsection A of 20.11.46.16 NMAC:

(i) any smelting operation where all of the emissions from the operation are not ducted to a stack; or

(ii) any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery; or

(iii) any other type of unit without add-on SO<sub>2</sub> control equipment, if the unit belongs to one of the following source categories: cement kilns, pulp and paper recovery furnaces, lime kilns or glass manufacturing.

(b) For each unit covered by Paragraph (2) of Subsection B of 20.11.46.16 NMAC, the account representative shall submit a notice to request that Paragraph (2) of Subsection A of 20.11.46.16 NMAC applies to one or more SO<sub>2</sub> emitting units at a WEB

source. The notice shall be submitted in accordance with the compliance dates specified in Paragraph (1) of Subsection F of 20.11.46.16 NMAC, and shall include the following information (in a format specified by the department with such additional, related information as may be requested):

(i) a notice of all units at the applicable source, specifying which of the units are to be covered by Paragraph (2) of Subsection A of 20.11.46.16 NMAC; and

(ii) an identification of any such units that are permanently retired.

(c) For each new unit at an existing WEB source for which the WEB source seeks to comply with this Paragraph (2) of Subsection A of 20.11.46.16 NMAC, and for which the account representative applies for an allocation under the new source set-aside provisions of Subsection F of 20.11.46.14 NMAC, the account representative shall submit a modified notice under Subparagraph (b) of Paragraph (2) of Subsection A of 20.11.46.16 NMAC, that includes such new SO<sub>2</sub> emitting unit(s). The modified notice shall be submitted in accordance with the compliance dates in Paragraph (1) of Subsection F of 20.11.46.16 NMAC, but no later than the date on which a request must be submitted under Paragraph (1) of Subsection F of 20.11.46.14 NMAC for allocations from the set-aside.

(d) The account representative for a WEB source shall submit an annual emissions statement for each unit under Paragraph (2) of Subsection A of 20.11.46.16 NMAC in accordance with Subsection H of 20.11.46.16 NMAC. The WEB source shall maintain operating records sufficient to estimate annual SO<sub>2</sub> emissions in a manner consistent with the emission inventory submitted by the source for calendar year 2006. In addition, if the estimated emissions from all such units at the WEB source are greater than the allowances for the current control year held in the special reserve compliance account for the WEB source, the account representative shall report the excess amount as part of the annual report for the WEB source under 20.11.46.19 NMAC, *compliance* and the WEB source shall obtain and transfer allowances into the special reserve compliance account for the WEB source to account for such emissions, in accordance with 20.11.46.19 NMAC.

(e) The remaining provisions of 20.11.46.16 NMAC shall not apply to units covered by Subparagraph (c) of Paragraph (2) of Subsection A of 20.11.46.16 NMAC except where otherwise noted.

(f) A WEB source may opt to modify the monitoring for an SO<sub>2</sub> emitting unit to use monitoring under Paragraph (1) of Subsection A of 20.11.46.16 NMAC, but any such monitoring change shall take effect on January 1 of the next compliance year. In addition, the account representative shall submit an initial monitoring plan at least 180 days prior to the date on which the new monitoring will take effect and a detailed monitoring plan in accordance with Subsection B of 20.11.46.16 NMAC. The account representative shall also submit a revised notice under Subparagraph (b) of Paragraph

(2) of Subsection A of 20.11.46.16 NMAC at the same time that the initial monitoring plan is submitted.

(3) For any monitoring that the WEB source uses under 20.11.46.16 NMAC (including Paragraph (2) of Subsection A of Section 20.11.46.16 NMAC), the WEB source (and, as applicable, the account representative) shall implement, certify, and use such monitoring in accordance with 20.11.46.16 NMAC, and shall record and report the data from such monitoring as required in 20.11.46.16 NMAC. In addition, the WEB source (and, as applicable, the account representative) shall not:

(a) except for an alternative approved by the EPA administrator for a WEB source that implements monitoring under Subparagraph (a) of Paragraph (1) of Subsection A of 20.11.46.16 NMAC, use an alternative monitoring system, alternative reference method or another alternative for the required monitoring method without having obtained prior written approval in accordance with Paragraph (5) of Subsection H of 20.11.46.16 NMAC;

(b) operate an SO<sub>2</sub> emitting unit so as to discharge, or allow to be discharged, SO<sub>2</sub> emissions to the atmosphere without accounting for these emissions in accordance with the applicable provisions of 20.11.46.16 NMAC;

(c) disrupt the approved monitoring method or any portion thereof, and thereby avoid monitoring and recording SO<sub>2</sub> mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality-assurance testing or maintenance is performed in accordance with the applicable provisions of 20.11.46.16 NMAC; or

(d) retire or permanently discontinue use of an approved monitoring method, except under one of the following circumstances:

(i) during a period when the unit is exempt from the requirements of 20.11.46.16 NMAC, including retirement of a unit as addressed in Subparagraph (c) of Paragraph (3) of Subsection A of 20.11.46.16 NMAC;

(ii) the WEB source is monitoring emissions from the unit with another certified monitoring method approved under 20.11.46.16 NMAC for use at the unit that provides data for the same parameter as the retired or discontinued monitoring method; or

(iii) the account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with 20.11.46.16 NMAC, and the WEB source recertifies thereafter a replacement monitoring system in accordance with the applicable provisions of 20.11.46.16 NMAC.

## **B. Monitoring plan**

(1) **General provisions:** The owner or operator of an SO<sub>2</sub> emitting unit that uses a monitoring method under Subparagraph (b) of Paragraph (1) of Subsection A of 20.11.46.16 NMAC shall meet the following requirements:

(a) prepare and submit to the department an initial monitoring plan for each monitoring method that the WEB source uses to comply with 20.11.46.16 NMAC; and in accordance with Paragraph (3) of Subsection B of 20.11.46.16 NMAC, the plan shall contain sufficient information on the units involved, the applicable method, and the use of data derived from that method to demonstrate that all unit SO<sub>2</sub> emissions are monitored and reported; and the plan shall be submitted in accordance with the compliance deadlines specified in Subsection F of 20.11.46.16 NMAC;

(b) prepare, maintain and submit to the department a detailed monitoring plan prior to the first day of certification testing in accordance with the compliance deadline specified in Subsection F of 20.11.46.16 NMAC; the plan shall contain the applicable information required by Subsection B of 20.11.46.16 NMAC; the department may require that the monitoring plan (or portions thereof) be submitted electronically; and the department also may require that the plan be submitted on an ongoing basis in electronic format as part of the quarterly report submitted under Paragraph (1) of Subsection H of 20.11.46.16 NMAC or resubmitted separately after any change is made to the plan in accordance with the following Paragraph (3) of Subsection B of 20.11.46.16 NMAC;

(c) whenever the WEB source makes a replacement, modification, or change in one of the systems or methodologies provided for in Subparagraph (b) of Paragraph (1) of Subsection A of 20.11.46.16 NMAC, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan (e.g., a change to serial number for a component of a monitoring system), then the WEB source shall update the monitoring plan within 90 days of the replacement, modification, or change.

(2) A WEB source with an SO<sub>2</sub> emitting unit that uses a method under Subparagraph (a) of Paragraph (1) of Subsection A of 20.11.46.16 NMAC (a unit subject to 40 CFR Part 75 under a program other than this WEB trading program) shall meet the requirements of Subsection B of 20.11.46.16 NMAC by preparing, maintaining and submitting a monitoring plan in accordance with the requirements of 40 CFR Part 75, provided that the WEB source also shall submit the entire monitoring plan to the department upon request.

(3) **Initial monitoring plan:** The account representative shall submit an initial monitoring plan for each SO<sub>2</sub> emitting unit (or group of units sharing a common methodology) that, except as otherwise specified in an applicable provision in 20.11.46.21 NMAC, contains the following information:

(a) for all SO<sub>2</sub> emitting units involved in the monitoring plan:

- (i) plant name and location;
- (ii) plant and unit identification numbers assigned by the department;
- (iii) type of unit (or units for a group of units using a common monitoring methodology);
- (iv) identification of all stacks or pipes associated with the monitoring plan;
- (v) types of fuel(s) fired (or sulfur containing process materials used in the SO<sub>2</sub> emitting unit), and the fuel classification of the unit if combusting more than one type of fuel and using a 40 CFR Part 75 methodology;
- (vi) type(s) of emissions controls for SO<sub>2</sub> installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process;
- (vii) maximum hourly heat input capacity, or process throughput capacity, if applicable;
- (viii) identification of all units using a common stack; and
- (ix) indicator of whether any stack identified in the plan is a bypass stack;

(b) for each unit and parameter required to be monitored, identification of monitoring methodology information, consisting of monitoring methodology, monitor locations, substitute data approach for the methodology, and general identification of quality assurance procedures; and if the proposed methodology is a site-specific methodology submitted pursuant to Item (iv) of Subparagraph (b) of Paragraph (1) of Subsection A of 20.11.46.16 NMAC, the description under Subparagraph (b) of Paragraph (3) of Subsection B of 20.11.46.16 NMAC shall describe fully all aspects of the monitoring equipment, installation locations, operating characteristics, certification testing, ongoing quality assurance and maintenance procedures, and substitute data procedures;

(c) if the WEB source intends to petition for a change to any specific monitoring requirement otherwise required under 20.11.46.16 NMAC, such petition may be submitted as part of the initial monitoring plan;

(d) the department may issue a notice of approval or disapproval of the initial monitoring plan based on the compliance of the proposed methodology with the requirements for monitoring in 20.11.46.16 NMAC.

(4) **Detailed monitoring plan:** The account representative shall submit a detailed monitoring plan that, except as otherwise specified in an applicable provision in 20.11.46.21 NMAC, *SO<sub>2</sub> monitoring of fuel gas combustion devices* or 20.11.46.22 NMAC, *protocol WEB 2: predictive flow monitoring systems for kilns with positive pressure fabric filter*, shall contain the following information:

(a) identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer or probe) in a CEMS (e.g., SO<sub>2</sub> pollutant concentration monitor, flow monitor, moisture monitor), a 40 CFR Part 75, Appendix D monitoring system (e.g., fuel flowmeter, data acquisition and handling system), or a protocol in 20.11.46.21 NMAC or 20.11.46.22 NMAC, including:

- (i) manufacturer, model number and serial number;
- (ii) component or system identification code assigned by the facility to each identifiable monitoring component, such as the analyzer or probe;
- (iii) designation of the component type and method of sample acquisition or operation (e.g., in situ pollutant concentration monitor or thermal flow monitor);
- (iv) designation of the system as a primary or backup system;
- (v) first and last dates the system reported data;
- (vi) status of the monitoring component; and
- (vii) parameter monitored;

(b) identification and description of all major hardware and software components of the automated data acquisition and handling system, including:

- (i) hardware components that perform emission calculations or store data for quarterly reporting purposes (provide the manufacturer and model number); and
- (ii) software components (provide the identification of the provider and model or version number);

(c) explicit formulas for each measured emissions parameter, using component or system identification codes for the monitoring system used to measure the parameter that links the system observations with the reported concentrations and mass emissions; the formulas shall contain all constants and factors required to derive mass emissions from component or system code observations and an indication of whether the formula is being added, corrected, deleted, or is unchanged; and the WEB source with a low mass emissions unit for which the WEB source is using the optional

low mass emissions excepted methodology in 40 CFR 75.19(c) is not required to report such formulas;

(d) inside cross-sectional area (square feet) at flow monitoring location (for units with flow monitors, only);

(e) if using CEMS for SO<sub>2</sub> and flow, for each parameter monitored include: scale, maximum potential concentration (and method of calculation), maximum expected concentration (if applicable, and method of calculation), maximum potential flow rate (and method of calculations), span value, full-scale range, daily calibration units of measure, span effective date and hour, span inactivation date and hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value in standard cubic feet per hour (scfh) for each unit or stack using SO<sub>2</sub> or flow component monitors;

(f) if the monitoring system or excepted methodology provides for use of a constant, assumed, or default value for a parameter under specific circumstances, then the following information for each value of such parameter shall be included:

- (i) identification of the parameter;
- (ii) default, maximum, minimum, or constant value, and units of measure for the value;
- (iii) purpose of the value;
- (iv) indicator of use during controlled and uncontrolled hours;
- (v) types of fuel;
- (vi) source of the value;
- (vii) value effective date and hour;
- (viii) date and hour value is no longer effective (if applicable); and
- (ix) for units using the excepted methodology under 40 CFR 75.19, the applicable SO<sub>2</sub> emission factor;

(g) unless otherwise specified in Section 6.5.2.1 of Appendix A to 40 CFR Part 75, for each unit or common stack on which hardware CEMS are installed:

- (i) the upper and lower boundaries of the range of operation (as defined in Section 6.5.2.1 of Appendix A to 40 CFR Part 75), or thousands of pounds per hour (lb/hr) of steam, or ft/sec (as applicable);

(ii) the load or operating level(s) designated as normal in Section 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of lb/hr of steam, or feet per second ft/sec (as applicable);

(iii) the two load or operating levels (i.e., low, mid, or high) identified in Section 6.5.2.1 of Appendix A to 40 CFR Part 75 as the most frequently used;

(iv) the date of the data analysis used to determine the normal load (or operating) level(s) and the two most frequently-used load (or operating) levels; and

(v) activation and deactivation dates when the normal load or operating level(s) change and are updated;

(h) for each unit that is complying with 40 CFR Part 75 for which the optional fuel flow-to-load test in Section 2.1.7 of Appendix D to 40 CFR Part 75 is used:

(i) the upper and lower boundaries of the range of operation (as defined in Section 6.5.2.1 of Appendix A to 40 CFR Part 75), expressed in thousands of lb/hr of steam;

(ii) the load level designated as normal, pursuant to Section 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam; and

(iii) the date of the load analysis used to determine the normal load level;

(i) information related to quality assurance testing, including (as applicable): identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels (percent of span) for the calibration error test and linearity check; calculations for determining maximum potential concentration, maximum expected concentration (if applicable), maximum potential flow rate, and span;

(j) if applicable, apportionment strategies under 40 CFR 75.10 through 75.18;

(k) description of site locations for each monitoring component in a monitoring system, including schematic diagrams and engineering drawings and any other documentation that demonstrates each monitor location meets the appropriate siting criteria; and for units monitored by a continuous emission monitoring system, diagrams shall include:

(i) a schematic diagram identifying entire gas handling system from unit to stack for all units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in the initial monitoring plan and Subparagraphs (a) and (c) of Paragraph (4) of Subsection B of 20.11.46.16 NMAC; the schematic diagram must depict the height of any monitor locations; and

comprehensive or separate schematic diagrams shall be used to describe groups of units using a common stack; and

(ii) stack and duct engineering diagrams showing the dimensions and locations of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks;

(l) a data flow diagram denoting the complete information-handling path from output signals of CEMS components to final reports.

(5) In addition to supplying the information in Paragraphs (3) and (4) of Subsection B of 20.11.46.16 NMAC above, the WEB source with an SO<sub>2</sub> emitting unit using either of the methodologies in Item (ii) of Subparagraph (b) of Paragraph (1) of Subsection A of 20.11.46.16 NMAC shall include the following information in its monitoring plan for the specific situations described:

(a) for each gas-fired or oil-fired SO<sub>2</sub> emitting unit for which the WEB source uses the optional protocol in Appendix D to 40 CFR Part 75 for SO<sub>2</sub> mass emissions, the account representative shall include the following information in the monitoring plan:

(i) parameter monitored;

(ii) type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate (i.e., upper range value or unit maximum) for each fuel flowmeter;

(iii) test method used to check the accuracy of each fuel flowmeter;

(iv) submission status of the data;

(v) monitoring system identification code;

(vi) the method used to demonstrate that the unit qualifies for monthly *gross calorific value* (GCV) sampling or for daily or annual fuel sampling for sulfur content, as applicable;

(vii) a schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeter(s), and the stack(s); the schematic diagram must depict the installation location of each fuel flowmeter and the fuel sampling location(s); and comprehensive and separate schematic diagrams shall be used to describe groups of units using a common pipe;

(viii) for units using the optional default SO<sub>2</sub> emission rate for "pipeline natural gas" or "natural gas" in Appendix D to 40 CFR Part 75, the information on the

sulfur content of the gaseous fuel used to demonstrate compliance with either Section 2.3.1.4 or 2.3.2.4 of Appendix D to 40 CFR Part 75;

(ix) for units using the 720 hour test under Section 2.3.6 of Appendix D to 40 CFR Part 75 to determine the required sulfur sampling requirements, report the procedures and results of the test; and

(x) for units using the 720 hour test under Section 2.3.5 of Appendix D to 40 CFR Part 75 to determine the appropriate fuel GCV sampling frequency, report the procedures used and the results of the test;

(b) for each SO<sub>2</sub> emitting unit for which the WEB source uses the low mass emission excepted methodology of 40 CFR 75.19, the WEB source shall include the following information in the monitoring plan that accompanies the initial certification application:

(i) the results of the analysis performed to qualify as a low mass emissions unit under 40 CFR 75.19(c); this report shall include either the previous three years actual or projected emissions; and the following items shall be included: a) current calendar year of application; b) type of qualification; c) years one, two, and three; d) annual measured, estimated or projected SO<sub>2</sub> mass emissions for years one, two, and three; and e) annual operating hours for years one, two, and three;

(ii) a schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeter(s), and the stack(s); and comprehensive or separate schematic diagrams shall be used to describe groups of units using a common pipe;

(iii) for units which use the long term fuel flow methodology under 40 CFR 75.19(c)(3), a diagram of the fuel flow to each unit or group of units and a detailed description of the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units;

(iv) a statement that the unit burns only gaseous fuel(s) or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only gaseous fuel(s) or fuel oil and a list of the fuels that are projected to be burned;

(v) a statement that the unit meets the applicability requirements in 40 CFR 75.19(a) and (b) with respect to SO<sub>2</sub> emissions; and

(vi) any unit historical actual, estimated and projected SO<sub>2</sub> emissions data and calculated SO<sub>2</sub> emissions data demonstrating that the unit qualifies as a low mass emissions unit under 40 CFR 75.19(a) and (b).

(c) for each gas-fired unit the account representative shall include the following in the monitoring plan: current calendar year, fuel usage data as specified in

the definition of "gas-fired" in 40 CFR 72.2, and an indication of whether the data are actual or projected data.

(6) The specific elements of a monitoring plan under 20.11.46.16 NMAC shall not be part of an operating permit for a WEB source issued in accordance with the Title V of the Clean Air Act, and modifications to the elements of the plan shall not require a permit modification.

### **C. Certification and recertification:**

(1) All monitoring systems are subject to initial certification and recertification testing as specified in 40 CFR Part 75, 20.11.46.21 NMAC or; 20.11.46.22 NMAC. Certification or recertification of a monitoring system by the EPA for a WEB source that is subject to 40 CFR Part 75 under a requirement separate from 20.11.46 NMAC shall constitute certification under the WEB Trading Program.

(2) The WEB source with an SO<sub>2</sub> emitting unit not otherwise subject to 40 CFR Part 75 that monitors SO<sub>2</sub> mass emissions in accordance with 40 CFR Part 75 to satisfy the requirements of 20.11.46.16 NMAC shall perform all of the tests required by that regulation and shall submit the following:

(a) a test notice, not later than 21 days before the certification testing of the monitoring system, provided that the department may establish additional requirements for adjusting test dates after this notice as part of the approval of the initial monitoring plan under Paragraph (3) of Subsection B of 20.11.46.16 NMAC;

(b) an initial certification application within 45 days after testing is complete;

(3) a monitoring system shall be considered provisionally certified while the application is pending, and the system shall be deemed certified if the department does not approve or disapprove the system within six months after the date on which the application is submitted;

(4) both at the time of the initial certification or recertification application submission and at the time of the audit, if an audit of any monitoring certified under 20.11.46 NMAC, and a review of the initial certification or recertification application, reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement of 20.11.46 NMAC, the department will issue a notice of disapproval of the certification status of such system or component; for the purposes of Paragraph (2) of Subsection C of 20.11.46.16 NMAC, an audit shall be either a field audit of the facility or an audit of any information submitted to the department regarding the facility; by issuing the notice of disapproval, the certification status is revoked prospectively, and the data measured and recorded shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the WEB source completes subsequently approved initial certification or recertification

tests in accordance with the procedures in 20.11.46.16 NMAC; and the WEB source shall apply the substitute data procedures in 20.11.46.16 NMAC to replace, prospectively, all of the invalid, non-quality-assured data for each disapproved system or component.

**D. Ongoing quality assurance and quality control:** The WEB source shall satisfy the applicable quality-assurance and quality control requirements of 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in 20.11.46.21 NMAC, *SO<sub>2</sub> monitoring of fuel gas combustion devices*, the applicable quality-assurance and quality control requirements in 20.11.46.21 NMAC on and after the date that certification testing commences.

**E. Substitute data procedures:**

(1) For any period after certification testing is complete in which quality-assured, valid data are not being recorded by a monitoring system certified and operating in accordance with 20.11.46 NMAC, missing or invalid data shall be replaced with substitute data in accordance with 40 CFR Part 75 or, if the WEB source is subject to a WEB protocol in 20.11.46.21 NMAC, *SO<sub>2</sub> monitoring of fuel gas combustion devices* or 20.11.46.22 NMAC, *protocol WEB 2: predictive flow monitoring systems for kilns with positive pressure fabric filter*, with substitute data in accordance with 20.11.46.21 NMAC.

(2) For an SO<sub>2</sub> emitting unit that does not have a certified or provisionally certified monitoring system in place as of the beginning of the first control period for which the unit is subject to the WEB trading program, the WEB source shall use one of the following procedures:

(a) if the WEB Source will use a CEMS to comply with 20.11.46.16 NMAC, substitute the maximum potential concentration of SO<sub>2</sub> for the unit and the maximum potential flow rate, as determined in accordance with 40 CFR Part 75; and the procedures for conditional data validation under Section 75.20(b)(3) may be used for any monitoring system under 20.11.46 NMAC that uses these 40 CFR Part 75 procedures, as applicable;

(b) if the WEB source will use the 40 CFR Part 75 Appendix D methodology, substitute the maximum potential sulfur content, density or gross calorific value for the fuel and the maximum potential fuel flow rate, in accordance with Section 2.4 of Appendix D to 40 CFR Part 75;

(c) if the WEB source will use the 40 CFR Part 75 methodology for low mass emissions units, substitute the SO<sub>2</sub> emission factor required for the unit as specified in 40 CFR 75.19 and the maximum rated hourly heat input, as defined in 40 CFR 72.2; or

(d) if using a protocol in 20.11.46.21 NMAC or 20.11.46.22 NMAC, follow the procedures in the applicable protocol.

## **F. Compliance deadlines:**

(1) The initial monitoring plan shall be submitted by the following dates:

(a) for each source that is a WEB source on or before the program trigger date, the monitoring plan shall be submitted 180 days after such program trigger date;

(b) for any existing source that becomes a WEB source after the program trigger date, the monitoring plan shall be submitted by September 30 of the year following the inventory year in which the source exceeded the emissions threshold (100 tpy SO<sub>2</sub>);

(c) for any new WEB source, the monitoring plan shall be included with the permit application under 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC or 20.11.61 NMAC.

(2) A detailed monitoring plan required under Subparagraph (b) of Paragraph (1) of Subsection B of 20.11.46.16 NMAC shall be submitted no later than 45 days prior to commencing certification as required by Paragraph (3) of Subsection F of 20.11.46.16 NMAC. Modifications to the monitoring plan shall be submitted within 90 days of implementing revised monitoring plans.

(3) Emission monitoring systems shall be installed, operational and shall have met all of the certification testing requirements of 20.11.46.16 NMAC (including any referenced in 20.11.46.21 NMAC or 20.11.46.22 NMAC) by the following dates:

(a) for each source that is a WEB source on or before the program trigger date: two years prior to the start of the first control period as described in 20.11.46.19 NMAC, *compliance*;

(b) for any existing source that becomes a WEB source after the program trigger date: one year after the due date for the monitoring plan under Subparagraph (b) of Paragraph (1) of Subsection F of 20.11.46.16 NMAC;

(c) for any new WEB source, or any new unit at a WEB source under Subparagraph (a) or (b) of Paragraph (3) of Subsection F of 20.11.46.16 NMAC: the earlier of 90 unit operating days or 180 calendar days after the date the new source commences operation.

(4) The WEB source shall submit test notices and certification applications in accordance with the deadlines set forth in Paragraph (2) of Subsection C of 20.11.46.16 NMAC.

(5) For each applicable control period, the WEB source shall submit each quarterly report under Subsection H of 20.11.46.16 NMAC by no later than 30 days after

the end of each calendar quarter and shall submit the annual report under Subsection H of 20.11.46.16 NMAC no later than 60 days after the end of each calendar year.

#### **G. Record keeping:**

(1) The WEB source shall keep copies of all reports, registration materials, compliance certifications, sulfur dioxide emissions data, quality-assurance data, and other submissions under 20.11.46 NMAC for a period of five years. In addition, the WEB source shall keep a copy of all account certificates of representation for the duration of this program. Unless otherwise requested by the WEB source and approved by the department, the copies shall be kept on site at the source.

(2) The WEB source shall keep records of all operating hours, quality-assurance activities, fuel sampling measurements, hourly averages for SO<sub>2</sub>, stack flow, fuel flow, or other continuous measurements, as applicable, and any other applicable data elements specified in 20.11.46.16 NMAC, 20.11.46.21 NMAC or in 20.11.46.22 NMAC. The WEB source shall maintain the applicable records specified in 40 CFR Part 75 for any SO<sub>2</sub> emitting unit that uses a 40 CFR Part 75 monitoring method to meet the requirements of 20.11.46.16 NMAC.

#### **H. Reporting.**

(1) **Quarterly reports.** For each SO<sub>2</sub> emitting unit, the account representative shall submit a quarterly report within 30 days after the end of each calendar quarter. The report shall be in a format specified by the department to include hourly and quality-assurance activity information and shall be submitted in a manner compatible with the WEB EATS. If the WEB source submits a quarterly report under 40 CFR Part 75 to the EPA administrator, no additional report under Paragraph (1) of Subsection H of 20.11.46.16 NMAC shall be required, provided, however, that the department may require that a copy of that report (or a separate statement of quarterly and cumulative annual SO<sub>2</sub> mass emissions) be submitted separately to the department.

(2) **Annual report.** Based on the quarterly reports, each WEB source shall submit an annual statement of total annual SO<sub>2</sub> emissions for all SO<sub>2</sub> emitting units at the source. The annual report shall identify the total emissions for all units monitored in accordance with Paragraph (1) of Subsection A of 20.11.46.16 NMAC and the total emissions for all units with emissions estimated in accordance with Paragraph (2) of Subsection A of 20.11.46.16 NMAC. The annual report shall be submitted within 60 days after the end of a control period.

(3) If the department so directs, any monitoring plan, report, certification, recertification, or emissions data required to be submitted under 20.11.46.16 NMAC shall be submitted to the tracking system administrator.

(4) The department may review and reject any report submitted under Subsection H of 20.11.46.16 NMAC that contains errors or fails to satisfy the

requirements of 20.11.46.16 NMAC, and the account representative shall resubmit the report to correct any deficiencies.

#### **I. Petitions:**

(1) A WEB source may petition for an alternative to any requirement specified in Subparagraph (b) of Paragraph (1) of Subsection A of 20.11.46.16 NMAC. The petition shall require approval of the department and the EPA administrator. Any petition submitted under Paragraph (1) of Subsection I of 20.11.46.16 NMAC shall include sufficient information for the evaluation of the petition, including, at a minimum, the following information:

(a) identification of the WEB source and applicable SO<sub>2</sub> emitting unit(s);

(b) a detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(c) a description and diagram of any equipment and procedures used in the proposed alternative, if applicable;

(d) a demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed and is consistent with the purposes of 20.11.46 NMAC and that any adverse effect of approving such alternative will be de minimis; and

(e) any other relevant information that the department may require.

**J.** For any monitoring plans, reports, or other information submitted under 20.11.46 NMAC, the account representative shall ensure that, where applicable, identifying information is consistent with the identifying information provided in the most recent certificate of representation for the WEB source submitted under 20.11.46.12 NMAC, *account representative for WEB sources*.

[20.11.46.16 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

#### **20.11.46.17 ALLOWANCE TRANSFERS:**

**A. Procedure:** To transfer allowances, the account representative shall submit the following information to the tracking system administrator:

(1) the transfer account number(s) identifying the transferor account;

(2) the transfer account number(s) identifying the transferee account;

(3) the serial number of each allowance to be transferred; and

(4) the transferor's account representative's name and signature and date of submission.

**B. Deadline:** The allowance transfer deadline is midnight pacific standard time March 1 of each year (or if this date is not a business day, midnight of the first business day thereafter) following the end of the control period. By this time, the transfer of the allowances into the WEB source's compliance account must be correctly submitted to the tracking system administrator in order to demonstrate compliance under 20.11.46.19 NMAC for that control period.

**C. Retirement of allowances:** To transfer allowances for the purpose of retirement, the account representative shall submit the following information to the tracking system administrator:

(1) the transfer account number(s) identifying the transferor account;

(2) the serial number of each allowance to be retired; and

(3) the transferor's account representative's name and signature and date of submission accompanied by a signed statement acknowledging that each retired allowance is no longer available for future transfers from or to any account.

[20.11.46.17 NMAC - N, 12/31/03; A, 5/16/11]

#### **20.11.46.18 USE OF ALLOWANCES FROM A PREVIOUS YEAR:**

**A.** Any allowance that is held in a compliance account or general account shall remain in such an account unless and until the allowance is either deducted in conjunction with the compliance process, or transferred to another account.

**B.** In order to demonstrate compliance under Subsection A of 20.11.46.19 NMAC for a control period, WEB sources shall only use allowances allocated for that current control period or any previous year. Because all allowances held in a special reserve compliance account for a WEB source that monitors certain units in accordance with Paragraph (2) of Subsection A of 20.11.46.16 NMAC will be deducted for compliance for each control period, no banking of such allowances for use in a subsequent year is permitted by 20.11.46 NMAC.

**C.** If flow control procedures for the current control period have been triggered as outlined in Section C4.2 of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*, then the use of allowances that were allocated for any previous year shall be limited as follows:

(1) the number of allowances that are held in each compliance account and general account as of the allowance transfer deadline for the immediately previous year and that were allocated for any previous year shall be determined;

(2) the number determined in Paragraph (1) of Subsection C of 20.11.46.18 NMAC shall be multiplied by the flow control ratio established in accordance with Section C4.2 of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*, to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period;

(3) allowances that were allocated for a previous year in excess of the number determined in Paragraph (2) of Subsection C of 20.11.46.18 NMAC may also be used for the current control period; and if such allowances are used to make a deduction, two allowances shall be deducted for each deduction of one allowance required under 20.11.46.19 NMAC, *compliance*.

**D. Special provisions for the year 2018.** After compliance with the 2017 allowance limitation has been determined in accordance with Subsection A of 20.11.46.19 NMAC, allowances allocated for any year prior to 2018 shall not be used for determining compliance with the 2018 allowance limitation or any future allowance limitation.

**E. Special reserve compliance accounts.** Unused allowances in any special reserve compliance account will be retired after the compliance deductions under 20.11.46.19 NMAC have been completed for each control period, and shall not be available for use in any future control period.

[20.11.46.18 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

#### **20.11.46.19 COMPLIANCE:**

##### **A. Compliance with allowance limitations:**

(1) In accordance with Paragraphs (2) and (3) of Subsection A of 20.11.46.19 NMAC and 20.11.46.18 NMAC, the WEB source shall hold allowances, as of the allowance transfer deadline in the WEB source's compliance account (together with any current control year allowances held in the WEB source's special reserve compliance account under Paragraph (2) of Subsection A of 20.11.46.16 NMAC) in an amount not less than the total SO<sub>2</sub> emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of 20.11.46.16 NMAC.

(a) For each source that is a WEB source on or before the program trigger date, the first control period is the calendar year that is six years following the calendar year for which SO<sub>2</sub> emissions exceeded the milestone in accordance with procedures in Part A of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*.

(b) For any existing source that becomes a WEB source after the program trigger date, the first control period is the calendar year that is four years following the inventory year in which the source exceeded the SO<sub>2</sub> emissions threshold.

(c) For any new WEB source after the program trigger date, the first control period is the first full calendar year that the source is in operation.

(d) If the WEB trading program is triggered in accordance with the 2013 review procedures in Section A4 of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*, the first control period for each source that is a WEB source on or before the program trigger date is the year 2018.

(2) **Allowance transfer deadline:** An allowance may only be deducted from the WEB source's compliance account if:

(a) the allowance was allocated for the current control period or meets the requirements in 20.11.46.18 NMAC, *use of allowances from a previous year*, for use of allowances from a previous control period, and

(b) the allowance was held in the WEB source's compliance account as of the allowance transfer deadline for the current control period, or was transferred into the compliance account by an allowance transfer correctly submitted for recording by the allowance transfer deadline for the current control period.

(3) Compliance with allowance limitations shall be determined as follows:

(a) the total annual SO<sub>2</sub> emissions for all SO<sub>2</sub> emitting units at the source that are monitored under Paragraph (2) of Subsection A of 20.11.46.16 NMAC, as reported by the source in Paragraph (2) and Paragraph (4) of Subsection H of 20.11.46.16 NMAC, and recorded in the WEB EATS, shall be compared to the allowances held in the source's special reserve compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with 20.11.46.18 NMAC, *use of allowances from a previous year*, if the emissions are equal to or less than the allowances in such account, all such allowances shall be retired to satisfy the obligation to hold allowances for such emissions; and if the total emissions from such units exceeds the allowances in such special reserve compliance account, the WEB source shall account for such excess emissions in Subparagraph (b) of Paragraph (3) of Subsection A of 20.11.46.19 NMAC;

(b) the total annual SO<sub>2</sub> emissions for all SO<sub>2</sub> emitting units at the source that are monitored under Paragraph (1) of Subsection A of 20.11.46.16 NMAC, as reported by the source to the director, as required by Paragraph (2) and Paragraph (4) of Subsection H of 20.11.46.16 NMAC, and recorded in the WEB EATS, together with any excess emissions as calculated in the Subparagraph (a) of Paragraph (3) of Subsection A of 20.11.46.19 NMAC, shall be compared to the allowances held in the source's

compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with 20.11.46.18 NMAC, *use of allowances from a previous year*;

(c) if the comparison in Subparagraph (b) of Paragraph (3) of Subsection A of 20.11.46.19 NMAC results in emissions that exceed the allowances held in the source's compliance account, the source has exceeded its allowance limitation and the excess emissions are subject to the allowance deduction penalty in Subsection C of 20.11.46.19 NMAC.

(4) Other than allowances in a special reserve compliance account for units monitored under Paragraph (2) of Subsection A of 20.11.46.16 NMAC, to the extent consistent with 20.11.46.18 NMAC, *use of allowances from a previous year*, allowances shall be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's account representative. Deduction of any other allowances as necessary for compliance with the allowance limitation shall be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account. The allowances held in a special reserve compliance account pursuant to Paragraph (2) of Subsection A of 20.11.46.16 NMAC shall be deducted as specified in Subparagraph (a) of Paragraph (3) of Subsection A of 20.11.46.19 NMAC.

#### **B. Certification of compliance:**

(1) For each control period in which a WEB source is subject to the allowance limitation, the account representative of the source shall submit to the department a compliance certification report for the source.

(2) The compliance certification report shall be submitted no later than the allowance transfer deadline of each control period, and shall contain the following:

(a) identification of each WEB source;

(b) at the account representative's option, the serial numbers of the allowances that are to be deducted from a source's compliance account or special reserve compliance account for compliance with the allowance limitation; and

(c) the compliance certification report according to Paragraph (3) of Subsection B of 20.11.46.19 NMAC.

(3) In the compliance certification report, the account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the WEB source in compliance with the WEB trading program, whether the WEB source for which the compliance certification is submitted was operated, during

the control period covered by the report, in compliance with the requirements of the WEB trading program applicable to the source including:

(a) whether the WEB source operated in compliance with the SO<sub>2</sub> allowance limitation;

(b) whether SO<sub>2</sub> emissions data has been submitted to the department in accordance with 20.11.46.16 NMAC and other applicable guidance, for review, revision as necessary, and finalization for forwarding to the SO<sub>2</sub> allowance tracking system for recording;

(c) whether the monitoring plan that governs the WEB source has been maintained to reflect the actual operation and monitoring of the source, and contains all information necessary to attribute SO<sub>2</sub> emissions to the source, in accordance with Paragraph (1) of Subsection A of 20.11.46.16 NMAC;

(d) whether all the SO<sub>2</sub> emissions from the WEB source, if applicable, were monitored or accounted for either through the applicable monitoring or through application of the appropriate missing data procedures;

(e) if applicable, whether any SO<sub>2</sub> emitting unit for which the WEB source is not required to monitor in accordance with Subparagraph (c) of Paragraph (1) of Subsection A of 20.11.46.16 NMAC remained permanently retired and had no emissions for the entire applicable period; and

(f) whether there were any changes in the method of operating or monitoring the WEB source that required monitor recertification; and if there were any such changes, the report shall specify the nature, reason, and date of the change, the method to determine compliance status subsequent to the change, and specifically, the method to determine SO<sub>2</sub> emissions.

### **C. Penalties for any WEB source exceeding its allowance limitations:**

#### **(1) Allowance deduction penalty:**

(a) If emissions from a WEB source exceed the allowance limitation for a control period, as determined in accordance with Subsection A of 20.11.46.19 NMAC, the source's allowances held in its compliance account will be reduced by an amount equal to three times the source's tons of excess emissions. If the compliance account does not have sufficient allowances allocated for that control period, the required number of allowances shall be deducted from the WEB source's compliance account regardless of the control period for which they were allocated, once allowances are recorded in the account.

(b) Any allowance deduction required under 20.11.46.19 NMAC shall not reduce or otherwise affect the liability of the owners and operators of the WEB source

for any fine, penalty or assessment or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act, implementing regulations or applicable state or tribal law. Accordingly, a violation can be assessed each day of the control period for each ton of SO<sub>2</sub> emissions in excess of its allowance limitation if the department so chooses.

(2) Reserved

#### **D. Liability:**

(1) **WEB Source liability for non-compliance:** A WEB source that violates any requirement of 20.11.46 NMAC is subject to administrative, civil and criminal penalties under the Air Quality Control Act and the Clean Air Act, separate from and regardless of any automatic penalties assessed for allowance deduction penalty. Each day of the control period is a separate violation, and each ton of SO<sub>2</sub> emissions in excess of a source's allowance limitation is a separate violation.

#### (2) **General liability:**

(a) Any provision of the WEB trading program that applies to a source or an account representative shall apply also to the owners and operators of such source.

(b) Any person who violates any requirement or prohibition of the WEB trading program shall be subject to enforcement pursuant to applicable state, tribal or federal law.

(c) Any person who knowingly makes a false material statement in any record, submission, or report under this WEB trading program shall be subject to criminal enforcement pursuant to the applicable state, tribal or federal law.

[20.11.46.19 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

#### **20.11.46.20 SPECIAL PENALTY PROVISIONS FOR YEAR 2018 MILESTONE:**

**A.** If the WEB trading program is triggered as outlined Part A of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*, and the first control period will not occur until after the year 2018, the following provisions shall apply for the 2018 emissions year.

(1) All WEB sources shall register, and open a compliance account within 180 days after the program trigger date, in accordance with Subsection A of 20.11.46.13 NMAC and 20.11.46.15 NMAC.

(2) The tracking system administrator shall record the allowances for the 2018 control period for each WEB source in the source's compliance account once the department allocates the 2018 allowances under Section C1 and D1 of the *Section 309*

*Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico.*

(3) The allowance transfer deadline is midnight pacific standard time on May 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter). WEB sources may transfer allowances as provided in Subsection A of 20.11.46.17 NMAC until the allowance transfer deadline.

(4) A WEB source shall hold allowances allocated for 2018 including those transferred into the compliance account or a special reserve account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total SO<sub>2</sub> emissions for 2018. Emissions shall be determined using the pre-trigger monitoring provisions in Part B of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*, and 20.11.46.9 NMAC.

(5) In accordance with Subsection D of 20.11.46.18 NMAC, and Paragraph (4) of Subsection A of 20.11.46.20 NMAC, the department shall seek at least the minimum financial penalty of \$5000 per ton of SO<sub>2</sub> emissions in excess of the WEB source's allowance limitation.

(a) Any source may resolve its excess emissions violation by agreeing to a streamlined settlement approach whereby the source pays a penalty of \$5000 per ton or partial ton of excess emissions, and payment is received within 90 calendar days after the issuance of a notice of violation.

(b) Any source that does not resolve its excess emissions violation in accordance with the streamlined settlement approach in Subparagraph (a) of Paragraph (5) of Subsection A of 20.11.46.20 NMAC will be subject to formal enforcement action, in which the director shall seek a financial penalty for the excess emissions based on New Mexico's statutory maximum civil penalties.

(6) Each ton of SO<sub>2</sub> emissions in excess of a source's allowance limitation is a separate violation and each day of a control period is a separate violation.

**B.** If the program has been triggered and the provision in Subsection A of 20.11.46.20 NMAC is implemented the provisions in Subsection C of 20.11.46.20 NMAC shall continue to apply for each year after the 2018 emission year until:

(1) the first control period under the WEB trading program under Subparagraph (a) of Paragraph (1) of Subsection A of 20.11.46.19 NMAC; or

(2) the department determines, in accordance with Section A3.10 of the *Section 309 Regional Haze State Implementation Plan Element: Albuquerque - Bernalillo County, New Mexico*, that the 2018 SO<sub>2</sub> milestone has been met.

**C.** If the special penalty provisions continue after the year 2018 as outlined in Subsection B of 20.11.46.20 NMAC, the deadlines listed in Paragraphs (2)-(5) of Subsection A of 20.11.46.20 NMAC, will be adjusted as follows:

(1) for the 2019 control period, the dates will be adjusted forward by one year, except that the allowance transfer deadline shall be midnight Pacific Standard Time on May 31, 2021 (or if this date is not a business day, midnight of the first business day thereafter); and

(2) for each control period after 2018 that the special penalty provisions are assessed, the dates and deadlines in Paragraph (1) of Subsection C of 20.11.46.20 NMAC above for the 2019 control period will be adjusted forward by one year.

**D.** The tracking system administrator will record the same number of allowances for each WEB source as were recorded for the 2018 control period for each subsequent control period.

[20.11.46.20 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

#### **20.11.46.21 PROTOCOL WEB 1: SO<sub>2</sub> MONITORING OF FUEL GAS COMBUSTION DEVICES:**

##### **A. Applicability.**

(1) The provisions of this protocol are applicable to fuel gas combustion devices at petroleum refineries.

(2) Fuel gas combustion devices include boilers, process heaters, and flares used to burn fuel gas generated at a petroleum refinery.

(3) Fuel gas means any gas, which is generated, and combusted at a petroleum refinery. Fuel gas does not include:

(a) natural gas, unless combined with other gases generated at a petroleum refinery;

(b) gases generated by a catalytic cracking unit catalyst regenerator;

(c) gases generated by fluid coking burners;

(d) gases combusted to produce sulfur or sulfuric acid; or

(e) process upset gases generated due to startup, shutdown, or malfunctions.

##### **B. Monitoring requirements.**

(1) Except as provided in Paragraph (2) and Paragraph (3) of Subsection B of 20.11.46.21 NMAC, fuel gas combustion devices shall use a *continuous fuel gas monitoring system* (CFGMS) to determine the total sulfur content (reported as H<sub>2</sub>S) of the fuel gas mixture prior to combustion, and continuous fuel flow meters to determine the amount of fuel gas burned.

(a) Fuel gas combustion devices having a common source of fuel gas may be monitored for sulfur content at one location, if monitoring at that location is representative of the sulfur content of the fuel gas being burned in any fuel gas combustion device.

(b) The CFGMS shall meet the performance requirements in Performance Specification 2 in Appendix B to 40 CFR Part 60, and the following:

(i) continuously monitor and record the concentration by volume of total sulfur compounds in the gaseous fuel reported as ppmv H<sub>2</sub>S;

(ii) have the span value set so that the majority of readings fall between 10 and 95% of the range;

(iii) record negative values of zero drift, for initial certification and daily calibration error tests;

(iv) calibration drift shall be 5.0% of the span; and

(v) use EPA Test Method 15A or 16, or an approved alternative test method to determine total reduced sulfur emissions; these are the reference methods for the relative accuracy test; and the relative accuracy test shall include a bias test in accordance with Paragraph (3) of Subsection D of 20.11.46.21 NMAC.

(c) All continuous fuel flow meters shall comply with the provisions of Section 2.1.5 of Appendix D to 40 CFR Part 75.

(d) The hourly mass SO<sub>2</sub> emissions rate for all the fuel combustion devices monitored by this approach shall be calculated using the following equation:

$E_t = (C_s)(Q_f)(K)$ ; where:

$E_t$  = Total SO<sub>2</sub> emissions in lb/hr from applicable fuel gas combustion devices;

$C_s$  = Sulfur content of the fuel gas as H<sub>2</sub>S (ppmv);

$Q_f$  = Fuel gas flow rate to the applicable fuel gas combustion devices (scf/hr); and

$K = 1.660 \times 10^{-7}$  (lb/scf)/ppmv.

(2) As an alternative to using a CFGMS as required by Paragraph (1) of Subsection B of 20.11.46.21 NMAC, fuel gas combustion devices having a common source of fuel gas may be monitored with an SO<sub>2</sub> CEMS and flow CEMS and (if necessary) a moisture monitoring system at only one location, if the CEMS monitoring at that location is representative of the SO<sub>2</sub> emission rate (lb SO<sub>2</sub>/scf fuel gas burned) of all applicable fuel gas combustion devices. Continuous fuel flow meters shall be used in accordance with Paragraph (2) of Subsection B of 20.11.46.21 NMAC, and the fuel gas combustion device monitored by a CEMS shall have separate fuel metering.

(a) Each CEMS for SO<sub>2</sub> and flow, and (if applicable) moisture, shall comply with the operating requirements, performance specifications, and quality-assurance requirements of 40 CFR Part 75.

(b) All continuous fuel flow meters shall comply with the provisions of Section 2.1.5 of Appendix D to 40 CFR Part 75.

(c) The SO<sub>2</sub> hourly mass emissions rate for all the fuel gas combustion devices monitored by this approach shall be determined by the ratio of the amount of fuel gas burned by the CEMS-monitored fuel gas combustion device to the total fuel gas burned by all applicable fuel gas combustion devices using the following equation:

$E_t = (E_m)(Q_t)/(Q_m)$ ; where:

$E_t$  = Total SO<sub>2</sub> emissions in lb/hr from applicable fuel gas combustion devices;

$E_m$  = SO<sub>2</sub> emissions in lb/hr from the CEMS-monitored fuel gas combustion device, calculated using *Equation F-1* or (if applicable) *F-2* in Appendix F to 40 CFR Part 75;

$Q_t$  = Fuel gas flow rate (scf/hr) from applicable fuel gas combustion devices; and

$Q_m$  = Fuel gas flow rate (scf/hr) to the CEMS-monitored fuel gas combustion device.

(3) As an additional alternative to using a CFGMS as required by Paragraph (1) of Subsection B of 20.11.46.21 NMAC, fuel gas combustion devices having a common source of fuel gas may be monitored with an SO<sub>2</sub> - diluent CEMS at only one location, if the CEMS monitoring at that location is representative of the SO<sub>2</sub> emission rate (lb SO<sub>2</sub>/mmBtu) of all applicable fuel gas combustion devices. If this option is selected, the owner or operator shall conduct fuel gas sampling and analysis for gross calorific value (GCV), and shall use continuous fuel flow metering in accordance with Paragraph (1) of Subsection B of 20.11.46.21 NMAC, with separate fuel metering for the CEMS-monitored fuel gas combustion device.

(a) Each SO<sub>2</sub> - diluent CEMS shall comply with the applicable provisions for SO<sub>2</sub> monitors and diluent monitors in 40 CFR Part 75, and shall use the procedures in Section 3 of Appendix F to 40 CFR Part 75 for determining SO<sub>2</sub> emission rate

(lb/mmBtu) by substituting the term SO<sub>2</sub> for NO<sub>x</sub> in that section, and using a K factor of  $1.660 \times 10^{-7}$  (lb/scf) ppmv instead of the NO<sub>x</sub> K factor.

(b) All continuous fuel flow meters and fuel gas sampling and analysis for GCV to determine the heat input ratio shall comply with the applicable provisions of Section 2.1.5 and 2.3.4 of Appendix D to 40 CFR Part 75.

(c) The SO<sub>2</sub> hourly mass emissions rate for all the fuel gas combustion devices monitored by this approach shall be determined by the ratio of the fuel gas heat input to the CEMS-monitored fuel gas combustion device to the total fuel gas heat input to all applicable fuel gas combustion devices using the following equation:

$E_t = (E_m)(Q_t)/(GCV) / 10^6$ ; where:

$E_t$  = Total SO<sub>2</sub> emissions in lbs/hr from applicable fuel gas combustion devices;

$E_m$  = SO<sub>2</sub> emissions in lb/mmBtu from the CEMS - monitored fuel gas combustion device;

$Q_t$  = Fuel gas flow rate (scf/hr) to the applicable fuel gas combustion devices;

GCV = Fuel Gross Calorific Value (Btu/scf); and

$10^6$  = Conversion from Btu to million Btu.

(d) The owner or operator shall calculate total SO<sub>2</sub> mass emissions for each calendar quarter and each calendar year based on the emissions in lb/hr and *Equations F-3 and F-4* in Appendix F to 40 CFR Part 75.

**C. Certification and recertification requirements.** All monitoring systems are subject to initial certification and recertification testing as follows:

(1) the owner or operator shall comply with the initial testing and calibration requirements in performance specification 2 in Appendix B of 40 CFR Part 60 and Subparagraph (b) of Paragraph (1) of Subsection B of 20.11.46.21 NMAC for each CFGMS;

(2) each CEMS for SO<sub>2</sub> and flow or each SO<sub>2</sub>-diluent CEMS shall comply with the testing and calibration requirements specified in 40 CFR 75.20 and Appendices A and B, except that each SO<sub>2</sub>-diluent CEMS shall meet the relative accuracy requirements for a NO<sub>x</sub>-diluent CEMS (lb/mmBtu);

(3) a continuous fuel flow meter shall comply with certification requirements in Section 2.1.5 of Appendix D of 40 CFR Part 75.

**D. Quality-assurance/quality control requirements.** A quality-assurance and quality control (QA/QC) plan shall be developed and implemented for each:

(1) CEMS for SO<sub>2</sub> and flow or the SO<sub>2</sub>-diluent CEMS in compliance with Sections 1, 1.1, and 1.2 of Appendix B of 40 CFR Part 75.

(2) Continuous fuel flow meter and fuel sampling and analysis in compliance with Sections 1, 1.1, and 1.3 Appendix B of 40 CFR Part 75. The owner or operator shall meet the requirements in Section 2.1.6 of Appendix D to 40 CFR Part 75, and may use the procedures set forth in Section 2.1.7 of that appendix.

(3) CFGMS in compliance with Sections 1 and 1.1 of Appendix B to 40 CFR Part 75, and the following:

(a) perform a daily calibration error test of each CFGMS at two gas concentrations, one low level and one high level; and calculate the calibration error as described in Appendix A to 40 CFR Part 75; an out of control period occurs whenever the error is greater than 5.0 percent of the span value;

(b) in addition to the daily calibration error test, an additional calibration error test shall be performed whenever a daily calibration error test is failed, whenever a monitoring system is returned to service following repairs or corrective actions that may affect the monitor measurements, and after making manual calibration adjustments;

(c) perform a linearity test once every operating quarter; calculate the linearity as described in Appendix A to 40 CFR Part 75; and an out of control period occurs whenever the linearity error is greater than 5.0 percent of a reference value, and the absolute value of the difference between average monitor response values and a reference value is greater than 5.0 ppm;

(d) perform a relative accuracy test audit once every four operating quarters; calculate the relative accuracy as described in Appendix A to 40 CFR Part 75; and an out of control period occurs whenever the relative accuracy is greater than 20.0 percent of the mean value of the reference method measurements;

(e) using the results of the relative accuracy test audit, conduct a bias test in accordance with Appendix A to 40 CFR Part 75, and calculate and apply a bias adjustment factor if required.

**E. Missing data procedures.** For any period in which valid data are not being recorded by a(n)

(1) SO<sub>2</sub> CEMS or flow CEMS specified in 20.11.46.21 NMAC, missing or invalid data shall be replaced with substitute data in accordance with the requirements in Subpart D of 40 CFR Part 75.

(2) SO<sub>2</sub>-diluent CEMS specified in 20.11.46.21 NMAC, missing or invalid data shall be replaced with substitute data on a rate basis (lb/mmBtu) in accordance with the requirements for SO<sub>2</sub> monitors in Subpart D of 40 CFR Part 75.

(3) Continuous fuel flow meter or for fuel gas GCV sampling and analysis specified in 20.11.46.21 NMAC, missing or invalid data shall be replaced with substitute data in accordance with missing data requirements in Section 2.4 of Appendix D to 40 CFR Part 75.

(4) CFGMS as specified in 20.11.46.21 NMAC, hourly missing or invalid data shall be replaced with substitute data in accordance with the missing data requirements for units performing hourly gaseous fuel sulfur sampling in Section 2.4 of Appendix D to 40 CFR Part 75.

**F. Monitoring plan and reporting requirements.** In addition to the general monitoring plan and reporting requirements of 20.11.46.16 NMAC, the owner or operator shall meet the following additional requirements:

(1) the monitoring plan shall identify each group of units that is monitored by a single monitoring system under 20.11.46.21 NMAC, and the plan shall designate an identifier for the group of units for emissions reporting purposes; and for purpose of submitting emissions reports, no apportionment of emissions to the individual units within the group is required;

(2) if the provisions of Paragraph (2) or Paragraph (3) of Subsection B of 20.11.46.21 NMAC are used, provide documentation and an explanation to demonstrate that the SO<sub>2</sub> emission rate from the monitored unit is representative of the rate from non-monitored units.

[20.11.46.21 NMAC - N, 12/31/03; A, 9/15/08; A, 5/16/11]

## **20.11.46.22 PROTOCOL WEB 2: PREDICTIVE FLOW MONITORING SYSTEMS FOR KILNS WITH POSITIVE PRESSURE FABRIC FILTER:**

**A. Applicability.** The provisions of this protocol are applicable to cement kilns or lime kilns that:

(1) are controlled by a positive pressure fabric filter;

(2) combust only a single fuel, no fuel blends; and

(3) have operating conditions upstream of the fabric filter that the WEB source documents would reasonably prevent reliable flow monitor measurements; and this protocol does not modify the SO<sub>2</sub> monitoring requirements in 20.11.46.16 NMAC.

### **B. Monitoring requirements.**

(1) A cement or lime kiln with a positive pressure fabric filter shall use a *predictive flow monitoring system* (PFMS) to determine the hourly kiln exhaust gas flow.

(2) A PFMS is the total equipment necessary for the determination of exhaust gas flow using process or control device operating parameter measurements and a conversion equation, a graph, or computer program to produce results in cubic feet per hour.

(3) The PFMS shall meet the following performance specifications:

(a) sensor readings and conversion of sensor data to flow in cubic feet per hour must be automated;

(b) the PFMS must allow for the automatic or manual determination of failed monitors; and at a minimum a daily determination must be performed;

(c) the PFMS shall have provisions to check the calibration error of each parameter that is individually measured; the owner or operator shall propose appropriate performance specifications in the initial monitoring plan for all parameters used in the PFMS comparable to the degree of accuracy required for other monitoring systems used to comply with 20.11.46 NMAC; the parameters shall be tested at two levels, low: 0 to 20 percent of full scale, and high: 50 to 100 percent of full scale; and the reference value need not be certified;

(d) the relative accuracy of the PFMS must be less than or equal to 10.0 percent of the reference method average value, and include a bias test in accordance with Paragraph (3) of Subsection D of 20.11.46.22 NMAC.

**C. Certification requirements.** The PFMS is subject to initial certification testing. The source owner or operator shall:

(1) demonstrate the ability of the PFMS to identify automatically or manually a failed monitor;

(2) provide evidence of calibration testing of all monitoring equipment; and any tests conducted within the previous 12 months of operation that are consistent with the QA/QC plan for the PFMS are acceptable for initial certification purposes; and

(3) perform an initial relative accuracy test over the normal range of operating conditions of the kiln. Using the results of the relative accuracy test audit, conduct a bias test in accordance with Appendix A to 40 CFR Part 75; and calculate and apply a bias adjustment factor if required.

**D. Quality-assurance and quality control requirements.** A quality-assurance and quality control plan shall be developed and implemented for each PFMS in compliance with Sections 1 and 1.1 of Appendix B of 40 CFR Part 75, and the following:

- (1) perform a daily monitor failure check;
- (2) perform calibration tests of all monitors for each parameter included in the PFMS; at a minimum, calibrations shall be conducted prior to each relative accuracy test audit; and
- (3) perform a relative accuracy test audit and accompanying bias test once every four operating quarters; and calculate the relative accuracy (and bias adjustment factor) as described in 20.11.46.21 NMAC and 40 CFR Part 75; an out of control period occurs whenever the flow relative accuracy is greater than 10.0 percent of the mean value of the reference method.

**E. Missing data.** For any period in which valid data are not being recorded by the PFMS specified in 20.11.46.22 NMAC, hourly missing or invalid data shall be replaced with substitute data in accordance with the flow monitor missing data requirements for non-load based units in Subpart D of 40 CFR Part 75.

**F. Monitoring plan requirements.** In addition to the general monitoring plan requirements of 20.11.46.16 NMAC, the owner or operator shall meet the following additional requirements:

- (1) the monitoring plan shall document the reasons why stack flow measurements upstream of the fabric filter are unlikely to provide reliable flow measurements over time;

- (2) the initial monitoring plan shall explain the relationship of the proposed parameters and stack flow, and discuss other parameters considered and the reasons for not using those parameters in the PFMS; and the department may require that the subsequent monitoring plan include additional explanation and documentation for the reasonableness of the proposed PFMS.

[20.11.46.22 NMAC - N, 12/31/03; A, 5/16/11]

#### **20.11.46.23 SAVINGS CLAUSE:**

Any amendment to *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program*, 20.11.46 NMAC, which is filed with the state records center and archives shall not affect actions pending for violation of a statute, ordinance, part, or permit. Prosecution for a violation of a prior statute, ordinance, part or permit shall be governed and prosecuted under the statute, ordinance, part or permit wording in effect at the time the violation was committed.

[20.11.46.23 NMAC - N, 12/31/03]

#### **20.11.46.24 SEVERABILITY:**

If any section, subsection, sentence, phrase, clause or wording of 20.11.46 NMAC or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court or the EPA, the decision shall not affect the validity of remaining portions of 20.11.46 NMAC.

[20.11.46.24 NMAC - N, 12/31/03; A, 9/15/08]

## **PART 47: EMISSIONS INVENTORY REQUIREMENTS**

### **20.11.47.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.

[20.11.47.1 NMAC - N, 5/1/08]

### **20.11.47.2 SCOPE:**

20.11.47 NMAC applies to each person who owns or operates a source or who intends to construct or modify a source within Bernalillo county, but does not apply to sources in Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

[20.11.47.2 NMAC - N, 5/1/08]

### **20.11.47.3 STATUTORY AUTHORITY:**

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

[20.11.47.3 NMAC - N, 5/1/08]

### **20.11.47.4 DURATION:**

Permanent.

[20.11.47.4 NMAC - N, 5/1/08]

### **20.11.47.5 EFFECTIVE DATE:**

May 1, 2008 except where a later date is cited at the end of a section.

[20.11.47.5 NMAC - N, 5/1/08]

**20.11.47.6 OBJECTIVE:**

To establish requirements for the submission of certain relevant information to ensure that the regulations and standards under the Air Quality Control Act and the federal act will not be violated.

[20.11.47.6 NMAC - N, 5/1/08; A, 11/12/12]

**20.11.47.7 DEFINITIONS:**

In addition to the definitions in 20.11.47 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.47 NMAC shall govern.

**A. "Actual emissions"** means the quantified emissions of a regulated air pollutant from a stationary source for every 12-month period. Valid continuous emission monitoring data or source test data shall be preferentially used to determine actual emissions. In the absence of valid continuous emissions monitoring data or source test data, the basis for determining actual emissions shall be quantified using actual operating hours, production rates, throughputs of process materials, throughputs of materials stored, usage of materials, data provided in manufacturer's product specifications, material volatile organic compound (VOC) content reports, laboratory analyses, or any other technically acceptable data as approved by the department in advance and in writing. All calculations of actual emissions shall use USEPA or department approved methods including emission factors and assumptions.

**B. "Air pollution control equipment"** means any device, equipment, process or combination thereof the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state.

**C.** Reserved

**D.** Reserved

**E. "Commencement" or "commence"** means that an owner or operator has undertaken a continuous program of construction or modification.

**F. "Construction"** means fabrication, erection, installation or relocation of a stationary source, including temporary installations and portable stationary sources.

**G. "Emissions report" or "emissions inventory"** means a listing, by source, of the amount of regulated air pollutants discharged into the atmosphere.

**H. "Fuel carbon content"** means the mass of carbon per unit of heat content of a fuel.

**I. "Fugitive emissions"** are those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

**J.** Reserved

**K.** Reserved

**L.** Reserved

**M.** Reserved

**N. "Modification"** means any physical change in, or change in the method of operation of, a stationary source that results in an increase in the potential emission rate of any regulated air pollutant emitted by the source or that results in the emission of any regulated air pollutant not previously emitted, but does not include:

(1) a change in ownership of the source;

(2) routine maintenance, repair or replacement;

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

(4) unless previously limited by enforceable permit conditions:

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

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

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

**O.** Reserved

**P. "Nonattainment area"** means, for any regulated air pollutant, an area that has been designated as a nonattainment area under Section 107 of the federal act.

**Q. "Operator"** means the person or persons responsible for the overall operation of a facility.

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

**S.** Reserved

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

**U. "Potential emission rate"** means the emission rate of a source at its maximum capacity to emit a regulated air pollutant under its physical and operational design, provided a physical or operational limitation on the capacity of the source to emit a regulated air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its physical and operational design only if the limitation or the effect it would have on emissions is enforceable by the department pursuant to the Air Quality Control Act or the federal act.

**V. "Potential to emit"** means the maximum capacity of a stationary source to emit a regulated air pollutant under its physical and operational design, except that a physical or operational limitation on the capacity of a source to emit a regulated air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable; however, the potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

**W. "Regulated air pollutant"** means the following:

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

(2) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;

(3) any Class I or II substance subject to any standard promulgated under or established by Title VI of the federal act; or

(4) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act; but

(5) excluding greenhouse gases as defined in Subsection CC of 20.11.1.7 NMAC.

**X. "Responsible person" or "responsible official"** means the person designated in a permit or source registration, who is responsible for complying with the permit, or source registration and 20.11.47 NMAC.

**Y. "Shutdown"** means the cessation of operation of air pollution control equipment, process equipment or process for any purpose, except routine phasing out of batch process units.

**Z. "Stationary source" or "source"** means a structure, building, equipment, facility, installation (including temporary installations), operation or portable stationary source that emits or may emit a regulated air pollutant; a research facility may group its sources for the purpose of 20.11.47 NMAC with the prior written approval of the director of the department.

**AA.** Reserved

**BB. "Sulfur oxides"** means compounds containing sulfur and oxygen, including sulfur dioxide (SO<sub>2</sub>).

**CC.** Reserved

**DD. "Western backstop sulfur dioxide trading program"** means 20.11.46 NMAC, if triggered as a backstop in accordance with the provisions of the *section 309 regional haze state implementation plan element for Albuquerque-Bernalillo county, New Mexico*, to reduce regional sulfur dioxide emissions.

[20.11.47.7 NMAC - N, 5/1/08; A, 11/12/12]

#### **20.11.47.8 VARIANCES:**

No person can obtain a variance from the requirements of 20.11.47 NMAC.

[20.11.47.8 NMAC - N, 5/1/08]

#### **20.11.47.9 SEVERABILITY:**

If for any reason any section, subsection, sentence, phrase, clause or wording of 20.11.47 NMAC is held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of remaining portions of 20.11.47 NMAC.

[20.11.47.9 NMAC - N, 5/1/08]

#### **20.11.47.10 CONSTRUCTION:**

20.11.47 NMAC shall be liberally construed to carry out its purpose.

[20.11.47.10 NMAC - N, 5/1/08]

**20.11.47.11 SAVINGS CLAUSE:**

The filing of 20.11.47 NMAC, *Emissions Inventory Requirements*, and the filing of any amendment to 20.11.47 NMAC with the state records center and archives shall not affect any action pending for violation of a city or county ordinance, a board regulation, or a permit, and shall not affect a petition filed pursuant to 20.11.47 NMAC. Prosecution for violation of a prior statute, ordinance, part or permit shall be governed and prosecuted under the statute, ordinance, part or permit wording in effect at the time the violation was committed.

[20.11.47.11 NMAC - N, 5/1/08]

**20.11.47.12 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with 20.11.47 NMAC does not relieve a person from responsibility for complying with any other applicable federal, state, or local regulations.

[20.11.47.12 NMAC - N, 5/1/08]

**20.11.47.13 DOCUMENTS:**

Documents incorporated and cited in 20.11.47 NMAC may be viewed at the Albuquerque environmental health department, Suite 3023, One Civic Plaza, 400 Marquette NW, Albuquerque, NM.

[20.11.47.13 NMAC - N, 5/1/08]

**20.11.47.14 EMISSIONS INVENTORY REQUIREMENTS:**

**A. Applicability:** 20.11.47.14 NMAC applies to the owner or operator of every stationary source, located within Bernalillo county that:

- (1) has an active permit issued pursuant to 20.11.41 NMAC, *Authority to Construct*, or 20.11.42 NMAC, *Operating Permits*; or
- (2) is required to file a source registration pursuant to 20.11.40 NMAC, *Source Registration*.

**B. Reporting requirements:**

(1) A source that meets requirements under Paragraph (1) of Subsection A of 20.11.47.14 NMAC shall submit an emissions report annually. A source is not required to submit an emissions report more frequently than annually.

(2) A source that meets requirements under Paragraph (2) of Subsection A of 20.11.47.14 NMAC shall submit an emissions report if required by the department. A source is not required to submit an emissions report more frequently than annually.

(3) The department will provide a complete copy of an owner or operator's submitted emissions report when requested in writing by the owner or operator.

(4) The owner or operator shall submit to the department a complete, correct and current emissions report in the format specified by the department; the report shall state accurately the emissions of all regulated air pollutants included in the permit requested for any specified calendar year.

(5) Except as provided in Paragraph (6) of Subsection B of 20.11.47.14 NMAC, if the owner or operator is required to submit an emissions report to the department, the owner or operator shall submit the report by March 15 for the previous calendar year or any other calendar year.

(6) Sources required by a permit to submit an annual emissions report on a specific date shall submit the report on the specified date.

**C. Content of emissions reports:** Emissions report contents for reports required by Subsection B of 20.11.47.14 NMAC shall include:

(1) the air quality stationary source permit number or source registration number;

(2) the name, address, if any, and physical location of the stationary source;

(3) the name and telephone number of the person to contact regarding the emissions report;

(4) a certification signed by the owner, or operator, or a responsible official or designated representative, attesting that the statements and information contained in the emissions report are true and accurate to the best knowledge and belief of the certifying official, and including the full name, title, signature, date of signature, and telephone number of the certifying official; for sources subject to 20.11.42 NMAC, the certification shall be made as required by 20.11.42 NMAC;

(5) for each emission point, in the format required by the department:

(a) stack and exhaust gas parameters and location information;

(b) type of control equipment and estimated control efficiency;

(c) schedule of operation;

(d) annual process or fuel combustion rates;

(e) fuel heat, sulfur, and ash content;

(f) actual emissions estimate in pounds per year of total suspended particulate, PM<sub>10</sub>, PM<sub>2.5</sub>, ammonia, sulfur oxides, nitrogen oxides, carbon monoxide, volatile organic compounds, and lead, including fugitive emissions and emissions occurring during maintenance, start-ups, shutdowns, upsets, and downtime;

(g) speciated hazardous air pollutants, if requested by the department; and

(h) a description of the methods utilized to make the estimates, including calculations;

(6) for smelters, an annual report of sulfur input stated in tons per year; and

(7) all information required by 40 CFR Part 51, Subpart A, *Emissions Inventory Reporting Requirements*, as amended.

**D. Additional content for emissions reports from sources in ozone nonattainment areas:** In addition to the contents required by Subsection C of 20.11.47.14 NMAC, emissions reports from sources located in ozone nonattainment areas that emit nitrogen oxides and volatile organic compounds shall also include the following information:

(1) typical daily process rate during the peak ozone season, where the peak ozone season is specified by the department;

(2) actual emissions estimate of nitrogen oxides and volatile organic compounds in pounds per day for a typical day during the peak ozone season for:

(a) each emissions point; and

(b) for each process and fuel type contributing to emissions from each point.

**E. Waiver of reporting requirements for insignificant emissions:** The department may waive the requirements of Paragraph (5) of Subsection C of 20.11.47.14 NMAC for emissions that the department determines to be insignificant pursuant to 20.11.42 NMAC, except the following shall not be waived:

(1) for sources in nonattainment areas, reporting of emissions of pollutants for which the area is in nonattainment; and

(2) emissions reporting required by the federal act.

**F. Emission tracking requirements for sulfur dioxide emission inventories:** In addition to complying with the requirements of Subsections A through E of 20.11.47.14 NMAC, an owner may be subject to 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program*.

[20.11.47.14 NMAC - N, 5/1/08; A, 11/16/09; A, 11/12/12]

**20.11.47.15 [RESERVED]**

[20.11.47.15 NMAC - N, 5/1/08; A, 11/16/09; Repealed, 11/12/12]

**PART 48: GREENHOUSE GAS EMISSIONS REPORTING [REPEALED]**

[This part was repealed effective November 12, 2012]

**PART 49: EXCESS EMISSIONS**

**20.11.49.1 ISSUING AGENCY:**

Albuquerque - Bernalillo County Air Quality Control Board, c/o Environmental Health Department. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.

[20.11.49.1 NMAC - N, 10/13/09]

**20.11.49.2 SCOPE:**

**A.** 20.11.49 NMAC is applicable to every stationary source within Bernalillo county.

**B. Exempt:** 20.11.49 NMAC does not apply to sources within Bernalillo county that are located on indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

[20.11.49.2 NMAC - N, 10/13/09]

**20.11.49.3 STATUTORY AUTHORITY:**

20.11.49 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance No. 94-5, Sections 4 and 5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994, Sections 9-5-1-4 and 9-5-1-5.

[20.11.49.3 NMAC - N, 10/13/09]

**20.11.49.4 DURATION:**

Permanent.

[20.11.49.4 NMAC - N, 10/13/09]

**20.11.49.5 EFFECTIVE DATE:**

10/13/09, unless a later date is cited at the end of a section.

[20.11.49.5 NMAC - N, 10/13/09]

**20.11.49.6 OBJECTIVE:**

To implement requirements for the reporting of excess emissions for facility owners and operators.

[20.11.49.6 NMAC - N, 10/13/09; A, 10/15/16]

**20.11.49.7 DEFINITIONS:**

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

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

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

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

**D. "Building, structure, facility, or installation"** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group ( i.e. , which have the same two-digit code) as described in the *standard industrial classification manual, 1972*, as amended by the 1977 supplement

(U.S. government printing office stock numbers 4101-0065 and 003-005-00176-0, respectively).

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

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

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

**H. [RESERVED]**

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

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

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

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

[20.11.49.7 NMAC - N, 10/13/09]

**20.11.49.8 VARIANCES:**

**[RESERVED]**

[20.11.49.8 NMAC - N, 10/13/09]

**20.11.49.9 SAVINGS CLAUSE:**

Any amendment to 20.11.49 NMAC which is filed with the state records center shall not affect actions pending for violation of a city or county ordinance, or 20.11.49 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part, or regulation section in effect at the time the violation was committed.

[20.11.49.9 NMAC - N, 10/13/09]

**20.11.49.10 SEVERABILITY:**

If for any reason any section, subsection, sentence, phrase, clause, wording or application of 20.11.49 NMAC is held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity or application of remaining portions of 20.11.49 NMAC.

[20.11.49.10 NMAC - N, 10/13/09]

**20.11.49.11 DOCUMENTS:**

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

[20.11.49.11 NMAC - N, 10/13/09]

**20.11.49.12 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with 20.11.49 NMAC does not relieve a person from the responsibility to comply with any other applicable federal, state, or local statute or regulation.

[20.11.49.12 NMAC - N, 10/13/09]

**20.11.49.13 APPLICABILITY:**

**A. Any source:**

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

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

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

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

[20.11.49.13 NMAC - N, 10/13/09; A, 10/15/16]

#### **20.11.49.14 OPERATION RESULTING IN AN EXCESS EMISSION:**

The emission of a regulated air pollutant in excess of the quantity, rate, opacity, or concentration specified in an air quality regulation or permit condition that results in an excess emission is a violation of the air quality regulation or permit condition and may be subject to an enforcement action. If the owner or operator of a source having an excess emission chooses to continue to operate it while the excess emission continues, the owner or operator shall take all appropriate measures consistent with good air pollution control practices for minimizing emissions. The duration and extent of any excess emission and the owner or operator's efforts to minimize the excess emission may be considered by the department in any resulting enforcement action.

[20.11.49.14 NMAC - N, 10/13/09; A, 10/15/16]

#### **20.11.49.15 NOTIFICATION:**

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

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

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

**B.** Each excess emission report shall include the following information:

(1) the name of the source;

- (2) the name of the owner and operator of the source;
- (3) the name and title of the person preparing the report;
- (4) identifying information for the source (e.g. permit and database numbers);
- (5) the specific date(s), time(s), and duration of the excess emission;
- (6) identification of the equipment involved and the emission point(s) (including bypass) from which the excess emission occurred;
- (7) the air quality regulation or permit condition that was exceeded;
- (8) identification of the air contaminant(s) and the magnitude of the excess emission expressed in the units of the air quality regulation or permit condition;
- (9) the method for determining the magnitude and duration of the excess emission;
- (10) the cause and nature of the excess emission;
- (11) the steps taken to limit the duration and magnitude of the excess emission;
- (12) the corrective action(s) taken to eliminate the cause of the excess emission; if one or more corrective actions are required, the report shall include a schedule for implementation of those actions, with associated progress reports; if no corrective actions are required, the report shall include a detailed explanation for that conclusion.
- (13) the corrective action(s) taken to prevent a recurrence of the excess emission;
- (14) whether the owner or operator attributes the excess emission to malfunction, startup, shutdown or emergency;
- (15) whether the owner or operator intends to file a supplemental report under Subsections A, B, or C of 20.11.49.16 NMAC; and
- (16) the person signing the final report shall certify that it is true, accurate, and complete.

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

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

[20.11.49.15 NMAC - N, 10/13/09; A, 10/15/16]

**20.11.49.16 EXCESS EMISSIONS DURING STARTUP, SHUTDOWN, MALFUNCTION, OR EMERGENCY:**

All periods of excess emissions regardless of cause are violations of the state Air Quality Control Act and rules promulgated thereunder, and any applicable permit. The owner or operator of a source who contends that an excess emission occurred during startup, shutdown, malfunction, or emergency may submit to the department a supplemental report addressing the criteria described in Subsections A, B, or C of 20.11.49.16 NMAC. To be considered by the department, the appropriate supplemental report described in Subsections A, B, or C of 20.1.49.16 NMAC below must be submitted to the department no later than 30 days after the final excess emissions report submitted pursuant to 20.11.49.15 NMAC. The department may grant written extensions to this deadline for good cause shown. An owner or operator of a source who contends that enforcement action for an excess emission is not warranted must provide information in a supplemental report as described in Subsections A, B, or C of 20.11.49.16 NMAC. If no supplemental report is timely received, the department will not consider the criteria described in Subsections A, B, and C of 20.11.49.16 NMAC. The department may require the owner or operator of a source to provide further information in addition to that already contained in the supplemental report or otherwise specified in 20.11.49.16 NMAC. The information in the supplemental report may be considered by the department at its sole discretion and is not intended to be enforceable in a legal proceeding by any party or to limit the enforcement authority of any party. 20.11.49.16 NMAC shall not be construed to preclude EPA or federal court jurisdiction under Section 113 of the federal act to assess civil penalties or other forms of relief for periods of excess emissions, to prevent EPA or the courts from considering the statutory factors for the assessment of civil penalties under Section 113 of the federal act, or to interfere with the rights of litigants to pursue enforcement consistent with their rights under the citizen suit provision of Section 304 of the federal act.

**A. Supplemental report for an excess emission during *malfunction*:** The owner or operator of a source subject to 20.11.49 NMAC may file a supplemental report for an excess emission during malfunction addressing the following criteria:

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

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

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

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

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

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

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

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

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

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

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

**B. Supplemental report for an excess emission during *startup or shutdown*:**

The owner or operator of a source subject to 20.11.49 NMAC may file a supplemental report for an excess emission during startup or shutdown, addressing the following criteria:

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

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

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

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

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

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

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

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

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

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

**C. Supplemental report for an *emergency*:** The owner or operator of a source subject to 20.11.49 NMAC may file a supplemental report for an excess emission during an emergency addressing the following criteria:

(1) an emergency occurred;

(2) the excess emission occurred during the emergency;

(3) the owner or operator has identified the cause of the emergency;

(4) the excess emission resulted from the emergency;

(5) the excess emission and resulting emergency could not have been prevented through careful planning and design;

(6) the excess emission and resulting emergency were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(7) at the time the excess emission and emergency occurred, the source was being properly operated;

(8) during the period of the excess emission, the owner or operator took all reasonable steps to minimize levels of emissions that exceeded the applicable standard, regulation, or permit condition; and

(9) the owner or operator complied with all notification requirements in 20.11.49.15 NMAC, including a description of the emergency, any steps to mitigate emissions, and corrective actions taken.

**D. Department's determination of adequacy of supplemental report:** Nothing in 20.11.49 NMAC creates an affirmative defense or entitles a source to relief from penalties for any excess emission including, but not limited to, any exceedance of a limit which already takes into account startup and shutdown emissions, any NAAQS or PSD increment, or any federally promulgated limit or any requirement derived from such a limit, including 40 CFR Parts 60, 61, and 63. However, the department in its sole discretion may consider any relevant information, including information submitted in a supplemental report, in connection with a demand for corrective action or injunctive relief, or the assessment or negotiation of a penalty in an enforcement action. The department's determination of how much weight to give information in a supplemental report is based on its sole discretion.

[20.11.49.16 NMAC - N, 10/13/09; A, 10/15/16]

#### **20.11.49.17 ROOT CAUSE AND CORRECTIVE ACTION ANALYSIS:**

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

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

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

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

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

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

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

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

**B.** The department shall make the demand for a root cause and corrective action analysis no later than 90 days after receipt of the final report required by Subsection A of 20.11.49.15 NMAC.

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

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

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

[20.11.49.17 NMAC - N, 10/13/09; A, 10/15/16]

#### **20.11.49.18 [RESERVED]**

[20.11.49.18 NMAC - N, 10/13/09; Repealed, 10/15/16]

### **PART 50-59: [RESERVED]**

## **PART 60: PERMITTING IN NONATTAINMENT AREAS**

#### **20.11.60.1 ISSUING AGENCY:**

Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.

[20.11.60.1 NMAC - Rp, 20.11.60.1 NMAC, 1/23/06; A, 8/30/10]

#### **20.11.60.2 SCOPE:**

**A.** 20.11.60 NMAC establishes a pre-construction permit program for new major stationary sources and major modifications of existing major stationary sources located within a nonattainment area.

**B. Exempt:** 20.11.60 NMAC does not apply to sources within Bernalillo county, which are located on indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

[20.11.60.2 NMAC - Rp, 20.11.60.2 NMAC, 1/23/06; A, 8/30/10]

### **20.11.60.3 STATUTORY AUTHORITY:**

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

[20.11.60.3 NMAC - Rp, 20.11.60.3 NMAC, 1/23/06]

### **20.11.60.4 DURATION:**

Permanent.

[20.11.60.4 NMAC - Rp, 20.11.60.4 NMAC, 1/23/06]

### **20.11.60.5 EFFECTIVE DATE:**

January 23, 2006, unless a later date is cited at the end of a section.

[20.11.60.5 NMAC - Rp, 20.11.60.5 NMAC, 1/23/06]

### **20.11.60.6 OBJECTIVE:**

To implement a pre-construction permit program for new or modified major stationary sources that plan to locate in an area where a federal ambient air quality standard is being exceeded.

[20.11.60.6 NMAC - Rp, 20.11.60.6 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

### **20.11.60.7 DEFINITIONS:**

In addition to the definitions in 20.11.60.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.60.7 NMAC shall govern.

**A. "Actual emissions"** means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with Paragraphs (1)-(3) of Subsection A of 20.11.60.7 NMAC, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a plantwide applicability limit under 20.11.60.27 NMAC. Instead, Subsections E and II of 20.11.60.7 NMAC shall apply for those purposes.

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is

representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

**B. "Administrator"** means the administrator of the United States environmental protection agency (USEPA) or an authorized representative.

**C. "Adverse impact on visibility"** means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the mandatory federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with:

(1) times of visitor use of the mandatory federal class I area; and

(2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 *Definitions*.

**D. "Allowable emissions"** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source, (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both,) and the most stringent of the following:

(1) the applicable standard set forth in 40 CFR Part 60 or 61;

(2) any applicable state implementation plan emissions limitation including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

**E. "Baseline actual emissions"** means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with Paragraphs (1)-(4) of Subsection E of 20.11.60.7 NMAC.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator

within the five year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of Paragraph (1) of Subsection E of 20.11.60.7 NMAC.

(2) For an existing emissions unit (other than an electric utility steam generating unit) baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10 year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under 20.11.60.7 NMAC or under a plan approved by the administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions

reductions in an attainment demonstration or maintenance plan consistent with the requirements of Paragraph (7) of Subsection B of 20.11.60.15 NMAC.

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (2) of Subsection E of 20.11.60.7 NMAC.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a plantwide applicability limit for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of Subsection E of 20.11.60.7 NMAC, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of Subsection E of 20.11.60.7 NMAC, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of Subsection E of 20.11.60.7 NMAC.

**F. "Begin actual construction"** means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

**G. "Best available control technology (BACT)"** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated new source review pollutant which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If the department determines that technological or economic limitations on the application of measurement methodology

to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

**H. "Building, structure, facility or installation"** means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group," that is, which have the same two-digit code, as described in the *standard industrial classification manual*, 1972, as amended by the 1977 supplement (U. S. government printing office stock numbers 4101-0065 and 003-005-00176-0, respectively).

**I. "Commence"** as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

**J. "Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

**K. "Continuous emissions monitoring system (CEMS)"** means all of the equipment that may be required to meet the data acquisition and availability requirements of 20.11.60 NMAC, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

**L. "Continuous emissions rate monitoring system (CERMS)"** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

**M. "Continuous parameter monitoring system (CPMS)"** means all of the equipment necessary to meet the data acquisition and availability requirements of 20.11.60 NMAC, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents), and other

information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and to record average operational parameter value(s) on a continuous basis.

**N. "Electric utility steam generating unit"** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

**O. "Emissions unit"** means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric steam generating unit as defined in Subsection N of 20.11.60.7 NMAC. For purposes of 20.11.60.7 NMAC, there are two types of emissions units as described in Paragraphs (1) and (2) of Subsection O of 20.11.60.7 NMAC.

(1) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of Subsection O of 20.11.60.7 NMAC. A replacement unit, as defined in 20.11.60.7 NMAC, is an existing unit.

**P. "Federal class I area"** means any federal land that is classified or reclassified as "class I".

**Q. "Federal land manager"** means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

**R. "Federally enforceable"** means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I including operating permits issued under an EPA-approved program that requires adherence to any permit issued under such program.

**S. "Fugitive emissions"** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**T. "Lowest achievable emission rate (LAER)"** means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source; in no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source performance standard.

**U. "Major modification"** means:

(1) Any physical change in or change in the method of operation of a major stationary source that would result in:

(a) a significant emissions increase of a regulated new source review pollutant; and

(b) a significant net emissions increase of that pollutant from the major stationary source.

(2) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(3) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or any superseding legislation, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the federal Clean Air Act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which;

(i) the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit

condition which was established after December 21, 1976 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source; or

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan for the state in which the project is located and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(4) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.11.60.27 NMAC for a plantwide applicability limit for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.11.60.27 NMAC shall apply.

(5) For the purpose of applying the requirements of 20.11.60.17 NMAC to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to Subpart 2, Part D, Title I of the act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(6) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the act.

## **V. "Major stationary source"**

(1) Means:

(a) Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated new source review pollutant, except that lower emission thresholds shall apply in areas subject to Subpart 2, Subpart 3, or Subpart 4 of Part D, Title I of the act, according to Items (i)-(vi) of Subparagraph (a) of Paragraph (1) of Subsection V of 20.11.60.7 NMAC.

(i) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(ii) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(iii) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(iv) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(v) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the administrator).

(vi) 70 tons per year of PM<sub>10</sub> in any serious nonattainment area for PM<sub>10</sub>.

(b) For the purposes of applying the requirements of 20.11.60.17 NMAC to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the emission thresholds in Items (i)-(vi) of Subparagraph (b) of Paragraph (1) of Subsection V of 20.11.60.7 NMAC shall apply in areas subject to Subpart 2 of Part D, Title I of the act.

(i) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) 100 tons per year or more of nitrogen oxides in any area designated under Section 107(d) of the act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

(c) any physical change that would occur at a stationary source not qualifying under Subparagraph (a) or (b) of Paragraph (1) of Subsection V of 20.11.60.7 NMAC as a major stationary source, if the change would constitute a major stationary source by itself.

(2) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of Subsection V of 20.11.60.7 NMAC whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) carbon black plants (furnace process);

(b) charcoal production plants;

(c) chemical process plants – not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(d) coal cleaning plants (with thermal dryers);

(e) coke oven batteries;

(f) fossil fuel-fired steam electric plants of more than 250 million Btu/hr heat input;

(g) fossil fuel boilers (or combination thereof) totaling more than 250 million Btu/hr heat input;

(h) fuel conversion plants;

(i) glass fiber processing plants;

(j) hydrofluoric acid plants;

(k) iron and steel mill plants;

(l) kraft pulp mills;

- (m) lime plants;
- (n) municipal incinerators capable of charging more than 250 tons of refuse per day;
- (o) nitric acid plants;
- (p) petroleum refineries;
- (q) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (r) phosphate rock processing plants;
- (s) Portland cement plant;
- (t) primary lead smelters;
- (u) primary zinc smelters;
- (v) primary aluminum ore reduction plants;
- (w) primary copper smelters;
- (x) secondary metal production plants;
- (y) sintering plants;
- (z) sulfur recovery plants;
- (aa) sulfuric acid plants;
- (bb) taconite ore processing plants; or
- (cc) any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the federal Clean Air Act.

**W. "Mandatory federal class I area"** means those federal lands that are international parks, national wilderness areas which exceed 5,000 acres in size, national memorial parks which exceed 5,000 acres in size, and national parks which exceed 6,000 acres in size, and which were in existence on August 7, 1977. These areas may not be redesignated.

**X. "Natural conditions"** includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

**Y. "Necessary preconstruction approvals or permits"** means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the applicable state implementation plan (SIP).

**Z. "Net emissions increase"**

(1) Means, with respect to any regulated new source review pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(a) the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection B of 20.11.60.12 NMAC; and

(b) any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases under Subparagraph (b) of Paragraph (1) of Subsection Z of 20.11.60.7 NMAC, shall be determined as provided in Subsection E of 20.11.60.7 NMAC, except that Subparagraphs (c) of Paragraph (1) and (d) of Paragraph (2) of Subsection E of 20.11.60.7 NMAC shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs between:

(i) the date five years prior to the commencement of construction on the particular change; and

(ii) the date that the increase from the particular change occurs; and

(b) the department has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

(a) the old level of actual emissions or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(c) the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress; and

(d) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(7) Paragraph (1) of Subsection A of 20.11.60.7 NMAC shall not apply for determining creditable increases and decreases or after a change.

**AA. "Nonattainment area"** means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling, or other methods determined by the administrator to be reliable, to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under Subparagraphs (A) through (C) of Section 107(d)(1) of the federal Clean Air Act.

**BB. "Nonattainment major new source review (NSR) program"** means a major source preconstruction permit program that has been approved by the administrator and incorporated into the New Mexico state implementation plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI. Any permit issued under such a program is a major new source review permit.

**CC. "Part"** means an air quality control regulation under Title 20, Chapter 11 of the New Mexico administrative code (NMAC), unless otherwise noted; as adopted or amended by the board.

**DD. "Portable stationary source"** means a source which can be relocated to another operating site with limited dismantling and reassembly.

**EE. "Potential to emit"** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the

limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

**FF. "Predictive emissions monitoring system (PEMS)"** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents), and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and calculate and record the mass emissions rate (for example, pounds per hour), on a continuous basis.

**GG. "Prevention of significant deterioration (PSD) permit"** means any permit that is issued under 20.11.61 NMAC.

**HH. "Project"** means a physical change in, or change in the method of operation of, an existing major stationary source.

## **II. "Projected actual emissions"**

(1) Means, the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated new source review pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions under Paragraph (1) of Subsection II of 20.11.60.7 NMAC, before beginning actual construction, the owner or operator of the major stationary source:

(a) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(b) shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

(c) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection E of 20.11.60.7 NMAC and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(d) in lieu of using the method set out in Subparagraphs (a) through (c) of Paragraph (2) of Subsection II of 20.11.60.7 NMAC, may elect to use the emissions unit's potential to emit, in tons per year, as defined under Subsection EE of 20.11.60.7 NMAC.

**JJ. "Regulated new source review pollutant"**, for purposes of 20.11.60 NMAC, means the following:

- (1) nitrogen oxides or any volatile organic compounds;
- (2) any pollutant for which a national ambient air quality standard has been promulgated; or
- (3) any pollutant that is a constituent or precursor of a general pollutant listed under Paragraphs (1) or (2) of Subsection JJ of 20.11.60.7 NMAC, provided that such constituent or precursor pollutant may only be regulated under new source review as part of regulation of the general pollutant; precursors identified by the administrator for purposes of NSR are the following:
  - (a) volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas;
  - (b) sulfur dioxide is a precursor to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas;
  - (c) nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations;
  - (d) volatile organic compounds and ammonia are presumed not to be precursors to PM<sub>2.5</sub> in any PM<sub>2.5</sub> nonattainment area, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations; or
- (4) PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in nonattainment major NSR permits; compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered

in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

**KK. "Replacement unit"** means an emission unit for which all of the criteria listed in Paragraphs (1)-(4) of Subsection KK of 20.11.60.7 NMAC are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement (unit) does not alter the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**LL. "Secondary emissions"** means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of 20.11.60.7 NMAC, secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

**MM. "Significant"** means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

- (1) Pollutant emission rates:
  - (a) carbon monoxide, 100 tons per year;
  - (b) nitrogen oxides, 40 tons per year;
  - (c) sulfur dioxide, 40 tons per year;

(d) PM<sub>10</sub> emissions, 15 tons per year;

(e) ozone, 40 tons per year of volatile organic compounds or nitrogen oxides;  
or

(f) lead, 0.6 tons per year; or

(g) PM<sub>2.5</sub>, 10 tons per year of direct PM<sub>2.5</sub> emissions; 40 tons per year of sulfur dioxide emissions; 40 tons per year of nitrogen oxide emissions unless demonstrated not to be a PM<sub>2.5</sub> precursor under Subsection JJ of 20.11.60.7 NMAC.

(2) Notwithstanding the significant emissions rate for ozone in Paragraph (1) of Subsection MM of 20.11.60.7 NMAC, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

(3) For the purposes of applying the requirements of 20.11.60.17 NMAC to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in Paragraphs (1), (2), and (5) of Subsection MM of 20.11.60.7 NMAC shall apply to nitrogen oxides emissions.

(4) Notwithstanding the significant emissions rate for carbon monoxide under Paragraph (1) of Subsection MM of 20.11.60.7 NMAC, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(5) Notwithstanding the significant emissions rates for ozone under Paragraphs (1) and (2) of Subsection MM of 20.11.60.7 NMAC, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the act shall be considered a significant net emissions increase.

**NN. "Significant emissions increase"** means, for a regulated new source review pollutant, an increase in emissions that is significant for that pollutant.

**OO. "Stationary source"** means any building, structure, facility, or installation which emits or may emit any regulated new source review pollutant.

**PP.** "Temporary source" means a stationary source which changes its location or ceases to exist within one year from the date of initial start of operations.

**QQ.** "Visibility impairment" means any humanly perceptible change in visibility, that is, visual range, contrast, coloration, from that which would have existed under natural conditions.

[20.11.60.7 NMAC - Rp, 20.11.60.7 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

**20.11.60.8 VARIANCES:**

**[RESERVED]**

[20.11.60.8 NMAC - Rp, 20.11.60.8 NMAC, 1/23/06]

**20.11.60.9 SAVINGS CLAUSE:**

Any amendment to 20.11.60 NMAC, which is filed, with the state records center shall not affect actions pending for violation of a city or county ordinance, or air quality control board regulation. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part, or regulation section in effect at the time the violation was committed.

[20.11.60.9 NMAC - Rp, 20.11.60.9 NMAC, 1/23/06]

**20.11.60.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of 20.11.60 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.60 NMAC.

[20.11.60.10 NMAC - Rp, 20.11.60.10 NMAC, 1/23/06]

**20.11.60.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.60 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM.

[20.11.60.11 NMAC - Rp, 20.11.60.11 NMAC, 1/23/06]

**20.11.60.12 APPLICABILITY:**

**A.** Any person constructing any new major stationary source or major modification shall obtain a permit from the department in accordance with the requirements of

20.11.60 NMAC prior to the start of construction or modification if either of the following conditions under Paragraph (1) or (2) of Subsection A of 20.11.60.12 NMAC apply.

(1) **Sources that would locate in a designated nonattainment area.** The proposed major stationary source or major modification would be located within a nonattainment area so designated pursuant to Section 107(d)(1)(A)(i) of the federal Clean Air Act and would emit a regulated new source review pollutant for which it is major and for which the area is designated nonattainment.

(2) **Sources locating in designated clean or unclassifiable areas which would cause or contribute to a violation of a NAAQS.**

(a) The proposed major stationary source or major modification would be located within an area designated as attainment or unclassifiable for any NAAQS pursuant to Section 107 of the federal Clean Air Act, and will emit a regulated new source review pollutant for which it is major and when it would cause or contribute to a violation of any NAAQS.

(b) A major source or major modification will be considered to cause or contribute to a violation of a NAAQS when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

**Significant ambient concentrations:**

Pollutant	Averaging Time				
	Annual	24-hr	8-hr	3-hr	1-hr
Sulfur Dioxide	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	--	25 µg/m <sup>3</sup>	--
PM <sub>2.5</sub>	0.3 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>	--	--	--
PM <sub>10</sub>	1.0 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>	--	--	--
Nitrogen Dioxide	1.0 µg/m <sup>3</sup>	--	--	--	--
Carbon Monoxide	--	--	0.5 mg/m <sup>3</sup>	--	2 mg/m <sup>3</sup>

(3) A proposed major source or major modification subject to Subsection A of 20.11.60.12 NMAC may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, the department shall deny the proposed construction.

(4) The requirements of Subsection A of 20.11.60.12 NMAC shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to Section 107 of the act.

## **B. Applicability procedures.**

(1) Except as otherwise provided in Subsection C of 20.11.60.12 NMAC, and consistent with the definition of major modification, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e. the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3), (4) and (6) of Subsection B of 20.11.60.12 NMAC. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e. the second step of the process) is contained in the definition of net emissions increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) **Actual-to-projected-actual applicability test for projects that involve existing emissions units.** A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(4) **Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) **[RESERVED]**

(6) **Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of Subsection B of 20.11.60.12 NMAC as applicable with respect to each emissions unit, for each type of emissions unit equals

or exceeds the significant amount for that pollutant (as defined in Subsection MM of 20.11.60.7 NMAC).

**C.** For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.11.60.27 NMAC.

[20.11.60.12 NMAC - N, 1/23/06; A, 8/30/10; A, 5/13/13]

### **20.11.60.13 SOURCE OBLIGATION AND ENFORCEABLE PROCEDURES:**

**A.** At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to 40 CFR 51.165 shall apply to the source or modification as though construction had not yet commenced on the source or modification.

**B.** Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, state or federal law, including provisions of the Air Quality Control Act, Sections 74-2-1 to 74-2-17, NMSA 1978, and any applicable regulations of the board.

**C.** Any owner or operator who commences construction or operates a major stationary source or major modification without, or not in accordance with, a permit issued under the requirements of 20.11.60 NMAC shall be subject to enforcement action.

**D.** Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. For a phased construction project, each phase must commence construction within 18 months of the projected and approved commencement date. The director may extend the 18-month period upon a satisfactory showing that an extension is justified.

**E.** For phased construction projects, the determination of the lowest achievable emission rate shall be reviewed and modified as appropriate at the latest reasonable time but no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of lowest achievable emission rate.

**F.** If the owner or operator previously issued a permit under 20.11.60 NMAC applies for an extension as provided for under Subsection D of 20.11.60.13 NMAC, and the new proposed date of construction is greater than 18 months from the date the permit would

become invalid, the determination of lowest achievable emission rate shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or operator may be required to demonstrate the adequacy of any previous determination of lowest achievable emission rate.

[20.11.60.13 NMAC - Rp, 20.11.60.12 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

#### **20.11.60.14 FUGITIVE EMISSIONS:**

The provisions of 20.11.60 NMAC do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emission to the extent quantifiable are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- A.** carbon black plants (furnace process);
- B.** charcoal production plants;
- C.** chemical process plants – not including ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;
- D.** coal cleaning plants (with thermal dryers);
- E.** coke oven batteries;
- F.** fossil fuel-fired steam electric plants of more than 250 million Btu/hr heat input;
- G.** fossil fuel boilers (or combination thereof) totaling more than 250 million Btu/hr heat input;
- H.** fuel conversion plants;
- I.** glass fiber processing plants;
- J.** hydrofluoric acid plants;
- K.** iron and steel mill plants;
- L.** kraft pulp mills;
- M.** lime plants;
- N.** municipal incinerators capable of charging more than 250 tons of refuse per day;
- O.** nitric acid plants;

**P.** petroleum refineries;

**Q.** petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

**R.** phosphate rock processing plants;

**S.** Portland cement plant;

**T.** primary lead smelters;

**U.** primary zinc smelters;

**V.** primary aluminum ore reduction plants;

**W.** primary copper smelters;

**X.** secondary metal production plants;

**Y.** sintering plants;

**Z.** sulfur recovery plants;

**AA.** sulfuric acid plants;

**BB.** taconite ore processing plants; or

**CC.** any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the federal Clean Air Act.

[20.11.60.14 NMAC - Rp, 20.11.60.13, 1/23/06; 20.11.60.14 NMAC - N, 8/30/10]

#### **20.11.60.15 BASELINE FOR DETERMINING CREDIT FOR EMISSION AND AIR QUALITY OFFSETS:**

**A.** For sources and modifications subject to any preconstruction review program adopted pursuant to Subsection 40 CFR 51.165(a), the baseline for determining credit for emissions reductions is the emissions limit under the applicable state implementation plan (SIP) in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(1) the demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(2) the applicable SIP does not contain an emissions limitation for that source or source category.

## **B. Combustion of fuels.**

(1) Where the emissions limit under the applicable SIP allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.

(2) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable SIP for the type of fuel being burned at the time the permit application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure, which would achieve the same degree of emission reduction should the source switch back to a dirtier fuel at some later date. The department should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

### **(3) Emission reduction credit from shutdowns and curtailments.**

(a) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if they meet the requirements in Items (i) and (ii) of Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.60.15 NMAC.

(i) Such reductions are surplus, permanent, quantifiable, and federally enforceable.

(ii) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of Item (ii) of Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.60.15 NMAC, the department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(b) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in Item (ii) of Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.60.15 NMAC may be generally credited only if:

(i) the shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(ii) the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of Item (i) of Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.60.15 NMAC.

(4) No emissions credit shall be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's *Recommended Policy on Control of Volatile Organic Compounds* (42 FR 35314, July 8, 1977) and any amendments thereto.

(5) All emission reductions claimed as offset credit shall be federally enforceable.

(6) Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in 40 CFR Part 51 Appendix S Section IV.D.

(7) Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51 Subpart I or the department has not relied on it in demonstration attainment or reasonable further progress.

(8) **[RESERVED]**

(9) **[RESERVED]**

(10) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the federal Clean Air Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

**C.** All emission reductions claimed as offset credit shall occur prior to or concurrent with the start of operation of the proposed source. In addition, past reductions must have occurred later than the date upon which the area became nonattainment in order to be creditable.

**D.** The owner or operator desiring to utilize an emission reduction as an offset shall submit to the department the following information:

(1) a detailed description of the process to be controlled and the control technology to be used; and

(2) emission calculations showing the types and amounts of actual emissions to be reduced; and

- (3) the effective date of the reduction.

[20.11.60.15 NMAC - Rp, 20.11.60.14 NMAC, 1/23/06; 20.11.60.15 NMAC - N, 8/30/10; A, 5/13/13]

#### **20.11.60.16 PROVISIONS FOR PROJECTED ACTUAL EMISSIONS:**

Except as otherwise provided in Subsection F of 20.11.60.16 NMAC, the following specific provisions apply with respect to any regulated new source review pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of Subsection F of 20.11.60.16 NMAC, that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in Subparagraphs (a), (b) and (c) of Paragraph (2) of Subsection II of 20.11.60.7 NMAC for calculating projected actual emissions. Deviations from these provisions will be approved only if the department specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in Subsections A through F of 20.11.60.16 NMAC.

**A.** Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

- (1) a description of the project;
- (2) identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and
- (3) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Subparagraph (c) of Paragraph (2) of Subsection II of 20.11.60.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

**B.** If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of Subsection F of 20.11.60.12 NMAC to the department. Nothing in Paragraph (2) of Subsection F of 20.11.60.12 NMAC shall be construed to require the owner or operator of such a unit to obtain any determination from the department; however, necessary preconstruction approvals or permits must be obtained before beginning actual construction.

**C.** The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified in Subparagraph (a) of Paragraph (2) of Subsection A of

20.11.60.16 NMAC; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

**D.** If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Subsection C of 20.11.60.16 NMAC setting out the unit's annual emissions during the year that preceded submission of the report.

**E.** If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Subsection A of 20.11.60.16 NMAC, exceed the baseline actual emissions (as documented and maintained pursuant to Paragraph (3) of Subsection A of 20.11.60.16 NMAC) by a significant amount for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection (as documented and maintained pursuant to Paragraph (3) of Subsection A of 20.11.60.16 NMAC). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

- (1) the name, address and telephone number of the major stationary source;
- (2) the annual emissions as calculated pursuant to Subsection C of 20.11.60.16 NMAC; and
- (3) any other information that the owner or operator wishes to include in the report, (for example, an explanation as to why the emissions differ from the preconstruction projection).

**F.** A "reasonable possibility" under 20.11.60.16 NMAC occurs when the owner or operator calculates the project to result in either:

(1) a projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection NN of 20.11.60.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated new source review pollutant; or

(2) a projected actual emissions increase that, added to the amount of emissions excluded under Subparagraph (c) of Paragraph (2) of Subsection II of 20.11.60.7 NMAC, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection NN of 20.11.60.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated new source review pollutant; for a project for which a reasonable possibility occurs only within the meaning of Paragraph (2) of Subsection F of 20.11.60.16 NMAC, and not

also within the meaning of Paragraph (1) of Subsection F of 20.11.60.16 NMAC, then the provisions in Subsections B through E of 20.11.60.16 NMAC do not apply to the project.

**G. Information requests.** The owner or operator of the source shall make the information required to be documented and maintained pursuant to 20.11.60.16 NMAC available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

[20.11.60.16 NMAC - Rp, 20.11.60.15 NMAC, 1/23/06; 20.11.60.16 NMAC - N, 8/30/10]

### **20.11.60.17 ADDITIONAL PROVISIONS FOR EMISSIONS OF NITROGEN OXIDES IN OZONE TRANSPORT REGIONS AND NONATTAINMENT AREAS:**

The requirements of 20.11.60 NMAC applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the administrator has granted a NO<sub>x</sub> waiver applying the standards set forth under Section 182(f) of the act and the waiver continues to apply.

[20.11.60.17 NMAC - Rp, 20.11.60.16 NMAC, 1/23/06; Repealed 8/30/10; 20.11.60.17 NMAC - N, 8/30/10]

### **20.11.60.18 EMISSIONS OFFSET RATIOS:**

**A.** In meeting the emissions offset requirements of 20.11.60.15 NMAC, the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in Subsections B through D of 20.11.60.18 NMAC.

**B.** In meeting the emissions offset requirements of 20.11.60.15 NMAC for ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

- (1) in any marginal nonattainment area for ozone—at least 1.1:1;
- (2) in any moderate nonattainment area for ozone—at least 1.15:1;
- (3) in any serious nonattainment area for ozone—at least 1.2:1;
- (4) in any severe nonattainment area for ozone—at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

(5) in any extreme nonattainment area for ozone—at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

**C.** Notwithstanding the requirements of Subsection B of 20.11.60.18 NMAC for meeting the requirements of 20.11.60.15 NMAC, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to Subpart 2, Part D, Title I of the act, except for serious, severe, and extreme ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the act.

**D.** In meeting the emissions offset requirements of 20.11.60.15 NMAC for ozone nonattainment areas that are subject to Subpart 1, Part D, Title I of the act (but are not subject to Subpart 2, Part D, Title I of the act, including 8-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.

[20.11.60.18 NMAC - Rp, 20.11.60.17 NMAC, 1/23/06; Repealed 8/30/10; 20.11.60.18 NMAC - N, 8/30/10]

#### **20.11.60.19 PM<sub>10</sub> PRECURSORS:**

The requirements of 20.11.60 NMAC applicable to major stationary sources and major modifications of PM<sub>10</sub> shall also apply to major stationary sources and major modifications of PM<sub>10</sub> precursors, except where the administrator determines that such sources do not contribute significantly to PM<sub>10</sub> levels that exceed the PM<sub>10</sub> ambient standards in the area.

[20.11.60.19 NMAC - Rp, 20.11.60.18 NMAC, 1/23/06; 20.11.60.19 NMAC - N, 8/30/10]

#### **20.11.60.20 INTERPRECURSOR OFFSETTING.**

In meeting the emissions offset requirements of 20.11.60.15 NMAC and Subsections A-D of 20.11.60.18 NMAC, the emissions offsets obtained shall be for the same regulated new source review pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in 20.11.60.20 NMAC. The offset requirements in 20.11.60.15 NMAC for direct PM<sub>2.5</sub> emissions or emissions of precursors of PM<sub>2.5</sub> may be satisfied by offsetting reductions of direct PM<sub>2.5</sub> emissions or emissions of any PM<sub>2.5</sub> precursor identified under Paragraph (3) of Subsection JJ of 20.11.60.7 NMAC if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

[20.11.60.20 NMAC - Rp, 20.11.60.19 NMAC, 1/23/06; 20.11.60.20 NMAC - N, 8/30/10]

#### **20.11.60.21 APPLICATION CONTENTS:**

The owner or operator of a proposed major stationary source or major modification shall submit all information necessary to perform any analysis or make any determination required under 20.11.60 NMAC. The following items are required before the department may deem an application administratively complete. All applications shall include:

- A.** all information required by Subsection A of 20.11.41.13 NMAC; and
- B.** a detailed schedule for construction of the major stationary source or major modification; and
- C.** a detailed description of the planned system of continuous emission reduction to be implemented, emission estimates, and other information necessary to demonstrate that the lowest achievable emission rate or any other applicable emission limitation will be maintained.

[20.11.60.21 NMAC - Rp, 20.11.60.20 NMAC, 1/23/06; 20.11.60.21 NMAC - Rn, 20.11.60.14 NMAC, 8/30/10]

#### **20.11.60.22 SOURCE REQUIREMENTS FOR SOURCES THAT WOULD LOCATE IN A DESIGNATED NONATTAINMENT AREA:**

**A. Conditions for approval.** If the department finds that the major stationary source or major modification would be constructed in an area designated in 40 CFR 81.300 *et seq* as nonattainment for a pollutant for which the stationary source or modification is major, approval may be granted only if the following conditions are met:

(1) **Condition 1.** The major stationary source or major modification shall meet an emission limitation which specifies the lowest achievable emission rate (LAER) for such source.

(2) **Condition 2.** The applicant must certify that all existing major stationary sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in the same state as the proposed source are in compliance with, all applicable emission limitations and standards, under the federal Clean Air Act (or are in compliance with an expeditious schedule which is federally enforceable or contained in a court decree).

(3) **Condition 3.** Emission reductions (offsets) from existing sources in the area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS. Except as provided in 20.11.60.20 NMAC (addressing PM<sub>2.5</sub> and its precursors). Only intrapollutant emission offsets will be acceptable (e.g., hydrocarbon increases may not be offset against SO<sub>2</sub> reductions).

(4) **Condition 4.** The emission offsets shall provide a positive net air quality benefit in the affected area (where the national ambient air quality standard for that pollutant is violated). Atmospheric simulation modeling is not necessary for volatile organic compounds and NO<sub>x</sub>. Fulfillment of "condition 3" at Paragraph (3) of Subsection A of 20.11.60.22 NMAC and "location of offsetting emissions" requirements at Subsection B of 20.11.60.22 NMAC, will be considered adequate to meet this condition.

**B. Location of offsetting emissions.** The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under 20.11.60 NMAC for increased emissions of any air pollutant only by obtaining emissions reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the department may allow the owner or operator of a source to obtain such emissions reductions in another nonattainment area if the conditions in Paragraph (1) and (2) of Subsection B of 20.11.60.22 NMAC are met.

(1) The other area has an equal or higher nonattainment classification than the area in which the source is located.

(2) Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

**C.** The owner or operator of the proposed major stationary source or major modification shall conduct an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

**D.** The proposed major stationary source or major modification shall meet all applicable emission requirements in the New Mexico state implementation plan, any applicable new source performance standard in 40 CFR Part 60, and any national emission standard for hazardous air pollutants in 40 CFR Part 61 or 40 CFR Part 63.

**E. Emission reductions:**

(1) Emission reductions (offsets) at existing sources shall occur prior to or concurrent with the start of operation of the proposed major stationary source or major modification for each pollutant emitted which is subject to 20.11.60 NMAC. As a general rule, such offsets shall be at least 20 percent greater than the allowable emissions of the proposed new major stationary source or major modification, and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction in the actual emissions of such air pollutant from the same or other sources in the area. An offset less than 20 percent, but at least 10 percent (a 1.0:1.1 ratio), may be allowed if reasonable progress toward the attainment of the applicable NAAQS will be achieved. A higher level of offset reduction may be required in order to demonstrate that a net air quality benefit will occur.

(2) A new major stationary source or major modification which is subject to the requirements of Subsection D of 20.11.60.12 NMAC shall obtain sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major stationary source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard.

[20.11.60.22 NMAC - Rp, 20.11.60.21 & 20.11.60.22 NMAC, 1/23/06; Repealed, 8/30/10; 20.11.60.22 NMAC - Rn & A, 20.11.60.15 NMAC, 8/30/10]

### **20.11.60.23 ADDITIONAL REQUIREMENTS FOR SOURCES IMPACTING MANDATORY FEDERAL CLASS I AREAS:**

**A.** The requirements of 20.11.60.23 NMAC apply only to proposed major stationary sources or major modifications that meet the criteria of Paragraph (1) of Subsection A of 20.11.60.12 NMAC and that also are major stationary sources or major modifications as defined in 20.11.61 NMAC. A major stationary source or major modification which meets the criteria of Paragraph (2) of Subsection A of 20.11.60.12 NMAC may be subject to requirements for federal class I areas in 20.11.61 NMAC, if applicable.

**B.** The department shall transmit to the administrator and any affected federal land manager a copy of each permit application and any information relevant to any proposed major stationary source or major modification which may have an impact on visibility in any mandatory federal class I area. Relevant information will include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The application shall be transmitted within 30 days of receipt by the department and at least 60 days prior to any public hearing on the application. Additionally, the department shall notify any affected federal land manager within 30 days from the date the department receives a request for a pre-application meeting from a proposed source subject to 20.11.60 NMAC. The department shall consult with the affected federal land manager prior to making a determination of completeness for any such permit application. The department shall also provide the federal land manager and the administrator with a copy of the preliminary determination on the permit application and shall make available to them any materials used in making that determination.

**C.** The owner or operator of any proposed major stationary source or major modification which may have an impact on visibility in a mandatory federal class I area shall include in the permit application an analysis of the anticipated impacts on visibility in such areas.

**D.** The department may require monitoring of visibility in any mandatory federal class I area where the department determines an adverse impact on visibility may occur due to the operations of the proposed new source or modification. Such monitoring shall be conducted following procedures approved by the department and subject to the following conditions:

(1) visibility monitoring methods specified by the department shall be reasonably available and not require any research and development; and

(2) both preconstruction and post construction visibility monitoring may be required. In each case, the duration of such monitoring shall not exceed one year.

**E.** The department shall consider any analysis with respect to visibility impacts provided by the federal land manager if it is received within 30 days from the date a complete application is given to the federal land manager. In any case where the department disagrees with the federal land manager's analysis, the department shall either explain its decision to the federal land manager or give notice as to where the explanation can be obtained. In the case where the department disagrees with the federal land manager's analysis, the department will also explain its decision or give notice to the public by means of an advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed as to where the decision can be obtained.

**F.** In making its determination as to whether or not to issue a permit, the department shall ensure that the source's emissions will be consistent with making reasonable progress toward the national visibility goal of preventing any future impairment of visibility in mandatory federal class I areas. The department may take into account the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the useful life of the source.

[20.11.60.23 NMAC - N, 1/23/06; 20.11.60.23 NMAC - Rn & A, 20.11.60.16 NMAC, 8/30/10]

#### **20.11.60.24 BANKING OF EMISSION REDUCTION:**

**A.** Any stationary source which decreases actual emissions of a regulated new source review pollutant in excess of the requirements of 20.11.60 NMAC or any other applicable air quality regulation or permit emission limitation may preserve or bank such excess emission reductions for sale or future use.

**B.** The owner or operator desiring to preserve such reductions shall submit a written request prior to the actual emission reduction to the department which contains the following information:

(1) a detailed description of the process(es) to be controlled and the control technology to be used; and

(2) emission calculations showing the types and amounts of actual emissions to be reduced; and

(3) the effective date(s) of such reductions.

**C. The department shall:**

- (1) verify the amount of emission reduction claimed in the written request; and
- (2) approve or deny the request for banking of the emission reduction and notify the applicant in writing of the decision; and
- (3) keep appropriate records of any emission reduction accepted for banking; and
- (4) for the case where emission reductions are approved in excess of those required for obtaining a permit under 20.11.60 NMAC, the department shall make such reductions a condition of the permit; and
- (5) for the case where emission reductions are approved not in conjunction with granting a permit, the department shall preserve such reductions as a state implementation plan revision which must be approved by the board.

**D. Use and sale of emission reductions.**

- (1) The use of any preserved emission reduction is confined to meeting the emission offset requirements of 20.11.60 NMAC or 20.11.41 NMAC.
- (2) The provisions of 20.11.60 NMAC apply to the future use of any preserved emission reduction as if such reductions were obtained concurrently with the commencement of operations of the new or modified source.
- (3) Before the use or sale of any preserved emission reduction occurs, written notification must be given to the department. Such notice shall be in writing and shall identify the permit(s) and state implementation plan revision(s) in which such reductions are preserved. The department must verify the availability of the preserved reduction before any use or sale occurs.
- (4) The use of preserved emission reduction credits is subject to the criteria of 20.11.60 NMAC.

[20.11.60.24 NMAC - Rn & A, 20.11.60.19 NMAC, 8/30/10]

**20.11.60.25 AIR QUALITY BENEFIT:**

All demonstrations of the occurrence of a net air quality benefit shall meet the following criteria.

**A.** Emission offsets for volatile organic compounds or nitrogen oxides emissions impacting an ozone nonattainment area may be obtained from sources located in the broad vicinity of the proposed new source or modification, subject to approval by the

department. Atmospheric dispersion modeling will not be required to demonstrate the net air quality benefit that occurs due to reductions in volatile organic compound emissions.

**B.** An applicant which proposes emission offsets for sulfur dioxide, particulate matter, carbon monoxide, nitrogen oxides, or any other pollutant may be required by the department to submit atmospheric dispersion modeling to demonstrate a net air quality benefit will occur. For any case involving these pollutants where stack emissions and fugitive or ground level emissions are offsetting, atmospheric dispersion modeling shall be required to demonstrate a net air quality benefit will occur.

[20.11.60.25 NMAC - Rn, 20.11.60.20 NMAC, 8/30/10]

#### **20.11.60.26 PUBLIC PARTICIPATION AND NOTIFICATION:**

**A.** The department shall, within 30 days after its receipt of an application for a permit or significant permit revision subject to 20.11.60 NMAC, review such application and determine whether it is administratively complete. If the application is deemed:

(1) administratively complete, a letter to that effect shall be sent by certified mail to the applicant;

(2) administratively incomplete, a letter shall be sent by certified mail to the applicant stating what additional information or points of clarification are necessary to deem the application administratively complete; upon receipt of the additional information or clarification, the department shall promptly review such information and determine whether the application is administratively complete;

(3) administratively complete but no permit is required, a letter shall be sent by certified mail to the applicant informing the applicant of the determination.

**B.** The department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available at the department, district and local office nearest to the proposed source a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public by advertisement in a newspaper of general circulation in the area in which the proposed major stationary source or major modification would be constructed, of the application, the preliminary determination, and of the opportunity for comment at a public hearing as well as written public comment. The public comment period shall be for 45 days from the date of such advertisement.

(4) Send a copy of the notice of public comment to the applicant, the administrator, and to officials and agencies having jurisdiction over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies, the chief executives of the city and county where the source would be located, any regional comprehensive land use planning agency, and any state, federal land manager, or indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source and other appropriate considerations. Public hearings shall be held in the geographic area likely to be impacted by the source.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection in the same locations where the department made available preconstruction information relating to the source.

(7) Within 90 days after the application is deemed administratively complete, unless the director grants an extension, not to exceed 90 days for good cause:

(a) make a final determination whether construction should be approved, approved with conditions, or disapproved, or whether no permit is required; and

(b) notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the department made available preconstruction information and public comments relating to the source.

[20.11.60.26 NMAC - Rn, 20.11.60.21 NMAC, 8/30/10]

## **20.11.60.27 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALS):**

### **A. Applicability.**

(1) The department may approve the use of an actuals PAL for any existing major stationary source (except as provided in Paragraph (2) of Subsection A of 20.11.60.27 NMAC) if the PAL meets the requirements of 20.11.60.27 NMAC. The term "PAL" shall mean "actuals PAL" throughout 20.11.60.27 NMAC.

(2) An actuals PAL for VOC or NO<sub>x</sub> shall not be allowed for any major stationary source located in an extreme ozone nonattainment area.

(3) Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of 20.11.60.27 NMAC, and complies with the PAL permit:

(a) is not a major modification for the PAL pollutant;

(b) does not have to be approved through the requirements of 20.11.60 NMAC; and

(c) is not subject to the provisions in Subsection A of 20.11.60.13 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the nonattainment major new source review program).

(4) Except as provided under Subparagraph (c) of Paragraph (3) of Subsection A of 20.11.60.27 NMAC, a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

**B. Definitions.** When a term is not defined in Subsection B of 20.11.60.27 NMAC, it shall have the meaning given in 20.11.60.7 NMAC or in 20.11.1 NMAC.

(1) **Actuals PAL for a major stationary source** means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

(2) **Allowable emissions** means "allowable emissions" as defined in Subsection D of 20.11.60.7 NMAC, except as this definition is modified according to Subparagraph (a) and (b) of Paragraph (2) of Subsection B of 20.11.60.27 NMAC.

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in Subsection EE of 20.11.60.7 NMAC, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(3) **Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection MM of 20.11.60.7 NMAC or in the federal Clean Air Act, whichever is lower.

(4) **Major emissions unit** means:

(a) Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL

pollutant as defined by the federal Clean Air Act for nonattainment areas; for example, in accordance with the definition of major stationary source in Section 182 (c) of the federal Clean Air Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

(5) **Plantwide applicability limitation (PAL)** means an emission limitation expressed in tons per year, for a pollutant at a major stationary source that is enforceable as a practical matter and established source-wide in accordance with 20.11.60.27 NMAC.

(6) **PAL effective date** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit which is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(7) **PAL effective period** means the period beginning with the PAL effective date and ending 10 years later.

(8) **PAL major modification** means, notwithstanding the definitions for major modification and net emissions increase in 20.11.60.7 NMAC, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(9) **PAL permit** means the minor NSR permit, major NSR permit or operating permit issued by the department under the requirements of 20.11.41 NMAC, 20.11.60 NMAC, or 20.11.61 NMAC, or the title V permit issued by the department under the requirements of 20.11.42 that establishes a PAL for a major stationary source.

(10) **PAL pollutant** means the pollutant for which a PAL is established at a major stationary source.

(11) **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection MM of 20.11.60.7 NMAC or in the federal Clean Air Act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Paragraph (4) of Subsection B of 20.11.60.27 NMAC.

**C. Permit application requirements.** As part of a permit application requesting a PAL, the owner or operator of a major stationary source shall submit the following information to the department for approval.

(1) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source

shall indicate which, if any, federal or state applicable requirements, emission limitations or work practices apply to each unit.

(2) Calculations of the baseline actual emissions with supporting documentation. Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of 20.11.60.27 NMAC.

#### **D. General requirements for establishing PALs.**

(1) A PAL at a major stationary source may be established by the department, provided that at a minimum, the following requirements are met.

(a) The PAL shall impose an annual emission limitation in tons per year that is enforceable as a practical matter, for the entire major stationary source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of 20.11.60.27 NMAC.

(c) The PAL permit shall contain all the requirements of Subsection G of 20.11.60.27 NMAC.

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsection L through N of 20.11.60.27 NMAC for each emissions unit under the PAL through the PAL effective period.

(2) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant, which occur during the PAL effective period, creditable as decreases for purposes of offsets under Subsection B of 20.11.60.15 NMAC unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

**E. Public participation requirement for PALs.** PALs for existing major stationary sources shall be established, renewed, or increased through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department shall address all material comments before taking final action on the permit.

**F. Setting the 10-year actuals PAL level.**

(1) Except as provided in Paragraph (2) of Subsection F of 20.11.60.27 NMAC, the actuals PAL level for a major stationary source shall be established as the sum of the baseline actual emissions (as defined in 20.11.60.7 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under Subsection UU of 20.11.60.27 NMAC or under the federal Clean Air Act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of Subsection F of 20.11.60.27 NMAC, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

**G. Contents of the PAL permit.** The PAL permit shall contain, at a minimum, all of the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source owner or operator applies to renew a PAL in accordance with Subsection J of 20.11.60.27 NMAC before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source is subject to the requirements of Subsection I of 20.11.60.27 NMAC.

(6) The calculation procedures that the major stationary source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of 20.11.60.27 NMAC.

(7) A requirement that the major stationary source owner or operator monitor all emissions units in accordance with the provisions under Subsection L of 20.11.60.27 NMAC.

(8) A requirement to retain the records required under Subsection M of 20.11.60.27 NMAC on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of 20.11.60.27 NMAC by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

#### **H. PAL effective period and reopening of the PAL permit.**

(1) **PAL effective period.** The permit shall specify a PAL effective period of 10 years.

(2) **Reopening of the PAL permit.**

(a) During the PAL effective period, the department shall reopen the PAL permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 20.11.60.15 NMAC; or

(iii) revise the PAL to reflect an increase in the PAL as provided under Subsection K of 20.11.60.27 NMAC.

(b) The department may reopen the PAL permit to:

(i) reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(ii) to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source under 20.11.60 NMAC; or

(iii) to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related value that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Subparagraph (a) of Paragraph (2) of Subsection H of 20.11.60.27 NMAC for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of Subsection E of 20.11.60.27 NMAC.

**I. Expiration of a PAL.** Any PAL which is not renewed in accordance with the procedures in Subsection J of 20.11.60.27 NMAC shall expire at the end of the PAL effective period, and the following requirements shall apply.

(1) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of 20.11.60.27 NMAC, the major stationary source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of 20.11.60.27 NMAC, such distribution shall be made as if the PAL had been adjusted.

(b) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (a) of Paragraph (1) of Subsection I of 20.11.60.27 NMAC, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(4) Any physical change or change in the method of operation at the major stationary source will be subject to the nonattainment major new source review requirements if such change meets the definition of major modification in 20.11.60.7 NMAC.

(5) The major stationary source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to 20.11.60.12 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (3) of Subsection A of 20.11.60.27 NMAC.

#### **J. Renewal of a PAL.**

(1) The department shall follow the procedures specified in Subsection E of 20.11.60.27 NMAC in approving any request to renew a PAL for a major stationary source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(2) **Application deadline.** A major stationary source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(3) **Application requirements.** The application to renew a PAL permit shall contain the following information.

(a) The information required in Paragraphs (1) through (3) of Subsection C of 20.11.60.27 NMAC.

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL, (with supporting documentation).

(d) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(4) **PAL adjustment.** In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraph (a) of Paragraph (4) of Subsection J of 20.11.60.27 NMAC. However, in no case may any such adjustment fail to comply with Subparagraph (b) of Paragraph (4) of Subsection J of 20.11.60.27 NMAC.

(a) If the emissions level calculated in accordance with Subsection F of 20.11.60.27 NMAC is equal to or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in Subparagraph (b) of Paragraph (4) of Subsection J of 20.11.60.27 NMAC; or

(b) the department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(c) Notwithstanding Paragraph (4) of Subsection J of 20.11.60.27 NMAC,

(i) if the potential to emit of the major stationary source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source has complied with the provisions of Subsection K of 20.11.60.27 NMAC, *Increasing a PAL during the PAL effective period.*

(5) If the compliance date for a New Mexico or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

## **K. Increasing a PAL during the PAL effective period.**

(1) The department may increase a PAL emission limitation only if the major stationary source complies with the following provisions.

(a) The owner or operator of the major stationary source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary source's emissions to equal or exceed its PAL.

(b) As part of this application, the major stationary source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator shall obtain a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of Paragraph (1) of Subsection K of 20.11.60.27 NMAC, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major NSR program process (for example, LAER), even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(2) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of Subsection K of 20.11.60.27 NMAC), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of 20.11.60.27 NMAC.

## **L. Monitoring requirements for PALs.**

(1) **General Requirements.**

(a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Subparagraphs (a) through (d) of Paragraph (2) of Subsection L of 20.11.60.27 NMAC and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of Paragraph (1) of Subsection L of 20.11.60.27 NMAC, the owner or operator may also employ an alternative monitoring approach that meets Subparagraph (a) of Paragraph (1) of Subsection L of 20.11.60.27 NMAC if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of 20.11.60.27 NMAC renders the PAL invalid.

(2) **Minimum performance requirements for approved monitoring approaches.** The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of Subsection L of 20.11.60.27 NMAC:

- (a) mass balance calculations for activities using coatings or solvents;
- (b) CEMS;
- (c) CPMS or PEMS; and
- (d) emission factors.

(3) **Mass balance calculations.** An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(4) **CEMS.** An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable Performance Specifications found in 40 CFR part 60, appendix B; and

(b) CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.

(5) **CPMS or PEMS.** An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(6) **Emission factors.** An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the department determines that testing is not required.

(7) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational

restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of Subsection L of 20.11.60.27 NMAC, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(a) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(9) **Revalidation.** All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every five years after issuance of the PAL.

#### **M. Recordkeeping requirements.**

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of 20.11.60.27 NMAC and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

(2) The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:

(a) a copy of the PAL permit application and any applications for revisions to the PAL; and

(b) each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

**N. Reporting and notification requirements.** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the requirements of 20.11.42 NMAC. The reports shall meet the following requirements.

(1) **Semi-Annual Report.** The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information.

(a) The identification of owner and operator and the permit number.

(b) Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of 20.11.60.27 NMAC.

(c) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

(d) A list of any emissions units modified or added to the major stationary source during the preceding six-month period.

(e) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

(f) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of 20.11.60.27 NMAC.

(g) A signed statement by the responsible official (as defined by 20.11.42.7 NMAC) certifying the truth, accuracy, and completeness of the information provided in the report.

(2) **Deviation report.** The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) the PAL requirement that experienced the deviation or that was exceeded;

(c) emissions resulting from the deviation or the exceedance; and

(d) a signed statement by the responsible official (as defined by 20.11.42 NMAC) certifying the truth, accuracy, and completeness of the information provided in the report.

(3) **Revalidation results.** The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

**O. Transition requirements.**

(1) The department shall not issue a PAL that does not comply with the requirements of 20.11.60.27 NMAC after the administrator has approved regulations incorporating these requirements into the SIP.

(2) The department may supersede any PAL which was established prior to the date of approval of 20.11.60 NMAC by the administrator with a PAL that complies with the requirements of 20.11.60.27 NMAC.

[20.11.60.27 NMAC - Rn & A, 20.11.60.23 NMAC, 8/30/10]

**PART 61: PREVENTION OF SIGNIFICANT DETERIORATION**

**20.11.61.1 ISSUING AGENCY:**

Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.

[20.11.61.1 NMAC - Rp, 20.11.61.1 NMAC, 1/23/06; A, 8/30/10]

**20.11.61.2 SCOPE:**

Any person constructing any new major stationary source or major modification, as defined in 20.11.61 NMAC, that emits or will emit regulated new source review (NSR) pollutants in an attainment or unclassifiable area shall obtain a permit from the department in accordance with the requirements of 20.11.41 NMAC, *Authority-to-Construct*, and 20.11.61 NMAC prior to the construction or modification.

**A. Exempt:**

(1) sources within Bernalillo county which are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction;

(2) each regulated NSR pollutant emitted by a source or modification located in a nonattainment area for that pollutant;

(3) after a public hearing, consistent with the public notice and participation provisions of 20.11.41 NMAC, *Authority-to-Construct*, the board may exempt major stationary sources or major modifications if:

(a) the major stationary source would be a nonprofit health or nonprofit educational institution, or a major modification that would occur at such an institution; or

(b) the source or modification is a portable stationary source which has previously received a permit pursuant to 20.11.61 NMAC if:

(i) the owner or operator proposes to relocate the source, and emissions from the source at the new location would be temporary; and

(ii) the emissions from the source would not exceed its allowable emission rate; and

(iii) the emissions from the source would not impact any federal class I area nor any area where an applicable increment is known to be violated; and

(iv) reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location; such notice shall be given to the department not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the department;

(4) sources or modifications that would be major only if quantifiable fugitive emissions are considered in calculating the potential to emit, and the source does not belong to:

(a) any category in Table 1 of 20.11.61.26 NMAC; or

(b) any other stationary source category which as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

**B. Variances:** The director may grant a variance to any person constructing a major stationary source or major modification from the federal class I maximum allowable increases consistent with the requirements listed in 40 CFR 52.21(p)(5).

[20.11.61.2 NMAC - Rp, 20.11.61.2 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

### **20.11.61.3 STATUTORY AUTHORITY:**

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

[20.11.61.3 NMAC - Rp, 20.11.61.3 NMAC, 1/23/06]

#### **20.11.61.4 DURATION:**

Permanent.

[20.11.61.4 NMAC - Rp, 20.11.61.4 NMAC, 1/23/06]

#### **20.11.61.5 EFFECTIVE DATE:**

January 23, 2006, unless a later date is cited at the end of a section.

[20.11.61.5 NMAC - Rp, 20.11.61.5 NMAC, 1/23/06; A, 5/13/13]

#### **20.11.61.6 OBJECTIVE:**

To minimize air pollutant emissions from new major stationary sources or major modifications in areas classified as in attainment of the national ambient air quality standards (NAAQS) or determined to be unclassifiable pursuant to Section 107(d) of the act.

[20.11.61.6 NMAC - Rp, 20.11.61.6 NMAC, 1/23/06; A, 1/10/11; A, 5/13/13]

#### **20.11.61.7 DEFINITIONS:**

In addition to the definitions in 20.11.61 NMAC, the definitions in 20.11.1 NMAC, *General Provisions*, shall apply unless there is a conflict between definitions, in which case the definition in 20.11.61 NMAC shall govern.

**A. "Act"** means the federal Clean Air Act, as amended, 42 U. S. C. Sections 7401 et seq.

**B. "Actual emissions"** means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with Paragraphs (2) through (4) of Subsection B of 20.11.61.7 NMAC.

**(1)** This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 20.11.61.20 NMAC. Instead, Subsections I and VV of 20.11.61.7 NMAC shall apply for those purposes.

**(2)** In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(3) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

**C. "Administrator"** means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

**D. "Adverse impact on visibility"** means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with the following:

(1) times of visitor use of the federal class I area; and

(2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 *Definitions*.

**E. "Air quality related values (AQRV)"** means visibility and other scenic, cultural, physical, biological, ecological, or recreational resources which may be affected by a change in air quality resulting from the emissions of a proposed major stationary source or major modification that interferes with the management, protection, preservation, or enjoyment of the AQRV of a federal class I area.

**F. "Allowable emissions"** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) the applicable standards as set forth in 40 CFR Parts 60 and 61;

(2) the applicable state implementation plan emissions limitation, including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

**G. "Associated emission sources"** means secondary emissions and all reasonably foreseeable emissions of regulated pollutants from the growth of general residential, commercial, industrial, governmental emission sources and other mobile and non-mobile emission sources which are associated with or support the proposed new major stationary source or major modification. Other mobile and non-mobile emission sources shall include, but not be limited to, new highways and roads or improvements to existing highways and roads to increase capacity, new parking

facilities or improvements to existing parking facilities to increase capacity, service enhancements to ground and air public transportation to include the building of new public transportation facilities or improvements to existing public transportation facilities to increase capacity; and the building of new public or private educational facilities or improving existing public or private educational facilities to increase enrollment.

**H. "Attainment area"** means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling not to exceed any NAAQS for such pollutant, and is so designated under Section 107(d)(1)(D) or (E) of the act.

**I. "Baseline actual emissions"** means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with Paragraphs (1)-(4) of Subsection I of 20.11.61.7 NMAC.

**(1)** For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

**(a)** The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

**(b)** The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

**(c)** For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

**(d)** The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of Paragraph (1) of Subsection I of 20.11.61.7 NMAC.

**(2)** For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10 year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under 20.11.61 NMAC or under a plan approved by the

administrator, whichever is earlier, except that the 10 year period shall not include any period earlier than November 15, 1990.

**(a)** The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

**(b)** The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

**(c)** The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

**(d)** For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

**(e)** The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (2) of Subsection I of 20.11.61.7 NMAC.

**(3)** For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

**(4)** For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of Subsection I of 20.11.61.7 NMAC, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of Subsection I of 20.11.61.7 NMAC, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of Subsection I of 20.11.61.7 NMAC.

## **J. "Baseline area"**

**(1)** Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the act in which the

major source or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the baseline date is established, as follows: equal to or greater than one microgram per cubic meter ( $1 \mu\text{g}/\text{m}^3$ ) (annual average) for  $\text{SO}_2$ ,  $\text{NO}_2$  or  $\text{PM}_{10}$ ; or equal to or greater than  $0.3 \mu\text{g}/\text{m}^3$  (annual average) for  $\text{PM}_{2.5}$ .

**(2)** Area redesignations under Section 107(d)(1)(A)(ii) or (iii) of the act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

**(a)** establishes a minor source baseline date; or

**(b)** is subject to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166, and would be constructed in the same state as the state proposing the redesignation.

**(3)** Any baseline area established originally for total suspended particulates (TSP) increments shall remain in effect and shall apply for purposes of determining the amount of available  $\text{PM}_{10}$  increments, except that such baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date in accordance with Paragraph (3) of Subsection MM of 20.11.61.7 NMAC.

**K. "Baseline concentration"** means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

**(1)** A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

**(a)** the actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in Paragraph (2) of Subsection K of 20.11.61.7 NMAC;

**(b)** the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

**(2)** The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

**(a)** actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

**(b)** actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

**L. "Begin actual construction"** means, in general, the initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities which mark the initiation of the change.

**M. "Best available control technology (BACT)"** means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification, which the director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

**N. "Building, structure, facility or installation"** means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same first two-digit code) as described in the standard industrial classification (SIC) manual, 1972, as amended by the 1977 supplement (U. S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively) or any superseding SIC manual.

**O. "Class I area"** means any federal land that is classified or reclassified as "class I" as listed in 20.11.61.25 NMAC.

**P. "Commence"** as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

**Q. "Complete"** means, in reference to an application for a permit, that the department has determined the application contains all of the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

**R. "Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

**S. "Continuous emissions monitoring system (CEMS)"** means all of the equipment that may be required to meet the data acquisition and availability requirements of 20.11.61 NMAC, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

**T. "Continuous emissions rate monitoring system (CERMS)"** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

**U. "Continuous parameter monitoring system (CPMS)"** means all of the equipment necessary to meet the data acquisition and availability requirements of 20.11.61 NMAC, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record average operational parameter value(s) on a continuous basis.

**V. "Department"** means the city of Albuquerque, environmental health department or its successor agency.

**W. "Director"** means the director of the city of Albuquerque, environmental health department or the director of its successor agency.

**X. "Electric utility steam generating unit"** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

**Y. "Emissions unit"** means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit as defined in 20.11.61.7 NMAC. For purposes of 20.11.61 NMAC, there are two types of emissions units as follows:

(1) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated;

(2) an existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of Subsection Y of 20.11.61.7 NMAC. A replacement unit is an existing unit.

**Z. "Federal land manager"** means, with respect to any lands in the United States, a federal level cabinet secretary of a federal level department (e.g. interior department) with authority over such lands.

**AA. "Federally enforceable"** means all limitations and conditions which are enforceable by the administrator, including:

(1) those requirements developed pursuant to 40 CFR Parts 60 and 61;

(2) requirements within any applicable state implementation plan (SIP);

(3) any permit requirements established pursuant to 40 CFR 52.21; or

(4) under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that expressly requires adherence to any permit issued under such program.

**BB. "Fugitive emissions"** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**CC. "Greenhouse gases" or "GHGs"** means the air pollutant defined in § 86.1818–12(a) of Chapter I of Title 40 of the CFR, as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

**DD. "High terrain"** means any area having an elevation 900 feet or more above the base of a source's stack.

**EE. "Indian governing body"** means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

**FF. "Innovative control technology"** means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

**GG. "Low terrain"** means any area other than high terrain.

**HH. "Lowest achievable emission rate (LAER)"** means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source; in no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

## **II. "Major modification"**

(1) Means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase of a regulated NSR pollutant; and a significant net emissions increase of that pollutant from the major stationary source.

(2) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or oxides of nitrogen shall be considered significant for ozone.

(3) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which:

(i) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or 40 CFR 51.166;

(g) any change in ownership at a stationary source;

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan for the state in which the project is located; and

(ii) other requirements necessary to attain and maintain the NAAQS during the project and after it is terminated;

(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated NSR pollutant emitted by the unit; this exemption shall apply on a pollutant-by-pollutant basis; or

(j) the reactivation of a very clean coal-fired electric utility steam generating unit.

(4) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 20.11.61.20 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.11.61.20 NMAC shall apply.

**JJ. "Major source baseline date" means:**

(1) in the case of PM<sub>10</sub> and sulfur dioxide, January 6, 1975;

- (2) in the case of nitrogen dioxide, February 8, 1988; and
- (3) in the case of PM<sub>2.5</sub>, October 20, 2010.

**KK. "Major stationary source"**

- (1) means:

(a) any stationary source listed in Table 1 of 20.11.61.26 NMAC which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant;

(b) notwithstanding the stationary source categories specified in Subparagraph (a) of Paragraph (1) of Subsection KK of 20.11.61.7 NMAC, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any regulated NSR pollutant; or

(c) any physical change that would occur at a stationary source not otherwise qualifying under Subsection KK of 20.11.61.7 NMAC, as a major stationary source if the change would constitute a major stationary source by itself.

(2) A major source that is major for volatile organic compounds or oxides of nitrogen shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 of 20.11.61.26 NMAC or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

**LL. "Mandatory federal class I area"** means any area identified in 40 CFR Part 81, Subpart D.

**MM. "Minor source baseline date"** means the earliest date after the trigger date on which a major stationary source or major modification subject to 40 CFR 52.21, or to regulations approved pursuant to 40 CFR 51.166, submits a complete application under the relevant regulations.

- (1) The trigger dates are:

(a) August 7, 1977, for PM<sub>10</sub> and sulfur dioxide; and

(b) February 8, 1988 for nitrogen dioxide; and

(c) October 20, 2011, for PM<sub>2.5</sub>.

**(2)** The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

**(a)** the area in which the proposed major stationary source or major modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the federal act for the pollutant on the date of its complete application under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; and

**(b)** in the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

**(3)** Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that the department may rescind any such minor source baseline date where it can be shown, to the director's satisfaction that, either the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM<sub>10</sub> emissions.

**NN.** "**Natural conditions**" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

**OO.** "**Necessary preconstruction approvals or permits**" mean those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the New Mexico state implementation plan.

**PP.** "**Net emissions increase**"

**(1)** Means, that with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

**(a)** the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection D of 20.11.61.11 NMAC; and

**(b)** any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable; baseline actual emissions for calculating increases and decreases shall be determined as provided in Subsection I of 20.11.61.7 NMAC, except that Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection I of 20.11.61.7 NMAC shall not apply.

**(2)** An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

**(a)** the date five years prior to the commencement of construction on the particular change; and

**(b)** the date that the increase from the particular change occurs.

**(3)** An increase or decrease in actual emissions is creditable only if:

**(a)** it occurs between:

**(i)** the date five years prior to the commencement of construction on the particular change; and

**(ii)** the date that the increase from the particular change occurs; and

**(b)** the department has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.166, which permit is in effect when the increase in actual emissions from the particular change occurs; and

**(c)** the increase or decrease in emissions did not occur at a ***clean unit***, as defined in 40 CFR 51.166 (b)(3)(iii)(c) and Federal Register Vol. 76 No. 61, 3/30/11, p. 17554.

**(d)** As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in Paragraph (3) of Subsection KK of 20.11.61.7 NMAC or it occurs at an emission unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in Paragraph (3) of Subsection KK of 20.11.61.7 NMAC and that are not, by themselves, part of a listed source category.

**(4)** An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or oxides of nitrogen that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

**(5)** An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

**(6)** A decrease in actual emissions is creditable only to the extent that:

**(a)** the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(7) an increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant; any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) Paragraph (2) of Subsection B of 20.11.61.7 NMAC shall not apply for determining creditable increases and decreases.

**QQ. "Nonattainment area"** means an area which has been designated under Section 107 of the act as nonattainment for one or more of the NAAQS by EPA.

**RR. "Portable stationary source"** means a source which can be relocated to another operating site with limited dismantling and reassembly.

**SS. "Potential to emit"** means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollutant control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect the limitation would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

**TT. "Predictive emissions monitoring system (PEMS)"** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

**UU. "Project"** means a physical change in, or change in method of operation of, an existing major stationary source.

**VV. "Projected actual emissions"**

(1) Means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source.

(2) In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

(a) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under an approved SIP; and

(b) shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(c) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection I of 20.11.61.7 NMAC and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(3) in lieu of using the method set out in Subparagraphs (a)-(c) of Paragraph (2) of Subsection VV of 20.11.61.7 NMAC, may elect to use the emissions unit's potential to emit in tons per year.

**WW. "Regulated new source review pollutant" or "regulated NSR pollutant"** means the following:

(1) any pollutant for which a NAAQS has been promulgated; this includes, but is not limited to the following:

(a) PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits; compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of 40 CFR 51.166 unless the applicable implementation plan required condensable particulate matter to be included;

(b) any pollutant identified under Subparagraph (b) of Paragraph (1) of Subsection WW of 20.11.61.7 NMAC as a constituent or precursor to a pollutant for which a NAAQS has been promulgated; precursors identified by the administrator for purposes of NSR are the following:

**(i)** volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

**(ii)** sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas;

**(iii)** nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations;

**(iv)** volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment or unclassifiable area, unless the state demonstrates to the administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations;

**(2)** any pollutant that is subject to any standard promulgated under Section 111 of the act;

**(3)** any class I or II substance subject to a standard promulgated under or established by Title VI of the act;

**(4)** any pollutant that otherwise is "subject to regulation" under the act as defined in Subsection CCC of 20.11.61.7 NMAC;

**(5)** notwithstanding Paragraphs (1) through (4) of Subsection WW of 20.11.61.7 NMAC, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in Section 112 of the act, or added to the list pursuant to Section 112(b)(2) of the act, and which have not been delisted pursuant to Section 112(b)(3) of the act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the act;

**(6)** particulate matter (PM) emissions, PM<sub>2.5</sub> emissions, and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures; on or after January 1, 2011 (or any earlier date established in the upcoming rulemaking codifying test methods), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM, PM<sub>2.5</sub> and PM<sub>10</sub> in PSD permits; compliance with emissions limitations for PM, PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan; applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of 20.11.61 NMAC unless the applicable implementation plan required condensable particulate matter to be included.

**XX. "Replacement unit"** means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**YY. "Secondary emissions"** means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of 40 CFR 51.166, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

**ZZ. "Significant"** means:

(1) in reference to a net emissions increase or the potential of a source to emit any of the pollutants listed in Table 2 of 20.11.61.27 NMAC, a rate of emissions that would equal or exceed any of the corresponding emission rates listed in Table 2 of 20.11.61.27 NMAC;

(2) in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that Paragraph (1) of Subsection ZZ of 20.11.61.7 NMAC, does not list, any emissions rate; and

(3) notwithstanding Paragraph (1) of Subsection ZZ of 20.11.61.7 NMAC, any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1  $\mu\text{g}/\text{m}^3$  (24-hour average).

**AAA. "Significant emissions increase"** means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

**BBB. "Stationary source"** means any building, structure, facility, or installation which emits, or may emit, any regulated NSR pollutant.

**CCC. "Subject to regulation"** means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally-applicable regulation codified by the administrator in Subchapter C of Chapter I of Title 40 of the CFR, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) Greenhouse gases (GHGs) shall not be subject to regulation except as provided in Paragraphs (4) and (5) of Subsection CCC of 20.11.61.7 NMAC and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in 20.11.61.20 NMAC, and complies with the PAL permit containing the GHG PAL.

(2) For purposes of Paragraphs (3) through (5) of Subsection CCC of 20.11.61.7 NMAC, the term "tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(a) multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of Part 98 of Chapter I of Title 40 of the CFR — *Global Warming Potentials*;

(b) sum the resultant value from Subparagraph (a) of Paragraph (2) of Subsection CCC of 20.11.61.7 NMAC for each gas to compute a tpy CO<sub>2</sub>e.

(3) The term "emissions increase" as used in Paragraphs (4) and (5) of Subsection CCC of 20.11.61.7 NMAC, shall mean that both a significant emissions increase (as calculated using the procedures in Subsection D of 20.11.61.11 NMAC) and a significant net emissions increase (as defined in Subsection PP of 20.11.61.7 NMAC and Subsection ZZ of 20.11.61.7 NMAC) occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO<sub>2</sub>e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO<sub>2</sub>e instead of applying the value in Table 2 of 20.11.61.27 NMAC.

(4) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) the stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more; or

(b) the stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of 75,000 tpy CO<sub>2</sub>e or more; and,

(5) beginning July 1, 2011, in addition to the provisions in Paragraph (4) of Subsection CCC of 20.11.61.7 NMAC, the pollutant GHGs shall also be subject to regulation:

(a) at a new stationary source that will emit or have the potential to emit 100,000 tpy CO<sub>2</sub>e; or

(b) at an existing stationary source that emits or has the potential to emit 100,000 tpy CO<sub>2</sub>e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.

**DDD. "Temporary source"** means a stationary source which changes its location or ceases to exist within two years from the date of initial start of operations.

**EEE. "Visibility impairment"** means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

**FFF. "Volatile organic compound (VOC)"** means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions; this includes any such organic compound other than those which the administrator designates as having negligible photochemical reactivity under 40 CFR 51.100(s).

[20.11.61.7 NMAC - Rp, 20.11.61.7 NMAC, 1/23/06; A, 5/15/06; A, 8/30/10; A, 1/10/11; A, 5/13/13; A, 5/29/15]

#### **20.11.61.8 SAVINGS CLAUSE:**

Any amendment to 20.11.61 NMAC, *Prevention of Significant Deterioration* that is filed with the state records center and archives shall not affect actions pending for violation of a city or county ordinance or board regulation. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part or section in effect at the time the violation was committed.

[20.11.61.8 NMAC - Rp, 20.11.61.9 NMAC, 1/23/06]

#### **20.11.61.9 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of 20.11.61 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.61 NMAC.

[20.11.61.9 NMAC - Rp, 20.11.61.10 NMAC, 1/23/06]

#### **20.11.61.10 DOCUMENTS:**

Documents incorporated and cited in 20.11.61 NMAC may be viewed at the Albuquerque environmental health department, One Civic Plaza NW, 3rd Floor, Suite 3023, Albuquerque, NM 87102.

[20.11.61.10 NMAC - Rp, 20.11.61.11 NMAC, 1/23/06; A, 5/13/13]

#### **20.11.61.11 APPLICABILITY:**

**A.** The requirements of 20.11.61 NMAC apply to the construction of any new major stationary source or any project at an existing major stationary source in an area designated as attainment or unclassifiable.

**B.** The requirements of 20.11.61.12 NMAC through 20.11.61.18 NMAC, 20.11.61.21 NMAC and 20.11.61.24 NMAC apply to the construction of any new major stationary source or the major modification of any existing major stationary source except as 20.11.61 NMAC otherwise provides.

**C.** No new major stationary source or major modification to which the requirements of Subsections A, B, C, and D of 20.11.61.12 NMAC, 20.11.61.13 NMAC through 20.11.61.18 NMAC, 20.11.61.21 NMAC and 20.11.61.24 NMAC apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

#### **D. Applicability procedures.**

**(1)** Except as otherwise provided in Subsection E of 20.11.61.11 NMAC, and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

**(2)** The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) through (5) of Subsection D of 20.11.61.11 NMAC. The procedure for calculating

(before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in Subsection PP of 20.11.61.7 NMAC. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

**(3) Actual-to-projected-actual applicability test for projects that only involve existing emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions for each existing emissions unit equals or exceeds the significant amount for that pollutant.

**(4) Actual-to-potential test for projects that only involve construction of a new emissions unit(s).** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

**(5) Hybrid test for projects that involve multiple types of emissions units.** A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of Subsection D of 20.11.61.11 NMAC as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

**E.** For any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under 20.11.61.20 NMAC.

[20.11.61.11 NMAC - N, 1/23/06; A, 8/30/10; A, 1/10/11; A, 5/13/13; A, 5/29/15]

#### **20.11.61.12 OBLIGATIONS OF OWNERS OR OPERATORS OF SOURCES:**

**A.** Any owner or operator who begins actual construction or operates a source or modification without, or not in accordance with, a permit issued under the requirements of 20.11.61 NMAC shall be subject to enforcement action.

**B.** Approval to construct shall not relieve any person from the responsibility to comply fully with the provisions of the Air Quality Control Act, Sections 74-2-1 to 74-2-17, NMSA 1978; any applicable regulations of the board; and any other requirements under local, state, or federal law.

**C.** Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time; the administrator may extend the 18-month period upon a satisfactory showing

that an extension is justified; this provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

**D.** At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then 20.11.61 NMAC shall apply to the source or modification as though construction had not yet commenced on the source or modification.

**E.** Except as otherwise provided in Paragraph (6) of Subsection E of 20.11.61.12 NMAC the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility within the meaning of Paragraph (6) of Subsection E of 20.11.61.12 NMAC that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection VV of 20.11.61.7 NMAC for calculating projected actual emissions.

**(1)** Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

**(a)** a description of the project;

**(b)** identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

**(c)** a description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection VV of 20.11.61.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

**(2)** If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of Subsection E of 20.11.61.12 NMAC to the department. Nothing in Paragraph (2) of Subsection E of 20.11.61.12 NMAC shall be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction; however, necessary preconstruction approvals and/or permits must be obtained before beginning actual construction.

**(3)** The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Subparagraph (b) of Paragraph (1) of Subsection E of 20.11.61.12 NMAC; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit. For purposes of Paragraph (3) of Subsection E of 20.11.61.12 NMAC, fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in Table 1 of 20.11.61.26 NMAC or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

**(4)** If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Subparagraph (c) of Paragraph (1) of Subsection E of 20.11.61.12 NMAC setting out the unit's annual emissions during the calendar year that preceded submission of the report.

**(5)** If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of Subsection E of 20.11.61.12 NMAC, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of Subsection E of 20.11.61.12 NMAC) by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of Subsection E of 20.11.61.12 NMAC. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

- (a)** the name, address and telephone number of the major stationary source;
- (b)** the annual emissions as calculated pursuant to Paragraph (3) of Subsection E of 20.11.61.12 NMAC; and
- (c)** any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

**(6)** A "reasonable possibility" under Subsection E of 20.11.61.12 NMAC occurs when the owner or operator calculates the project to result in either:

- (a)** a projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection AAA of 20.11.61.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; or

**(b)** a projected actual emissions increase that, added to the amount of emissions excluded under Paragraph (3) of Subsection VV of 20.11.61.7 NMAC, sums to at least 50 percent of the amount that is a "significant emissions increase," as defined under Subsection AAA of 20.11.61.7 NMAC (without reference to the amount that is a significant net emissions increase), for the regulated NSR pollutant; for a project for which a reasonable possibility occurs only within the meaning of Subparagraph (b) of Paragraph (6) of Subsection E of 20.11.61.12 NMAC, and not also within the meaning of Subparagraph (a) of Paragraph (6) of Subsection E of 20.11.61.12 NMAC, then provisions of Paragraphs (2) through (5) of Subsection E of 20.11.61.12 NMAC do not apply to the project.

**F.** The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection E of 20.11.61.12 NMAC available for review upon request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

[20.11.61.12 NMAC - Rp, 20.11.61.12 NMAC, 1/23/06; A, 8/30/10; A, 1/10/11; A, 5/13/13]

#### **20.11.61.13 SOURCE INFORMATION:**

The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required by 20.11.61 NMAC.

**A.** Information shall include, but is not limited to:

**(1)** a description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing the design and plant layout; and

**(2)** a detailed schedule of construction of the source or modification; and

**(3)** a detailed description of the planned system of continuous emission reduction for the source or modification, emission estimates, and other information necessary to determine that best available control technology will be applied.

**B.** Upon request by the department, the owner or operator shall also provide information on:

**(1)** the air quality impact of the source or modification, including meteorological and topographic data necessary to estimate such impact; and

**(2)** the air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977 in the area the source or modification would affect.

[20.11.61.13 NMAC - Rp, 20.11.61.13 NMAC, 1/23/06]

#### **20.11.61.14 CONTROL TECHNOLOGY REVIEW AND INNOVATIVE CONTROL TECHNOLOGY:**

**A.** A new major stationary source shall apply best available control technology for each regulated NSR pollutant that it would have the potential to emit in amounts equal to or greater than the significance levels as listed in Table 2 of 20.11.61.27 NMAC. This requirement applies to each proposed emissions unit or operation that will emit such pollutant.

**B.** A major modification shall apply best available control technology for each regulated NSR pollutant at the source when a significant net emissions increase occurs. This requirement applies to each proposed emissions unit or operation where a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

**C.** For phased construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time but no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

**D. Innovative control technology.** The department may approve a system of innovative control technology for the major stationary source or major modification if:

(1) the proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function; and

(2) the owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Subsection A of 20.11.61.14 NMAC by a date specified by the department. Such date shall not be later than four years from the time of startup or seven years from permit issuance; and

(3) the source or modification would meet the requirements equivalent to 20.11.61.14 NMAC and 20.11.61.15 NMAC based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified by the department; and

(4) during the interim period of achieving the permitted emission level, the source or modification would not:

(a) cause or contribute to a violation of an applicable NAAQS; nor

(b) impact any federal class I area; nor

(c) impact any area where an applicable increment is known to be violated;  
and

(5) all other applicable requirements including those for public participation have been met.

E. The department shall withdraw any approval to employ a system of innovative control technology if:

(1) the proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(2) the proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(3) the department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

F. If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with Subsection E of 20.11.61.14 NMAC, the department may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

G. If the owner or operator of a major stationary source or major modification previously issued a permit under 20.11.61 NMAC applies for an extension, and the new proposed date of construction is greater than 18 months from the date the permit would become invalid, the determination of best available control technology shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

[20.11.61.14 NMAC - Rp, 20.11.61.14 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

#### **20.11.61.15 AMBIENT IMPACT REQUIREMENTS:**

A. The requirements of 20.11.61.15 NMAC shall apply to each pollutant emitted by a new major stationary source or major modification in amounts equal to or greater than that in Table 2 of 20.11.61.27 NMAC. For particulate matter, the source will only be required to perform ambient impact analysis for PM<sub>10</sub> when the source has the potential to emit significant amounts of PM<sub>10</sub> as determined from Table 2 of 20.11.61.27 NMAC.

#### **B. Source impact analysis.**

**(1) Required demonstration.** The owner or operator of the proposed source or modification shall demonstrate that the allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, (including secondary emissions), would not cause or contribute to air pollution in violation of:

**(a)** any NAAQS in any air quality control region; or

**(b)** any applicable maximum allowable increase (as shown in Table 4 of 20.11.61.29 NMAC) over the baseline concentrations in any area.

**(2) Reserved**

**C.** The owner or operator of the proposed major stationary source or major modification shall demonstrate that neither a violation of Subparagraph (a) or (b) of Paragraph (1) of Subsection B of 20.11.61.15 NMAC will occur.

[20.11.61.15 NMAC - Rp, 20.11.61.15 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

**20.11.61.16 ADDITIONAL IMPACT ANALYSES:**

**A.** The owner or operator of the proposed major stationary source or major modification shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value. The analysis can use data or information available from the department.

**B.** The owner or operator shall also provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.

**C.** The department may require monitoring of visibility in any federal class I area where the department determines that an adverse impact on visibility may occur due primarily to the operations of the proposed new source or modification. Such monitoring shall be conducted following procedures approved by the department and subject to the following:

**(1)** visibility monitoring methods specified by the department shall be reasonably available and not require any research and development; and

**(2)** the cost of visibility monitoring required by the department shall not exceed 50 percent of the cost of ambient monitoring required by 20.11.61 NMAC; if ambient monitoring is not required, the cost shall be estimated as if it were required for each pollutant to which 20.11.61 NMAC applies;

(3) both preconstruction and post construction visibility monitoring may be required; in each case, the duration of such monitoring shall not exceed one year.

[20.11.61.16 NMAC - Rp, 20.11.61.16 NMAC, 1/23/06; A, 8/30/10]

#### **20.11.61.17 AMBIENT AIR QUALITY MODELING:**

All estimates of ambient concentrations required by 20.11.61 NMAC shall be based on applicable air quality models, data bases, and other requirements as specified in Appendix W to 40 CFR Part 51, its revisions, or any superseding EPA document, and approved by the department. Where an air quality model specified in the Appendix W to 40 CFR Part 51, *Guideline on Air Quality Models*, is inappropriate, the model may be modified or another model substituted. Any substitution or modification of a model must be approved by the department. Notification shall be given by the department of such a substitution or modification and the opportunity for public comment provided for in fulfilling the public notice requirements in Subsection B of 20.11.61.21 NMAC. The department will seek EPA approval of such substitutions or modifications.

[20.11.61.17 NMAC - Rp, 20.11.61.17 NMAC, 1/23/06; A, 8/30/10]

#### **20.11.61.18 AIR QUALITY ANALYSIS AND MONITORING REQUIREMENTS:**

##### **A. Preapplication analysis.**

(1) Any application for a permit under regulations approved pursuant to 40 CFR 51.166 (e.g. 20.11.61 NMAC) shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(a) for a major stationary source, each pollutant that it would have the potential to emit in a significant amount; or

(b) for a major modification, each pollutant for which it would result in a significant net emission increase.

(2) If no NAAQS for a pollutant exists, and there is an acceptable method for monitoring that pollutant, the analysis shall contain such air quality monitoring data as the department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(3) For pollutants (other than nonmethane hydrocarbons) for which a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

**(4)** The continuous air quality monitoring data that is required shall have been gathered over a period of one year and shall represent the one year period preceding receipt of the permit application. The department has the discretion to:

**(a)** determine that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year but not less than four months; or

**(b)** determine that existing air quality monitoring data is representative of air quality in the affected area and accept such data in lieu of additional monitoring by the applicant.

**(5)** Ozone monitoring shall be performed if monitoring data is required for volatile organic compounds or oxides of nitrogen. The owner or operator of a proposed major stationary source or major modification of volatile organic compounds who satisfies all conditions of 40 CFR Part 51 Appendix S, Section IV may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under Subsection A of 20.11.61.18 NMAC.

**B. Post-construction monitoring.** The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification, conduct such ambient monitoring as the department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area, including monitoring to validate attainment of ambient air quality standards and to assure that increments are not exceeded.

**C. Operation of monitoring stations.** The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR 58, Appendix B during the operation of monitoring stations for purposes of satisfying the requirements of Subsections A through C of 20.11.61.18 NMAC.

**D. Exceptions.** The department has the discretion to exempt a proposed major stationary source or major modification from the requirements of Subsections A through C of 20.11.61.18 NMAC with respect to monitoring for a particular pollutant if:

**(1)** the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the levels listed in Table 3 of 20.11.61.28 NMAC;

**(2)** the existing ambient concentrations of the pollutant in the area affected by the source or modification are less than the concentrations listed in Table 3 of 20.11.61.28 NMAC; or

**(3)** the pollutant is **not** listed in Table 3 of 20.11.61.28 NMAC.

[20.11.61.18 NMAC - Rp, 20.11.61.18 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

### **20.11.61.19 TEMPORARY SOURCE EXEMPTIONS:**

The requirements of Subsection B of 20.11.61.15 NMAC, 20.11.61.16 NMAC and 20.11.61.18 NMAC shall not apply to a major source or modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification: would not impact any federal class I area or any areas where an applicable increment is known to be violated; and would be temporary.

[20.11.61.19 NMAC - Rp, 20.11.61.19 NMAC, 1/23/06; A, 8/30/10]

### **20.11.61.20 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs):**

#### **A. Applicability.**

(1) The department may approve the use of an actuals PAL, including for GHGs on either a mass basis or a CO<sub>2</sub>e basis, for any existing major stationary source or any existing GHG-only source if the PAL meets the requirements of 20.11.61.20 NMAC. The term "PAL" shall mean "actuals PAL" throughout 20.11.61.20 NMAC.

(2) Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total source-wide emissions below the PAL level, meets the requirements of 20.11.61.20 NMAC, and complies with the PAL permit:

- (a) is not a major modification for the PAL pollutant;
- (b) does not have to be approved through the plan's major NSR program;
- (c) is not subject to the provisions in Subsection D of 20.11.61.12 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program); and
- (d) does not make GHGs "subject to regulation" as defined by Subsection CCC of 20.11.61.7 NMAC.

(3) Except as provided under Subparagraph (c) of Paragraph (2) of Subsection A of 20.11.61.20 NMAC, a major stationary source or a GHG-only source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

#### **B. Definitions applicable to 20.11.61.20 NMAC.**

**(1) Actuals PAL for a major stationary source** means a PAL based on the *baseline actual emissions* (as defined in Subsection I of 20.11.61.7 NMAC) of all *emissions units* (as defined in Subsection Y of 20.11.61.7 NMAC) at the source, that emit or have the potential to emit the PAL pollutant. **For a GHG-only source, actuals PAL** means a PAL based on the *baseline actual emissions* (as defined in Paragraph (13) of Subsection B of 20.11.61.20 NMAC) of all *emissions units* (as defined in Paragraph (14) of Subsection B of 20.11.61.20 NMAC) at the source, that emit or have the potential to emit GHGs.

**(2) Allowable emissions** means "allowable emissions" as defined in Subsection F of 20.11.61.7 NMAC, except as this definition is modified in accordance with the following.

**(a)** The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

**(b)** An emissions unit's potential to emit shall be determined using the definition in Subsection SS of 20.11.61.7 NMAC, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

**(3) Small emissions unit** means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection ZZ of 20.11.61.7 NMAC or in the act, whichever is lower. **For a GHG PAL issued on a CO<sub>2</sub> e basis, small emissions unit** means an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO<sub>2</sub> e basis defined as "significant" for the purposes of Paragraph (3) of Subsection CCC of 20.11.61.7 NMAC at the time the PAL permit is being issued.

**(4) Major emissions unit means:**

**(a)** Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

**(b)** any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the act for nonattainment areas. For example, in accordance with the definition of major stationary source in Section 182(c) of the act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.

**(c)** For a GHG PAL issued on a CO<sub>2</sub> e basis, any emissions unit that emits or has the potential to emit equal to or greater than the amount of GHGs on a CO<sub>2</sub> e basis that would be sufficient for a new source to trigger permitting requirements under Subsection CCC of 20.11.61.7 NMAC at the time the PAL permit is being issued.

(5) **Plantwide applicability limitation (PAL)** means an emission limitation expressed on a mass basis in tons-per-year, or expressed in tpy CO<sub>2</sub> e for a CO<sub>2</sub> e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established source-wide in accordance with 20.11.61.20 NMAC.

(6) **PAL effective date** generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(7) **PAL effective period** means the period beginning with the PAL effective date and ending 10 years later.

(8) **PAL major modification** means, notwithstanding the definitions for *major modification*, *net emissions increase* and *subject to regulation* at Subsections II, PP and CCC of 20.11.61.7 NMAC respectively, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(9) **PAL permit** means the major NSR permit, the minor NSR permit, or the state operating permit under a program that is approved into the SIP, or the title V permit issued by the department that establishes a PAL for a major stationary source or a GHG-only source.

(10) **PAL pollutant** means the pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is GHGs.

(11) **Significant emissions unit** means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the *significant level* (as defined in Subsection ZZ of 20.11.61.7 NMAC or in the act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a *major emissions unit* as defined in Paragraph (4) of Subsection B of 20.11.61.20 NMAC. For a GHG PAL issued on a CO<sub>2</sub> e basis, *significant emissions unit* means any emissions unit that emits or has the potential to emit GHGs on a CO<sub>2</sub> e basis in amounts equal to or greater than the amount that would qualify the unit as *small emissions unit* as defined in Paragraph (3) of Subsection B of 20.11.61.20 NMAC, but less than the amount that would qualify the unit as a *major emissions unit* as defined in Subparagraph (c) of Paragraph (4) of Subsection B of 20.11.61.20 NMAC.

(12) **GHG-only source** means any existing stationary source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under Subsection KK of 20.11.61.7 NMAC and the amount of GHGs on a CO<sub>2</sub> e basis that would be sufficient for a new source to trigger permitting

requirements for GHGs under Subsection CCC of 20.11.61.7 NMAC at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated NSR pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under 20.11.61.20 NMAC.

**(13) Baseline actual emissions for a GHG PAL** means the average rate, in tpy CO<sub>2</sub> e or tpy GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the administrator for a permit required under 40 CFR 52.21 or by the department for a permit required by a plan, whichever is earlier. For any existing electric utility steam generating unit, *baseline actual emissions for a GHG PAL* means the average rate, in tpy CO<sub>2</sub> e or tpy GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding either the date the owner or operator begins actual construction of the project, except that the administrator shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

**(a)** The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

**(b)** The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

**(c)** The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source must currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.

**(d)** The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by Subparagraphs (b) and (c) of Paragraph (13) of Subsection B of 20.11.61.20 NMAC.

**(14) Emissions unit with respect to GHGs** means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of 40 CFR 52.21, there are two types of emissions units as described in the following:

**(a)** a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated;

(b) an existing emissions unit is any emissions unit that does not meet the requirements in Subparagraph (a) of Paragraph (14) of Subsection B of 20.11.61.20 NMAC.

(15) **Minor source** means any stationary source that does not meet the definition of *major stationary source* in Subsection KK of 20.11.61.7 NMAC for any pollutant at the time the PAL is issued.

**C. Permit application requirements.** As part of a permit application requesting a PAL, the owner or operator of a major stationary source or a GHG-only source shall submit the following information to the department for approval.

(1) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(2) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Subsection M of 20.11.61.20 NMAC.

(4) As part of a permit application requesting a GHG PAL, the owner or operator of a major stationary source or a GHG-only source shall submit a statement by the source owner or operator that clarifies whether the source is an existing *major source* as defined in Subparagraphs (a) and (b) of Paragraph (1) of Subsection KK of 20.11.61.7 NMAC or a *GHG-only source* as defined in Paragraph (12) of Subsection B of 20.11.61.20 NMAC.

#### **D. General requirements for establishing PALs.**

(1) The department may establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the following requirements are met.

(a) The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tpy CO<sub>2</sub> e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For

each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of 20.11.61.20 NMAC.

(c) The PAL permit shall contain all the requirements of Subsection G of 20.11.61.20 NMAC.

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsections L through N of 20.11.61.20 NMAC for each emissions unit under the PAL through the PAL effective period.

(2) At no time during or after the PAL effective period are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

**E. Public participation requirements for PALs.** PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased, through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department must address all material comments before taking final action on the permit.

#### **F. Setting the 10-year actuals PAL level.**

(1) Except as provided in Paragraph (2) of Subsection F of 20.11.61.20 NMAC, the actuals PAL level for a major stationary source or a GHG-only source shall be established as the sum of the *baseline actual emissions* (as defined in Subsection I of 20.11.61.7 NMAC or, for GHGs Paragraph (13) of Subsection B of 20.11.61.20 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under Subsection ZZ of 20.11.61.7 NMAC or under the act, whichever is lower. When establishing the actuals

PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of Subsection F of 20.11.61.20 NMAC, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(3) For CO<sub>2</sub> e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs *baseline actual emissions* (as defined in Paragraph (13) of Subsection B of 20.11.61.20 NMAC) of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as "significant" on a CO<sub>2</sub> e basis for the purposes of Paragraph (3) of Subsection CCC of 20.11.61.7 NMAC at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO<sub>2</sub> e-based PAL, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level (in tpy CO<sub>2</sub> e) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit.

**G. Contents of the PAL permit.** The PAL permit shall contain, at a minimum, the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year or tpy CO<sub>2</sub> e.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source or a GHG-only source owner or operator applies to renew a PAL in accordance with Subsection J of 20.11.61.20 NMAC before the end of the PAL effective period, then the PAL shall not

expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of Subsection I of 20.11.61.20 NMAC.

(6) The calculation procedures that the major stationary source or GHG-only source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection M of 20.11.61.20 NMAC.

(7) A requirement that the major stationary source or GHG-only source owner or operator monitor all emissions units in accordance with the provisions under Subsection L of 20.11.61.20 NMAC.

(8) A requirement to retain the records required under Subsection M of 20.11.61.20 NMAC on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of 20.11.61.20 NMAC by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(11) A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation under Subsection CCC of 20.11.61.7 NMAC as long as the source complies with the PAL.

#### **H. PAL effective period and reopening of the PAL permit.**

(1) **PAL effective period.** The PAL effective period shall be 10 years.

(2) **Reopening of the PAL permit.**

(a) During the PAL effective period, the department shall reopen the PAL permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(iii) revise the PAL to reflect an increase in the PAL as provided under Subsection K of 20.11.61.20 NMAC.

(b) The department may reopen the PAL permit for the following:

(i) to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(ii) to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source or GHG-only source under the plan; and

(iii) to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an air quality related values (AQRV) that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Item (i) of Subparagraph (a) of Paragraph (2) of Subsection H of 20.11.61.20 NMAC for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of Subsection E of 20.11.61.20 NMAC.

**I. Expiration of a PAL.** Any PAL that is not renewed in accordance with the procedures in Subsection J of 20.11.61.20 NMAC shall expire at the end of the PAL effective period, and the requirements in Subsection I of 20.11.61.20 NMAC shall apply.

(1) Each emissions unit, or each group of emissions units, that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the procedures in Paragraph (1) of Subsection I of 20.11.61.20 NMAC.

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of 20.11.61.20 NMAC, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit, (or each group of emissions units, if such a distribution is more appropriate as decided by the department), by distributing the PAL allowable emissions for the major stationary source or GHG-only source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of 20.11.61.20 NMAC, such distribution shall be made as if the PAL had been adjusted.

(b) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (b) of Paragraph (1) of Subsection I of 20.11.61.20 NMAC, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(4) Any physical change or change in the method of operation at the major stationary source or GHG-only source will be subject to major NSR requirements if such change meets the definition of major modification in Subsection II of 20.11.61.7 NMAC.

(5) The major stationary source owner or operator shall continue to comply with any state or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Subsection D of 20.11.61.12 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (2) of Subsection A of 20.11.61.20 NMAC.

#### **J. Renewal of a PAL.**

(1) The department shall follow the procedures specified in Subsection E of 20.11.61.20 NMAC in approving any request to renew a PAL for a major stationary source or a GHG-only source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(2) **Application deadline.** A major stationary source or GHG-only source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source or GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

**(3) Application requirements.** The application to renew a PAL permit shall contain the following information.

**(a)** The information required in Subsection C of 20.11.61.20 NMAC.

**(b)** A proposed PAL level.

**(c)** The sum of the potential to emit of all emissions units under the PAL, with supporting documentation.

**(d)** Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

**(4) PAL adjustment.** In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraphs (a) and (b) of Paragraph (4) Subsection J of 20.11.61.20 NMAC. However, in no case may any such adjustment fail to comply with Subparagraph (c) of Paragraph 4 of Subsection J of 20.11.61.20 NMAC.

**(a)** If the emissions level calculated in accordance with Subsection F of 20.11.61.20 NMAC is equal to or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in Subparagraph (b) of Paragraph (4) of Subsection J of 20.11.61.20 NMAC; or

**(b)** the department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

**(c)** Notwithstanding Subparagraphs (a) and (b) of Paragraph (4) of Subsection J of 20.11.61.20 NMAC:

**(i)** if the potential to emit of the major stationary source or GHG-only source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

**(ii)** the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of Subsection K of 20.11.61.20 NMAC, *Increasing a PAL during the PAL effective period*.

**(5)** If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not

already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or Title V permit renewal, whichever occurs first.

**K. Increasing a PAL during the PAL effective period.**

**(1)** The department may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the following provisions.

**(a)** The owner or operator of the major stationary source or GHG-only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary or GHG-only source's emissions to equal or exceed its PAL.

**(b)** As part of this application, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

**(c)** The owner or operator obtains a major NSR permit for all emissions unit(s) identified in Subparagraph (a) of Paragraph (1) of Subsection B of 20.11.61.20 NMAC, regardless of the magnitude of the emissions increase resulting from them, that is, no significant levels apply. These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process, for example, BACT, even though they have also become subject to the PAL or continue to be subject to the PAL.

**(d)** The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

**(2)** The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of Subsection K of 20.11.61.20 NMAC), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of 20.11.61.20 NMAC.

#### **L. Monitoring requirements for PALs.**

##### **(1) General requirements.**

(a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time *or*  $CO_2$  *e per unit of time*. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Paragraph (2) of Subsection L of 20.11.61.20 NMAC and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of Paragraph (1) of Subsection L of 20.11.61.20 NMAC, you may also employ an alternative monitoring approach that meets Subparagraph (a) of Paragraph (1) of Subsection L of 20.11.61.20 NMAC if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of 20.11.61.20 NMAC renders the PAL invalid.

**(2) Minimum performance requirements for approved monitoring approaches.** The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of Subsection L of 20.11.61.20 NMAC:

(a) mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) emission factors.

**(3) Mass balance calculations.** An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(4) **CEMS.** An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable performance specifications found in 40 CFR part 60, Appendix B; and

(b) CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(5) **CPMS or PEMS.** An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(6) **Emission factors.** An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct

validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the department determines that testing is not required.

**(7)** A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

**(8)** Notwithstanding the requirements in Paragraphs (3) through (7) of Subsection L of 20.11.61.20 NMAC, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

**(a)** establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

**(b)** determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

**(9) Revalidation.** All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every five years after issuance of the PAL.

#### **M. Recordkeeping requirements.**

**(1)** The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of 20.11.61.20 NMAC and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.

**(2)** The PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus five years:

**(a)** a copy of the PAL permit application and any applications for revisions to the PAL; and

**(b)** each annual certification of compliance pursuant to 20.11.42 NMAC, *Operating Permits*, and the data relied on in certifying the compliance.

**N. Reporting and notification requirements.** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in

accordance with 20.11.42 NMAC, *Operating Permits*. The reports shall meet the following requirements.

**(1) Semi-annual report.** The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information.

**(a)** The identification of owner and operator and the permit number.

**(b)** Total annual emissions (expressed on a mass-basis in tons/year, or expressed in tpy CO<sub>2</sub> e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of 20.11.61.20 NMAC.

**(c)** All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions.

**(d)** A list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding six-month period.

**(e)** The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.

**(f)** A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of 20.11.61.20 NMAC.

**(g)** A signed statement by the responsible official as defined by 20.11.42.7 NMAC certifying the truth, accuracy, and completeness of the information provided in the report.

**(2) Deviation report.** The major stationary source or GHG-only source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to 40 CFR 70.6(a)(3)(iii)(B) shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing 40 CFR 70.6(a)(3)(iii)(B). The reports shall contain the following information:

**(a)** the identification of owner and operator and the permit number;

(b) the PAL requirement that experienced the deviation or that was exceeded;

(c) emissions resulting from the deviation or the exceedance; and

(d) a signed statement by the responsible official as defined by 20.11.42.7 NMAC certifying the truth, accuracy, and completeness of the information provided in the report.

**(3) Revalidation results.** The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

#### **O. Transition requirements.**

(1) The department may not issue a PAL that does not comply with the requirements of Subsections A through O of 20.11.61.20 NMAC after March 3, 2003.

(2) The department may supersede any PAL which was established prior to March 3, 2003 with a PAL that complies with the requirements of Subsections A through O of 20.11.61.20 NMAC.

[20.11.61.20 NMAC - N, 1/23/06; A, 8/30/10; A, 1/10/11; A, 5/13/13]

#### **20.11.61.21 PUBLIC PARTICIPATION AND NOTIFICATION:**

**A.** The department shall, within 30 days after receipt of an application, review such application and determine whether it is administratively complete or there is any deficiency in the application or information submitted. To be deemed administratively complete, the application must meet the requirements of 20.11.61.13 NMAC in addition to the requirements of 20.11.41 NMAC. If the application is deemed:

(1) administratively complete, a letter to that effect shall be sent by certified mail to the applicant;

(2) administratively incomplete, a letter shall be sent by certified mail to the applicant stating what additional information or points of clarification are necessary to deem the application administratively complete; upon receipt of the additional information or clarification, the department shall promptly review such information and determine whether the application is administratively complete;

(3) administratively complete but no permit is required, a letter shall be sent by certified mail to the applicant informing the applicant of the determination.

**B. For purposes of determining minor source baseline date pursuant to 40 CFR 51:**

(1) an application is complete when it contains all the information necessary for processing the application; designating an application complete for purposes of 40 CFR 51 does not preclude the department from requesting or accepting any additional information; and

(2) in the event that additional information is submitted to remedy any deficiency in the application or information submitted, the date of receipt of the application shall be the date on which the department received all required information.

**C. Within one year after receipt of a complete application, the department shall:**

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available at the department district and local office nearest to the proposed source a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed:

(a) of the application;

(b) the preliminary determination;

(c) the degree of increment consumption that is expected from the source or modification; and

(d) of the opportunity for comment at a public hearing as well as written public comment; the public comment period shall be for 30 days from the date of such advertisement.

(4) Send a copy of the notice of public comment to:

(a) the applicant;

(b) the administrator; and

(c) officials and agencies having jurisdiction over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to it, the control technology required, and other appropriate considerations.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection in the same locations where the department made available preconstruction information relating to the proposed source or modification.

(7) Within 180 days after an application is deemed administratively complete, unless the director grants an extension not to exceed 90 days for good cause:

(a) make a final determination of whether construction should be approved, approved with conditions, or disapproved; and

(b) notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the department made available preconstruction information and public comments relating to the source.

[20.11.61.21 NMAC - N, 1/23/06; A, 8/30/10]

#### **20.11.61.22 STACK HEIGHT CREDIT:**

The department shall review all applications in accordance with the provisions of 20.11.43 NMAC, *Stack Heights Requirements*.

[20.11.61.22 NMAC - Rp, 20.11.61.19 NMAC, 1/23/06]

#### **20.11.61.23 EXCLUSIONS FROM INCREMENT CONSUMPTION:**

A. Following a public hearing, the director may exclude the following concentrations in determining compliance with a maximum allowable increase:

(1) concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), over the emissions from such sources before the effective date of such an order;

(2) concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act, over the emissions from such sources before the effective date of such plan;

**(3)** concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

**(4)** the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and

**(5)** concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the administrator as meeting the criteria specified in Subsection D of 20.11.61.23 NMAC.

**B.** If the plan provides that the concentrations to which Paragraph (1) or (2) of Subsection A of 20.11.61.23 NMAC refers, shall be excluded, it shall also provide that no exclusion of such concentrations shall apply more than five years after the effective date of the order to which Paragraph (1) of Subsection A of 20.11.61.23 NMAC refers, or the plan to which Paragraph (2) of Subsection A of 20.11.61.23 NMAC refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

### **C. [RESERVED]**

**D.** For purposes of excluding concentrations pursuant to Paragraph (5) of Subsection A of 20.11.61.23 NMAC, the administrator may approve a plan revision that:

**(1)** specifies the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur such time is not to exceed 2 years in duration unless a longer time is approved by the administrator;

**(2)** specifies that the time period for excluding certain contributions in accordance with Paragraph (1) of Subsection D of 20.11.61.23 NMAC, is not renewable;

**(3)** allows no emissions increase from a stationary source which would:

**(a)** impact a class I area or an area where an applicable increment is known to be violated; or

**(b)** cause or contribute to the violation of a NAAQS;

**(4)** requires limitations to be in effect the end of the time period specified in accordance with Paragraph (1) of Subsection D of 20.11.61.23 NMAC, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

[20.11.61.23 NMAC - Rp, 20.11.61.21 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

#### **20.11.61.24 SOURCES IMPACTING FEDERAL CLASS I AREAS - ADDITIONAL REQUIREMENTS:**

**A. Notice to EPA.** The department shall transmit to the administrator and the federal land manager a copy of each permit application relating to a major stationary source or major modification proposing to locate within 100 kilometers of any federal class I area. The complete permit application shall be transmitted within 30 days of receipt and 60 days prior to any public hearing on the application. The department shall include all relevant information in the permit application. Relevant information shall include an analysis of the proposed source's anticipated impacts on visibility in the federal class I area. The department shall consult with all affected federal land managers as to the completeness of the permit application and shall consider any analysis performed by the federal land manager concerning the impact of the proposed major stationary source or major modification on AQRV. This consideration shall include visibility, if such analysis is received within 30 days after the federal land manager receives a copy of the complete application. Additionally, the department shall notify any affected federal land manager within 30 days from the date the department receives a request for a pre-application meeting from a proposed source subject to 20.11.61 NMAC. Notice shall be provided to the administrator and federal land manager of every action related to the consideration of such permit. The department shall also provide the federal land manager and the administrator with a copy of the preliminary determination required under 20.11.61.21 NMAC and shall make available to them any materials used in making that determination. In any case where the department disagrees with the federal land manager's analysis of source impact on AQRV, the department shall, either explain its decision or give notice to the federal land manager as to where the explanation can be obtained. In the case where the department disagrees with the federal land manager's analysis, the department will also explain its decision or give notice to the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed, as to where the decision can be obtained.

**B.** The department shall transmit to air quality control agencies of neighboring states and Indian governing bodies a copy of each permit application having the potential to affect federal class I areas or increment consumption in areas under their jurisdiction. The department shall also provide the affected air quality control agencies and Indian governing bodies with a copy of the preliminary determination required under 20.11.61.21 NMAC and shall make available to them any materials used in making that determination. The department shall include a provision for a 60 day comment period for the federal land managers before any public hearing on a permit application is held.

**C. Denial - impact on AQRV:** The federal land manager of any such lands may demonstrate to the department that the emissions from a proposed source or modification would have an adverse impact on the AQRV (including visibility), of those lands, notwithstanding that the change in air quality resulting from emissions from such

proposed source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a federal class I area. If the department concurs with such demonstration, then the source shall not be issued a permit.

**D. Class I waivers:** The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such proposed source or modification would have no adverse impact on the AQRV of any such lands (including visibility), notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a federal class I area. If the federal land manager concurs with such demonstration and so certifies to the department, the department may: *provided*, that the applicable requirements are otherwise met, issue the permit with such emission limitations as may be necessary to assure that emissions of sulfur dioxide, PM<sub>2.5</sub>, PM<sub>10</sub> and oxides of nitrogen would not exceed the maximum allowable increases over minor source baseline concentrations for such pollutants, as shown in Table 5 of 20.11.61.30 NMAC.

**E.** For the case where the federal land manager does not perform an impact analysis with respect to visibility impairment in a federal class I area, the department may perform such an analysis. The department shall not issue the source a permit if the department determines that an adverse impact on visibility would occur. The adverse impact must be due, primarily, to the operation of the proposed source or modification.

**F. Sulfur dioxide waiver by governor with FLM concurrence:** The owner or operator of a proposed major stationary source or major modification, which cannot be approved under Subsection D of 20.11.61.24 NMAC, may demonstrate to the governor that the source or modification cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of 24 hours or less applicable to any class I area and, in the case of federal mandatory class I areas, that a waiver from this requirement would not adversely affect the AQRV of the area (including visibility). The governor, after consideration of the federal land manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a waiver from such maximum allowable increase. If the waiver is granted, the department shall issue a permit to the owner or operator of the source or modification. Any owner or operator of a source or modification who obtains a permit under 20.11.61 NMAC shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases of ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of 20.11.61.31 NMAC for periods of 24 hours or less for more than 18 days, not necessarily consecutive, in any annual period.

**G. Sulfur dioxide waiver by governor with the president's concurrence.** In any case where the governor recommends a waiver in which the federal land manager does not concur, the recommendations of the governor and the federal land manager shall be transmitted to the president through the office of the governor. The president may approve the governor's recommendation if he finds that the waiver is in the national

interest. If the waiver is approved, the department shall issue the permit. Any source or modification that obtains a permit under 20.11.61 NMAC shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases in ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of 20.11.61.31 NMAC for periods of 24 hours or less for more than 18 days, not necessarily consecutive, in any annual period.

[20.11.61.24 NMAC - Rp, 20.11.61.22 NMAC, 1/23/06; A, 8/30/10; A, 5/13/13]

## **20.11.61.25 RESTRICTIONS ON AREA CLASSIFICATIONS:**

### **A. Mandatory federal class I areas:**

**(1) All of the following areas which were in existence on August 7, 1977, shall be class I areas and may not be redesignated:**

- (a)** international parks (all of them);
- (b)** national wilderness areas which exceed 5,000 acres in size;
- (c)** national memorial parks which exceed 5,000 acres in size; and
- (d)** national parks which exceed 6,000 acres in size.

**(2) Specifically for New Mexico, these areas are:**

- (a)** Bandelier wilderness, administered by national park service (NPS);
- (b)** Bosque del Apache wilderness, administered by national fish and wildlife service (NFWS);
- (c)** Carlsbad caverns national park, administered by NPS;
- (d)** Gila wilderness, administered by national forest service (NFS);
- (e)** Pecos wilderness, administered by NFS;
- (f)** Salt Creek wilderness, administered by NFWS;
- (g)** San Pedro Parks wilderness, administered by NFS;
- (h)** Wheeler Peak wilderness, administered by NFS; and
- (i)** White Mountain wilderness, administered by NFS.

### **B. Areas which may be redesignated only as class I or class II:**

**(1) The following areas may be redesignated only as class I or II:**

**(a)** an area which, as of August 7, 1977, exceeded 10,000 acres in size and was a national monument, national primitive area, national preserve, national recreational area, national wild and scenic river, national wildlife refuge; and

**(b)** a national park or national wilderness area established after August 7, 1977 which exceeds 10,000 acres in size.

**(2) Specifically for New Mexico, these areas include (but are not necessarily limited to):**

- (a)** Apache Kid wilderness, administered by national forest service (NFS);
- (b)** Bandelier national monument, administered by national park service (NPS);
- (c)** Bitter Lake national wildlife refuge, administered by national fish and wildlife service (NFWS);
- (d)** Blue Range wilderness, administered by NFS;
- (e)** Bosque del Apache national wildlife refuge, administered by NFWS;
- (f)** Capitan mountains wilderness, administered by NFS;
- (g)** Cebolla wilderness, administered by bureau of land management (BLM);
- (h)** Chama River Canyon wilderness, administered by NFS;
- (i)** Cruces Basin wilderness, administered by NFS;
- (j)** De-na-zin wilderness, administered by BLM;
- (k)** El Malpais national monument, administered by NPS;
- (l)** Latir Peak wilderness, administered by NFS;
- (m)** Manzano mountain wilderness, administered by NFS;
- (n)** San Andres national wildlife refuge, administered by NFWS;
- (o)** Sandia Mountain wilderness, administered by NFS;
- (p)** Sevilleta national wildlife refuge, administered by NFWS;

**(q)** West Malpais wilderness, administered by BLM;

**(r)** White Sands national monument, administered by NPS; and

**(s)** Withington Wilderness, administered by NFS.

[20.11.61.25 NMAC - Rp, 20.11.61.20 NMAC, 1/23/06; A, 8/30/10]

**20.11.61.26 TABLE 1 - PSD SOURCE CATEGORIES:**

**A.** Carbon black plants (furnace process).

**B.** Charcoal production plants.

**C.** Chemical process plants (the term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS Codes 325193 or 312140).

**D.** Coal cleaning plants (with thermal dryers).

**E.** Coke oven batteries.

**F.** Fossil fuel boilers (or combinations thereof) totaling more than 250 million BTU/hr heat input.

**G.** Fossil fuel-fired steam electric plants of more than 250 million BTU/hr heat input.

**H.** Fuel conversion plants.

**I.** Glass fiber processing plants.

**J.** Hydrofluoric acid plants.

**K.** Iron and steel mills.

**L.** Kraft pulp mills.

**M.** Lime plants.

**N.** Municipal incinerators capable of charging more than 250 tons of refuse per day.

**O.** Nitric acid plants.

**P.** Petroleum refineries.

**Q.** Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

**R.** Phosphate rock processing plants.

**S.** Portland cement plants.

**T.** Primary aluminum ore reduction plants.

**U.** Primary copper smelters.

**V.** Primary lead smelters.

**W.** Primary zinc smelters.

**X.** Secondary metal production plants.

**Y.** Sintering plants.

**Z.** Sulfur recovery plants.

**AA.** Sulfuric acid plants.

**BB.** Taconite ore processing plants.

[20.11.61.26 NMAC - Rp, 20.11.61.23 NMAC, 1/23/06; A, 8/30/10]

**20.11.61.27 TABLE 2 - SIGNIFICANT EMISSION RATES:**

<b>POLLUTANT</b>	<b>EMISSION RATE (TONS/YR)</b>
Carbon monoxide	100
Fluorides	3
Lead	0.6
Municipal waste combustor:	
Acid gases (measured as sulfur dioxide and hydrogen chloride)	40 (36 megagrams/year)
Metals (measured as particulate matter)	15 (14 megagrams/year)
Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	0.0000035 (0.0000032 megagrams/yr)
Municipal solid waste landfill emissions (measured as NMOC)	50 (45 megagrams/year)
Nitrogen oxides	40
Ozone	40 VOC or NOx
Particulate Matter:	
Particulate matter emissions	25

	PM <sub>10</sub> emissions	15
	PM <sub>2.5</sub> emissions	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless demonstrated not to be a PM <sub>2.5</sub> precursor under Subsection WW of 20.11.61.7 NMAC
Sulfur compounds		
	Hydrogen sulfide (H <sub>2</sub> S)	10
	Reduced sulfur compounds (incl. H <sub>2</sub> S)	10
	Sulfur dioxide	40
	Sulfuric acid mist	7
	Total reduced sulfur (incl. H <sub>2</sub> S)	10
Any other regulated NSR pollutant that is not listed in this table		Any emission rate
Each regulated pollutant		Emission rate or net emissions increase associated with a major stationary source or major modification that causes an air quality impact of one microgram per cubic meter or greater (24-hr average) in any Class I Federal area located within 10 km of the source.

[20.11.61.27 NMAC - Rp, 20.11.61.24 NMAC, 1/23/06; A, 8/30/10; A, 1/10/11; A, 5/13/13]

**20.11.61.28 TABLE 3 - SIGNIFICANT MONITORING CONCENTRATIONS:**

POLLUTANT	AIR QUALITY CONCENTRATION	AVERAGING TIME
	micrograms per cubic meter (µg/m <sup>3</sup> )	
Carbon monoxide	575	8 hours
Fluorides	0.25	24 hours
Lead	0.1	3 months
Nitrogen dioxide	14	Annual
Ozone	<b>b</b>	

Particulate matter (PM <sub>10</sub> )	10	24 hours
Sulfur compounds		
Hydrogen sulfide (H <sub>2</sub> S)	0.20	1 hour
Reduced sulfur compounds (incl. H <sub>2</sub> S)	10	1 hour
Sulfur dioxide	13	24 hours
Sulfuric acid mist	a	
Total reduced sulfur (incl. H <sub>2</sub> S)	10	1 hour
<p><b>a</b> - No acceptable monitoring techniques available at this time. Therefore, monitoring is not required until acceptable techniques are available.</p> <p><b>b</b> - No <i>de minimis</i> air quality level is provided for ozone. However, any net emissions increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.</p>		

[20.11.61.28 NMAC - Rp, 20.11.61.25 NMAC, 1/23/06; A, 5/15/06; A, 8/30/10]

**20.11.61.29 TABLE 4 - ALLOWABLE PSD INCREMENTS:**

Pollutant	Maximum allowable increase micrograms per cubic meter (µg/m <sup>3</sup> )		
	Class I	Class II	Class III
<b>Nitrogen Dioxide</b>			
annual arithmetic mean	2.5	25	50
<b>Particulate Matter</b>			
PM <sub>2.5</sub> , annual arithmetic mean	1	4	8
PM <sub>2.5</sub> , 24-hour maximum	2	9	18
PM <sub>10</sub> , annual arithmetic mean	4	17	34
PM <sub>10</sub> , 24-hour maximum	8 <sup>a</sup>	30 <sup>a</sup>	60 <sup>a</sup>
<b>Sulfur Dioxide</b>			
annual arithmetic mean	2	20	40
24-hour maximum	5 <sup>a</sup>	91 <sup>a</sup>	182 <sup>a</sup>
3-hour maximum	25 <sup>a</sup>	512 <sup>a</sup>	700 <sup>a</sup>
<p><b>a</b> - Not to be exceeded more than once a year.</p>			

[20.11.61.29 NMAC - Rp, 20.11.61.26 NMAC, 1/23/06; A, 5/15/06; A, 8/30/10; A, 5/13/13]

**20.11.61.30 TABLE 5 - MAXIMUM ALLOWABLE INCREASES FOR CLASS I VARIANCES:**

<b>Pollutant</b>	<b>Maximum allowable increase</b> Micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ )
<b>Nitrogen Dioxide</b>	
annual arithmetic mean	25
<b>Particulate Matter</b>	
PM <sub>2.5</sub> , annual arithmetic mean	4
PM <sub>2.5</sub> , 24-hour maximum	9
PM <sub>10</sub> , annual arithmetic mean	17
PM <sub>10</sub> , 24-hour maximum	30
<b>Sulfur Dioxide</b>	
annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	325

[20.11.61.30 NMAC - N, 1/23/06; A, 8/30/10; A, 5/13/13]

**20.11.61.31 TABLE 6 - MAXIMUM ALLOWABLE INCREASE FOR SULFUR DIOXIDE WAIVER BY GOVERNOR:**

<b>Period of Exposure</b>	<b>Terrain Areas</b>	
	<b>Low</b>	<b>High</b>
24-hr. maximum	36 $\mu\text{g}/\text{m}^3$	62 $\mu\text{g}/\text{m}^3$
3-hr. maximum	130 $\mu\text{g}/\text{m}^3$	221 $\mu\text{g}/\text{m}^3$

[20.11.61.31 NMAC - N, 1/23/06; A, 8/30/10]

**PART 62: ACID RAIN**

**20.11.62.1 ISSUING AGENCY:**

Albuquerque/Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[1/1/96; 20.11.62.1 NMAC – Rn, 20 NMAC 11.62.I.1, 10/1/02]

**20.11.62.2 SCOPE:**

**A.** This part is applicable to sources affected by the Federal Acid Rain Program. These requirements herein are to be implemented through the Acid Rain Portion of the operating permit.

**B. Exempt:** This Part does not apply to sources within Bernalillo County, which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control lacks jurisdiction.

[1/1/96; 20.11.62.2 NMAC – Rn, 20 NMAC 11.62.I.2, 10/1/02]

**20.11.62.3 STATUTORY AUTHORITY:**

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

[1/1/96; 20.11.62.3 NMAC – Rn, 20 NMAC 11.62.I.3, 10/1/02]

**20.11.62.4 DURATION:**

Permanent.

[1/1/96; 20.11.62.4 NMAC – Rn, 20 NMAC 11.62.I.4, 10/1/02]

**20.11.62.5 EFFECTIVE DATE:**

January 1, 1996, unless a later date is cited at the end of a section.

[1/1/96; 20.11.62.5 NMAC – Rn, 20 NMAC 11.62.I.5 & A, 10/1/02]

**20.11.62.6 OBJECTIVE:**

The objective of this Part is to establish permitting required by 40 CFR Part 72, and to fulfill state requirements that accommodate the implementation of the Federal Acid Rain Program, which is designed to control acid deposition at the national level.

[1/1/96; 20.11.62.6 NMAC – Rn, 20 NMAC 11.62.I.6, 10/1/02]

**20.11.62.7 DEFINITIONS:**

The terms used in this Part shall have the meanings set forth in Title IV of the Clean Air Act, 42 U.S.C 7401, et seq. as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. 7651, et seq. (November 15 1990). In addition to the definitions in 20.11.62.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this Part shall govern.

**A. "Acid Rain Compliance Option"** means one of the methods of compliance used by an affected unit under the Acid Rain Program as described in a compliance

plan submitted and approved in accordance 20.11.62.15 NMAC or regulations implementing 40 CFR Part 76.

**B. "Acid Rain Emissions Limitation" means:**

(1) For the purposes of sulfur dioxide emissions:

(a) the tonnage equivalent of the basic Phase II allowance allocations authorized to be allocated to an affected unit for use in a calendar year,

(b) as adjusted:

(i) by allowances allocated by the EPA pursuant to Section 403, Section 405 (a)(2), (a)(3), (b)(2), (c)(4), (d)(3), and (h)(2), and Section 406 of the Act,

(ii) by allowances allocated by the EPA pursuant to 40 CFR Part 72 Subpart D, and thereafter

(iii) by allowance transfers to or from the compliance sub-account for that unit that were recorded or properly submitted for recordation by the allowance transfer deadline as provided in 40 CFR 73.35, after deductions and other adjustments are made pursuant to 40 CFR 73.34(c).

(2) For purposes of nitrogen oxides emissions, the applicable limitation established by regulations promulgated by the EPA pursuant to 40 CFR Part 76, as modified by an Acid Rain permit application submitted to the Department, and an Acid Rain permit issued by the Department, in accordance with regulations implementing 40 CFR Part 76.

**C. "Acid Rain Emissions Reduction Requirement" means a requirement under the Acid Rain Program to reduce the emissions of sulfur dioxide or nitrogen oxides from a unit to a specified level or by a specified percentage.**

**D. "Acid Rain Permit or Permit" means the legally binding written document, or portion of such document, issued by the Department (following an opportunity for appeal pursuant to 40 CFR Part 78 or local ordinance ROA 1994 Section 9-5-1-7), including any permit revisions, specifying the Acid Rain Program requirements applicable to an affected source, to each affected unit at an affected source, and to the owners and operators and the designated representative of the affected source or the affected unit.**

**E. "Acid Rain Program" means the national sulfur dioxide and nitrogen oxides air pollution control and emissions reduction program established in accordance with Title IV of the Act, this Part, 40 CFR Parts 72, 73, 74, 75, 76, 77, and 78.**

**F. "Act"** means the Clean Air Act, 42 U.S.C. 7401, et seq. as amended by Public Law No. 101-549 (November 15, 1990).

**G. "Actual SO<sub>2</sub> Emissions rate"** means the annual average sulfur dioxide emissions rate for the unit (expressed in lb/mmBtu), for the specified calendar year; provided that, if the unit is listed in the NADB, the "1985 actual SO<sub>2</sub> emissions rate " for the unit shall be the rate specified by the Administrator in the NADB under the data field "SO<sub>2</sub> RTE."

**H. "Affected Source"** means a source that includes one or more affected units.

**I. "Affected Unit"** means a unit that is subject to any Acid Rain emissions reduction requirement or Acid Rain emissions limitation.

**J. "Affiliate"** shall have the meaning set forth in Section 2(a)(11) of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79b(a)(11), as of November 15, 1990.

**K. "Allocate or Allocation"** means the initial crediting of an allowance by the EPA to an ATS unit account or general account.

**L. "Allowance"** means an authorization by the EPA under the Acid Rain Program to emit up to one ton of sulfur dioxide during or after a specified calendar year.

**M. "Allowance Deduction or Deduct When Referring to Allowances"** means the permanent withdrawal of allowances by the EPA from an ATS compliance sub-account to account for the number of the tons of SO<sub>2</sub> emissions from an affected unit for the calendar year, for tonnage emissions estimates calculated for periods of missing data as provided in 40 CFR Part 75, or for any other allowance surrender obligations of the Acid Rain Program.

**N. "Allowances Held or Hold Allowances"** means the allowances recorded by the EPA, or submitted to the EPA for recordation in accordance with 40 CFR 73.50, in an ATS account.

**O. "Allowances Tracking System or ATS"** means the Acid Rain Program system by which the EPA allocates, records, deducts, and tracks allowances.

**P. "Allowance Tracking System Account"** means an account in the ATS established by the EPA for purposes of allocating, holding, transferring, and using allowances.

**Q. "Allowance Transfer Deadline"** means midnight of January 30 or, if January 30 is not a business day, midnight of the first business day thereafter and is the deadline by which allowances may be submitted for recordation in an affected unit's compliance sub-account for the purposes of meeting the unit's Acid Rain emissions limitation requirements for sulfur dioxide for the previous calendar year.

**R. "Authorized Account Representative"** means a responsible natural person who is authorized, in accordance with 40 CFR Part 73, to transfer and otherwise dispose of allowances held in an ATS general account; or, in the case of a unit account, the designated representative of the owners and operators of the affected unit.

**S. "Basic Phase II Allowance Allocations"** means:

(1) for calendar years 2000 through 2009 inclusive, allocations of allowances made by the EPA pursuant to Section 403 and Section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i); and (j) of the Act,

(2) For each calendar year beginning in 2010, allocations of allowances made by the EPA pursuant to Section 403 and Section 405 (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i); and (j) of the Act.

**T. "Boiler"** means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or any other medium.

**U. "Certificate of Representation"** means the completed and signed submission required by 40 CFR 72.20, for certifying the appointment of a designated representative for an affected source or a group of identified affected sources authorized to represent the owners and operators of such source(s) and of the affected units at such source(s) with regard to matters under the Acid Rain Program.

**V. "Certifying Official"** means:

(1) for a corporation, a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation,

(2) for partnership or sole proprietorship, a general partner or the proprietor, respectively, and

(3) for a local government entity or State, federal, or other public agency, either a principal executive officer or ranking elected official.

**W. "Coal"** means all solid fuels classified as anthracite, bituminous, sub-bituminous, or lignite by the American Society for Testing and Materials Designation ASTM D388-92 "Standard Classification of Coals by Rank."

**X. "Coal Derived Fuel"** means any fuel, whether in a solid, liquid, or gaseous state, produced by the mechanical, thermal, or chemical processing of coal (e.g., pulverized coal, coal refuse, liquefied or gasified coal, washed coal, chemically cleaned coal, coal-oil mixtures, and coke).

**Y. "Coal-Fired"** means the combustion of fuel consisting of coal or any coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), alone or in combination with any other fuel, where a unit is "coal-fired" if it uses coal or coal-derived fuel as its primary fuel (expressed in mmBtu); provided that, if the unit is listed in the NADB, the primary fuel is the fuel listed in the NADB under the data field "PRIMEFUEL".

**Z. "Cogeneration Unit"** means a unit that has equipment used to produce electric energy and forms of useful thermal energy (such as heat or steam) for industrial, commercial, heating or cooling purposes, through the sequential use of energy.

**AA. "Commence Commercial Operation"** means to have begun to generate electricity for sale, including the sale of test generation.

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

**CC. "Commence Operation"** means to have begun any mechanical, chemical, or electronic process, including start-up of an emissions control technology or emissions monitor or of a unit's combustion chamber.

**DD. "Common Stack"** means the exhaust of emissions from two or more units through a single flue.

**EE. "Compliance Certification"** means a submission to the EPA or the Department that is required by this Part, by 40 CFR Part 72, 73, 74, 75, 76, 77, or 78 to report an affected source or an affected unit's compliance or non-compliance with a provision of the Acid Rain Program and that is signed and verified by the designated representative in accordance with 20.11.62.19 NMAC, 40 CFR Part 72 Subpart B, and the Acid Rain Program regulations generally.

**FF. "Compliance Plan, For Purposes of the Acid Rain Program"** means the document submitted for an affected source in accordance with Subsections A and B of 20.11.62.14NMAC specifying the method(s) (including one or more Acid Rain compliance options under R-402 or 40 CFR Part 76) by which each affected unit at the source will meet the applicable Acid Rain emissions limitation and Acid Rain emissions reduction requirements.

**GG. "Compliance Sub-account"** means the sub-account in an affected unit's Allowance Tracking System account, established pursuant to 40 CFR 73.31 (a) or (b), in which are held, from the date that allowances for the current calendar year are recorded under 40 CFR 73.34(a) until December 31, allowances available for use by the unit in the current calendar year and, after December 31 until the date that deductions are made under 40 CFR 73.35(b), allowances available for use by the unit in the preceding

calendar year, for the purpose of meeting the unit's Acid Rain emissions limitation for sulfur dioxide.

**HH. "Compliance Use Date"** means the first calendar year for which an allowance may be used for purposes of meeting a unit's Acid Rain emissions limitation for sulfur dioxide.

**II. "Construction"** means fabrication, erection, or installation of a unit or any portion of a unit.

**JJ. "Designated Representative"** means a responsible natural person authorized by the owners and operators of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR Part 72, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the Acid Rain Program. Whenever the term "responsible official" is used in 40 CFR Part 70 or in any other regulations implementing Title V of the Act, it shall be deemed to refer to the "designated representative" with regard to all matters under the Acid Rain Program.

**KK. "Diesel Fuel"** means a low sulfur fuel oil of grades 1-D or 2-D, as defined by the American Society for Testing and Materials ASTM D975-91, "Standard Specification for Diesel Fuel Oils."

**LL. "Direct Public Utility Ownership"** means direct ownership of equipment and facilities by one or more corporations, the principal business of which is sale of electricity to the public at retail. Percentage ownership of such equipment and facilities shall be measured on the basis of book value.

**MM. "Draft Acid Rain Permit or Draft Permit"** means the version of the Acid Rain permit, or the Acid Rain portion of an operating permit, that the Department offers for public comment.

**NN. "Emissions"** means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the EPA by the designated representative and as determined by the EPA, in accordance with the emissions monitoring requirements of 40 CFR Part 75.

**OO. "Excess Emissions"** means:

(1) any tonnage of sulfur dioxide emitted by an affected unit during a calendar year that exceeds the Acid Rain emissions limitation for sulfur dioxide for the unit, and

(2) any tonnage of nitrogen oxide emitted by an affected unit during a calendar year that exceeds the annual tonnage equivalent of the Acid Rain emissions limitation for nitrogen oxides applicable to the affected unit taking into account the unit's heat input for the year.

**PP. "Existing Unit"** means a unit (including a unit subject to Section 111 of the Act) that commenced commercial operation before November 15, 1990 and that on or after November 15, 1990 served a generator with a nameplate capacity of greater than 25 MWe. "Existing unit" does not include simple combustion turbines or any unit that on or after November 15, 1990 served only generators with a nameplate capacity of 25 MWe or less. Any "existing unit" that is modified, reconstructed, or repowered after November 15, 1990 shall continue to be an "existing unit".

**QQ. "Facility"** means any institutional, commercial, or industrial structure, installation, plant, source, or building.

**RR. "Fossil Fuel"** means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

**SS. "Fossil Fuel-Fired"** means the combustion of fossil fuel or any derivative of fossil fuel, alone or in combination with any other fuel, independent of the percentage of fossil fuel consumed in any calendar year.

**TT. "Fuel Oil"** means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) as defined by the American Society for Testing and Materials in ASTM D396-90a, "Standard Specification for Fuel Oils," and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid or gaseous state.

**UU. "Gas-Fired"** means the combustion of natural gas, or a coal-derived gaseous fuel with a sulfur content no greater than natural gas, for at least 90 percent of the average annual heat input during the previous three calendar years and for at least 85 percent of the annual heat input in each of those calendar years; and any fuel other than coal or any other coal-derived fuel for the remaining heat input, if any.

**VV. "General Account"** means an ATS account that is not a unit account.

**WW. "Generator"** means a device that produces electricity and was or would have been required to be reported as a generating unit pursuant to the United States Department of Energy Form 860 (1990 edition).

**XX. "Generator Output Capacity"** means the full-load continuous rating of a generator under specific conditions as designed by the manufacturer.

**YY. "Heat Input"** means the product (expressed in mmBtu/time) of the gross calorific value of the fuel (expressed in Btu/lb) and the fuel feed rate into the combustion device (expressed in mass of fuel/time) and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

**ZZ. "Independent Power Production Facility (IPP)"** means a source that:

(1) is non-recourse project financed, as defined by the Secretary of Energy at 10 CFR Part 715,

(2) is used for the generation of electricity, eighty percent or more of which is sold at wholesale, and

(3) is a new unit required to hold allowances under Title IV of the Act,

(4) provided that direct public utility ownership of the equipment comprising the facility does not exceed 50 percent.

**AAA. "Life-of-the-Unit, Firm Power Contractual Arrangement"** means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified generating unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) for the life of the unit,

(2) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination, or

(3) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

**BBB. "Nameplate Capacity"** means the maximum electrical generating output (expressed in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings, as listed in the NADB under the data field "NAMECAP" if the generator is listed in the NADB or as measured in accordance with the United States Department of Energy standards if the generator is not listed in the NADB.

**CCC. "National Allowance Data Base or NADB"** means the database established by the Administrator under Section 402(4)(C) of the Act.

**DDD. "Natural Gas"** means a naturally occurring fluid mixture of hydrocarbons containing little or no sulfur (e.g., methane, ethane, or propane), produced in geological formations beneath the Earth's surface, and maintaining a gaseous state at standard atmospheric temperature and pressure conditions under ordinary conditions.

**EEE. "New Unit"** means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

**FFF. "Offset Plan"** means a plan pursuant to 40 CFR Part 77 for offsetting excess emissions of sulfur dioxide that have occurred at an affected unit in any calendar year.

**GGG. "Oil-Fired"** means the combustion of: fuel oil for more than 10 percent of the average annual heat input during the previous three calendar years or for more than 15 percent of the annual heat input in any one of those calendar years; and any solid, liquid, or gaseous fuel, other than coal or any other coal-derived fuel (except a coal-derived gaseous fuel with a sulfur content no greater than natural gas), for the remaining heat input, if any.

**HHH. "Operating Permit"** means a permit issued under 40 CFR Part 70 and any other regulations implementing Title V of the Act.

**III. "Owner"** means any of the following persons:

(1) any holder of any portion of the legal or equitable title in an affected unit,  
or

(2) any holder of a leasehold interest in an affected unit, or

(3) any purchaser of power from an affected unit under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit, or

(4) with respect to any ATS general account, any person identified in the submission required by 40 CFR 73.31(c) that is subject to the binding agreement for the authorized account representative to represent that person's ownership interest with respect to allowances.

**JJJ. "Owner or Operator"** means any person who is an owner or who operates, controls, or supervises an affected unit or affected source and shall include, but not be limited to, any holding company, utility system, or plant manager of an affected unit or affected source.

**KKK. "Permit Revision"** means a permit modification, fast track modification, administrative permit amendment, or automatic permit amendment, as provided in 20.11.62.18 NMAC.

**LLL. "Phase II"** means the Acid Rain Program period beginning January 1, 2000, and continuing into the future thereafter.

**MMM. "Potential Electrical Output Capacity"** means the MWe capacity rating for the units which shall be equal to 33 percent of the maximum design heat input

capacity of the steam generating unit, as calculated according to 40 CFR Part 72 appendix D.

**NNN. "Power Distribution System"** means the portion of an electricity grid owned or operated by a utility that is dedicated to delivering electric energy to customers.

**OOO. "Power Purchase Commitment"** means a commitment or obligation of a utility to purchase electric power from a facility pursuant to:

- (1) a power sales agreement,
- (2) a State regulatory authority order requiring a utility to:
  - (a) enter into a power sales agreement with the facility,
  - (b) purchase from the facility, or
  - (c) enter into arbitration concerning the facility for the purpose of establishing terms and conditions of the utility's purchase of power.
- (3) a letter of intent or similar instrument committing to purchase power (actual electrical output or generator output capacity) from the source at a previously offered or lower price and a power sales agreement applicable to the source is executed within the time frame established by the terms of the letter of intent but no later than November 15, 1992 or, where the letter of intent does not specify a time frame, a power sales agreement applicable to the source is executed on or before November 15, 1992, or
- (4) a utility competitive bid solicitation that has resulted in the selection of the qualifying facility of independent power production facility as the winning bidder.

**PPP. "Power Sales Agreement"** is a legally binding agreement between a QF, IPP, or firm associated with such facility and a regulated electric utility that establishes the terms and conditions for the sale of power from the facility to the utility.

**QQQ. "Primary Fuel or Primary Fuel Supply"** means the main fuel type (expressed in mmBtu) consumed by an affected unit for the applicable calendar year.

**RRR. "Proposed Acid Rain Permit or Proposed Permit"** means the version of an Acid Rain permit that the Department submits to the EPA after the public comment period, but prior to completion of the EPA permit review period under 40 CFR 70.8(c).

**SSS. "Qualifying Facility (QF)"** means a "qualifying small power production facility" within the meaning of Section 3(17)(C) of the Federal Power Act or a "qualifying cogeneration facility" within the meaning of Section 3(18)(B) of the Federal Power Act.

**TTT. "Qualifying Power Purchase Commitment"** means a power purchase commitment in effect as of November 15, 1990 without regard to changes to that commitment so long as:

(1) the identity of the electric output purchaser, the identity of the steam purchaser and the location of the facility, remain unchanged as of the date the facility commences commercial operation, and

(2) the terms and conditions of the power purchase commitment are not changed in such a way as to allow the costs of compliance with the Acid Rain Program to be shifted to the purchaser.

**UUU. "Qualifying Repowering Technology"** means:

(1) replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magneto-hydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the EPA, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990, or

(2) any oil or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

**VVV. "Receive or Receipt Of"** means the date the EPA or the Department comes into possession of information or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the information or correspondence, by the EPA or the Department in the regular course of business.

**WWW. "Recordation, Record, or Recorded"** means, with regard to allowances, the transfer of allowances by the EPA from one ATS account or sub-account to another.

**XXX. "Schedule of Compliance"** means an enforceable sequence of actions, measures, or operations designed to achieve or maintain compliance, or correct non-compliance, with an applicable requirement of the Acid Rain Program, including any applicable Acid Rain permit requirement.

**YYY. "Secretary of Energy"** means the Secretary of the United States Department of Energy or the Secretary's duly authorized representative.

**ZZZ. "Simple Combustion Turbine"** means a unit that is a rotary engine driven by a gas under pressure that is created by the combustion of any fuel. This term

includes combined cycle units without auxiliary firing. This term excludes combined cycle units with auxiliary firing, unless the unit did not use the auxiliary firing from 1985 through 1987 and does not use auxiliary firing at any time after November 15, 1990.

**AAAA.** **"Solid Waste Incinerator"** means a source as defined in Section 129(g)(1) of the Act.

**BBBB.** **"Source"** means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the Act. For purposes of Section 502(c) of the Act, a "source", including a "source" with multiple units, shall be considered a single "facility."

**CCCC.** **"Stack"** means a structure that includes one or more flues and the housing for the flues.

**DDDD.** **"State"** means New Mexico and includes any non-federal authorities, including local agencies, interstate associations, and State-wide agencies with approved State operating permit programs. The term "State" shall have its conventional meaning where such meaning is clear from the context.

**EEEE.** **"State Operating Permit Program"** means an operating permit program that the EPA has approved as meeting the requirements of Titles IV and V of the Act and 40 CFR Parts 70 and 72.

**FFFF.** **"Submit or Serve"** means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

- (1) in person,
- (2) by United States Postal Service certified mail with the official postmark or, if service is by the EPA or the Department, by any other mail service by the United States Postal Service, or
- (3) by other means with an equivalent time and date mark used in the regular course of business to indicate the date of dispatch or transmission and a record of prompt delivery. Compliance with any "submission", "service", or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

**GGGG.** **"Ton or Tonnage"** means any "short ton" (i.e., 2,000 pounds). For the purpose of determining compliance with the Acid Rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with 40 CFR Part 75, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not to equal any ton.

**HHHH. "Total Planned Net Output Capacity"** means the planned generator output capacity, excluding that portion of the electrical power which is designed to be used at the power production facility, as specified under one or more qualifying power purchase commitments or contemporaneous documents as of November 15, 1990. "Total installed net output capacity" shall be the generator output capacity, excluding that portion of the electrical power actually used at the power production facility, as installed.

**IIII. "Unit"** means a fossil fuel-fired combustion device.

**JJJJ. "Unit Account"** means an ATS account, established by the EPA for an affected unit pursuant to 40 CFR 73.31 (a) or (b).

**KKKK. "Utility"** means any person that sells electricity.

**LLLL. "Utility Competitive Bid Solicitation"** is a public request from a regulated utility for offers to the utility for meeting future generating needs. A qualifying facility, independent power production facility may be regarded as having been "selected" in such solicitation if the utility has named the facility as a project with which the utility intends to negotiate a power sales agreement.

**MMMM. "Utility Regulatory Authority"** means an authority, board, commission, or other entity (limited to the local-, State-, or federal-level, whenever so specified) responsible for overseeing the business operations of utilities located within its jurisdiction, including, but not limited to, utility rates and charges to customers.

**NNNN. "Utility Unit"** means a unit owned or operated by a utility:

- (1) that serves a generator that produces electricity for sale, or
- (2) that during 1985, served a generator that produced electricity for sale,
- (3) notwithstanding paragraphs (1) and (2) of this definition, a unit that was in operation during 1985, but did not serve a generator that produced electricity for sale during 1985, and did not commence commercial operation on or after November 15, 1990 is not a utility unit for purposes of the Acid Rain Program.
- (4) notwithstanding paragraphs (1) and (2) of this definition, a unit that co-generates steam and electricity is not a utility unit for purposes of the Acid Rain Program, unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990 and supplies, more than one-third of its potential electrical output capacity and more than 25 MWe output to any power distribution system for sale.

**OOOO. "Measurements, Abbreviations, and Acronyms"**

- (1) **ASTM** - American Society for Testing and Materials
- (2) **Btu** - British thermal unit.
- (3) **CFR** - Code of Federal Regulations
- (4) **DOE** - Department of Energy.
- (5) **mmBtu** - million Btu.
- (6) **Mwe** - megawatt electrical.
- (7) **SO<sub>2</sub>** - sulfur dioxide.

[1/1/96; 20.11.62.7 NMAC – Rn, 20 NMAC 11.62.I.7, 10/1/02]

#### **20.11.62.8 VARIANCES:**

**[RESERVED]**

[20.11.62.8 NMAC - N, 10/1/02]

#### **20.11.62.9 SAVINGS CLAUSE:**

Any amendment to 20.11.62 NMAC which is filed with the State Records Center shall not affect actions pending for violation of a City or County ordinance, or 20.11.62. NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

[1/1/96; 20.11.62.9 NMAC – Rn, 20 NMAC 11.62.I.9, 10/1/02]

#### **20.11.62.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of this Part or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.

[1/1/96; 20.11.62.10 NMAC – Rn, 20 NMAC 11.62.I.10, 10/1/02]

#### **20.11.62.11 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[1/1/96; 20.11.62.11 NMAC – Rn, 20 NMAC 11.62.I.11 & A, 10/1/02]

## **20.11.62.12 ACID RAIN PROGRAM GENERAL PROVISIONS:**

### **A. Applicability:**

(1) Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the Acid Rain Program.

(a) A unit listed in Table 1 of 40 CFR 73.10(a).

(b) An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10 and any other existing utility unit, except a unit under Paragraph (2), of Subsection A of 20.11.62.12 NMAC.

(c) A utility unit, except a unit under Paragraph (2), of Subsection A of 20.11.62.12 NMAC, that:

(i) is a new unit,

(ii) did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990 but serves such a generator after November 15, 1990,

(iii) was a simple combustion turbine on November 15, 1990 but adds or uses auxiliary firing after November 15, 1990,

(iv) was an exempt cogeneration facility under Subparagraph (d), of Paragraph (2), of Subsection A of 20.11.62.12 NMAC but during any three calendar year period after November 15, 1990 sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical out-put capacity and more than 219,000 MWe-hrs electric output, on a gross basis;

(v) was an exempt qualifying facility under Subparagraph (e), of Paragraph (2), of Subsection A of 20.11.62.12 NMAC but, at any time after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of qualifying facility,

(vi) was an exempt independent power production facility under Subparagraph (f), of Paragraph (2), of Subsection A of 20.11.62.12 NMAC but, at any time after the later of November 15, 1990 or the date the facility commences commercial operation, fails to meet the definition of independent power production facility, or

(vii) was an exempt solid waste incinerator under Subparagraph (g), of Paragraph (2), of Subsection A of 20.11.62.12 NMAC but during any three calendar year period after November 15, 1990 consumes 20 percent or more (on a Btu basis) fossil fuel.

(2) The following types of units are not affected units subject to the requirements of the Acid Rain Program:

(a) A simple combustion turbine that commenced operation before November 15, 1990.

(b) Any unit that commenced commercial operation before November 15, 1990 and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.

(c) Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.

(d) A cogeneration facility which:

(i) for a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program, or

(ii) for units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three calendar year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the Acid Rain Program.

(e) A qualifying facility that:

(i) has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(ii) consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned

net output capacity. If the emissions rates of the units are not the same, the EPA may exercise discretion to designate which units are exempt.

(f) An independent power production facility that:

(i) has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity, and

(ii) consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of its total planned net output capacity. If the emissions rates of the units are not the same, the EPA may exercise discretion to designate which units are exempt.

(g) A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of non-fossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For a solid waste incinerator, which began operation after January 1, 1985, the average annual fuel consumption of non-fossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three calendar year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the Acid Rain Program.

(h) A non-utility unit.

(3) A certifying official of any unit may petition the EPA for a determination of applicability under 40 CFR 72.6(c). The EPA's determination of applicability shall be binding upon the Department, unless the petition is found to have contained significant errors or omissions.

#### **B. New Units Exemption:**

**(1) Applicability:** This section applies to any new utility unit that serves one or more generators with total nameplate capacity of 25 MWe or less and burns only fuels with a sulfur content of 0.05 percent or less by weight, as determined in accordance with Subparagraph (a), of Paragraph (4), of Subsection B of 20.11.62.12 NMAC.

**(2) Petition for Written Exemption:** The designated representative, authorized in accordance with 40 CFR Part 72 Subpart B, of a source that includes a unit under Paragraph (1), of Subsection B of 20.11.62.12 NMAC may petition the Department for a written exemption, or to renew a written exemption, for the unit from certain requirements of the Acid Rain Program. The petition shall be submitted on a form approved by the Department, which includes the following elements:

(a) identification of the unit,

(b) the nameplate capacity of each generator served by the unit,

(c) a list of all fuels currently burned by the unit and their percentage sulfur content by weight, determined in accordance with Paragraph (1), of Subsection B of 20.11.62.12 NMAC.

(d) A list of all fuels that are expected to be burned by the unit and their sulfur content by weight.

(e) The special provisions in Paragraph (4), of Subsection B of 20.11.62.12 NMAC.

**(3) Department's Action:**

(a) The Department will issue, for any unit meeting the requirements Paragraphs (1) and (2), of Subsection B of 20.11.62.12 NMAC, a written exemption from the requirements of the Acid Rain Program except for the requirements specified in this Section, 40 CFR 72.2 through 72.7, and 40 CFR 72.10 through 72.13; provided that no unit shall be exempted unless the designated representative of the unit surrenders, and the EPA deducts from the unit's ATS account, allowances pursuant to 40 CFR 72.7(c)(1)(i) and (d)(1).

(b) The exemption shall take effect on January 1 of the year immediately following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with Subparagraph (c), of Paragraph (3), of Subsection B of 20.11.62.12 NMAC; provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of the Acid Rain Program concerning all years for which the unit was not exempted, even if such requirements arise, or must be complied with, after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the Acid Rain Program whether the violation occurs before or after the exemption takes effect.

(c) In considering and issuing or denying a written exemption under Subparagraph (a), of Paragraph (3), of Subsection B of 20.11.62.12 NMAC, the Department will apply the permitting procedures in 20.11.62.17 NMAC by:

(i) treating the petition as an Acid Rain permit application under such provisions,

(ii) issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions, and

(iii) issuing or denying a proposed written exemption that is treated as the issuance or denial of a proposed permit under such provisions; provided that no provision under 20.11.62.17 NMAC concerning the content, effective date, or term of an Acid Rain permit shall apply to the written exemption or proposed written exemption under this Section.

(d) A written exemption issued under this section shall have a term of 5 years from its effective date, except as provided in Subparagraph (c), of Paragraph (4), Subsection B of 20.11.62.12 NMAC.

**(4) Special Provisions:**

(a) The owners and operators of each unit exempted under this Section shall determine the sulfur content by weight of its fuel as follows:

(i) for petroleum or petroleum products that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ASTM methods ASTM D4057-88 and ASTM D129-91, ASTM D2622-92, or ASTM D4294-90.

(ii) for natural gas that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, the sulfur content shall be assumed to be 0.05 per cent or less by weight.

(iii) for gaseous fuel (other than natural gas) that the unit burns starting on the first day on which the exemption takes effect until the exemption terminates, a sample of each delivery of such fuel shall be tested using ASTM methods ASTM D1072-90 and ASTM D1265-92; provided that if the gaseous fuel is delivered by pipeline to the unit, a sample of the fuel shall be tested, at least once every quarter in which the unit operates during any year for which the exemption is in effect, using ASTM method ASTM D1072-90.

(b) The owners and operators of each unit exempted under this Section shall retain at the source that includes the unit, the records of the results of the tests performed under Items (i), and (iii), of Subparagraph (a), of Paragraph (4), of Subsection B of 20.11.62.12 NMAC, and a copy of the purchase agreements for the fuel under Subparagraph (a), of Paragraph (4), of Subsection B of 20.11.62.12 NMAC, stating the sulfur content of such fuel. Such records and documents shall be retained for 5 years from the date they are created.

(c) On the earlier of the date the written exemption expires, the date a unit exempted under this Section burns any fuel with a sulfur content in excess of 0.05 percent by weight (as determined in accordance with Subparagraph (a), of Paragraph (4), of Subsection B of 20.11.62.12 NMAC), or 24 months prior to the date the unit first serves one or more generators with total nameplate capacity in excess of 25 MWe, the

unit shall no longer be exempted under this Section and shall be subject to all requirements of the Acid Rain Program, except that:

(i) notwithstanding Paragraphs (2) and (3), of Subsection A of 20.11.62.14 NMAC, the designated representative of the source that includes the unit shall submit a complete Acid Rain permit application on the later of January 1, 1998 or the date the unit is no longer exempted under this Section,

(ii) for purposes of applying monitoring requirements under 40 CFR Part 75, the unit shall be treated as a new unit that commenced commercial operation on the date the unit no longer meets the requirements Paragraph (1), of Subsection B of 20.11.62.12 NMAC.

### **C. Retired Units Exemption:**

**(1) Applicability:** This Subsection applies to any affected unit that is retired prior to the issuance (including renewal) of an Acid Rain permit for the unit as a final agency action.

#### **(2) Petition For Written Exemption:**

(a) The designated representative, authorized in accordance with 40 CFR Part 72 Subpart B, of a source that includes a unit under Paragraph (1), of Subsection C of 20.11.62.12 NMAC may petition the Department for a written exemption, or to renew a written exemption, for the unit from certain requirements of the Acid Rain Program.

(b) A petition under this section shall be submitted on or before:

(i) the deadline for submitting an Acid Rain permit application for Phase II, or

(ii) if the unit has a Phase II Acid Rain permit, the deadline for reapplying for such permit.

(c) The petition under this Section shall be submitted on a form approved by the Department which includes the following elements:

(i) identification of the unit,

(ii) the applicable deadline under Subparagraph (b), of Paragraph (2), Subsection C of 20.11.62.12 NMAC,

(iii) the actual or expected date of retirement of the unit,

(iv) the following statement: "I certify that this unit [ 'is' or `will be', as applicable] permanently retired on the date specified in this petition and will not emit any sulfur dioxide or nitrogen oxides after such date;"

(v) A description of any actions that have been or will be taken and provide the basis for the certification in Item (iv), of Subparagraph (c), of Paragraph (2), Subsection C of 20.11.62.12 NMAC, and

(vi) the special provisions in Paragraph (4), of Subsection C of 20.11.62.12 NMAC.

**(3) Department's Action:**

(a) The Department will issue, for any unit meeting the requirements of (1) and (2), of Subsection C of 20.11.62.12 NMAC, a written exemption from the requirements of this Part and 40 CFR Part 72 except for the requirements specified in this Section and 40 CFR 72.1 through 72.6, 40 CFR 72.8, and 40 CFR 72.10 through 72.13.

(b) The exemption shall take effect on January 1 of the year following the date on which the written exemption is issued as a final agency action subject to judicial review, in accordance with Subparagraph (c), of Paragraph (3), Subsection C of 20.11.62.12 NMAC; provided that the owners and operators, and, to the extent applicable, the designated representative, shall comply with the requirements of this Part and 40 CFR Part 72 concerning all years for which the unit was not exempted, even if such requirements arise or must be complied with after the exemption takes effect. The exemption shall not be a defense against any violation of such requirements of the Acid Rain Program whether the violation occurs before or after the exemption takes effect.

(c) In considering and issuing or denying a written exemption under Subparagraph (c), of Paragraph (3), of Subsection C of 20.11.62.12 NMAC, the Department will apply the procedures in 20.11.62.17 by:

(i) treating the petition as an Acid Rain permit application under such provisions,

(ii) issuing or denying a draft written exemption that is treated as the issuance or denial of a draft permit under such provisions, and

(iii) issuing or denying a proposed written exemption that is treated as a proposed permit under such provisions, provided that no provision under 20.11.62.17 NMAC concerning, the content, effective date, or term of an Acid Rain permit shall apply to the written exemption or proposed written exemption under this Section.

(d) A written exemption issued under this Subsection shall have a term of 5 years, except as provided in Subparagraph (c), of Paragraph (4), of Subsection C of 20.11.62.12 NMAC.

**(4) Special Provisions:**

(a) A unit exempted under this section shall not emit any sulfur dioxide and nitrogen dioxide starting on the date it is exempted.

(b) The owners and operators of a unit exempted under this section shall comply with monitoring requirements in accordance with 40 CFR Part 75 and will be allocated allowances in accordance with 40 CFR Part 73.

(c) A unit exempted under this Section shall not resume operation unless the designated representative of the source that includes the unit submits an Acid Rain permit application for the unit not less than 24 months prior to the later of January 1, 2000 or the date the unit is to resume operation. On the earlier of the date the written exemption expires or the date an Acid Rain permit application is submitted or is required to be submitted under this paragraph, the unit shall no longer be exempted under this Section and shall be subject to all requirements of this Part and 40 CFR Part 72.

**D. Standard Requirements:**

**(1) Permit Requirements:**

(a) The designated representative of each affected source and each affected unit at the source shall:

(i) submit a complete Acid Rain permit application under this part in accordance with the deadlines specified in Subsection A of 20.11.62.13 NMAC,

(ii) submit in a timely manner any supplemental information that the Department determines is necessary in order to review an Acid Rain permit application and issue or deny an Acid Rain permit.

(b) The owners and operators of each affected source and each affected unit at the source shall:

(i) operate the unit in compliance with a complete Acid Rain permit application or a superseding Acid Rain permit issued by the Department,

(ii) have an Acid Rain Permit.

**(2) Monitoring Requirements:**

(a) The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in 40 CFR Part 75 and 76.

(b) The emissions measurements recorded and reported in accordance with 40 CFR Part 75 and 76 shall be used to determine compliance by the unit with the Acid Rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the Acid Rain Program.

(c) The requirements of 40 CFR Part 75 and 76 shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.

### **(3) Sulfur Dioxide Requirements :**

(a) The owners and operators of each source and each affected unit at the source shall:

(i) hold allowances, as of the allowance transfer deadline, in the unit's compliance sub-account (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit, and

(ii) comply with the applicable Acid Rain emissions limitation for sulfur dioxide.

(b) Each ton of sulfur dioxide emitted in excess of the Acid Rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.

(c) An affected unit shall be subject to the requirements Subparagraph (a), of Paragraph (3), of Subsection D of 20.11.62.12 NMAC as follows:

(i) starting January 1, 2000, an affected unit under Subparagraph (b), of Paragraph (1), Subsection A of 20.11.62.12 NMAC,

(ii) starting on the later of January 1, 2000 or the deadline for monitor certification under 40 CFR Part 75, an affected unit under Subparagraph (c), Paragraph (1), Subsection A of 20.11.62.12 NMAC.

(d) Allowances shall be held in, deducted from, or transferred among ATS accounts in accordance with the Acid Rain Program.

(e) An allowance shall not be deducted, in order to comply with the requirements under Item (i), of Subparagraph (a), of Paragraph (3), Subsection D of 20.11.62.12 NMAC prior to the calendar year for which the allowance was allocated.

(f) An allowance allocated by the EPA under the Acid Rain Program is a limited authorization to emit sulfur dioxide in accordance with the Acid Rain Program. No provision of the Acid Rain Program, the Acid Rain permit application, the Acid Rain permit, or the written exemption under Subsections A B of 20.11.62.12 NMAC and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(g) An allowance allocated by the EPA under the Acid Rain Program does not constitute a property right.

**(4) Nitrogen Oxides Requirements:** The owners and operators of the source and each affected unit at the source shall comply with the applicable Acid Rain emissions limitation for nitrogen oxides.

**(5) Excess Emissions Requirements:**

(a) The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the EPA, as required under 40 CFR Part 77, and submit a copy to the Department.

(b) The owners and operators of an affected unit that has excess emissions in any calendar year shall:

(i) pay to the EPA without demand the penalty required, and pay to the EPA upon demand the interest on that penalty, as required by 40 CFR Part 77, and

(ii) comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

**(6) Record keeping and Reporting Requirements:**

(a) Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the EPA or Department.

(i) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(ii) All emissions monitoring information, in accordance with 40 CFR Part 75.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Acid Rain Program.

(iv) Copies of all documents used to complete an Acid Rain permit application and any other submission under the Acid Rain Program or to demonstrate compliance with the requirements of the Acid Rain Program.

(b) The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the Acid Rain Program, including those under 20.11.62.19 NMAC and 40 CFR Part 75.

**(7) Liability:**

(a) Any person who knowingly violates any requirement or prohibition of the Acid Rain Program, a complete Acid Rain permit application, an Acid Rain permit, or a written exemption under Subsections B or C, of 20.11.62.12 NMAC, including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the EPA pursuant to Section 113(c) of the Act and by the Department pursuant to ROA 1994 9-5-1-99(B)(1).

(b) Any person who knowingly makes a false, material statement in any record, submission, or report under the Acid Rain Program shall be subject to criminal enforcement by the EPA pursuant to Section 113(c) of the Act and 18 U.S.C. 1001 and by the Department pursuant to ROA 1994 9-5-1-99(B)(2).

(c) No permit revision shall excuse any violation of the requirements of the Acid Rain Program that occurs prior to the date that the revision takes effect.

(d) Each affected source and each affected unit shall meet the requirements of the Acid Rain Program.

(e) Any provision of the Acid Rain Program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.

(f) Any provision of the Acid Rain Program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under Subsection B of 20.11.62.15NMAC (Phase II Repowering Extension plans), 40 CFR Part 76, and except with regard to the requirements applicable to units with a common stack under 40 CFR Part 75 (including 40 CFR 75.16, 75.17, and 75.18), the owners and operators and the designated representative of one affected unit shall not be liable

for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

(g) Each violation of a provision of this Part and 40 CFR parts 72, 73, 74, 75, 76, 77, and 78 by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

**(8) Effect On Other Authorities:** No provision of the Acid Rain Program, an Acid Rain permit application, an Acid Rain permit, or a written exemption under Subsections B or C, of 20.11.62.12 NMAC shall be construed as:

(a) except as expressly provided in Title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act, including the provisions of Title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans,

(b) limiting the number of allowances a unit can hold; provided, that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act,

(c) requiring a change of any kind in any State law regulating electric utility rates and charges, affecting any State law regarding such State regulation, or limiting such State regulation, including any prudence review requirements under such State law,

(d) modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act, or

(e) interfering with or impairing any program for competitive bidding for power supply in a State in which such program is established.

[1/1/96; 20.11.62.12 NMAC – Rn, 20 NMAC 11.62.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.62.II.1, 10/1/02]

### **20.11.62.13 DESIGNATED REPRESENTATIVE:**

#### **A. Submissions:**

(1) The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the EPA in accordance with 40 CFR Part 72 Subpart B and, concurrently, shall submit a copy to the Department. Whenever the term "designated representative" is used in this Part, the term shall be construed to include the alternate designated representative.

(2) Each submission under the Acid Rain Program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

(3) In each submission under the Acid Rain Program, the designated representative shall certify, by his or her signature the following statements, which shall be included verbatim in such submission:

(a) "I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made",

(b) "I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment".

(4) The Department will accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with Paragraphs (2) and (3), of Subsection A of 20.11.62.13 NMAC.

(a) The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

(i) by the date of submission, of any Acid Rain Program submissions by the designated representative,

(ii) within 10 business days of receipt of a determination, of any written determination by the EPA or the Department, and

(iii) provided that the submission or determination covers the source or the unit.

(b) The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under II.2.1.E.1 [Subparagraph (e), Paragraph (1), Subsection B of 20.11.62.12 NMAC], unless the owner or operator expressly waives the right to receive such a copy.

#### **B. Objections:**

(1) Except as provided in 40 CFR 72.23, no objection or other communication submitted to the EPA or the Department concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any

submission, action, or inaction of the designated representative, or the finality of any decision by the Department, under the Acid Rain Program. In the event of such communication, the Department is not required to stay any submission or the effect of any action or inaction under the Acid Rain Program.

(2) The Department will not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

[1/1/96; 20.11.62.13 NMAC – Rn, 20 NMAC 11.62.II.2, 10/1/02]

#### **20.11.62.14 ACID RAIN PERMIT APPLICATIONS:**

##### **A. Requirement to Apply:**

(1) **Duty to Apply:** The designated representative of any source with an affected unit shall submit a complete Acid Rain permit application by the applicable deadline in Paragraphs (2) and (3), of Subsection A of 20.11.62.14 NMAC, and the owners and operators of such source and any affected unit at the source shall not operate the source or unit without a permit that states its Acid Rain Program requirements.

##### **(2) Deadlines:**

(a) For any source with an existing unit described under Subparagraph (b), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department on or before January 1, 1996.

(b) For any source with a new unit described under Item (i), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department at least 24 months before the later of January 1, 2000 or the date on which the unit commences operation.

(c) For any source with a unit described under Item (ii), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department at least 24 months before the later of January 1, 2000 or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

(d) For any source with a unit described under Item (iii), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the

Department at least 24 months before the later of January 1, 2000 or the date on which the auxiliary firing commences operation.

(e) For any source with a unit described under Item (iv), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department before the later of January 1, 1998 or March 1 of the year following the three calendar year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

(f) For any source with a unit described under Item (iii), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

(g) For any source with a unit described under Item (vi), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department before the later of January 1, 1998 or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

(h) For any source with a unit described under Item (vii), of Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.200 NMAC, the designated representative shall submit a complete Acid Rain permit application governing such unit to the Department before the later of January 1, 1998 or March 1 of the year following the three calendar year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).

**(3) Duty to Reapply:** The designated representative shall submit a complete Acid Rain permit application for each source with an affected unit at least 6 months or such longer time as may be approved under 40 CFR part 70 prior to the expiration of an existing Acid Rain permit governing the unit.

**(4)** The original and three copies of all permit applications shall be submitted to the Department.

**B. Information Requirements For Acid Rain Permit Applications:** A complete Acid Rain permit application shall be submitted on a form approved by the Department, which includes the following elements:

(1) identification of the affected source for which the permit application is submitted,

- (2) identification of each affected unit at the source for which the permit application is submitted,
- (3) a complete compliance plan for each unit, in accordance with 20.11.62.15 NMAC,
- (4) the standard requirements under Subsection D of 20.11.62.12 NMAC, and
- (5) if the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

### **C. Permit Application Shield and Binding Effect of permit Application:**

(1) Once a designated representative submits a timely and complete Acid Rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an Acid Rain permit under Subparagraph (b), of Paragraph (1), of Subsection D of 20.11.62.12 NMAC and Paragraph (1), of Subsection A of 20.11.62.14 NMAC; provided that any delay in issuing an Acid Rain permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the Department, necessary to issue a permit.

(2) Prior to the earlier of the date on which an Acid Rain permit is issued as a final agency action subject to judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete Acid Rain permit application shall be deemed to be operating in compliance with the Acid Rain Program.

(3) A complete Acid Rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an Acid Rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.

[1/1/96; 20.11.62.14 NMAC – Rn, 20 NMAC 11.62.II.3, 10/1/02]

## **20.11.62.15 ACID RAIN COMPLIANCE PLAN AND COMPLIANCE OPTIONS:**

### **A. General:**

(1) For each affected unit included in an Acid Rain permit application, a complete compliance plan shall include:

**(a) for sulfur dioxide emissions**, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit's compliance sub-account (after deductions under 40 CFR 73.34(c)) not less than the

total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with 20.11.62.15 NMAC, one or more of the Acid Rain compliance options,

**(b) for nitrogen oxides emissions**, a certification that the unit will comply with the applicable limitation established by 40 CFR Part 76 or shall specify one or more Acid Rain compliance options, in accordance with 40 CFR Part 76.

(2) The compliance plan may include a multi-unit compliance option under Subsection B of 20.11.62.15 NMAC or 40 CFR Part 76.

(a) A plan for a compliance option that includes units at more than one affected source shall be complete only if:

(i) such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan, and

(ii) a complete permit application is submitted covering each unit governed by such plan.

(b) Department's approval of a plan under Subparagraph (a), of Paragraph (2), of Subsection A of 20.11.62.15 NMAC that includes units in more than one State shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

**(3) Conditional Approval:** In the compliance plan, the designated representative of an affected unit may propose, in accordance with 20.11.62.15 NMAC, any Acid Rain compliance option for conditional approval; provided that an Acid Rain compliance option under 40 CFR Part 76 may be conditionally proposed only to the extent provided in regulations implementing 40 CFR Part 76.

(a) To activate a conditionally-approved Acid Rain compliance option, the designated representative shall notify the Department in writing that the conditionally-approved compliance option will actually be pursued beginning January 1 of a specified year. Such notification shall be subject to the limitations on activation under Subsection B of 20.11.62.15 NMAC and regulations implementing 40 CFR Part 76. If the conditionally approved compliance option includes a plan described in Subparagraph (a), of Paragraph (2), of Subsection A of 20.11.62.15 NMAC the designated representative of each source governed by the plan shall sign and certify the notification.

(b) The notification under Subparagraph (a), of Paragraph (3), of Subsection A of 20.11.62.15 NMAC shall specify the first calendar year and the last calendar year for which the conditionally approved Acid Rain compliance option is to be activated. A conditionally approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of

the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

(c) Upon submission of a notification meeting the requirements of Subparagraph (a) and (b), of Paragraph (3), of Subsection A of 20.11.62.15 NMAC , the conditionally-approved Acid Rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally-approved compliance option.

(d) A notification meeting the requirements of Subparagraph (a) and (b), of Paragraph (3), of Subsection A of 20.11.62.15 NMAC will revise the unit's permit in accordance with Subsection D of 20.11.62.18 NMAC.

#### **(4) Termination of Compliance Option:**

(a) The designated representative for a unit may terminate an Acid Rain compliance option by notifying the Department in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under Subsection B of 20.11.62.15 NMAC and regulations implementing 40 CFR Part 76. If the compliance option includes a plan described in Subparagraph (a), of Paragraph (2), of Subsection A of 20.11.62.15 NMAC the designated representative for each source governed by the plan shall sign and certify the notification.

(b) The notification under Subparagraph (a), of Paragraph (4), of Subsection B of 20.11.62.15 NMAC shall specify the calendar year for which the termination will take effect.

(c) Upon submission of a notification meeting the requirements of Subparagraph (a), of Paragraph (4), of Subsection B of 20.11.62.15 NMAC the termination becomes binding on the owners and operators and the designated representative of any unit governed by the Acid Rain compliance option to be terminated.

(d) A notification meeting the requirements of Subparagraphs (a) and (b), of Paragraph (4), of Subsection B of 20.11.62.15 NMAC will revise the unit's permit in accordance Subsection D of 20.11.62.18 NMAC.

#### **B. Repowering Extensions:**

##### **(1) Applicability:**

(a) This Section shall apply to the designated representative of:

(i) any existing affected unit that is a coal-fired unit and has a 1985 actual SO<sub>2</sub> emissions rate equal to or greater than 1.2 lbs/mmBtu, or

(ii) any new unit that will be a replacement unit, as provided in Subparagraph (b), of Paragraph (2), Subsection B of 20.11.62.15 NMAC, for a unit meeting the requirements of Item (i), of Subparagraph (a), Paragraph (1), of Subsection B of 20.11.62.15 NMAC, or

(iii) any oil and/or gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991 by the Secretary of Energy.

(b) A repowering extension does not exempt the owner or operator for any unit governed by the repowering plan from the requirement to comply with such unit's Acid Rain emissions limitations for sulfur dioxide.

**(2)** The designated representative of any unit meeting the requirements of Item (i), of Subparagraph (a), of Paragraph (2), of Subsection B of 20.11.62.15 NMAC; or may include in the unit's Acid Rain permit application a repowering extension plan that includes a demonstration that:

(a) the unit will be repowered with a qualifying repowering technology in order to comply with the emissions limitations for sulfur dioxide, or

(b) the unit will be replaced by a new utility unit that has the same designated representative and that is located at a different site using a qualified repowering technology and the existing unit will be permanently retired from service on or before the date on which the new utility unit commences commercial operation.

**(3)** In order to apply for a repowering extension, the designated representative of a unit under Subparagraph (a), of Paragraph (1), of Subsection B of 20.11.62.15 NMAC:

(a) Submit to the Department, by January 1, 1996, a complete repowering extension plan;

(b) Submit to the EPA before June 1, 1997, a complete petition for approval of repowering technology in accordance with 40 CFR 72.44(d) and submit a copy to the Department; and

(c) If the repowering extension plan is submitted for conditional approval, submit to the Department by December 31, 1997, a notification to activate the plan in accordance with Paragraph (3), of Subsection A of 20.11.62.15 NMAC.

**(4) Contents of Repowering Extension Plan.** A complete repowering extension plan shall include the following elements:

(a) Identification of the existing unit governed by the plan.

(b) The unit's federally-approved State Implementation Plan sulfur dioxide emissions limitation.

(c) The unit's 1995 actual SO<sub>2</sub> emissions rate, or best estimate of the actual emissions rate; provided that the actual emissions rate is submitted to the Department by January 30, 1996.

(d) A schedule for construction, installation, and commencement of operation of the repowering technology approved or submitted for approval under 40 CFR 72.44(d) with dates for the following milestones:

(i) completion of design engineering,

(ii) for a plan under Subparagraph (a), of Paragraph (2), of Subsection B of 20.11.62.15 NMAC, removal of the existing unit from operation to install the qualified repowering technology,

(iii) commencement of construction,

(iv) completion of construction,

(v) start-up testing,

(vi) for a plan under Subparagraph (a), of Paragraph (2), of Subsection B of 20.11.62.15 NMAC, shutdown of the existing unit, and

(vii) commencement of commercial operation of the repowering technology.

(e) For a plan under Subparagraph (a), of Paragraph (2), of Subsection B of 20.11.62.15 NMAC:

(i) identification of the new unit. A new unit shall not be included in more than one repowering extension plan,

(ii) certification that the new unit will replace the existing unit,

(iii) certification that the new unit has the same designated representative as the existing unit,

(iv) certification that the existing unit will be permanently retired from service on or before the date the new unit commences commercial operation.

(f) The special provisions of Paragraph (7), of Subsection B of 20.11.62.15 NMAC.

**(5) Department's Action on Repowering Extension Plan.**

(a) The Department will not approve a repowering extension plan until the EPA makes a conditional determination that the technology is a qualified repowering technology, unless the Department approves such plan subject to the conditional determination of the EPA.

**(b) Permit Issuance:**

(i) Upon a conditional determination by the EPA that the technology to be used in the repowering extension plan is a qualified repowering technology and a determination by the Department that such plan meets the requirements of this Section, the Department will issue the Acid Rain portion of the operating permit including: 1) The approved repowering extension plan, and 2) A schedule of compliance with enforceable milestones for construction, installation, and commencement of operation of the repowering technology and other requirements necessary to ensure that emission reduction requirements under this section will be met.

(ii) Except as otherwise provided in Paragraph (6), of Subsection B of 20.11.62.15 NMAC, the repowering extension shall be in effect starting January 1, 2000 and ending on the day before the date (specified in the Acid Rain permit) on which the existing unit will be removed from operation to install the qualifying repowering technology or will be permanently removed from service for replacement by a new unit with such technology; provided that the repowering extension shall end no later than December 31, 2003

(iii) The portion of the operating permit specifying the repowering extension and other requirements under Item (i) of Subparagraph (e), of Paragraph (5), of Subsection B of 20.11.62.15 NMAC shall be subject to the EPA's final determination, under 40 CFR 72.44(d)(4), that the technology to be used in the repowering extension plan is a qualifying repowering technology.

**(c) Allowance Allocation.** Allowances will be allocated in accordance with 40 CFR 72.44(f)(3) and (g).

**(6) Failed Repowering Projects:**

(a) If, at any time before the end of the repowering extension under Item (ii), of Subparagraph (e), of Paragraph (5), of Subsection B of 20.11.62.15 NMAC, the designated representative of a unit governed by an approved repowering extension plan submits the notification under Paragraph (4), Subsection B of 20.11.62.19 NMAC that the owners and operators have decided to terminate efforts to properly design, construct, and test the repowering technology specified in the plan before completion of

construction or start-up testing, the designated representative may submit to the Department a proposed permit modification demonstrating that such efforts were in good faith. If such demonstration is to the satisfaction of the EPA, the unit shall not be deemed in violation of the Act because of such a termination and the Department will revise the operating permit in accordance with this subparagraph. Regardless of whether notification under this subparagraph is given, the repowering extension will end beginning on the earlier of the date of such notification or the date by which the designated representative was required to give such notification under Paragraph (4), of Subsection B of 20.11.62.19 NMAC.

(b) The designated representative of a unit governed by an approved repowering extension plan may submit to the Department a proposed permit modification demonstrating that the repowering technology specified in the plan was properly constructed and tested on such unit but was unable to achieve the emissions reduction limitations specified in the plan and that it is economically or technologically infeasible to modify the technology to achieve such limits. In order to be properly constructed and tested, the repowering technology shall be constructed at least to the extent necessary for direct testing of the multiple combustion emissions (including sulfur dioxide and nitrogen oxides) from such unit while operating the technology at nameplate capacity. If such demonstration is to the satisfaction, of the EPA

(i) The unit shall not be deemed in violation of the Act because of such failure to achieve the emissions reduction limitations;

(ii) The Department will revise the Acid Rain portion of the operating permit in accordance with Items (iii) and (iv), of Subparagraph (b), of Paragraph (6), of Subsection B of 20.11.62.15 NMAC;

(iii) The existing unit may be retrofitted or repowered with another clean coal or other available control technology; and

(iv) The repowering extension will continue in effect until the earlier of the date the existing unit commences commercial operation with such control technology or December 31, 2003.

**(7) Special Provisions:**

**(a) Emissions Limitations.**

(i) **Sulfur Dioxide.** Allowances allocated during the repowering extension under Subparagraph (c), of Paragraph (5), of Subsection B of 20.11.62.15 NMAC, and Paragraph (6), of Subsection B of 20.11.62.15 NMAC to a unit governed by an approved repowering extension plan shall not be transferred to any ATS account other than the unit accounts of other units at the same source as that unit.

**(ii) Nitrogen Oxides.** Any existing unit governed by an approved repowering extension plan shall be subject to the Acid Rain emissions limitations for nitrogen oxides in accordance with 40 CFR Part 76 and regulations implementing 40 CFR Part 76 beginning on the date that the unit is removed from operation to install the repowering technology or is permanently removed from service.

**(iii)** No existing unit governed by an approved repowering extension plan shall be eligible for a waiver under Section 111(j) of the Act.

**(iv)** No new unit governed by an approved repowering extension plan shall receive an exemption from the requirements imposed under Section 111 of the Act.

**(b) Reporting Requirements.** Each unit governed by an approved repowering extension plan shall comply with the special reporting requirements of Subsection B of 20.11.62.19 NMAC.

**(c) Liability:**

(i) The owners and operators of a unit governed by an approved repowering plan shall be liable for any violation of the plan or this section at that or any other unit governed by the plan.

(ii) The units governed by the plan under Subparagraph (b), of Paragraph (2), of Subsection B of 20.11.62.15 NMAC shall continue to have a common designated representative until the existing unit is permanently retired under the plan.

**(d) Terminations:** Except as provided in Paragraph (6), of Subsection B of 20.11.62.15 NMAC, a repowering extension plan shall not be terminated after December 31, 1999.

[1/1/96; 20.11.62.15 NMAC – Rn, 20 NMAC 11.62.II.4, 10/1/02]

**20.11.62.16 ACID RAIN PERMIT:**

**A. Contents:**

(1) Each Acid Rain permit (including any draft or proposed Acid Rain permit) will contain the following elements:

(a) all elements required for a complete Acid Rain permit application under Subsection B of 20.11.62.14 NMAC, as approved or adjusted by the Department,

(b) the applicable Acid Rain emissions limitation for sulfur dioxide, and

(c) the applicable Acid Rain emissions limitation for nitrogen oxides.

(2) Each Acid Rain permit is deemed to incorporate the definitions of terms under 20.11.62.7 NMAC.

**B. Permit Shield:** Each affected unit operated in accordance with the Acid Rain permit that governs the unit and that was issued in compliance with Title IV of the Act, as provided in this Part, 40 CFR Parts 72, 73, 75, 76, 77, and 78, shall be deemed to be operating in compliance with the Acid Rain Program, except as provided in Subparagraph (f), of Paragraph (7), of Subsection D of 20.11.62.12 NMAC.

[1/1/96; 20.11.62.16 NMAC – Rn, 20 NMAC 11.62.II.5, 10/1/02]

#### **20.11.62.17 ACID RAIN PERMIT ISSUANCE PROCEDURES:**

**A. General:** The Department will issue or deny all Acid Rain permits in accordance with 20.11.42 NMAC, including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by Sections 205 and 206 of 20.11.62 NMAC.

**B. Completeness:** The Department will submit a written notice of application completeness to the EPA within 10 working days following a determination by the Department that the Acid Rain permit application is complete.

#### **C. Statement of Basis:**

(1) The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the Department relied in issuing or denying the draft permit.

(2) The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

(3) The Department will submit to the EPA a copy of the draft Acid Rain permit and the statement of basis and all other relevant portions of the operating permit that may affect the draft Acid Rain permit.

#### **D. Issuance of Acid Rain Permits:**

(1) Proposed permit: After the close of the public comment period, the Department will incorporate all necessary changes and issue or deny a proposed Acid Rain permit.

(2) The Department will submit the proposed Acid Rain permit or denial of a proposed Acid Rain permit to the EPA in accordance with 20.11.42 NMAC, the

provisions of which shall be treated as applying to the issuance or denial of a proposed Acid Rain permit.

(3) Following the EPA's review of the proposed Acid Rain permit or denial of a proposed Acid Rain permit, the Department or, under 20.11.42 NMAC (treated as applying to the issuance or denial of an Acid Rain permit), the EPA will incorporate any required changes and issue or deny the Acid Rain permit in accordance with 20.11.62.16 NMAC. No Acid Rain permit (including a draft or proposed permit) shall be issued unless the EPA has received a certificate of representation for the designated representative of the source in accordance with 40 CFR Part 72 Subpart B.

(4) Permit issuance deadline and effective date:

(a) On or before December 31, 1997, the Department will issue an Acid Rain permit to each affected source whose designated representative submitted a timely and complete Acid Rain permit application by January 1, 1996 in accordance with Subsection A of 20.11.62.13 NMAC and meets the requirements of 20.11.62.17 NMAC and 20.11.42 NMAC.

(b) Nitrogen Oxides: Not later than January 1, 1999, the Department will reopen the Acid Rain permit to add the Acid Rain Program nitrogen oxides requirements; provided that the designated representative of the affected source submitted a timely and complete Acid Rain permit application for nitrogen oxides in accordance with Subsection A of 20.11.62.13 NMAC. Such reopening shall not affect the term of the Acid Rain portion of an operating permit.

(c) Each Acid Rain permit issued in accordance with Subparagraph (a), of Paragraph (4), Subsection D of 20.11.62.17 NMAC shall take effect by the later of January 1, 2000, or, where the permit governs a unit under Subparagraph (c), of Paragraph (1), of Subsection A of 20.11.62.12 NMAC, the deadline for monitor certification under 40 CFR Part 75.

(d) Each Acid Rain permit shall have a term of 5 years commencing on its effective date.

(e) An Acid Rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

(5) Each Acid Rain permit shall contain all applicable Acid Rain requirements, shall be a portion of the operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available. Invalidation of the Acid Rain portion of an operating permit shall not affect the continuing validity of the rest of the operating permit, nor shall invalidation of any other portion of the operating permit affect the continuing validity of the Acid Rain portion of the permit.

## **E. Acid Rain Permit Appeal Procedures:**

(1) Appeals of the Acid Rain portion of an operating permit issued by the Department that do not challenge or involve decisions or actions of the EPA under 40 CFR Part 72, 73, 74, 75, 76, 77 and 78 and regulations implementing 40 CFR Part 74 and 76 shall be conducted pursuant to ROA 1994 Section 9-5-1-7. Appeals of the Acid Rain portion of such a permit that challenge or involve such decisions or actions of the EPA shall follow the procedures under 40 CFR Part 78 and Section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

(2) No administrative appeal or judicial appeal of the Acid Rain portion of an operating permit shall be allowed more than 30 days following respectively issuance of the Acid Rain portion that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

(3) The EPA may intervene as a matter of right in any State administrative appeal of an Acid Rain permit or denial of an Acid Rain permit.

(4) No administrative appeal concerning an Acid Rain requirement shall result in a stay of the following requirements:

(a) the allowance allocations for any year during which the appeal proceeding is pending or is being conducted,

(b) any standard requirement under Subsection D of 20.11.62.12 NMAC,

(c) the emissions monitoring and reporting requirements applicable to the affected units at an affected source under 40 CFR Part 75,

(d) uncontested provisions of the decision on appeal, and

(e) the terms of a certificate of representation submitted by a designated representative under 40 CFR Part 72 Subpart B.

(5) The Department will serve written notice on the Administrator of any State administrative or judicial appeal concerning an Acid Rain provision of any operating permit or denial of an Acid Rain portion of any operating permit within 30 days of the filing of the appeal.

(6) The Department will serve written notice on the Administrator of any determination or order in a State administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an Acid Rain permit. Following any such determination or order, the Administrator will have an opportunity to review

and veto the Acid Rain permit or revoke the permit for cause in accordance with 20.11.42 NMAC.

[1/1/96; 20.11.62.17 NMAC – Rn, 20 NMAC 11.62.II.6, 10/1/02]

### **20.11.62.18 PERMIT REVISIONS:**

#### **A. General:**

(1) This Section shall govern revisions to any Acid Rain permit issued by the Department.

(2) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the Acid Rain permit to be revised. No permit revision shall excuse any violation of an Acid Rain Program requirement that occurred prior to the effective date of the revision.

(3) The terms of the Acid Rain permit shall apply while the permit revision is pending.

(4) Any determination or interpretation by State (including the Department or a State court) modifying or voiding any Acid Rain permit provision shall be subject to review by the EPA in accordance with 20.11.42 NMAC as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with Subsection D of 20,11,62.206 NMAC.

(5) The standard requirements of Subsection D of 20.11.62.12 NMAC shall not be modified or voided by a permit revision.

(6) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under Subsection B of 20.11.62.15 NMAC and 40 CFR Part 76 and regulations implementing 40 CFR Part 76.

(7) For permit revisions not described in Subsections B and C of 20.11.62.18 NMAC, the Department may, in its discretion, determine which of these sections is applicable.

#### **B. Permit Modifications:**

(1) Permit modifications shall follow the permit issuance requirements of 20.11.62.17 NMAC and 20.11.42 NMAC. For purposes of applying Paragraph (1), Subsection B of 20.11.62.18 NMAC, a permit modification shall be treated as an Acid Rain permit application, to the extent consistent with 20.11.62.18 NMAC.

(2) The following permit revisions are permit modifications:

(a) relaxation of an excess emission offset requirement after approval of the offset plan by the EPA,

(b) incorporation of a final nitrogen oxides alternative emission limitation following a demonstration period,

(c) determinations concerning failed repowering projects under Subparagraph (a), of Paragraph (6), of Subsection B of 20.11.62.15 NMAC and Subparagraph (c), of Paragraph (6), of Subsection B of 20.11.62.15 NMAC, and

(d) at the option of the designated representative submitting the permit revision, the permit revisions listed in Paragraph (2), of Subsection C of 20.11.62.18 NMAC.

**C. Fast-Track Modifications:**

(1) Fast-track modifications shall follow the following procedures:

(a) The designated representative shall serve a copy of the fast-track modification on the EPA, the Department, and any person entitled to a written notice under 20.11.42 NMAC. Within 5 business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice.

(b) The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the Department and to the designated representative.

(c) The designated representative shall submit the fast-track modification to the Department on or before commencement of the public comment period.

(d) Within 30 days of the close of the public comment period, the Department will consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. A fast-track modification shall be effective immediately upon issuance, in accordance with 20.11.42 NMAC as applied to significant modifications.

(2) The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this section or permit modifications under Subsection B of 20.11.62.18 NMAC:

(a) incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process,

(b) addition of a nitrogen oxides averaging plan to a permit, and

(c) changes in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.

**D. Administrative Permit Amendment:**

(1) Administrative amendments shall follow the procedures set forth in 20.11.42 NMAC. The Department will submit the revised portion of the permit to the EPA within 10 working days after the date of final action on the request for an administrative amendment.

(2) The following permit revisions are administrative amendments:

(a) activation of a compliance option conditionally approved by the Department; provided that all requirements for activation under Paragraph (3), of Subsection A of 20.11.62.15 NMAC and Subsection B of 20.11.62.15 NMAC are met,

(b) changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted to the EPA in accordance with 40 CFR Part 72 Subpart B,

(c) correction of typographical errors,

(d) changes in names, addresses, or telephone or facsimile numbers,

(e) changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days to the EPA in accordance with 40 CFR Part 72 Subpart B,

(f) Termination of a compliance option in the permit; provided that all requirements for termination under Paragraph (4), of Subsection A of 20.11.62.15 NMAC shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999,

(g) changes in the date, specified in a new unit's Acid Rain permit, of commencement of operation or the deadline for monitor certification, provided that they are in accordance with Subsection D of 20.11.62.12 NMAC,

(h) the addition of or change in a nitrogen oxides alternative emissions limitation demonstration period, provided that the requirements of regulations implementing 40 CFR Part 76 are met, and

(i) incorporation of changes that the EPA has determined to be similar to those in Subparagraphs (a) through (h), of Paragraph (2), of Subsection D of 20.11.62.18 NMAC.

**E. Automatic Permit Amendment:** The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's Acid Rain permit by operation of law without any further review:

(1) upon recordation by the EPA under 40 CFR Part 73, all allowance allocations to, transfers to, and deductions from an affected unit's ATS account, and

(2) incorporation of an offset plan that has been approved by the EPA under 40 CFR Part 77.

**F. Permit Reopenings:**

(1) As provided in 20.11.42 NMAC, the Department will reopen an Acid Rain permit for cause, including whenever additional requirements become applicable to any affected unit governed by the permit.

(2) In reopening an Acid Rain permit for cause, the Department will issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary. The draft permit shall be subject to the requirements of Sections 204 and 205 of 20.11.62 NMAC.

(3) Any reopening of an Acid Rain permit shall not affect the term of the permit.

[1/1/96; 20.11.62.18 NMAC – Rn, 20 NMAC 11.62.II.7, 10/1/02]

**20.11.62.19 COMPLIANCE CERTIFICATION:**

**A. Annual Compliance Certification Report:**

(1) **Applicability and Deadline:** For each calendar year in which a unit is subject to the Acid Rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the EPA and to the Department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.

(2) The submission of complete compliance certifications in accordance with Paragraph (1), of Subsection A of 20.11.62.19 NMAC and 40 CFR Part 75 shall be deemed to satisfy the requirement to submit compliance certifications under 20.11.42 NMAC with regard to the Acid Rain portion of the source's operating permit.

**B. Units With Repowering Extension Plans:**

(1) **Design and Engineering and Contract Requirements:** No later than January 1, 2000, the designated representative of a unit governed by an approved repowering plan shall submit to the EPA and the Department:

(a) Satisfactory documentation of a preliminary design and engineering effort.

(b) A binding letter agreement for the executed and binding contract (or for each in a series of executed and binding contracts) for the majority of the equipment to repower the unit using the technology conditionally approved by the Administrator under 40 CFR 72.44(d)(3).

(c) The letter agreement under Subparagraph (b), of Paragraph (1), of Subsection B of 20.11.62.19 NMAC shall be signed and dated by each party and specify

- (i) the parties to the contract,
- (ii) the date each party executed the contract,
- (iii) the unit to which the contract applies,
- (iv) a brief list identifying each provision of the contract,
- (v) any dates to which the parties agree, including construction completion date,
- (vi) the total dollar amount of the contract, and
- (vii) a statement that a copy of the contract is on site at the source and will be submitted upon written request of the EPA or the Department.

**(2) Removal From Operation To Repower:** The designated representative of a unit governed by an approved repowering plan shall notify the EPA and the Department in writing at least 60 days in advance of the date on which the existing unit is to be removed from operation so that the qualified repowering technology can be installed, or is to be replaced by another unit with the qualified repowering technology, in accordance with the plan.

**(3) Commencement of Operation:** Not later than 60 days after the units repowered under an approved repowering plan commences operation at full load, the designated representative of the unit shall submit a report to the EPA and the Department comparing the actual hourly emissions and percent removal of each pollutant controlled at the unit to the actual hourly emissions and percent removal at the existing unit under the plan prior to repowering, determined in accordance with 40 CFR Part 75.

**(4) Decision to Terminate:** If at any time before the end of the repowering extension and before completion of construction and start-up testing, the owners and operators decide to terminate good faith efforts to design, construct, and test the qualified repowering technology on the unit to be repowered under an approved

repowering plan, then the designated representative shall submit a notice to the EPA and the Department by the earlier of the end of the repowering extension or a date within 30 days of such decision, stating the date on which the decision was made.

[1/1/96; 20.11.62.19 NMAC – Rn, 20 NMAC 11.62.II.8, 10/1/02]

## **PART 63: NEW SOURCE PERFORMANCE STANDARDS FOR STATIONARY SOURCES**

### **20.11.63.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.

[1/1/2000; 20.11.63.1 NMAC - Rn, 20 NMAC 11.63.1, 10/1/02; A, 1/1/05; A, 2/16/09]

### **20.11.63.2 SCOPE:**

20.11.63 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to the requirements of 40 CFR Part 60, as amended in the *Federal Register* through January 23, 2017.

**A. Exempt:** 20.11.63 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

#### **B. Exclusions:**

(1) 40 CFR 60, Subpart AAA, *Standards of Performance for New Residential Wood Heaters*.

(2) 40 CFR 60, Subpart QQQQ, *Standards of Performance for New Residential Hydronic Heaters and Forced Air Furnaces*.

**C. Variances:** The variance provisions of 20.11.7 NMAC, *Variance Procedure*, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinances Section 30-37, and Section 74-2-8 NMSA 1978 shall not apply to 20.11.63 NMAC or the incorporated federal standards.

[1/1/2000; 20.11.63.2 NMAC - Rn, 20 NMAC 11.63.2, 10/1/02; A, 1/1/05; A, 1/1/06; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14; A, 5/13/17]

### **20.11.63.3 STATUTORY AUTHORITY:**

20.11.63 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Act, Section 74-2-5 NMSA 1978; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinances Section 30-33; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.

[1/1/2000; 20.11.63.3 NMAC - Rn, 20 NMAC 11.63.3, 10/1/02; A, 1/1/05; A, 5/13/17]

**20.11.63.4 DURATION:**

Permanent.

[1/1/2000; 20.11.63.4 NMAC - Rn, 20 NMAC 11.63.4, 10/1/02]

**20.11.63.5 EFFECTIVE DATE:**

December 1, 1999, unless a later date is cited at the end of a section.

[1/1/2000; 20.11.63.5 NMAC - Rn, 20 NMAC 11.63.5 & A, 10/1/02]

**20.11.63.6 OBJECTIVE:**

To adopt specified federal New Source Performance Standards (NSPS) codified at 40 CFR Part 60 as part of 20.11.63 NMAC.

[1/1/2000; 20.11.63.6 NMAC - Rn, 20 NMAC 11.63.6, 10/1/02; A, 1/1/05]

**20.11.63.7 DEFINITIONS:**

[RESERVED]

**20.11.63.8 SAVINGS CLAUSE:**

Any amendment to 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources* that is filed with the state records center and archives shall not affect actions pending for violation of a city or county ordinance or the version of 20.11.63 NMAC, *New Source Performance Standards For Stationary Sources*, in effect prior to amendment. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the ordinance, part, or regulation section in effect at the time the violation was committed.

[1/1/2000; 20.11.63.8 NMAC - Rn, 20 NMAC 11.63.8, 10/1/02; A, 1/1/05; A, 12/12/11]

**20.11.63.9 SEVERABILITY:**

If any section, subsection, sentence, phrase, clause, or wording of 20.11.63 NMAC or the federal standards incorporated herein is for any reason held to be unconstitutional

or otherwise invalid by any court, the decision shall not affect the validity of remaining portions of 20.11.63 NMAC.

[1/1/2000; 20.11.63.9 NMAC - Rn, 20 NMAC 11.63.9, 10/1/02; A, 1/1/05]

#### **20.11.63.10 DOCUMENTS:**

Documents incorporated and cited in 20.11.63 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM, 87102.

[1/1/2000; 20.11.63.10 NMAC - Rn, 20 NMAC 11.63.10, & A, 10/1/02; A, 1/1/05; A, 2/10/14]

#### **20.11.63.11 INCORPORATION OF FEDERAL STANDARDS:**

Except as otherwise provided in 20.11.63 NMAC, the New Source Performance Standards promulgated by the United States environmental protection agency, and codified at 40 CFR Part 60, including Subpart A, *General Provisions* thereto, as amended in the *Federal Register* through January 23, 2017, are hereby incorporated into 20.11.63 NMAC.

[1/1/2000; 20.11.63.11 NMAC - Rn, 20 NMAC 11.63.11, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14; A, 5/13/17]

#### **20.11.63.12 MODIFICATIONS AND EXCEPTIONS:**

For purposes of administering and enforcing 20.11.63 NMAC, the following modification or exception is made to the federal standards that are incorporated in 20.11.63 NMAC. When the director of Albuquerque environmental health department is exercising the authority delegated to the director by the United States environmental protection agency, the definition of "administrator" of the United States environmental protection agency that is included in 40 CFR 60.2, *Definitions*, shall be changed to "director" of the Albuquerque environmental health department.

[1/1/2000; 20.11.63.12 NMAC - Rn, 20 NMAC 11.63.12, 10/1/02; A, 1/1/05]

### **PART 64: EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR STATIONARY SOURCES**

#### **20.11.64.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.

[1/1/2000; 20.11.64.1 NMAC - Rn, 20 NMAC 11.64.1, 10/1/02; A, 1/1/05; A, 2/16/09]

## **20.11.64.2 SCOPE:**

20.11.64 NMAC is applicable to all stationary sources of air pollutants located within Bernalillo county, which are subject to any requirements of 40 CFR Part 61 or Part 63, as amended in the *Federal Register* through January 23, 2017.

**A. Exempt:** 20.11.64 NMAC does not apply to sources within Bernalillo county, that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

### **B. Exclusions:**

(1) 40 CFR 61, Subpart B, *National Emission Standards for Radon Emissions From Underground Uranium Mines*;

(2) 40 CFR 61, Subpart H, *National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities*;

(3) 40 CFR 61, Subpart I, *National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H*;

(4) 40 CFR 61, Subpart K, *National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants*;

(5) 40 CFR 61, Subpart Q, *National Emission Standards for Radon Emissions From Department of Energy Facilities*;

(6) 40 CFR 61, Subpart R, *National Emission Standards for Radon Emissions From Phosphogypsum Stacks*;

(7) 40 CFR 61, Subpart T, *National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings*; and

(8) 40 CFR 61, Subpart W, *National Emission Standards for Radon Emissions From Operating Mill Tailings*.

**C. Variances:** The variance provisions of 20.11.7 NMAC, *Variance Procedure*, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinances Section 30-37 and Section 74-2-8 NMSA 1978 shall not apply to 20.11.64 NMAC or the incorporated federal standards.

[1/1/2000; 20.11.64.2 NMAC - Rn, 20 NMAC 11.64.2, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14; A, 5/13/17]

**20.11.64.3 STATUTORY AUTHORITY:**

20.11.64 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Act, Section 74-2-5 NMSA 1978; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinances Section 30-33; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.

[1/1/2000; 20.11.64.3 NMAC - Rn, 20 NMAC 11.64.3, 10/1/02; A, 1/1/05; A, 5/13/17]

**20.11.64.4 DURATION:**

Permanent.

[1/1/2000; 20.11.64.4 NMAC - Rn, 20 NMAC 11.64.4, 10/1/02]

**20.11.64.5 EFFECTIVE DATE:**

December 1, 1999, unless a later date is cited at the end of a section.

[1/1/2000; 20.11.64.5 NMAC - Rn, 20 NMAC 11.64.5 & A, 10/1/02]

**20.11.64.6 OBJECTIVE:**

To adopt specified federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) and National Emissions Standards for Hazardous Air Pollutants for Source Categories codified at 40 CFR Parts 61 and 63 as part of 20.11.64 NMAC.

[1/1/2000; 20.11.64.6 NMAC - Rn, 20 NMAC 11.64.6, 10/1/02; A, 1/1/05]

**20.11.64.7 DEFINITIONS:**

[RESERVED]

**20.11.64.8 SAVINGS CLAUSE:**

Any amendment to 20.11.64 NMAC, *Emission Standards For Hazardous Air Pollutants For Stationary Sources* that is filed with the state records center and archives shall not affect actions pending for violation of a city or county ordinance or the version of 20.11.64 NMAC, *Emission Standards for Hazardous Air Pollutants for Stationary Sources*, in effect prior to amendment. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the ordinance, part, or regulation section in effect at the time the violation was committed.

[1/1/2000; 20.11.64.8 NMAC - Rn, 20 NMAC 11.64.8, 10/1/02; A, 1/1/05]

**20.11.64.9 SEVERABILITY:**

If any section, subsection, sentence, phrase, clause, or wording of 20.11.64 NMAC or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining portions of 20.11.64 NMAC.

[1/1/2000; 20.11.64.9 NMAC - Rn, 20 NMAC 11.64.9, 10/1/02; A, 1/1/05]

#### **20.11.64.10 DOCUMENTS:**

Documents incorporated and cited in 20.11.64 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM, 87102.

[1/1/2000; 20.11.64.10 NMAC - Rn, 20 NMAC 11.64.10, & A, 10/1/02; A, 1/1/05; A, 2/10/14]

#### **20.11.64.11 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 61:**

Except as otherwise provided, the National Emission Standards for Hazardous Air Pollutants, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 61, including Subpart A, *General Provisions* thereto, as amended in the *Federal Register* through January 23, 2017, are hereby incorporated into 20.11.64 NMAC.

[1/1/2000; 20.11.64.11 NMAC - Rn, 20 NMAC 11.64.11, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14; A, 5/13/17]

#### **20.11.64.12 INCORPORATION OF FEDERAL STANDARDS CODIFIED AT 40 CFR PART 63:**

Except as otherwise provided, the National Emissions Standards for Hazardous Air Pollutants for Source Categories, promulgated by the United States environmental protection agency, and codified at 40 CFR Part 63, including Subpart A, *General Provisions* thereto, as amended in the *Federal Register* through January 23, 2017, are hereby incorporated into 20.11.64 NMAC.

[1/1/2000; 20.11.64.12 NMAC - Rn, 20 NMAC 11.64.12, 10/1/02; A, 1/1/05; A, 1/15/07; A, 2/16/09; A, 12/12/11; A, 2/10/14; A, 5/13/17]

#### **20.11.64.13 MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY (MACT) DETERMINATIONS FOR CONSTRUCTED AND RECONSTRUCTED MAJOR SOURCES OF HAZARDOUS AIR POLLUTANTS:**

Any owner or operator that constructs or reconstructs a major source of hazardous air pollutants shall be required to perform a MACT determination, approved by the

department, consistent with the provisions of 40 CFR 63, Sections 40 through 44. Any MACT emission limitations or requirements shall be incorporated into any permit issued pursuant to 20.11.41 NMAC, *Construction Permits* or 20.11.42 NMAC, *Operating Permits*.

[1/1/2000; 20.11.64.13 NMAC - Rn, 20 NMAC 11.64.13, 10/1/02; A, 1/1/05; A, 2/10/14]

#### **20.11.64.14 MODIFICATIONS AND EXCEPTIONS:**

The following modifications or exceptions are made to the incorporated federal standards:

**A.** For purposes of administering and enforcing 40 CFR 61, the following modification or exception is made to the federal standards that are incorporated in 40 CFR 61. When the director of the Albuquerque environmental health department is exercising the authority delegated to the director by the United States environmental protection agency, the definition of "administrator" of the United States environmental protection agency that is included in 40 CFR 61.02, *Definitions*, shall be changed to "director" of the Albuquerque environmental health department.

**B.** For purposes of administering and enforcing 40 CFR 63, the following modification or exception is made to the federal standards that are incorporated in 40 CFR 63. When the director of the Albuquerque environmental health department is exercising the authority delegated to the director by the United States environmental protection agency, the definition of "administrator" of the United States environmental protection agency that is included in 40 CFR 63.2, *Definitions*, shall be changed to "director" of the Albuquerque environmental health department.

**C.** Pursuant to 40 CFR 63.42(b), the effective date for the incorporation of 40 CFR 63, Sections 40 through 44, shall be June 29, 1998. If the department does not have a program to adequately implement the provisions of Section 112(g) of the Clean Air Act, all case-by-case MACT determinations made by the department shall be submitted in writing to the EPA regional administrator for concurrence. All applicable MACT emission limitations and requirements shall be incorporated into all permits issued by the department.

[1/1/2000; 20.11.64.14 NMAC - Rn, 20 NMAC 11.64.14, 10/1/02; A, 1/1/05; A, 2/10/14]

### **PART 65: VOLATILE ORGANIC COMPOUNDS**

#### **20.11.65.1 ISSUING AGENCY:**

Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.

[3/23/87. . .12/1/95; 20.11.65.1 NMAC - Rn, 20 NMAC 11.65.1.1, 10/1/02; A, 10/13/09]

#### **20.11.65.2 SCOPE:**

20.11.65 NMAC is applicable to any source located within Bernalillo county.

**A. Exempt:** 20.11.65 NMAC does not apply to sources within Bernalillo county which are located on Indian lands over which the Albuquerque - Bernalillo County Air Quality Control Board lacks jurisdiction.

**B. NSPS Facilities:** Facilities, processes and equipment that are subject to specific requirements or allowed exemption by the federal New Source Performance Standards per 40 CFR 60 shall be exempt from the requirements of 20.11.65 NMAC that would otherwise govern.

[3/23/87. . .12/1/95; 20.11.65.2 NMAC - Rn, 20 NMAC 11.65.I.2 & A, 10/1/02]

#### **20.11.65.3 STATUTORY AUTHORITY:**

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

[3/23/87. . .12/1/95; 20.11.65.3 NMAC - Rn, 20 NMAC 11.65.I.3, 10/1/02; A, 10/13/09]

#### **20.11.65.4 DURATION:**

Permanent.

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

#### **20.11.65.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.65.5 NMAC - Rn, 20 NMAC 11.65.I.5 & A, 10/1/02]

#### **20.11.65.6 OBJECTIVE:**

To prevent or reduce emission of hydrocarbon vapors from facilities and sources not otherwise regulated or exempted by 40 CFR Part 60; including volatile organic compounds and petroleum liquids, in order to prevent the formation of photochemical oxidants in the atmosphere.

[3/23/87. . .12/1/95; 20.11.65.6 NMAC - Rn, 20 NMAC 11.65.I.6, 10/1/02; A, 10/13/09]

#### **20.11.65.7 DEFINITIONS:**

In addition to the definitions in 20.11.65.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.65 NMAC shall govern.

**A. "Active life"** means the time from initial startup until final shut down of the facility. This would also include periods of scheduled or unscheduled maintenance, flow adjustments or system failure, all of which are subject to the provisions of 20.11.49 NMAC.

**B. "Alternative method"** means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the EPA administrator's or the director's satisfaction, in specific cases, to produce results adequate for the determination of compliance.

**C. "Contaminated"** means a condition resulting from seepage, drainage, or flow of gaseous or liquid substances from activities such as a leaking underground storage tank, usually detected by hydro-geologic investigations or underground storage tank excavation and removal.

**D. "Cutback asphalt"** means asphalt cement or other paving material, which has been diluted or blended with petroleum solvents such as kerosene, naphtha, diesel oil, gasoline, or similar petroleum distillate products.

**E. "Decontamination facility"** means a place where a portable or stationary treatment system is installed and operated to receive water, air, or other gaseous substances bearing VOC contaminants.

**F. "Dispense"** means to introduce organic liquids by temporary connection from a supply container, greater than 60 gallons capacity, into a receptor container, which is normally closed and sealed against spillage or evaporative loss.

**G. "Equivalent approved by the director"** means the authorization to substitute an alternative control process, which has been demonstrated to the satisfaction of the director to result in no greater emissions, than would occur with the control process otherwise required. The director may use federal EPA document AP-42 or any other reliable reference or manufacturers data in completing the evaluation of the proposed alternative.

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

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

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

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

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

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

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

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

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

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

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

- (1) possessed by one person;
- (2) located so that any portion of such aggregation or combination of containers can be encompassed within a circle 300 feet in diameter; and
- (3) was constructed prior to June 11, 1973; those constructed after June 11, 1973, may be subject to 20.11.63 NMAC, *New Source Performance Standards*.

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

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

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

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

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

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

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

[3/23/87. . .12/1/95; 20.11.65.7 NMAC - Rn, 20 NMAC 11.65.I.7, 10/1/02; A, 10/13/09]

**20.11.65.8 VARIANCES:**

**[RESERVED]**

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

**20.11.65.9 SAVINGS CLAUSE:**

Any amendment to 20.11.65 NMAC, which is filed, with the state records center shall not affect actions pending for violation of a city or county ordinance, Air Quality Control Board Regulation 11, or 20.11.65 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, part, or regulation section in effect at the time the violation was committed.

[12/1/95; 20.11.65.9 NMAC - Rn, 20 NMAC 11.65.I.9, 10/1/02]

**20.11.65.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of 20.11.65 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.65 NMAC.

[12/1/95; 20.11.65.10 NMAC - Rn, 20 NMAC 11.65.I.10, 10/1/02]

#### **20.11.65.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.65 NMAC may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.65.11 NMAC - Rn, 20 NMAC 11.65.I.11 & A, 10/1/02; A, 10/13/09]

#### **20.11.65.12 STORAGE OF GASOLINE IN STATIONARY CONTAINERS GREATER THAN 40,000 GALLONS CAPACITY:**

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

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

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

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

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

#### **20.11.65.13 LOADING OF GASOLINE FROM A LOADING RACK WITH A 30-DAY THROUGHPUT GREATER THAN 600,000 GALLONS:**

No person shall load gasoline from a loading rack having a 30-day throughput greater than 600,000 gallons of gasoline into any tank truck, trailer, or railroad tank car unless

the loading rack is equipped with a vapor collection and disposal system or its equivalent approved by the director.

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

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

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

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

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

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

#### **20.11.65.14 TRANSPORT AND DELIVERY OF GASOLINE BY MOBILE TANK TRUCKS OR TRAILER:**

No person shall unload gasoline from any gasoline transport truck or trailer to a user within the jurisdiction of the Albuquerque - Bernalillo county air quality control board without meeting the following requirements:

##### **A. Delivery of gasoline into underground storage tanks:**

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

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

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

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

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

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

#### **20.11.65.15 GASOLINE HANDLING AND HOLDING AT RETAIL OR FLEET SERVICE STATIONS:**

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

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

#### **20.11.65.16 ORGANIC FLUIDS EXEMPT FROM VAPOR LOSS CONTROL UNDER 20.11.65 NMAC:**

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

[12/1/95; 20.11.65.16 NMAC - Rn, 20 NMAC 11.65.II.5, 10/1/02; A, 10/13/09]

#### **20.11.65.17 INDUSTRIAL HANDLING, STORAGE, OR USE OF ORGANIC FLUIDS AND GASES NOT OTHERWISE ADDRESSED IN 20.11.65 NMAC:**

No person shall operate an industrial processor material handling, transport, or delivery system which would have a potential emission rate greater than either 100 pounds of organic vapors in any single 24 hour day or 10 pounds per hour without operating with the following level of emission controls:

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

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

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

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

#### **20.11.65.18 CUTBACK ASPHALT:**

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

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

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

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

#### **20.11.65.19 CONTAMINATED SOILS AND GROUNDWATER TREATMENT:**

#### **A. Applicability:**

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

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

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

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

#### **D. Testing and reporting:**

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

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

[3/23/87; 20.11.65.19 NMAC - Rn, 20 NMAC 11.65.II.8, 10/1/02; A, 10/13/09]

## **PART 66: PROCESS EQUIPMENT**

### **20.11.66.1 ISSUING AGENCY:**

Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[3/24/82. . .12/1/95; 20.11.66.1 NMAC - Rn, 20 NMAC 11.66.I.1, 10/1/02]

**20.11.66.2 SCOPE:**

**A.** This Part is applicable to owners or operators of any equipment capable of emitting pollution emissions into the atmosphere within Bernalillo County.

**B. Exempt:** This Part does not apply to sources within Bernalillo County, which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control Board lacks jurisdiction.

[12/1/95; 20.11.66.2 NMAC – Rn, 20 NMAC 11.66.I.2, 10/1/02]

**20.11.66.3 STATUTORY AUTHORITY:**

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

[3/24/82, 12/1/95; 20.11.66.3 NMAC – Rn, 20 NMAC 11.66.I.3, 10/1/02]

**20.11.66.4 DURATION:**

Permanent.

[12/1/95; 20.11.66.4 NMAC – Rn, 20 NMAC 11.66.I.4, 10/1/02]

**20.11.66.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.66.5 NMAC – Rn, 20 NMAC 11.66.I.5 & A, 10/1/02]

**20.11.66.6 OBJECTIVE:**

The objective of this Part is to achieve attainment of regulatory air pollution standards and to minimize air pollution emissions.

[12/1/95; 20.11.66.6 NMAC – Rn, 20 NMAC 11.66.I.6, 10/1/02]

**20.11.66.7 DEFINITIONS:**

**[RESERVED]**

[12/1/95; 20.11.66.7 NMAC - Rn, 20 NMAC 11.66.I.7, 10/1/02]

**20.11.66.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.66.8 NMAC - Rn, 20 NMAC 11.66.I.8, 10/1/02]

**20.11.66.9 SAVINGS CLAUSE:**

Any amendment to 20.11.66 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation No. 9, or 20.11.66 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

[12/1/95; 20.11.66.9 NMAC – Rn, 20 NMAC 11.66.I.9, 10/1/02]

**20.11.66.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of this Part or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining portions of this Part.

[12/1/95; 20.11.66.10 NMAC – Rn, 20 NMAC 11.66.I.10, 10/1/02]

**20.11.66.11 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.66.11 NMAC – Rn, 20 NMAC 11.66.I.11, & A, 10/1/02]

**20.11.66.12 EMISSIONS OF PARTICULATER MATTER:**

Except as otherwise provided in this section, no person shall cause or allow the emission of particulate matter to the atmosphere from process equipment in any one hour in total quantities in excess of the amount shown in Table 1.

**A.** To use the Table 1, select the process weight per hour (wt/hr). From the process wt/hr shown in Table 1, locate the corresponding value for the maximum number of pounds of contaminants, which may be discharged into the atmosphere in any one hour. As an example, if a process emits contaminants into the atmosphere totaling 1,500 pounds (lbs.), and the process takes 3 hours to complete, you must divide the

weight of all materials in the specific process by the number of hours. For example, 1,500 lbs. divided by 3 yields a process weight per hour of 500 lbs. From Table 1, the amount of emissions that can be discharged is 1.77 lbs in any one hour during the overall 3-hour process. Where the process weight per hour falls between figures in the left-hand column, the exact weight of permitted discharge shall be interpolated.

**B.** For purposes of this Part, the total process weight from all similar process units at a plant or premises shall be used for determining the maximum allowable emission of particulate matter that passes through a stack or stacks. The process weight rate shall be the equipment manufacturers or designers guaranteed maximum input, whichever is greater. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply.

[12/1/95; 20.11.66.12 NMAC – Rn, 20 NMAC 11.66.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.66.II.1, 10/1/02]

#### **20.11.66.13 CEMENT KILNS:**

No person operating or utilizing cement kilns shall permit, cause, suffer or allow particulate matter emissions in excess of 230 mg/m<sup>3</sup> of exhaust gas.

[12/1/95; 20.11.66.13 NMAC – Rn, 20 NMAC 11.66.II.2, 10/1/02]

#### **20.11.66.14 GYPSUM COOKERS:**

20.11.66.12 NMAC shall not apply to gypsum cookers or kettles constructed prior to the effective date of these regulations. No person shall cause or allow the emission of particulate matter into the atmosphere in any one hour from gypsum cookers or kettles constructed prior to the effective date of these regulations in total amounts which exceed 690 mg/m<sup>3</sup> of exhaust gas.

[12/1/95; 20.11.66.14 NMAC – Rn, 20 NMAC 11.66.II.3, 10/1/02]

#### **20.11.66.15 ASPHALTIC BATCH PLANTS:**

20.11.66.12 NMAC shall not apply to an asphaltic batch plant. No person shall cause or allow the emission of particulate matter into the atmosphere in any one hour from any or all operations of an asphaltic batch plant in total quantities in excess of the amount shown in Table 2.

**A.** For a process weight between any two consecutive process weights in Table 2, the emission limitation shall be determined by interpolation. Where the plant has more than one emission point, the emission total is the sum of emissions from all emission points.

**B.** No plant shall operate without a fugitive dust control system and the system shall operate and be maintained so that particulate emission is limited to the stack outlet.

[12/1/95; 20.11.66.15 NMAC – Rn, 20 NMAC 11.66.II.4, 10/1/02]

**20.11.66.16 MEASUREMENT:**

For purposes of this Part, any measurement of emissions into the atmosphere may be made by comparing the weight of materials before and after processing or by measurements taken after particulate emissions have passed through air pollution control devices or apparatus, if any, or by other reasonably accurate methods or procedures.

[12/1/95; 20.11.66.16 NMAC – Rn, 20 NMAC 11.66.II.5, 10/1/02]

**20.11.66.17 FUGITIVE DUST:**

No person shall operate process equipment, which emits fugitive dust into the atmosphere unless reasonable effective precautions are taken to prevent fugitive dust from being emitted into the atmosphere.

[12/1/95; 20.11.66.17 NMAC – Rn, 20 NMAC 11.66.II.6, 10/1/02]

**20.11.66.18 EMISSIONS OF PARTICULATE MATTER:**

**TABLE 1**

<b>Process Wt/hr (lbs)</b>	<b>Maximum Weight Disc/hr (lbs)</b>	<b>Process Wt/hr (lbs)</b>	<b>Maximum Weight Disc/hr (lbs)</b>
50	0.24	3,400	5.44
100	0.46	3,500	5.52
150	0.66	3,600	5.61
200	0.85	3,700	5.69
250	1.03	3,800	5.77
300	1.20	3,900	5.85
350	1.35	4,000	5.93
400	1.50	4,100	6.01
450	1.63	4,200	6.08
500	1.77	4,300	6.15
550	1.89	4,400	6.22
600	2.01	4,500	6.30

<b>Process Wt/hr (lbs)</b>	<b>Maximum Weight Disc/hr (lbs)</b>	<b>Process Wt/hr (lbs)</b>	<b>Maximum Weight Disc/hr (lbs)</b>
650	2.12	4,600	6.37
700	2.24	4,700	6.45
750	2.34	4,800	6.52
800	2.43	4,900	6.60
850	2.53	5,000	6.67
900	2.62	5,500	7.03
950	2.72	6,000	7.37
1,000	2.80	6,500	7.71
1,100	2.97	7,000	8.05
1,200	3.12	7,500	8.39
1,300	3.26	8,000	8.71
1,400	3.40	8,500	9.03
1,500	3.54	9,000	9.36
1,600	3.66	9,500	9.67
1,700	3.79	10,000	10.00
1,800	3.91	11,000	10.63
1,900	4.03	12,000	11.28
2,000	4.14	13,000	11.89
2,100	4.24	14,000	12.50
2,200	4.34	15,000	13.13
2,300	4.44	16,000	13.74
2,400	4.55	17,000	14.36
2,500	4.64	18,000	14.97
2,600	4.74	19,000	15.58
2,700	4.84	20,000	16.19
2,800	4.92	30,000	22.22
2,900	5.02	40,000	28.30
3,000	5.10	50,000	34.30
3,100	5.18	60,000 or more	40.00
3,200	5.27		
3,300	5.36		

[12/1/95; 20.11.66.18 NMAC - Rn, 20 NMAC 11.66.Table 1, 10/1/02]

**20.11.66.19 ASPHALTIC BATCH PLANTS:**

**TABLE 2**

<b>Process Rate</b>	<b>Total Emission Rate</b>
<b>Pounds per hour</b>	<b>Pounds per hour</b>
10,000	10
20,000	15
30,000	22
40,000	28
50,000	31
100,000	33
200,000	37
300,000 and above	40

[12/1/95; 20.11.66.19 NMAC - Rn, 20 NMAC 11.66.Table 2, 10/1/02]

**PART 67: EQUIPMENT, EMISSIONS, LIMITATIONS**

**20.11.67.1 ISSUING AGENCY:**

Albuquerque/Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[3/24/82. . .12/1/95; 20.11.67.1 NMAC - Rn, 20 NMAC 11.67.I.1, 10/1/02]

**20.11.67.2 SCOPE:**

**A.** Any stationary source located in Bernalillo County containing, constructing or modifying the following: Orchard Heaters; Kraft Mills; Coal, Oil, or Gas Burning Equipment.

**B. Exempt:** 20.11.67 NMAC does not apply to sources within Bernalillo County, which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control lacks jurisdiction.

[12/1/95; 20.11.67.2 NMAC - Rn, 20 NMAC 11.67.I.2, 10/1/02]

**20.11.67.3 STATUTORY AUTHORITY:**

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

[3/24/82. . .12/1/95; 20.11.67.3 NMAC - Rn, 20 NMAC 11.67.I.3, 10/1/02]

**20.11.67.4 DURATION:**

Permanent.

[12/1/95; 20.11.67.4 NMAC - Rn, 20 NMAC 11.67.I.4, 10/1/02]

**20.11.67.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.67.5 NMAC - Rn, 20 NMAC 11.67.I.5 & A, 10/1/02]

**20.11.67.6 OBJECTIVE:**

To prevent equipment covered by this Part from being constructed, placed, maintained, altered, used, or operated unless the equipment meets the applicable emission limitations established by 20.11.67 NMAC.

[12/1/95; 20.11.67.6 NMAC - Rn, 20 NMAC 11.67.I.6, 10/1/02]

**20.11.67.7 DEFINITIONS:**

In addition to the definitions in 20.11.67.7 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.67 NMAC shall govern.

**A. "Btu"** means British thermal unit.

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

**C. "Construction"** means fabrication, erection or installation of an affected facility.

**D. "Existing Gas Burning Equipment"** means gas-burning equipment, the construction or modification of which is commenced prior to the publication of notice of hearing of this Part as proposed.

**E. "Existing Oil Burning Equipment"** means oil burning equipment that was fully constructed and operational or under construction prior to August 17, 1971. Existing oil burning equipment also includes any gas burning equipment that is converted to burn oil for energy considerations if the gas burning equipment was fully constructed and operational on the effective date of Regulation 16.

**F. "New Gas Burning Equipment"** means gas-burning equipment, the construction or modification of which is commenced after the publication of notice of hearing of 20.11.67 NMAC as proposed.

**G. "New Oil Burning Equipment"** means oil-burning equipment, the construction of which is commenced after August 17, 1971.

**H. "Visible Emissions"** means particulate or gaseous matter, which can be detected by the human eye.

[3/24/82. . .12/1/95; 20.11.67.7 NMAC - Rn, 20 NMAC 11.67.I.7, 10/1/02]

**20.11.67.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.67.8 NMAC - Rn, 20 NMAC 11.67.I.8, 10/1/02]

**20.11.67.9 SAVINGS CLAUSE:**

Any amendment to 20.11.67 NMAC which is filed with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation No. 6 Orchard Heaters; Regulation No. 10 Kraft Mills; Regulation No. 12 Coal Burning Equipment - Nitrogen Dioxide; Regulation No. 13 Coal Burning Equipment - Sulfur Dioxide; Regulation No. 14 Coal Burning Equipment - Particulate Matter; Regulation No. 15 Oil Burning Equipment - Nitrogen Dioxide; Regulation No. 16 Oil Burning Equipment - Particulate Matter; Regulation No. 17 Oil Burning Equipment - Sulfur Dioxide; Regulation No. 18 Gas Burning Equipment - Nitrogen Dioxide; or Part 67. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

[12/1/95; 20.11.67.9 NMAC - Rn, 20 NMAC 11.67.I.9, 10/1/02]

**20.11.67.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of this Part or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.

[12/1/95; 20.11.67.10 NMAC - Rn, 20 NMAC 11.67.I.10, 10/1/02]

**20.11.67.11 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.67.11 NMAC - Rn, 20 NMAC 11.67.I.11 & A, 10/1/02]

#### **20.11.67.12 ORCHARD HEATERS:**

**A.** No person shall construct, place, maintain, alter, use or operate orchard heaters for frost protection or otherwise, unless they are so designed or equipped and are operated or regulated so as not to discharge into the atmosphere smoke as dark or darker in shade than that designated as Number 1 on the Ringlemann chart.

**B. Sale of Heaters:** Within Bernalillo County, no person shall give, sell, or offer to sell for use for frost protection any orchard heater which does not comply with the objective of this Part or which cannot be modified to comply with Subsection A of 20.11.67.12 NMAC.

**C. Inspections:** All persons subject to the provisions of 20.11.67.12 NMAC shall cooperate with agents of the Department in performing orchard heater inspection to obtain information relating to emissions, which may cause or contribute to air pollution.

[3/24/82. . .12/1/95; 20.11.67.12 NMAC - Rn, 20 NMAC 11.67.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.67.II.1, 10/1/02]

#### **20.11.67.13 KRAFT MILLS:**

No person shall discharge into the atmosphere in any one hour from any and all operations of a kraft mill, total reduced sulfur in excess of 0.01 pounds.

[3/24/82; 20.11.67.13 NMAC - Rn, 20 NMAC 11.67.II.2, 10/1/02]

#### **20.11.67.14 COAL BURNING EQUIPMENT - NITROGEN DIOXIDE:**

No person owning or operating coal burning equipment having a power generating capacity in excess of 25 megawatts or a heat input of greater than 250 million BTUs per hour shall permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of 0.45 pounds per million BTUs of heat input.

[3/24/82. . .12/1/95; 20.11.67.14 NMAC - Rn, 20 NMAC 11.67.II.3, 10/1/02]

#### **20.11.67.15 COAL BURNING EQUIPMENT - SULFUR DIOXIDE:**

**A.** No person owning or operating coal burning equipment having a power generating capacity in excess of 25 megawatts or a heat input of greater than 250 million BTUs per hour shall permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere in excess of 0.34 pounds per million BTUs of heat input.

**B.** Sampling of emissions of sulfur dioxide shall be performed in a manner, which prevents interference and prevents the contamination of the reactive elements of the sampling method. The sampling procedures need not be isokinetic but must yield representative gas samples.

[3/24/82; 20.11.67.15 NMAC - Rn, 20 NMAC 11.67. II.4, 10/1/02]

#### **20.11.67.16 COAL BURNING EQUIPMENT - PARTICULATE MATTER:**

**A.** No person owning or operating coal burning equipment shall permit, cause, suffer or allow:

(1) Particulate matter emission to the atmosphere in excess of 0.05 pounds per million BTUs of heat input, or

(2) Fine particulate matter emissions of less than two microns equivalent aerodynamic diameter and unit density to the atmosphere in excess of 0.02 pounds per million BTUs of heat input.

**B.** Fine particulate matter emissions governed by this section shall be collected and measured at stack conditions and in such a manner that no condensation of gaseous material is included with the sample.

[3/24/82. . .12/1/95; 20.11.67.16 NMAC - Rn, 20 NMAC 11.67. II.5, 10/1/02]

#### **20.11.67.17 OIL BURNING EQUIPMENT - NITROGEN DIOXIDE:**

No person owning or operating oil burning equipment having a heat input of greater than 1,000,000 million BTUs per year per unit shall permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of 0.3 pounds per million BTUs of heat input.

[3/24/82. . .12/1/95; 20.11.67.17 NMAC - Rn, 20 NMAC 11.67. II.6, 10/1/02]

#### **20.11.67.18 OIL BURNING EQUIPMENT - PARTICULATE MATTER:**

**A. New:** No person owning or operating new oil burning equipment having a rated heat capacity greater than 250 million BTUs per hour (higher heating value) per unit shall permit, cause, suffer, or allow particulate matter emissions to the atmosphere in excess of 0.03 pounds per million BTUs of heat input (higher heating value) or visible emissions in excess of an opacity of twenty percent (20%) except as provided Subsection C of 20.11.67.18 NMAC.

**B. Existing:** No person owning or operating existing oil burning equipment having a rated heat capacity greater than 250 million BTUs per hour (higher heating value) per

unit shall permit, cause, suffer or allow particulate matter emissions to the atmosphere in excess of 0.05 pounds per million BTUs of heat input (higher heating value).

**C. Visible Emissions:**

(1) Visible emissions resulting from lightoff of new flames, blowing tubes or flues, or changing fuels while operating shall not be deemed violations provided the visible emissions do not exceed twenty-seven percent (27%) opacity for a period or periods aggregating not more than 6 minutes in any 60-minute period for units governed by Subsection A of 20.11.67.18 NMAC.

(2) Particulate matter emissions governed by Subsections A and B of 20.11.67.18 NMAC, shall be determined by a method consistent with the method set for the by the federal Environmental Protection Agency at 40 CFR, Part 60, Appendix A, Method 1 through 5, or any other equivalent method receiving prior approval by the Department.

(3) Opacity of emissions from oil burning equipment subject to Subsection A of 20.11.67.18 NMAC shall be determined consistent with the method set forth by the federal Environmental Protection Agency at 40 CFR, Part 60, Appendix A, Method 9, or any other equivalent method receiving prior approval by the Department. The time period for taking opacity readings shall be for a minimum of six minutes.

[3/24/82. . .12/1/95; 20.11.67.18 NMAC - Rn, 20 NMAC 11.67. II.7, 10/1/02]

**20.11.67.19 OIL BURNING EQUIPMENT - SULFUR DIOXIDE:**

No person owning or operating oil burning equipment having a heat input of greater than 1,000,000 million BTUs per year per unit shall permit, cause, suffer or allow sulfur dioxide emissions to the atmosphere in excess of 0.34 pounds per million BTUs of heat input.

[3/24/82. . .12/1/95; 20.11.67.19 NMAC - Rn, 20 NMAC 11.67. II.8, 10/1/02]

**20.11.67.20 GAS BURNING EQUIPMENT - NITROGEN DIOXIDE:**

**A.** No person owning or operating new gas burning equipment having a heat input of greater than 1,000,000 million BTUs per year per unit shall permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of 0.2 pounds per million BTUs of heat input.

**B.** No person owning or operating existing gas burning equipment having a heat input of greater than 1,000,000 million BTUs per year per unit shall permit, cause, suffer or allow nitrogen dioxide emissions to the atmosphere in excess of 0.3 pounds per million BTUs of heat input.

[3/24/82. . .12/1/95; 20.11.67.20 NMAC - Rn, 20 NMAC 11.67.II.9, 10/1/02]

## **PART 68: INCINERATORS AND CREMATORIES**

### **20.11.68.1 ISSUING AGENCY:**

Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

6/14/71 . . . 12/1/95; 20.11.68.1 NMAC – Rn, 20 NMAC 11.68.I.1, 4/01/02]

### **20.11.68.2 SCOPE:**

A. This Part is applicable to sources located in Bernalillo County.

B. Exempt: This Part does not apply to sources within Bernalillo County which are located on Indian lands over which the Albuquerque/Bernalillo County Air Quality Control Board lacks jurisdiction.

[12/1/95; 20.1.68.2 NMAC – Rn, 20 NMAC 11.68.I.2, 4/01/02]

### **20.11.68.3 STATUTORY AUTHORITY:**

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

[6/14/71 . . . 12/1/95; 20.11.68.3 NMAC – Rn, 20 NMAC 11.68.I.3, 4/01/02]

### **20.11.68.4 DURATION:**

Permanent.

[12/1/95; 20.11.68.4 NMAC – Rn, 20 NMAC 11.68.I.4, 4/01/02]

### **20.11.68.5 EFFECTIVE DATE:**

December 1, 1995.

[12/1/95; 20.11.68.5 NMAC – Rn, NMAC 20 11.68.I.5, 4/01/02]

### **20.11.68.6 OBJECTIVE:**

The objective of this Part is to minimize emissions from and in most cases eliminate the use of a particular class of equipment which the Board has found produces unsightly and noxious byproducts of combustion.

[3/16/94, 12/1/95; 20.11.68.6 NMAC – Rn, 20 NMAC 11.68.I.6, 4/01/02]

**20.11.68.7 DEFINITIONS:**

[RESERVED]

**20.11.68.8 VARIANCES:**

[RESERVED]

**20.11.68.9 SAVINGS CLAUSE:**

Any amendment to 20.11.68 NMAC which is filed with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Board Regulation No. 4, or 20.11.68 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part or regulation section in effect at the time the violation was committed.

[12/1/95; 20.11.68.9 NMAC – Rn, 20 NMAC 11.68.I.9, 4/01/02]

**20.11.68.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of this Part or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.

[12/1/95; 20.11.68.10 NMAC – Rn, 20 NMAC 11.68.I.10, 4/01/02]

**20.11.68.11 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, One Civic Plaza NW, 3rd Floor, Room 3023, Albuquerque, NM 87102.

[12/1/95; 20.11.68.11 NMAC – Rn, 20 NMAC 11.68.I.11, 4/01/02]

**20.11.68.12 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:**

This Part amends and supersedes Albuquerque/Bernalillo County Air Quality Control Board Regulation No. 04 - Incinerators and Crematories, filed on March 16, 1994. All references to this regulation shall be understood as a reference to this Part.

[12/1/95; 20.11.68.12 NMAC – Rn, 20 NMAC 11.68.I.12, 4/01/02]

**20.11.68.13-20.11.68.199 [RESERVED]**

**20.11.68.200 APPLICABLE REQUIREMENTS:**

A. Residential Use: The construction, use or operation of an incinerator on property devoted to residential uses is prohibited.

B. Construction/Operation: The construction, use or operation of an incinerator, even if an "affected facility" pursuant to 40 CFR 60, Subpart Ea as amended, on any property is prohibited, except for certain crematories as allowed by this Part.

C. Crematories: Crematories may be used solely for cremating human or animal remains, parts and tissues thereof, and other items normally associated with the cremation process. No person may release or discharge into the atmosphere from any crematory particulate matter in excess of 0.08 grains per standard cubic foot of dry exhaust gas corrected to 12 percent of carbon dioxide (CO<sub>2</sub>) at standard conditions. In measuring the combustion contaminants from crematories, the carbon dioxide (CO<sub>2</sub>) produced by combustion of any liquid or gaseous fuel shall be excluded from the correction to 12% of carbon dioxide (CO<sub>2</sub>). In no instance shall the emissions of a crematory exceed federal requirements.

[3/24/82, 6/16/92; 20.11.68.200 NMAC – Rn, 20 NMAC 11.68.II.1, 2, 3, & A, 4/01/02]

**PART 69: PATHOLOGICAL WASTE DESTRUCTORS**

**20.11.69.1 ISSUING AGENCY:**

Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.

[5/13/92. . .12/1/95; 20.11.69.1 NMAC - Rn, 20 NMAC 11.69.I.1, 10/1/02; A, 10/13/09]

**20.11.69.2 SCOPE:**

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

B. **EXEMPT:** 20.11.69 NMAC does not apply to sources within Bernalillo county which are located on Indian lands over which the Albuquerque - Bernalillo County Air Quality Control lacks jurisdiction.

[5/13/92; 20.11.69.2 NMAC - Rn, 20 NMAC 11.69.I.2, 10/1/02]

**20.11.69.3 STATUTORY AUTHORITY:**

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

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

**20.11.69.4 DURATION:**

Permanent.

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

**20.11.69.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.69.5 NMAC - Rn, 20 NMAC 11.69.I.5 & A, 10/1/02]

**20.11.69.6 OBJECTIVE:**

To assure that the citizens of Bernalillo county are not needlessly exposed to infectious or toxic substances in the air, which pathological waste destructors, might otherwise emit.

[5/13/92; 20.11.69.6 NMAC - Rn, 20 NMAC 11.69.I.6, 10/1/02; A, 10/13/09]

**20.11.69.7 DEFINITIONS:**

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

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

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

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

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

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

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

**G. "gr"** means grains.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **20.11.69.8 VARIANCES:**

**[RESERVED]**

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

#### **20.11.69.9 SAVINGS CLAUSE:**

Any amendment to 20.11.69 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a city or county ordinance, Air Quality Control Board Regulation 39, or 20.11.69 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

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

#### **20.11.69.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of 20.11.69 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.69 NMAC.

[12/1/95; 20.11.69.10 NMAC - Rn, 20 NMAC 11.69.I.10, 10/1/02; A, 10/13/09]

#### **20.11.69.11 DOCUMENTS:**

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

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

#### **20.11.69.12 CONDITIONS:**

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

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

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

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

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

#### **20.11.69.13 EMISSION LIMITS:**

No owner or operator shall cause or allow exceedence of the following emission limits: (Particulate matter emissions are measured at 12 percent CO<sub>2</sub>. All other emissions are measured at 7 percent O<sub>2</sub>. Opacity shall never exceed 10 percent).

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

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

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

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

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

- (a) Particulate matter 0.015 gr/dscf
- (b) Hydrogen chloride 40 mg/dscm
- (c) Carbon monoxide 60 mg/dscm
- (d) PCDD/PCDF 5 ng/dscm
- (e) Oxides of nitrogen 235 mg/dscm
- (f) Sulfur dioxide 80 mg/dscm
- (g) Arsenic 99 percent removal

(h) Beryllium 99 percent removal

(i) Cadmium 99 percent removal

(j) Lead 99 percent removal

(k) Mercury 90 percent removal

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

**20.11.69.14 COMPLIANCE:**

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

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

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

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

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

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

(2) the owner or operator obtains a written exemption from the Albuquerque - Bernalillo county AQCB that contains a condition limiting the operation of such PWD to

six hours in any one day. The violation of such an exemption condition shall be a violation of 20.11.69 NMAC.

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

#### **20.11.69.15 DESIGN REQUIREMENTS:**

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

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

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

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

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

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

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

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

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

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

#### **20.11.69.16 STACK HEIGHT REQUIREMENTS:**

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

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

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

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

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

#### **20.11.69.17 OPERATING REQUIREMENTS:**

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

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

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

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

#### **20.11.69.18 EMISSION MONITORING:**

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

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

(a) carbon monoxide (CO);

(b) oxygen (O<sub>2</sub>);

(c) opacity.

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

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

(a) oxygen (O<sub>2</sub>);

(b) carbon monoxide (CO).

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

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

**D.** The continuous emission monitors for oxygen (O<sub>2</sub>) and carbon monoxide (CO) shall complete a minimum of one operation cycle for each successive 15-minute period. One-hour averages shall be calculated from four (4) or more data points equally spaced over each one-hour period.

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

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

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

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

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

**20.11.69.19 CONTINUOUS EMISSION MONITOR MALFUNCTION:**

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

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

**20.11.69.20 CEM:**

**PERFORMANCE EVALUATION:**

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

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

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

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

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

**20.11.69.21 EMISSION TESTING:**

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

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

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

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

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

**C.** The owner or operator of any PWD with a charging capacity of 200 pounds per hour or greater shall conduct a performance test to demonstrate compliance with the standards for particulate matter (PM), carbon monoxide (CO), hydrogen chloride (HCl), sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), total tetra-through octa-chlorinated dibenzo-para-dioxins and dibenzo furans (PCDD/PCDF);

(1) and the following metals:

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

(f) mercury and compounds (expressed as mercury)

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

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

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

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

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

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

#### **20.11.69.22 TEST PROCEDURES:**

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

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

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

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

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

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

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

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

- (5) for beryllium 40 CFR Part 61, Appendix B, Method 104 as amended;
- (6) for mercury 40 CFR Part 61, Appendix B., Method 101A as amended;
- (7) for opacity 40 CFR Part 60, Appendix A, Method 9 as amended;
- (8) for hydrogen chloride 40 CFR Part 60, Appendix A, Method 26 as amended;
- (9) for carbon monoxide 40 CFR Part 60, Appendix A, Method 10 as amended;
- (10) for sulfur dioxide 40 CFR Part 60, Appendix A, Method 6 as amended; and
- (11) for nitrogen oxide 40 CFR Part 60, Appendix A, Method 7 as amended.

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

[5/13/92; 12/1/95; 20.11.69.22 NMAC - Rn, 20 NMAC 11.69.II.11, 10/1/02; A, 10/13/09]

### **20.11.69.23 QUARTERLY REPORT:**

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

- A.** The average hourly charging rate to each unit.
- B.** The thirty-minute average temperatures of the primary chamber, the secondary chamber, and the outlet from the final air pollution control device.
- C.** The hourly and four-hour average concentrations of carbon monoxide (CO) in mg/dscm, corrected to 7 percent O<sub>2</sub> as measured by continuous emission monitors.
- D.** The hourly average percent oxygen (O<sub>2</sub>) and six-minute average opacity as measured by continuous emission monitors.
- E.** The percent data capture for each twenty-four hour period for each continuous emission monitor.
- F.** The identification of all periods of startup, shutdown, and excess emissions.
- G.** The reason for any excess emissions and the corrective action taken.

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

**20.11.69.24 RECORDS:**

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

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

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

**20.11.69.25 UPSET CONDITION:**

**A.** The provisions of 20.11.49 NMAC shall not apply to any PWD.

**B.** Whenever the temperature requirements of Sections 15 or 17 of 20.11.69 NMAC or any emission limit in 20.11.69.13 NMAC for which compliance is based on continuous emissions monitoring, is exceeded, the operator shall take the following actions:

- (1) cut off waste charging to the combustion unit;
- (2) notify the department verbally of the exceedence within four hours of its occurrence or prior to twelve noon of the next business day should the exceedence occur during non-business hours;
- (3) note in the operating record the time and date of the exceedence, when shutdown began, and when shutdown was complete;
- (4) identify and correct the cause of the upset condition before resuming operation of the unit; and
- (5) note in the operating record the corrective action taken and the time and date of startup.

[5/13/92; 20.11.69.25 NMAC - Rn, 20 NMAC 11.69.II.14, 10/1/02; A, 10/13/09]

**20.11.69.26 HANDLING, STORAGE, AND TRANSPORTATION OF ASH:**

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

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

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

(2) shall line or seal vehicles to prevent any leakage of liquids.

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

[5/13/92; 20.11.69.26 NMAC - Rn, 20 NMAC 11.69.II.15, 10/1/02; A, 10/13/09]

**20.11.69.27 OPERATOR CERTIFICATION:**

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

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

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

**20.11.69.28 COMPLIANCE SCHEDULE FOR EXISTING PATHOLOGICAL WASTE DESTRUCTORS:**

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

**B. Assurances of discontinuance** shall contain the following:

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

(2) date of submittal;

- (3) description of facility;
- (4) description of the property upon which the facility is located;
- (5) the following increments of progress:

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

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

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

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

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

[5/13/92; 20.11.69.28 NMAC - Rn, 20 NMAC 11.69.II.17, 10/1/02; A, 10/13/09]

#### **20.11.69.29 TRAINING AND CERTIFICATION PROCEDURES DOCUMENT - PATHOLOGICAL WASTE DESTRUCTORS:**

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

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

- (1) proper waste handling;
- (2) identification of waste types acceptable for combustion;
- (3) PWD design and waste combustion theory;
- (4) proper PWD startup, operation, shutdown, and maintenance procedures; (these procedures must follow the PWD manufacturer's recommendations);

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

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

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

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

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

**D.** Every operator shall have visible proof of certification posted or filed the work area at the facility.

[5/13/92. .5/13/95; 12/1/95; 20.11.69.29 NMAC - Rn, 20 NMAC 11.69.II.18, 10/1/02]

**20.11.69.30 PATHOLOGICAL WASTE DESTRUCTOR SUMMARY OF REPORTING REQUIREMENTS:**

**TABLE 1**

Report/Description	Reference	Date due to Department
Notice of CEM performance evaluation.	Subsection C of 20.11.69.20 NMAC	At least 30 days prior to performance evaluation.
CEM performance evaluation.	Subsection D of 20.11.69.20 NMAC	Within 30 days from the end of the test period.
Notice of emission testing and test protocols.	Subsection A of 20.11.69.22 NMAC	At least 30 days prior to the actual test date.

Copy of emission test results.	Subsection C of 20.11.69.23 NMAC	Within 60 days from the test date.
Quarterly report of CEM and temperature monitoring results.	20.11.69.23 NMAC	Within 30 days of the end of each calendar quarter.
Notice of intent to cease unit operations.	Subsection A of 20.11.69.28 NMAC	Within 10 days of the effective date of this Part.
Compliance schedule/Assurance of Discontinuance	Subsection A of 20.11.69.28 NMAC	Within 10 days of the effective date of this Part.

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

**PART 70: [RESERVED]**

**PART 71: MUNICIPAL SOLID WASTE LANDFILLS**

**20.11.71.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board.

[20.11.71.1 NMAC - N, 1/1/06]

**20.11.71.2 SCOPE:**

**A. Applicability:** 20.11.71 NMAC is applicable to the city of Albuquerque and Bernalillo county.

**(1) Existing municipal solid waste landfills:** Except as provided in 20.11.71.14 NMAC, each owner or operator of an existing (active or closed) municipal solid waste landfill is subject to all provisions specified in 40 CFR Part 60, Subpart Cf,

*Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills*, as promulgated by the US EPA on August 29, 2016. Physical or operational changes made to an existing municipal solid waste landfill solely to comply with an emission guideline are not considered a modification or reconstruction and do not subject an existing municipal solid waste landfill to the requirements of 40 CFR Part 60 Subpart XXX.

**(2) New municipal solid waste landfills:** In addition to being subject to 20.11.71.13 NMAC new municipal solid waste landfills are subject to 40 CFR Part 60, Subpart XXX, *Standards of Performance for Municipal Solid Waste Landfills* as incorporated by reference in 20.11.63 NMAC, *New Source Performance Standards for Stationary Sources*.

**B. Exempt:** 20.11.71 NMAC does not apply to sources within Bernalillo county, that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction.

[20.11.71.2 NMAC - N, 1/1/06; A, 5/13/17]

#### **20.11.71.3 STATUTORY AUTHORITY:**

20.11.71 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, Section 74-2-5 NMSA 1978; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinances Section 30-33; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.

[20.11.71.3 NMAC - N, 1/1/06; A, 5/13/17]

#### **20.11.71.4 DURATION:**

Permanent.

[20.11.71.4 NMAC - N, 1/1/06]

#### **20.11.71.5 EFFECTIVE DATE:**

January 1, 2006, unless a later date is cited at the end of a section.

[20.11.71.5 NMAC - N, 1/1/06]

#### **20.11.71.6 OBJECTIVE:**

To establish requirements for municipal solid waste landfills (MSWLs) in order to control emissions of methane and non-methane organic compounds (NMOC); to create a legally enforceable mechanism to require owners and operators of existing MSWLs to comply with the provisions of 40 CFR Part 60, Subpart Cf.

[20.11.71.6 NMAC - N, 1/1/06; A, 5/13/17]

#### **20.11.71.7 DEFINITIONS:**

All definitions found in 40 CFR Part 60, Subpart A apply. All definitions found in 40 CFR Part 60, Subpart XXX apply to new municipal solid waste landfills and all definitions found in 40 CFR Part 60, Subpart Cf apply to existing MSWLs. In addition to the definitions in 20.11.71.7 NMAC, the definitions in 20.11.1 NMAC *General Provisions* apply unless there is a conflict between definitions, in which case the definition in 20.11.71 NMAC shall govern. As used in this part:

**A. "Active municipal solid waste landfill" or "active MSWL"** means an MSWL in which solid waste is being placed or an MSWL that is planned to accept waste in the future.

**B. "Closed municipal solid waste landfill" or "closed MSWL"** means an MSWL in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed in 40 CFR 60.7(a)(4). Once a notification of modification has been filed and additional solid waste is placed in the MSWL, the MSWL is no longer closed.

**C. "Existing municipal solid waste landfill" or "existing MSWL"** means an active or closed MSWL meeting the following conditions:

(1) has commenced construction, modification, or reconstruction on or *before* July 17, 2014; and;

(2) has accepted household waste at any time *since* November 8, 1987, or has additional design capacity available for future waste deposition.

**D. "New municipal solid waste landfill" or "new MSWL"** means an MSWL that commenced construction, reconstruction, or modification after July 17, 2014.

[20.11.71.7 NMAC - N, 1/1/06; A, 5/13/17]

#### **20.11.71.8 VARIANCES:**

The variance provisions of 20.11.7 NMAC, Variance Procedure, Revised Ordinances of Albuquerque 1994 Section 9-5-1-8, Bernalillo County Ordinances Section 30-37 and Section 74-2-8 NMSA 1978 shall **not** apply to 20.11.71 NMAC or the incorporated federal standards.

[20.11.71.8 NMAC - N, 1/1/06; A, 5/13/17]

#### **20.11.71.9 SAVINGS CLAUSE:**

Any amendment to 20.11.71 NMAC that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance, the air quality regulations for Albuquerque and Bernalillo county or a permit issued by the department. Prosecution for a violation under a prior statute, ordinance, regulation or permit shall be governed and prosecuted under the statute, ordinance or regulation in effect at the time the violation was committed.

[20.11.71.9 NMAC - N, 1/1/06]

#### **20.11.71.10 SEVERABILITY:**

If any section, paragraph, sentence, clause or word of 20.11.71 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.71 NMAC.

[20.11.71.10 NMAC - N, 1/1/06]

#### **20.11.71.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.71 NMAC may be viewed at the Albuquerque environmental health department, one civic plaza, suite 3023, 400 Marquette NW, Albuquerque, NM 87102.

[20.11.71.11 NMAC - N, 1/1/06]

#### **20.11.71.12 [RESERVED]**

[20.11.71.12 NMAC - N, 1/1/06]

#### **20.11.71.13 PERMITTING REQUIREMENTS:**

**A. Operating permits:** New and existing MSW landfills with design capacities greater than or equal to 2.5 million megagrams or 2.5 million cubic meters are subject to the permitting requirements of 20.11.42 NMAC *Operating Permits*. New and existing MSW landfills with design capacities less than 2.5 million megagrams or 2.5 million cubic meters are not subject to permitting requirements under 20.11.42 NMAC *Operating Permits* unless they are a major source as defined in 20.11.42 NMAC *Operating Permits*.

**B. Construction Permits:** Emissions of NMOC from MSW landfills subject to 20.11.71 NMAC shall not be included in applicability determinations that would otherwise be required by 20.11.41 NMAC *Construction Permits* and shall not be subject to the permit requirements of 20.11.41 NMAC.

[20.11.71.13 NMAC - N, 1/1/06; A, 5/13/17]

#### **20.11.71.14 REQUIREMENTS FOR EXISTING MUNICIPAL SOLID WASTE LANDFILLS:**

**A.** Except as provided below, requirements for existing (active and closed) MSWLs will be in accordance with 40 CFR Part 60 Subpart Cf.

(1) Existing active and closed MSWLs will continue to comply with 40CFR Subpart Cc or WWW, as applicable, until the effective date of final EPA approval, as published in the federal register, of a state plan for Albuquerque – Bernalillo County implementing 40 CFR Part 60 Subpart Cf. Upon such EPA approval, existing (active and closed) MSWLs will comply with 40 CFR Part 60 Subpart Cf.

(2) Each owner or operator of an existing (active or closed) MSWL must comply with all provisions in 40 CFR Part 60 Subpart Cf notwithstanding any language therein characterizing provisions of 40 CFR Part 60 Subpart Cf as "guidelines."

**B.** All reports required in 40 CFR Part 60, Subpart Cf shall be submitted to the department according to the schedules outlined in that subpart and to the administrator of the EPA as required by that subpart. Additional notifications regarding progress toward meeting the final compliance schedule for control system installation and startup shall be submitted to the department as follows:

(1) Contracts for construction of collection and control systems shall be awarded or orders for purchase of components shall be completed no later than six months following submission of the final control plan as required by 40 CFR 60.38f(d);

(2) On-site construction or installation of the collection and control system shall be initiated no later than nine months following submission of the final control plan;

(3) On-site construction or installation of the collection and control system shall be completed no later than 29 months following the submission of an annual NMOC emission rate report showing NMOC emissions equal to or exceeding the emissions threshold in 40 CFR Part 60, Subpart Cf; and

(4) Initial performance testing shall occur no later than 150 days following the final compliance date in 40 CFR Part 60, Subpart Cf.

**C. Exceptions:** Unless otherwise specified in the applicable federal subpart, on a case by case basis and consistent with 40 CFR Part 60.24(f), an existing active or closed MSWL may apply for a less stringent emission standard or longer compliance schedule than those otherwise required by this part, provided that the owner or operator demonstrates to the department:

(1) Unreasonable cost of control, including, but not limited to, MSWL age, location, or basic design;

(2) Physical impossibility or impracticability of installing necessary control equipment; or

(3) Other environmental factors specific to the MSWL that make application of a less stringent standard or final compliance time significantly more reasonable.

[20.11.71.14 NMAC - N, 1/1/06; A, 5/13/17]

## **PART 72-79: [RESERVED]**

## **PART 80: ADJUDICATORY PROCEDURES - ADMINISTRATIVE ENFORCEMENT HEARINGS BY DIRECTOR**

### **20.11.80.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.

[20.11.80.1 NMAC - N, 8/15/11]

### **20.11.80.2 SCOPE:**

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

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

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

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

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

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

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

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

[20.11.80.2 NMAC - N, 8/15/11]

**20.11.80.3 STATUTORY AUTHORITY:**

20.11.80 NMAC is adopted pursuant to the authority of the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, specifically Sections 74-2-5, 74-2-5.1 and 74-2-12 NMSA 1978.

[20.11.80.3 NMAC - N, 8/15/11]

**20.11.80.4 DURATION:**

Permanent.

[20.11.80.4 NMAC - N, 8/15/11]

**20.11.80.5 EFFECTIVE DATE:**

August 15, 2011, unless a later date is cited at the end of a section.

[20.11.80.5 NMAC - N, 8/15/11]

**20.11.80.6 OBJECTIVE:**

To govern the adjudicatory proceedings of the department and the director regarding administrative enforcement, provide due process for all parties and give an orderly structure to the proceedings.

[20.11.80.6 NMAC - N, 8/15/11]

**20.11.80.7 DEFINITIONS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**P. "Respondent"** means the person to whom the air program manager has issued a compliance order.

[20.11.80.7 NMAC - N, 8/15/11]

#### **20.11.80.8 VARIANCES:**

The variance procedures established in 20.11.7 NMAC shall not apply to 20.11.80 NMAC.

[20.11.80.8 NMAC - N, 8/15/11]

#### **20.11.80.9 SAVINGS CLAUSE:**

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

[20.11.80.9 NMAC - N, 8/15/11]

#### **20.11.80.10 SEVERABILITY:**

If for any reason any section, subsection, sentence, phrase, clause or wording of 20.11.80 NMAC is held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of remaining portions of 20.11.80 NMAC.

[20.11.80.10 NMAC - N, 8/15/11]

#### **20.11.80.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.80 NMAC may be viewed at the Albuquerque environmental health department, Suite 3023, One Civic Plaza, 400 Marquette NW, Albuquerque, New Mexico.

[20.11.80.11 NMAC - N, 8/15/11]

#### **20.11.80.12 GENERAL PROVISIONS:**

**A. Applicability of rules of civil procedure and rules of evidence:** In the absence of a specific provision in 20.11.80 NMAC governing an action, the hearing officer may look to the New Mexico Rules of Civil Procedure, NMRA 1-001 et seq., and the New Mexico Rules of Evidence, NMRA 11-101 et seq., for guidance. No provision of the rules of civil procedure shall be construed to extend or otherwise modify the authority and jurisdiction of the director.

**B. Liberal construction:** 20.11.80 NMAC shall be liberally construed to carry out its purpose.

#### **C. Director and hearing officer - powers and duties - disqualification and withdrawal:**

(1) **Director:** The director shall exercise all powers and duties authorized and required by the act and 20.11.80 NMAC that are not otherwise delegated by 20.11.80 NMAC to the hearing officer or the hearing clerk. The director or hearing officer may specify procedures in addition to, or that vary from, the procedures provided in 20.11.80 NMAC in order to expedite the efficient resolution of the action or to avoid obvious injustice.

(2) **Hearing officer:** The director shall appoint a hearing officer or hearing officers to perform the functions described in Subparagraph (b) of Paragraph (2) of Subsection C of 20.11.80.12 NMAC.

(a) **Qualifications and disqualifications:** A hearing officer may be an independent contractor, a hearing officer at the city of Albuquerque office of administrative hearings or similar successor city organizational unit, an employee of the department who is not air program staff, or an employee of a different city department. A hearing officer shall not be:

- (i) an employee of or staff for the air program;
- (ii) an employee of or staff for the department unless employed by the department as a hearing officer;
- (iii) a person who has a personal bias or prejudice concerning a party, has personal knowledge of disputed facts concerning the proceeding, is related to a party within the third degree of relationship or has a financial interest in the proceeding;
- (iv) a person who has performed prosecutorial or investigative functions in connection with the matter at issue in the proceeding; or
- (v) an officer, director or trustee of a party to the proceeding.

(b) **Hearing officer functions:** The hearing officer shall exercise all powers and duties required or delegated by the director pursuant to the act and 20.11.80 NMAC. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited and avoid delay. The hearing officer shall have authority to take all measures necessary to maintain order and the efficient, fair and impartial adjudication of issues arising in proceedings governed by 20.11.80 NMAC, including, but not limited to:

- (i) conducting hearings authorized by 20.11.80 NMAC;
- (ii) ruling upon motions, procedural requests and offers of proof, and issuing all necessary orders;
- (iii) administering oaths and affirmations, examining witnesses and admitting or excluding evidence;
- (iv) requiring parties to attend conferences for the settlement or simplification of issues, or for expediting proceedings;
- (v) imposing sanctions, subject to review and approval by the director, on parties who cause undue delay or fail to cooperate in the proceeding; and
- (vi) filing with the hearing clerk all original documents received by the hearing officer.

(3) **Director and hearing officer; disqualification or withdrawal:**

(a) The director may not perform functions authorized by 20.11.80 NMAC regarding any matter in which the director:

(i) has a personal bias or prejudice concerning a party, has personal knowledge of disputed facts concerning the proceeding, is related to a party within the third degree of relationship or has a financial interest in the proceeding;

(ii) has performed prosecutorial or investigative functions in connection with the matter at issue in the proceeding; or

(iii) is an officer, director or trustee of a party to the proceeding.

(b) The director shall not be disqualified solely because the director has been briefed on the matter before a compliance order is issued.

(c) A party may request the withdrawal or disqualification of the director or the hearing officer by filing a motion that includes a reason for disqualification listed in either Subparagraph (a) of Paragraph (3) of Subsection C of 20.11.80.12 NMAC or Subparagraph (a) of Paragraph (2) of Subsection C of 20.11.80.12 NMAC, as applicable. The motion shall be filed within 10 days after the later of the date the compliance order has been docketed or the hearing officer has been designated, or, if a new director or new hearing officer is appointed, within 10 days after the new director takes office or the new hearing officer is appointed, as applicable.

(d) A motion seeking withdrawal or disqualification of the director or the hearing officer shall be ruled upon by the director. If the director withdraws or is disqualified, the duties of the director shall be assumed by an associate director, deputy director or other person who would not be subject to disqualification and does not directly oversee the air program.

**D. Recording of hearings:** All hearings on the merits shall be recorded by a court reporter unless otherwise directed by the director or hearing officer. The recording made by the court reporter will be the sole official recording of the hearing. The hearing clerk shall make the transcription part of the record proper, which is a public record except as otherwise provided by law.

#### **E. Computation and extension of time:**

(1) **Computation of time:** In computing any period of time prescribed or allowed by 20.11.80 NMAC, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday or legal city of Albuquerque holiday, in which event, the time shall be extended until 5:00 p.m. on the next day that is not a Saturday, Sunday or legal city of Albuquerque holiday. Whenever a party must act within a prescribed period after service upon that party and service is by mail, three days shall be added to the prescribed period. The three-day extension does not apply to a deadline established by the act.

(2) **Extensions of time:** When a motion is filed, the hearing officer or director, as appropriate for the stage of the proceeding at the time the motion is filed, may grant an extension of time for filing a document or may grant continuance of a hearing. No extension shall be granted regarding a deadline established by the act.

**F. Ex parte contact.** Between the time a compliance order has been issued and the time the director issues a final order or the request for hearing has been withdrawn, no person shall have ex parte contact with the director or the hearing officer regarding the merits of a pending compliance order or motion filed pursuant to 20.11.80 NMAC. The ex parte restriction established in the immediately-preceding sentence does not apply to the director, the hearing officer or the hearing clerk.

**G. Document - filing, service, form and examination:**

(1) **Filing of documents:**

(a) except as otherwise provided, the original of all documents served in the proceeding shall be filed with the hearing clerk; and

(b) the party that files a document shall serve a copy of the document on all other parties. All documents shall be filed at least 15 days before the hearing at which the hearing officer or director will consider the matter unless otherwise ordered by the hearing officer. A certificate of service like the certificate of service shown in Subsection J of 20.11.80.12 NMAC shall accompany each filed document.

(2) **Service of Documents:** Except as otherwise provided or ordered by the hearing officer, all documents shall be served personally, mailed by express or first class mail, or, if the person being served has agreed in writing, sent by facsimile or by electronic transmission. Service by mail is complete when the document is mailed. Service by facsimile or electronic transmission is accomplished when transmission of the document is complete. If the person being served is represented by an attorney, service shall be made on the attorney. Delivery receipts shall be kept as proofs of service and shall be produced immediately upon the request of the hearing officer, the director or another party.

(3) **Form of documents:**

(a) If feasible, all documents in paper form shall be prepared on 8 1/2 inch x 11 inch white paper, printed double-sided. Where appropriate, the first page of every document shall include the caption or heading required by Subsection J of 20.11.80.12 NMAC. The contents, except quotations and footnotes, shall be double spaced.

(b) The original of each document, except exhibits, shall be signed by the party or the party's attorney or other representative, and shall include the address, e-mail address if any, and telephone number of the person who signed. The signature constitutes a certification that the signer has read the document; that, to the best of the

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

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

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

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

**J. Samples - caption; certificate of service:**

CITY OF ALBUQUERQUE

ENVIRONMENTAL HEALTH DEPARTMENT

CITY OF ALBUQUERQUE

ENVIRONMENTAL HEALTH DEPARTMENT

AIR QUALITY DIVISION

Complainant,

v. Administrative Compliance Order No. [year] - [indiv.  
order # ]

[Note: Confirm the compliance order number with the  
*hearing clerk before filing.*]

*[NAME OF RESPONDENT],*

Respondent.

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

By: \_\_\_\_\_

*[Signature]*

\_\_\_\_\_

*[Print or type name]*

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

### CERTIFICATE OF SERVICE

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

*[List names of persons served:]*

By \_\_\_\_\_

*[Signature of person certifying service]*

\_\_\_\_\_

*[Print or type name]*

[20.11.80.12 NMAC - N, 8/15/11]

### **20.11.80.13 PREHEARING PROCEDURES:**

#### **A. Initiation of process:**

(1) **Filing a request for hearing:** As required by the act at Subsection C of Section 74-2-12 NMSA 1978, no later than 30 days after a compliance order is served on a respondent, the respondent shall submit a written request for a hearing to the director. If a timely request for hearing is not submitted, the compliance order shall be final. The process governed by 20.11.80 NMAC shall be initiated by the respondent

filing a timely request for hearing and serving the request on the department director, the air program manager or his or her designee and every other party.

(2) **Request for hearing:** The request for hearing shall include an answer to the compliance order. The answer shall:

(a) in separately-numbered paragraphs that sequentially reference the numbered paragraphs in the compliance order, clearly and directly admit or deny each of the factual assertions contained in the compliance order; however, if the respondent has no knowledge of a particular factual assertion and so states, the assertion may be denied on the basis of a lack of knowledge; every allegation in the compliance order that is not specifically denied shall be deemed admitted by the respondent;

(b) indicate every affirmative defense upon which the respondent intends to rely; every affirmative defense that is not asserted in the request for hearing shall be deemed waived, except a defense asserting lack of subject matter jurisdiction;

(c) be signed under oath or affirmation that the information contained in the answer is to the best of the signer's knowledge and belief true and correct; and

(d) have a copy of the compliance order attached.

#### **B. Notice of docketing; notice of hearing officer assignment:**

(1) **Notice:** As soon as practical after the hearing clerk receives a request for hearing, the hearing clerk shall issue a notice of docketing that includes the caption or heading required by Subsection J of 20.11.80.12 NMAC, the docket number of the case, the date upon which the request for hearing was received by the hearing clerk and the name of the hearing officer if one has been designated. If a hearing officer has not been designated, the hearing clerk shall notify the parties of the name and address of the hearing officer as soon as one is assigned. The hearing clerk shall include a copy of 20.11.80 NMAC with the notice of docketing that is sent to the respondent.

(2) **Untimeliness:** The hearing clerk shall docket every request for hearing that is delivered to the hearing clerk without regard to whether it appears to be timely. Any party may move to dismiss an untimely request for hearing.

#### **C. Scheduling the hearing:**

(1) In consultation with the hearing officer, but no later than 30 days before the date of the hearing, the hearing clerk shall issue and serve upon the parties a notice of hearing setting forth the date, time and location of the hearing.

(2) After consideration of prejudice to the parties, the hearing officer shall not grant a request to postpone a hearing unless all parties consent or the hearing officer determines good cause has been shown.

(3) Location of the hearing; attendance by the public: The hearing shall be held in a public facility within Bernalillo county with seating available for members of the public, who can attend and listen, but who shall not testify unless identified as a witness by a party as required by Subsection B of 20.11.80.14 NMAC.

#### **D. Motions:**

(1) **General:** Except for motions made orally during a hearing, all motions shall be in writing, specify the grounds for the motion, state the relief sought and state whether the motion is opposed or unopposed. Each motion that is not made orally during a hearing shall be filed no fewer than 30 days before the hearing at which the hearing officer or director will consider the matter unless a different deadline is established by the hearing officer; shall be accompanied by an affidavit, certificate or other evidence relied upon; and shall be served as required by Paragraph (2) of Subsection G of 20.11.80.12 NMAC.

(2) **Unopposed motions:** An unopposed motion shall state that concurrence of all other parties was obtained. The moving party shall submit a proposed order approved by all parties for the hearing officer's review with the motion.

(3) **Opposed motions:** Every opposed motion shall state either that concurrence was sought and denied or why concurrence was not sought. A memorandum brief in support of an opposed motion may be filed with the motion. The moving party shall submit a proposed order for the hearing officer's review with the motion.

(4) **Response to motions:** Unless a different deadline is established by the hearing officer, every party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. A non-moving party who fails to file a timely response shall be deemed to have waived any objection to the granting of the motion.

(5) **Reply to response:** Unless a different deadline is established by the hearing officer, the moving party may submit a reply to a response within 10 days after service of the response, but is not required to submit a reply.

(6) **Decision regarding motions:** All motions shall be decided by the hearing officer without a hearing, unless the hearing officer decides to hold a hearing or unless a party requests a hearing and the hearing officer consents to a motion hearing.

(7) **Procedural motions:** The hearing officer may rule upon a procedural motion before the expiration of the time for response. A response regarding the procedural motion received after the decision is made shall be treated as a request for reconsideration of the ruling.

(8) The hearing officer may refer a motion to the director with the hearing officer's recommendation if the motion would result in a final determination of the merits or an essential element of the compliance order.

[20.11.80.13 NMAC - N, 8/15/11]

#### **20.11.80.14 DISCOVERY:**

Formal discovery is not a right in an administrative enforcement procedure and, therefore, is discouraged. If a party wishes to conduct discovery in addition to the methods of discovery provided in 20.11.80.14 NMAC, additional discovery shall only be allowed by order of the hearing officer.

##### **A. Scope of discovery:**

(1) **Criteria:** Discovery of information that is not privileged or exempt may be permitted if:

(a) the discovery will not unreasonably delay the proceeding;

(b) the information to be obtained is not unreasonably cumulative or duplicative, or not otherwise reasonably obtainable elsewhere;

(c) the discovery is not unreasonably burdensome; and

(d) there is a substantial reason to believe that the information sought will be admissible at the hearing or will be likely to lead to the discovery of admissible evidence.

(2) **Request:** Unless otherwise directed by the hearing officer, a party requesting discovery shall:

(a) serve the discovery request directly upon the party from whom discovery is sought; and

(b) file a notice with the hearing clerk; the notice shall include the caption or heading required by Subsection J of 20.11.80.12 NMAC and state the date of service of the discovery request, the type of discovery sought and the party from whom discovery is sought.

(3) **Response to discovery request:** A party responding to a discovery request shall:

(a) serve the response, including any objections, upon the party making the discovery request; and

(b) file a notice with the hearing clerk; the notice shall include the caption or heading required by Subsection J of 20.11.80.12 NMAC and state the date of service of the response, the type of discovery request being responded to and the party upon whom the response was served.

(4) **Continuing obligation to supplement responses:** Every party from whom discovery is sought has a continuing obligation, subject to any objections interposed that are not overruled by the hearing officer, to supplement responses with relevant information obtained after service of the initial response and any previous supplemental responses. Unless otherwise ordered by the hearing officer, supplemental responses shall be served as soon as practical, but no later than five days after the information became available. If the information becomes available fewer than five days before the hearing or during the hearing, the information shall be brought to the attention of the hearing officer for direction and ruling on use of the information.

(5) **Privilege:** A list of privileged or exempt documents, identified by titles, author, date and privilege or protection claimed, shall be provided in response to discovery.

(6) **Protective order:** Upon motion and for good cause show, the hearing officer may protect the discovery from disclosure. If the motion is granted, the moving party shall not present the protected discovery at the hearing.

(7) **Motion to compel; sanctions:** A party may move for an order compelling discovery if the party from whom discovery was requested has failed to respond in an adequate or timely manner. The hearing officer may order the response and may impose such sanctions as may be appropriate, including the following:

(a) refusal to allow the testimony of a witness not identified as required by Subsection B of 20.11.80.14 NMAC;

(b) denial of admission of a document that has not been provided as required by Subsection B of 20.11.80.14 NMAC or has not been produced for inspection and copying as required by Subsection C of 20.11.80.14 NMAC;

(c) drawing adverse inferences against the non-responsive party; and

(d) in an extreme case, dismissal or default judgment against the non-responsive party.

**B. Witness information; exhibits:** Unless otherwise ordered by the hearing officer, within 15 days after receipt of the notice of hearing on the merits or within no fewer than 45 days before the hearing on the merits, whichever is closer to the hearing date, each party shall provide to every other party:

(1) regarding each person who is expected to be called as an expert witness:

(a) the name and address of the person expected to be called as an expert witness;

(b) a complete statement of all opinions the expert witness will express and the basis and reasons for the opinions;

(c) the data or other information considered by the expert witness in forming the opinions of the expert witness;

(d) an estimate of the length of the direct testimony of the expert witness;

(e) a list of exhibits, if any, to be offered into evidence at the hearing on the merits through testimony of the expert witness, and, regarding each exhibit, the name of each expert witness who is expected to testify regarding the exhibit; and

(f) a copy of each exhibit to be offered into evidence at the hearing on the merits through the testimony of the expert witness;

(2) regarding each person who is expected to be called by a party, but not as an expert witness:

(a) the name and address of the witness;

(b) a description of the general subject matter of the anticipated testimony of the witness;

(c) an estimate of the length of the direct testimony of the witness;

(d) a list of exhibits, if any, to be offered into evidence at the hearing on the merits through testimony of the witness; and

(e) a copy of each exhibit to be offered into evidence at the hearing on the merits through testimony of the witness; and

### **C. Production of documents:**

(1) **Definition:** As used in Subsection C of 20.11.80.14 NMAC, "document" includes the following: any designated documents or electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images and any other data or data compilations, that are stored in any medium from which information can be obtained either directly or, if necessary, after translation, including translation by a responding party, into a reasonably usable form.

(2) **Request:** If the criteria in Paragraph (1) of Subsection A of 20.11.80.14 NMAC are met, any party may inspect and make copies of any designated documents in the possession or control of a party after serving a written request on the party. The

request shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The party who has received the request for production shall specify a reasonable time, place and manner for inspecting and copying. Reasonable time means no more than 20 days after service of the request unless a different deadline is established by the hearing officer.

**D. Subpoenas:**

(1) A party that wishes to have a subpoena issued shall obtain a subpoena form from the hearing clerk. The subpoena form shall be completed by the requesting party and shall:

(a) include the caption or heading and the information required by Subsection J of 20.11.80.12 NMAC; and

(b) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing or sampling of designated documents, electronically stored information or other tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place specified in the subpoena.

(2) All subpoenas shall be issued by hearing clerk, who shall sign and date the subpoena.

(3) Pursuant to the authority that has been delegated by the director to the hearing clerk, the hearing clerk shall issue a subpoena, signed but otherwise in blank, to the party requesting the subpoena. The hearing clerk shall not issue a subpoena if the hearing officer issues a protective order as provided by Paragraph (6) of Subsection A of 20.11.80.14 NMAC.

(4) The requesting party shall complete the subpoena form before serving the subpoena. The subpoena shall be served as required by Paragraph (2) of Subsection G of 20.11.80.12 NMAC.

(5) The party that served the subpoena shall file an original proof of service with the record and shall serve a copy on all other parties.

(6) Duties in responding to subpoena.

(a) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business and shall organize and label them to correspond with the categories in the demand.

(b) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the

information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(c) A person responding to a subpoena is not required to produce the same electronically stored information in more than one form.

(d) A person responding to a subpoena is not required to provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. The hearing officer may order discovery from such sources if the requesting party shows good cause, after taking into consideration the provisions of Paragraph (1) of Subsection A of 20.11.80.14 NMAC regarding scope of discovery and the requirements of Subsection B of 20.11.80.14 NMAC regarding witness information and exhibits.

(e) A party receiving documents under subpoena shall make them available for copying by other parties.

**E. Request for admissions:** If the criteria in Paragraph (1) of Subsection A of 20.11.80.14 NMAC are met, no fewer than 30 days before the hearing on the merits, any party may serve upon any other party a written request for the admission of any statement or opinion of fact or the application of law to fact, including the genuineness of any document, unless otherwise ordered by the hearing officer. If the request includes a request for admission of the genuineness of a document, the document shall be attached to the request unless it has been or is otherwise furnished or made available for inspection and copying. Each statement in the request for admissions shall be deemed admitted unless, within 20 days after service of the request for admission, or a longer or shorter period as the hearing officer may establish, the party to whom the request is directed serves upon the requesting party a sworn written response specifically denying the matter.

[20.11.80.14 NMAC - N, 8/15/11]

## **20.11.80.15 HEARING PROCEDURES:**

### **A. Evidence:**

(1) **General:** The hearing officer shall admit all evidence, unless the hearing officer determines that the evidence is irrelevant, immaterial, unduly repetitious or otherwise unreliable or of little probative value. Evidence relating to settlement that could be excluded in the courts under Rule 11-408 NMRA is not admissible.

(2) **Examination of witnesses:** Witnesses shall be examined orally, under oath or affirmation, except as otherwise provided in 20.11.80 NMAC, and may be examined by the hearing officer. In addition to the hearing officer, only parties shall have

the right to cross-examine a witness. The hearing officer may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony of the witness.

(3) **Exhibits:** All exhibits in evidence shall be marked with a designation identifying the party by whom the exhibit is offered and shall be numbered serially in the sequence in which the exhibits are expected to be offered. Large charts and diagrams, models and other bulky exhibits are discouraged. Exhibits should be limited to 8 ½ x 11 inches or be capable of being folded to that size, unless otherwise necessary for adequate presentation of evidence.

(4) **Official notice:** Official notice may be taken of any matter that may be judicially noticed in the New Mexico courts.

#### **B. Objections and offers of proof:**

(1) **Objection:** An objection concerning the conduct of the hearing may be stated orally or in writing during the hearing. The party raising the objection must supply a short statement of the grounds for the objection. The ruling by the hearing officer regarding an objection and the reasons given by the hearing officer for the ruling shall be part of the record.

(2) **Offer of proof:** Whenever evidence is excluded from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded and what the evidence would have proved. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded. If the director decides the ruling of the hearing officer that excluded the evidence was both erroneous and prejudicial, the hearing may be reopened to allow the taking of the excluded evidence.

#### **C. Burden of persuasion:**

(1) **Compliance order:** The complainant has the burden of going forward with the evidence and proving by a preponderance of the evidence that the facts relied upon to show the violation occurred and that the proposed civil penalty is appropriate. After the complainant has established a prima facie case, the respondent shall have the burden of going forward with adverse evidence or a defense to the allegations.

(2) **Preponderance of evidence:** Each matter of controversy shall be determined by the hearing officer upon a preponderance of the evidence.

[20.11.80.15 NMAC - N, 8/15/11]

#### **20.11.80.16 POST-HEARING PROCEDURES:**

**A. Filing the transcript:** Unless otherwise ordered by the director or hearing officer, the hearing shall be transcribed verbatim. The hearing clerk shall promptly notify all parties of the availability of the transcript. Any person who wants a copy of the transcript may order a copy from the reporter.

**B. Proposed findings and conclusions:** Within 30 days after the transcript is filed, or by the deadline established by the hearing officer, any party may submit to the hearing officer proposed findings of fact and conclusions of law or discretion and a closing argument. All such submissions shall be in writing, filed, served on all parties and contain adequate references to the record and authorities relied upon. No new evidence shall be presented unless specifically allowed by the hearing officer.

**C. Recommended decision:**

(1) **Content:** Unless otherwise ordered by the director, the hearing officer shall issue a recommended decision within 30 days after the deadline established by Subsection B of 20.11.80.16 NMAC for filing proposed findings and conclusions has passed. The recommended decision shall contain:

(a) the hearing officer's findings of fact and conclusions regarding all material issues of law or discretion and the reasons for the findings and conclusions;

(b) if applicable, a review of the penalty to determine if the division acted within its discretion in setting the amount or nature of the penalty; if the hearing officer decides to recommend a civil penalty that is different in amount or nature from the penalty in the compliance order, the hearing officer shall set forth the hearing officer's recommended decision regarding the penalty and the reason for the change; and

(c) a proposed final order.

(2) **Comment on recommended decision:** Within 15 days after service of the recommended decision, any party may file comments regarding the recommended decision and may include argument for, against or for modification of the recommended decision.

(3) **Oral argument before the director:** Upon the request of a party or on the director's own initiative, the director may allow oral argument regarding the recommended decision. If oral argument is allowed, the director shall specify the time and place for the oral argument, after giving due consideration to the convenience of the parties and the need to expeditiously resolve the proceeding.

**D. Final order of director:** As soon as practical, but no later than 30 days after the later of the deadline for filing comments on the recommended decision of the hearing officer or the conclusion of oral argument if oral argument is allowed, the director shall issue a written final order in the matter.

(1) **Decision:** The director may adopt, modify or set aside the hearing officer's recommended decision, and shall set forth the reasons for the action taken.

(2) **Penalty:** The director may change the amount and nature of the civil penalty, if any, that the hearing officer recommends assessing and shall set forth the reasons for the change.

**E. Payment of civil penalty:** Within 60 days after the respondent receives the final order, the respondent shall pay the full amount of any monetary civil penalty that is assessed in the final order unless otherwise ordered by the director. Payment shall be made by delivering to the division a cashier's check or certified check in the amount of the penalty assessed in the final order, payable to the general fund as specified in the final order. The respondent shall attach a copy of the final order to the penalty payment.

**F. Judicial review:** Judicial review of the director's final order shall be by appeal to the court of appeals of the state of New Mexico as provided by the act Subsection A of Section 74-2-9 NMSA 1978.

**G. Preparation of record proper:** The preparation of the record proper for an appeal to the court of appeals of the state of New Mexico or for any other reason shall be the responsibility of the hearing clerk. Appellant shall make satisfactory arrangements with the hearing clerk, including arrangements regarding copying or transcript costs, before the hearing clerk begins to prepare the record proper.

[20.11.80.16 NMAC - N, 8/15/11]

#### **20.11.80.17 ALTERNATE RESOLUTION:**

##### **A. Summary procedures:**

(1) **Use of summary procedures:** Under the following limited circumstances, the director may dispose of a request for hearing after an expedited hearing as a result of:

(a) a motion by a party to dismiss the request for hearing because of jurisdictional defects, such as filing an untimely request for hearing; or

(b) a request by a party to decide the merits of the request for hearing on legal arguments presented in writing and oral argument.

(2) **Expedited hearing:** If the hearing officer determines that a request for an expedited hearing has a likelihood of success and could fairly expedite the resolution of the proceeding, then notice for a hearing shall be given in the manner set forth in Paragraph (1) of Subsection C of 20.11.80.13 NMAC. Following the expedited hearing, the hearing officer shall submit a recommended decision to the director. The director shall either follow Subsection D of 20.11.80.16 NMAC and issue a final order or remand

the matter to the hearing officer with directions to proceed with a full hearing as otherwise required by 20.11.80 NMAC.

#### **B. Settlement:**

(1) **Policy:** The director encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the act and the regulations. Settlement conferences shall not affect any party's obligation to respond in a timely manner to any matter governed by 20.11.80 NMAC, including the respondent's obligation to file a timely request for hearing under Subsection A of 20.11.80.13 NMAC.

(2) **Stipulated final order:** The director may approve a stipulated final order signed by all the parties. The stipulated final order shall include all the terms and conditions agreed to by the parties and shall state that, for the purpose of this proceeding, the parties admit the jurisdictional allegations of the compliance order and consent to the relief specified, including the assessment of the civil penalty, if any is included in the stipulated final order. If the director disapproves the stipulated final order, the matter shall proceed as if there had been no stipulated final order or settlement.

(3) **Withdrawal:** The respondent may withdraw the request for hearing at any time before the director issues a final order. A notice of withdrawal shall be filed with the hearing clerk and served on all parties. Any party may file written objections to the notice of withdrawal within 10 days after receipt. If an objection is filed, the director shall rule on the notice of withdrawal.

[20.11.80.17 NMAC - N, 8/15/11]

## **PART 81: ADJUDICATORY PROCEDURES -- AIR QUALITY CONTROL BOARD**

### **20.11.81.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2600.

[20.11.81.1 NMAC - N, 12/16/06]

### **20.11.81.2 SCOPE:**

**A.** 20.11.81 NMAC governs the following adjudicatory proceedings of the board, which are proceedings in which the board makes final, binding determinations that directly affect legal rights:

(1) petitions for hearings on the merits before the board made by permit applicants, permittees or other persons who participated in a permitting action before the department and who are adversely affected by the permitting action, as provided by the New Mexico Air Quality Control Act, Subsection H of Section 74-2-7 NMSA 1978; and

(2) any other adjudicatory proceeding subject to the jurisdiction of the board if the applicable board regulation establishes that 20.11.81 NMAC applies to the proceeding.

**B.** 20.11.81 NMAC does not govern the adjudicatory proceedings of the board regarding:

(1) administrative enforcement actions initiated pursuant to Air Quality Control Act 74-2-12 NMSA 1978, entitled "Enforcement; compliance orders; field citations", and any administrative enforcement action that is governed by the administrative enforcement provisions of another regulation adopted by the board;

(2) petitions for variance and related stays, which are governed by 20.11.7 NMAC, Variance Procedure; and

(3) adoption of, amendment to, and repeal of board regulations as authorized by 74-2-6 NMSA 1978, which are governed by rulemaking provisions of another regulation adopted by the board.

**C. Exempt:** 20.11.81 NMAC does not apply to sources within Bernalillo county that are located on Indian lands over which the board lacks jurisdiction.

[20.11.81.2 NMAC - N, 12/16/06]

#### **20.11.81.3 STATUTORY AUTHORITY:**

20.11.81 NMAC is adopted pursuant to the authority of the Air Quality Control Act, Chapter 74, Article 2 NMSA 1978, Sections 74-2-5 and 74-2-7.

[20.11.81.3 NMAC - N, 12/16/06]

#### **20.11.81.4 DURATION:**

Permanent.

[20.11.81.4 NMAC - N, 12/16/06]

#### **20.11.81.5 EFFECTIVE DATE:**

December 16, 2006, unless a later date is cited at the end of a section.

[20.11.81.5 NMAC - N, 12/16/06]

**20.11.81.6 OBJECTIVE:**

The objective of 20.11.81 NMAC is to establish procedures that govern the adjudicatory proceedings of the board that are described in Subsection A of 20.11.81.2 NMAC.

[20.11.81.6 NMAC - N, 12/16/06]

**20.11.81.7 DEFINITIONS:**

In addition to the definitions in 20.11.81 NMAC, the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.81 NMAC shall govern.

**A. "30-day hearing procedure"** means that the regulation that authorizes or requires the board to hold a hearing on the merits pursuant to 20.11.81 NMAC also requires the board to hold the hearing on the merits within 30 days of the timely filing of the petition for hearing.

**B. "60-day hearing procedure"** means that the regulation that authorizes or requires the board to hold a hearing on the merits pursuant to 20.11.81 NMAC also requires the board to hold the hearing on the merits within 60 days of the timely filing of the petition for hearing.

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

**D. "Applicant"** means a person who has applied for or has been issued an air quality permit by the department, unless a different procedure is required by another board regulation.

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

**F. "Days"** means consecutive days except as otherwise specifically provided.

**G. "Department"** means the city of Albuquerque environmental health department, or the department's successor agency.

**H. "Docket"** means, when used as a noun, the list compiled by the hearing clerk, and includes all documents filed by or with the hearing clerk from the beginning to the end of the procedure authorized by 20.11.81 NMAC, but does not include the administrative record or the law of the case and, when used as a verb, also means the act of assigning an individual number to a newly-opened case or filing a document in and listing the document on the docket.

**I. "Document"** means any pleading, motion, response, memorandum, decision, order or other written material or tangible item that is filed or brought to or before the board for its consideration in a proceeding pursuant to 20.11.81 NMAC, but does not include the cover letter that accompanies a document transmitted for filing.

**J. "Ex parte contact"** means oral or other communication with a board member or a board hearing officer regarding the merits of an expected or pending petition or related proceeding if:

(1) the communication is made by a person who is not a board member, hearing clerk or hearing officer;

(2) the person communicating knows or has reason to know a petition will be or has been filed pursuant to 20.11.81 NMAC;

(3) the communication is made without all other parties being present or receiving the same communication received by the board member or board hearing officer; and

(4) the communication is intended to affect, or reasonably may be expected to affect the board member's or the hearing officer's opinion regarding the merits of the expected or pending petition or related proceeding.

**K. "Hearing clerk"** means the department employee designated by the director to provide staff support to the board, and is the person designated by the board to maintain the official record of the proceeding.

**L. "Hearing officer"** means the person who is appointed or otherwise authorized by the board to conduct a proceeding pursuant to 20.11.81 NMAC.

**M. "Interested participant"** means any person, other than a party, who files an entry of appearance in accordance with Paragraphs (1) and (2) of Subsection I of 20.11.81.14 NMAC.

**N. "Party"** means the petitioner, the applicant if the applicant is not the petitioner, the department, and any other person granted intervenor status by the hearing officer or board following a motion.

**O. "Petition"** means a petition filed pursuant to Subsection H of 74-2-7 NMSA 1978 and 20.11.81 NMAC.

**P. "Petitioner"** means a person who files a timely petition pursuant to Subsection H of NMSA 74-2-7 and 20.11.81 NMAC.

**Q. "Record proper" or "record"** means all documents filed by or with the hearing clerk during the proceeding authorized by 20.11.81 NMAC, and includes:

- (1) the administrative record of the permitting action filed by the department;
- (2) the verbatim record of the hearing (transcript or tapes, as applicable) and all exhibits offered into evidence at the hearing, whether or not admitted; and
- (3) minutes or a summary of minutes, or the decision or order resulting from a hearing or board meeting at which the board deliberated or acted on any procedural or substantive issue in the proceeding.

**R. "Regulations"** means the rules promulgated by the board, as authorized by the act.

**S. "Service"** means delivering to a person that 20.11.81 NMAC requires to be served a copy of a document, exhibit or pleading by personally delivering it to that person, mailing it to that person, or, if that person agrees, by sending it by facsimile or electronic transmission to that person. If a person is represented by an attorney, service shall be made on the attorney. Service by mail is complete upon mailing the document unless service is made by mail to a party who must act within a prescribed period after being served, in which case three days shall be added to prescribed period. Service by facsimile or electronic transmission is accomplished when the transmission of the document is completed or upon acknowledgement by the recipient.

**T. "Technical evidence"** means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

[20.11.81.7 NMAC - N, 12/16/06]

#### **20.11.81.8 VARIANCES:**

The variance procedures provided by 20.11.7 NMAC shall not apply to 20.11.81 NMAC. No variance from the requirements of 20.11.81 NMAC shall be granted, unless the board is authorized by Subsection K of 20.11.2.18 NMAC, Fees, to grant a waiver from payment of the Board hearing fee.

[20.11.81.8 NMAC - N, 12/16/06]

#### **20.11.81.9 SAVINGS CLAUSE:**

The filing of 20.11.81 NMAC, Adjudicatory Procedures-Air Quality Control Board, and the filing of any amendment to 20.11.81 NMAC with the state records center and archives shall not affect any action pending for violation of a city or county ordinance, a board regulation, or a permit, and shall not affect a petition filed pursuant to 20.11.81 NMAC. Prosecution for violation of a prior statute, ordinance, part or permit shall be governed and prosecuted under the statute, ordinance, part or permit wording in effect at the time the violation was committed.

[20.11.81.9 NMAC - N, 12/16/06]

**20.11.81.10 SEVERABILITY:**

20.11.81 NMAC shall be liberally construed to carry out its purposes. If for any reason any section, subsection, sentence, phrase, clause or wording of 20.11.81 NMAC is held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity of remaining portions of 20.11.81 NMAC.

[20.11.81.10 NMAC - N, 12/16/06]

**20.11.81.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.81 NMAC may be viewed at the Albuquerque environmental health department, Suite 3020, One Civic Plaza, 400 Marquette NW, Albuquerque, New Mexico.

[20.11.81.11 NMAC - N, 12/16/06]

**20.11.81.12 GENERAL PROVISIONS:**

**A. Applicability of rules of civil procedure and rules of evidence:** In the absence of a specific provision in 20.11.81 NMAC governing an action, the board and the board's hearing officer may look to the New Mexico Rules of Civil Procedure, NMRA 1-001 et seq., and the New Mexico Rules of Evidence, NMRA 11-101 et seq., for guidance. No provision of the rules of civil procedure shall be construed to extend or otherwise modify the authority and jurisdiction of the board.

**B. Board and hearing officer powers and duties-qualification, disqualification, recusal, withdrawal:**

**(1) Board:** The board shall exercise all powers and duties authorized and required by the act, 20.11.81 NMAC and any other board regulation if the powers and duties are not otherwise delegated by 20.11.81 NMAC to a board staff member, a hearing officer or the hearing clerk. The board or a hearing officer appointed or authorized by the board may specify procedures in addition to, or that vary from the procedures provided in 20.11.81 NMAC in order to expedite the efficient resolution of the action or to avoid obvious injustice, if the procedures do not conflict with the act or the regulations, or prejudice the rights of any party.

**(2) Hearing officer:** The board may appoint a hearing officer or authorize the hearing clerk to secure one or more hearing officers to perform the functions described in Paragraph (2) of Subsection B of 20.11.81.12 NMAC. From the date a proceeding is initiated pursuant to 20.11.81 NMAC, the chair or acting chair of the board shall serve as hearing officer until another hearing officer is appointed or authorized by the board

and is secured by the hearing clerk. The appointment of a hearing officer shall not prevent any board member from attending or participating in any proceeding.

**(a) Qualifications:** A hearing officer may be an independent contractor, board counsel or a member of the board and shall not be:

(i) an employee of the department, unless employed by the department as a hearing officer; or

(ii) a person who is disqualified as a result of a condition described in Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.81.12 NMAC.

**(b) Functions:** The hearing officer shall exercise all powers and duties required by or delegated under the act and 20.11.81 NMAC. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by 20.11.81 NMAC, including, but not limited to:

(i) conducting hearings pursuant to 20.11.81 NMAC;

(ii) ruling upon motions and procedural requests that do not seek final resolution of the proceeding, and issuing all necessary orders;

(iii) issuing subpoenas, as authorized by law, for the attendance and testimony of witnesses and the production of documentary evidence;

(iv) administering oaths and affirmations, examining witnesses, and admitting or excluding evidence;

(v) requiring parties to attend conferences for the settlement or simplification of issues, or the expedition of proceedings;

(vi) imposing sanctions, subject to review and approval by the board, on parties and interested participants who cause undue delay and fail to cooperate with the board; and

(vii) filing with the hearing clerk all original documents received or generated by the hearing officer.

**(c) Notice of hearing officer assignment:** If a hearing officer other than a board member is assigned as a hearing officer, the hearing clerk shall notify the parties of the name and address of the hearing officer. At the same time, the hearing clerk also shall forward to the hearing officer copies of all documents related to the petition that have been filed to date.

**(3) Board member and hearing officer disqualification-recusal-withdrawal:**

**(a)** A board member or a hearing officer shall not perform any function authorized by 20.11.81 NMAC regarding any matter in which a board member or a hearing officer:

**(i)** has a personal bias or prejudice concerning a party or the outcome of a proceeding;

**(ii)** has personal knowledge of disputed facts concerning the proceeding;

**(iii)** is related to a party within the third degree of relationship;

**(iv)** is an officer, director or trustee of a party or interested participant in the proceeding;

**(v)** has a financial interest in the proceeding or facility that is the subject of the proceeding or has any other conflict of interest; or

**(vi)** has performed prosecutorial or investigative functions in connection with a permitting action at issue in the proceeding.

**(b)** In making its decision regarding whether a board member or hearing officer should be disqualified or recuse himself or herself, the board and hearing officer may rely on applicable legal authority

**(c) Disqualification, recusal and withdrawal:**

**(i)** Any party, for a cause included in Subparagraph (a) of Paragraph (3) of Subsection B of 20.11.81.12 NMAC, may file a motion requesting the disqualification of a board member at any time before the final order is filed, or requesting the disqualification of a hearing officer at any time prior to the completion of the evidentiary hearing.

**(ii)** If a motion is filed pursuant to Paragraph (3) of Subsection B of 20.11.81.12 NMAC, and the motion asks that a board member be disqualified, then, within five days after the hearing officer and the challenged board member receive the motion, the challenged board member may respond to the motion in writing. Within 10 days after the hearing officer and the challenged board member receive the motion regarding the challenged board member, the hearing officer shall file a recommended decision. The board shall vote on the motion. However, the vote of the board shall not include the vote of the challenged board member. If the vote of the majority of a quorum of the board, not including the vote of the challenged board member, determines that

the challenged board member is disqualified, the disqualified board member will not participate in the proceeding thereafter.

**(iii)** If a motion is filed pursuant to Paragraph (3) of Subsection B of 20.11.81.12 NMAC, and the motion asks that a hearing officer be disqualified, then, within 10 days after the hearing officer receives the motion, the hearing officer may respond to the motion in writing. The board shall vote on the motion. If the vote of the majority vote of a quorum of the board members determines that the challenged hearing officer is disqualified, the disqualified hearing officer will not participate in the proceeding thereafter, and the board may appoint, or authorize the hearing clerk to secure a replacement hearing officer.

**(iv)** A board member may recuse himself or herself from a hearing, and a hearing officer may withdraw as hearing officer, by filing written notice with the hearing clerk or by making a statement on the record at a hearing or meeting of the board. In making a decision regarding whether to recuse or withdraw, a board member or a hearing officer may rely on applicable legal authority.

**C. Recording of hearings:** All hearings on the merits shall be recorded by a court reporter unless otherwise directed by the board. If a hearing will be tape recorded but a party prefers to have the hearing recorded by a court reporter in another manner, then, before the hearing, the party requesting the alternate method of reporting shall pay the court reporter for the services or make satisfactory payment arrangements with the court reporter. If a hearing is recorded by a court reporter, the recording of the court reporter approved by the board or the hearing officer, or arranged by the hearing clerk will be the sole official recording of the hearing. If a transcription is made by the court reporter, then the person who requested the transcription shall pay the court reporter. Payment for the transcription shall include payment for delivery of the original transcription to the hearing clerk. The hearing clerk shall make the transcription part of the record proper, which is a public record except as otherwise provided by law.

**D. Participation by conference, telephone or other similar device:** A member of the board may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when a medical or emergency situation exists that makes it extremely difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone or other device can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any member of the board who speaks at the meeting. A request to be present and vote by telephone or other similar device must be made by the member to the chair or acting chair of the board by the member. A board member who wishes to participate in a meeting in this manner must receive permission from the chair or acting chair of the board sufficiently in advance of the meeting so the hearing clerk can arrange for an adequate telephone hookup. The chair or acting chair shall determine whether a qualifying medical or emergency situation exists. A board member's participation by such means shall constitute presence in person at the meeting. This

provision may be used only to allow a member to constitute a quorum for the purposes of choosing a hearing officer for a hearing or hearings; scheduling or rescheduling a meeting or hearing; and voting on those limited issues.

**E. Ex parte contact:** At no time before a petition is expected to be filed pursuant to 20.11.81 NMAC, and at no time between the filing of a petition and the final decision of the board or withdrawal of the petition or related permit action shall any person other than the hearing officer or hearing clerk have ex parte contact with a board member or the hearing officer regarding the merits of the expected or pending petition or related proceeding. This prohibition does not apply to a hearing officer's consideration of, and decision regarding a motion filed pursuant to 20.11.81 NMAC.

**F. Computation and extension of time:**

**(1) Computation of time:** In computing any period of time prescribed or allowed by 20.11.81 NMAC, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal city of Albuquerque or Bernalillo county holiday, in which event, the time shall be extended until the end of the next day which is not a Saturday, Sunday, or legal city of Albuquerque or Bernalillo county holiday. Whenever a party must act within a prescribed period after service upon that party, and service is by mail, three days shall be added to the prescribed period. The three-day extension does not apply to a deadline established by the act. Whenever a party must act within a prescribed period after service upon that party, and service is by facsimile or electronic transmission, no days shall be added to the prescribed period.

**(2) Extension of time:** Upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, the hearing officer or the board, as appropriate for the stage of the proceeding at the time, may grant an extension of time for filing any document. No extension shall be granted regarding a deadline established by the act or an applicable regulation, except the petitioner may waive the deadline for holding the hearing by the deadline established by the act or an applicable regulation.

**G. Documents; filing, service, form and examination:**

**(1) Filing of documents:** Except as otherwise provided, a party filing a document shall file the original and nine copies with the hearing clerk and shall serve a copy thereof upon the hearing officer, the board's legal counsel, and all other parties. If the hearing officer is also a board member, the party shall serve the document upon the board chair. All documents shall be filed at least five days (for a 30-day hearing procedure) or seven days (for a 60-day hearing procedure) before the hearing at which the hearing officer or the board will consider the matter. A certificate of service with the following heading or "caption", completed appropriately, shall accompany each filed document.

STATE OF NEW MEXICO

ALBUQUERQUE-BERNALILLO COUNTY

AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION FOR

A HEARING ON THE MERITS REGARDING

AIR QUALITY PERMIT NO. \_\_\_\_

[Name of Petitioner:] \_\_\_\_\_, Petitioner

**(2) Service of documents:** Except as otherwise provided, all documents may be served personally, by facsimile or by express or first class mail. Delivery receipts shall be kept as proofs of service, and shall be produced immediately upon the request of the hearing officer, the board or an opposing party.

**(3) Form of documents:** Unless otherwise provided by order of the hearing officer or the board, all documents, except exhibits, shall be prepared on 8 1/2 x 11-inch white paper, printed double-sided if feasible, and, where appropriate, the first page of every document shall contain the caption or heading required by Paragraph (1) of Subsection G of 20.11.81.12 NMAC.

**(4) Documents issued by board or hearing officer:** All documents issued by the board or hearing officer shall be filed with the hearing clerk. The hearing clerk shall promptly serve copies of the documents upon all parties and interested participants.

**(5) Examination of documents filed-cost:**

**(a) Examination allowed:** Subject to the provisions of law restricting the public disclosure of confidential or other exempt or protected information, during normal business hours any person may inspect and copy any document filed in any proceeding filed pursuant to 20.11.81 NMAC. Inspection shall be allowed consistent with the requirements of the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12, and may be limited as provided by the Air Quality Control Act, NMSA 1978, Sections 74-2-1 through 74-2-17. The hearing clerk shall make the appropriate documents available for inspection and copying.

**(b) Cost of duplication:** The cost of duplicating documents or tapes filed in any proceeding shall be borne by the person seeking the copies. If the requested documents are available in an electronic format, the department will provide a copy by electronic transmission without charge, or the documents will be copied onto a CD, DVD, or other electronic media, if provided by the requester, without charge.

## **H. Motions:**

**(1) General:** All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, and state the relief sought. Each written motion shall be accompanied by an affidavit, certificate or other evidence relied upon, and shall be filed and served as required by Paragraphs (1) and (2) of Subsection G of 20.11.81.12 NMAC.

**(2) Unopposed motions:** An unopposed motion shall state that the concurrence or agreement of all other parties was obtained. The party that filed the motion shall submit to the hearing officer for review a proposed order that has been approved by all parties.

**(3) Opposed motions:** Any opposed motion shall state either that concurrence or agreement of all other parties was sought and denied, or why concurrence was not sought. A memorandum brief in support of an opposed motion may be filed with the motion.

**(4) Response to motions:** Any party upon whom an opposed motion is served shall have 10 days (for a 30-day hearing procedure) or 15 days (for a 60-day hearing procedure) after service of the motion to file a response. Any other party who fails to file a timely response shall be deemed to have waived any objection to the granting of the motion.

**(5) Reply to response:** The moving party may submit, but is not required to submit a reply to any response within five days (for a 30-day hearing procedure), or 10 days (for a 60-day hearing procedure) after service of the response.

**(6) Decision regarding motions:** All motions may be decided by the hearing officer, in the hearing officer's sole discretion, without a hearing. Within five days (for a 30-day hearing procedure) or 10 days (for a 60-day hearing procedure) after being served with a copy of the motion, a party upon whom service has been made may file a written request asking that a hearing be held. However, the hearing officer shall refer all motions that would effectively dispose of the petition to the board for a decision.

**(7) The hearing officer may refer any motion to the board for decision.** A procedural motion may be ruled upon before the expiration of the time for response. Any response regarding the procedural motion received after the decision is made shall be treated as a request for reconsideration of the ruling.

[20.11.81.12 NMAC - N, 12/16/06]

**20.11.81.13 [RESERVED]**

**20.11.81.14 PREHEARING PROCEDURES:**

**A. Initiation of petition hearing; filing and content of petition:** A petition for a hearing on the merits shall be initiated by filing a petition as required by Paragraph (1) of Subsection G of 20.11.81.12 NMAC. The petitioner shall:

(1) sign the petition under oath or affirmation and attest to the truth of the information contained therein; and

(2) file the original and nine copies of the petition with the board and serve a copy of the petition on the department.

**B. Petition requirements and contents-fee:**

(1) **Filing fee.** At the time the petition is filed, the petitioner shall pay the board hearing fee required by 20.11.2 NMAC.

(2) **Timing and contents:** A petition shall:

(a) be filed with the board within 30 consecutive days from the date notice is given of the permitting action taken by the department, and regarding which the petition objects;

(b) state the petitioner's name, address, telephone number, and if available, facsimile number, cellular telephone number and other contact information;

(c) either state in what manner the petitioner participated in the permitting action that was pending before the department and how the petitioner is adversely affected by the permitting action taken by the department, or cite a board regulation other than 20.11.81 NMAC that authorizes the petitioner to request a hearing on the merits pursuant to 20.11.81 NMAC, and state how, under the other regulation, the petitioner qualifies for a hearing on the merits conducted pursuant to 20.11.81 NMAC;

(d) if a permitting action is being challenged, identify the specific permitting action appealed from, specify the portions of the permitting action to which petitioner objects, and state the factual and legal basis of petitioner's objections to the permitting action taken by the department;

(e) state the remedy petitioner is seeking, the legal basis for the remedy, and how granting the remedy is within the air quality jurisdiction of the board; and

(f) attach a copy of the permitting action or other action regarding which petitioner is filing a petition.

**C. Hearing delay and waiver:** A petitioner may waive petitioner's right to have the hearing begin by the deadline established by the act or applicable regulation in order to negotiate with the department or for other good reason as determined by either the hearing officer or the board, as appropriate for the stage of the proceeding. The

petitioner's waiver must be filed seven days (whether for a 30-day hearing procedure or for a 60-day hearing procedure) before expiration of the deadline for beginning the hearing. The waiver will stay all deadlines established in 20.11.81 NMAC for up to an additional 30 days (whether for a 30-day hearing procedure or for a 60-day hearing procedure), as determined by the hearing officer or the board, as appropriate for the stage of the proceeding. The stay of deadlines may be extended for an additional period for good reason as determined by the hearing officer or the board, as appropriate for the stage of the proceeding.

**D. Response of department:** Within 15 days (for a 30-day hearing procedure) or 30 days (for a 60-day hearing procedure) after receipt of a petition filed pursuant to 20.11.81 NMAC, if a permitting action is being challenged, the department shall perform the following actions.

(1) The department shall file with the hearing clerk the administrative record of the permitting action that is the subject of the petition. Before the department files the administrative record, the parties may stipulate in writing to the portions of the record that the department will file with the board. The department shall serve only the index of the record on the other parties.

(2) The department shall deliver to the hearing clerk a list of all persons who, within the preceding 12 months, have expressed in writing to the department an interest in the facility or the permitting action that is the subject of the petition or who participated in a public information meeting or hearing on the permitting action and who have provided a legible written name and current mailing address at the public information meeting or hearing.

(3) The department shall file an answer to the petition, responding to each objection in the petition.

**E. Notice of docketing:**

(1) **Docketing Notice:** As soon as practicable after receipt of a petition, the hearing clerk shall issue and serve upon the parties and each board member a notice of docketing, which shall include the caption required by Paragraph (1) of Subsection G of 20.11.81.12 NMAC, the docket number of the case, and the date the petition was received by the hearing clerk. A copy of 20.11.81 NMAC shall be included with the notice of docketing sent to the petitioner.

(2) **Untimeliness:** The hearing clerk shall docket every petition, without regard to whether it appears to be timely. However, the board or any party may move to dismiss an untimely petition.

**F. Scheduling the hearing on the merits:**

**(1) Hearing date:** The hearing officer shall schedule the hearing on the merits to begin no later than the deadline required by the act or applicable regulation, unless a waiver is filed by the petitioner and a stay of deadlines is granted pursuant to Subsection C of 20.11.81.14 NMAC. The waiver must be filed with the board, and served as required by 20.11.81 NMAC before the expiration of the deadline for beginning the hearing on the merits.

**(2) Scheduling order:** Unless the deadline for beginning the hearing on the merits has been waived and a stay of deadlines is granted, no later than 20 days (for a 30-day hearing procedure) or 30 days (for a 60-day hearing procedure) before the hearing begins, the hearing officer shall issue a scheduling order setting the date, time and location of the hearing. The scheduling order may include other procedural matters. Jointly or singly, and before the hearing officer issues the scheduling order, the parties may submit to the hearing officer, at least five days (for a 30-day hearing procedure) or 10 days (for 60-day hearing procedure) before the deadline for issuing the scheduling order, a request regarding the date and location of the hearing and other procedural matters, such as the assignment of a non-board-member hearing officer. At a board meeting, the hearing officer may consult with the board regarding procedural matters.

#### **G. Public notice of hearing:**

**(1) Publication:** Upon direction from the board or hearing officer, the hearing clerk shall prepare a notice of hearing setting forth the date, time and location of the hearing, a brief description of the petition, and information on the requirements for entry of appearance and for submitting a statement of intent to present evidence, and

**(a)** no later than 10 days (for a 30-day hearing procedure) or 15 days (for a 60-day hearing procedure) before the hearing date, send a copy of the notice of hearing, with a request for publication, to at least one newspaper of general circulation that is distributed at least weekly in Bernalillo county;

**(b)** no later than 10 days (for a 30-day hearing procedure) or 15 days (for a 60-day hearing procedure) before the hearing date, mail a copy of the notice of hearing to each party, to each interested participant who has filed an entry of appearance, and to each person who within the previous 12 months has expressed in writing to the department or the board an interest in the facility or permitting action that is the subject of the petition; and

**(c)** immediately upon receipt of an entry of appearance that is received after the initial mailing, mail a copy of the notice of hearing to each additional interested participant.

**(2) Certification:** After the notice of hearing has been distributed as required by Subsection G of 20.11.81.14 NMAC, the hearing clerk shall file with the record proper an affidavit certifying how and when notice was given and shall attach to the affidavit a copy of the notice of hearing and affidavits of publication.

#### **H. Statement of intent to present technical evidence:**

**(1) Requirement to file:** No later than 10 days (for a 30-day hearing procedure) or 15 days (for 60-day hearing procedure) days before the hearing, any person who wishes to present technical evidence at the hearing shall file with the hearing clerk and serve on all parties a statement of intent to present technical evidence.

#### **(2) The statement of intent to present technical evidence shall include:**

- (a)** the name of the person filing the statement;
- (b)** a statement clarifying whether the person filing the statement supports or opposes the petition at issue;
- (c)** the name of each witness;
- (d)** an estimate of the length of the direct testimony of each witness;
- (e)** a summary or outline of the anticipated direct testimony of each witness;
- (f)** a list of exhibits, if any, to be offered into evidence at the hearing on the merits; and
- (g)** a copy of each exhibit to be offered into evidence at the hearing on the merits.

#### **I. Participation by persons other than parties:**

**(1) Interested participants; entry of appearance:** No later than seven days (for a 30-day hearing procedure) or 10 days (for a 60-day hearing procedure) before the beginning of the hearing on the merits, any person who wishes to be treated as an interested participant and to cross-examine witnesses at the hearing shall file an entry of appearance with the hearing clerk and serve the entry of appearance upon all parties. For purposes of Paragraph (1) of Subsection I of 20.11.81.14 NMAC, a statement of intent to present technical evidence filed pursuant to Subsection H of 20.11.81.14 NMAC shall be considered an entry of appearance if the person has not previously filed a separate entry of appearance. The entry of appearance shall identify the person wishing to be treated as an interested participant, provide the address of the person wishing to be treated as an interested participant, and list each individual who may appear on behalf of that person.

**(2) Participation by the general public; General non-technical statement:** Any person who has not timely filed either an entry of appearance as an interested participant pursuant to Subsection I of 20.11.81.14 NMAC or a statement of intent to

present technical evidence pursuant to Subsection H of 20.11.81.14 NMAC, may present a general non-technical statement by meeting the following conditions.

**(a)** Any member of the general public may testify at the hearing. No prior notification is required to present general non-technical statements in support of or in opposition to the petition. A member of the general public also may offer exhibits related to his testimony, as long as the exhibit is non-technical in nature and does not unduly repeat other testimony.

**(b)** A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement with the hearing clerk before the hearing begins. If a member of the general public who testified or submitted a written statement wants to receive written notice of the decision of the board, then, at the hearing at which the member of the general public testified or submitted the written statement, the member of the general public must provide the hearing clerk with a legible written name and current mailing address.

**J. Pre-hearing discovery:** Discovery shall be guided by the provisions of the New Mexico rules of civil procedure in effect at the time of the hearing. Formal discovery is not a right, and, therefore, is discouraged and shall only be allowed by order of the hearing officer if the following conditions exist.

**(1) Grounds for discovery:** Formal discovery shall only be authorized if the hearing officer determines:

**(a)** the type of discovery sought will not unreasonably delay the proceeding and is not unreasonably burdensome or unreasonably expensive; and

**(b)** the information to be obtained is relevant and is not otherwise reasonably obtainable, or may be lost, or may become unavailable.

**(2) Order for discovery:** Upon motion for discovery by a party and determination by the hearing officer that the motion should be granted, the hearing officer shall issue an order for the taking of discovery. The order shall include all terms and conditions imposed by the hearing officer.

[20.11.81.14 NMAC - N, 12/16/06]

**20.11.81.15 [RESERVED]**

**20.11.81.16 HEARING PROCEDURES:**

**A. Hearing on the merits:**

**(1) Location of the hearing on the merits:** Unless otherwise ordered by the board or hearing officer, the hearing on the merits normally shall be held in the Vincent

E. Griego Chambers, on the lower level of the Albuquerque-Bernalillo County Government Center located at One Civic Plaza, near the intersection of Fourth Street and Marquette Avenue NW, in Albuquerque, New Mexico, or in another adequate city of Albuquerque, county of Bernalillo, or other publicly-owned location.

**(2) Postponement of hearing:** No request for postponement of a hearing shall be granted unless the hearing officer or the board determines either that all parties consent or that good cause has been proved.

**B. Conduct of hearing on the merits:**

**(1)** The hearing officer shall conduct the hearing on the merits in a manner that provides a reasonable opportunity for all parties and interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.

**(2)** The hearing officer shall establish the order of testimony, except that the petitioner shall present its case first. The hearing officer may allow brief opening and closing statements.

**C. Burden of persuasion:** In a hearing on the merits, the petitioner has the burden of proof, the burden of going forward with the evidence and the burden of proving by a preponderance of the evidence the facts relied upon by the petitioner to justify the relief sought in the petition. Following the establishment of a prima facie case by the petitioner, any person opposed to the relief sought in the petition has the burden of going forward with any adverse evidence and showing why the relief should not be granted.

**D. Evidence:**

**(1) General:** The hearing officer shall admit any relevant evidence, unless the hearing officer determines that the evidence is unduly repetitious, otherwise unreliable or of little probative value.

**(2) Examination of witnesses:** Witnesses shall be examined orally, under oath or affirmation, and may be examined by the hearing officer and members of the board. At the hearing on the merits, the board members, hearing officer, parties and interested participants shall have the right to cross-examine a witness. The hearing officer may limit cross-examination that is unduly repetitious, harassing or beyond the scope of the direct testimony of the witness.

**(3) Exhibits:** All exhibits offered in evidence shall be marked with a designation identifying the person offering the exhibit, and shall be individually numbered serially. Large charts and diagrams, models and other bulky exhibits are discouraged. Exhibits should be limited to 8 1/2 X 11 inches, or be capable of being folded to that size, unless otherwise necessary for adequate presentation of evidence.

Any person offering an exhibit shall provide at least an original and 15 copies for the board, the other parties and persons attending the hearing.

**(4) Official notice:** The hearing officer may take official notice of any matter that may be judicially noticed in the New Mexico courts. In the hearing, parties shall be given adequate opportunity to show that such facts have been erroneously noticed.

**E. Objections and offers of proof:**

**(1) Objection:** Any objection concerning the conduct of the hearing on the merits may be stated during the hearing, either orally or in writing. The party raising the objection must make a short statement of the grounds for the objection. The ruling by the hearing officer on any objection and the reasons given for the ruling shall be part of the record.

**(2) Offer of proof:** Whenever the hearing officer excludes evidence from the record, the party offering the evidence may make an offer of proof, which shall be included in the record. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded and what such evidence would have proven. The offer of proof for excluded documents or exhibits shall consist of the insertion in the record of the documents or exhibits excluded.

[20.11.81.16 NMAC - N, 12/16/06]

**20.11.81.17 [RESERVED]**

**20.11.81.18 POST-HEARING PROCEDURES:**

**A. Filing the transcript:** Unless the board orders the hearing to be tape recorded, or recorded by other means, the hearing shall be transcribed verbatim by a court reporter. Any person, other than the board, who wants a copy of a transcript from the court reporter, shall pay the court reporter for the transcript copy. Any person, other than the board, who wants a copy of hearing tapes must arrange with the hearing clerk to have the tapes copied and shall pay for the copy of the tapes before the hearing clerk delivers the copy of the tapes to the person requesting the copy.

**B. Proposed findings of fact and conclusions of law:** The hearing officer may allow the record to remain open for a reasonable period of time after the conclusion of the hearing on the merits in order to allow any party or interested participant to submit proposed findings of fact and conclusions of law and a closing argument, but the hearing officer shall not allow the record to remain open solely because closing arguments will be made before the board. At the conclusion of the evidentiary hearing held by the hearing officer, the hearing officer shall state whether the parties may submit findings, conclusions and closing arguments and the deadlines for submission. All such submissions shall be in writing, shall be served upon all parties, and shall contain adequate references to the record and authorities relied upon. After the

conclusion of the evidentiary hearing before the hearing officer, no new evidence shall be presented unless specifically allowed by the hearing officer for good cause.

**C. Recommended decision:** If the board directs, the hearing officer shall issue a recommended decision within a period established by the board. The recommended decision shall contain the hearing officer's findings of fact, conclusions regarding all material issues of law or discretion, reasons for the recommended decision, and a proposed final order. Upon receipt of the hearing officer's recommended decision, the hearing clerk shall forward a copy to all parties and to the board. At the board's or the hearing officer's discretion, any party or interested participant may file comments regarding the hearing officer's recommended decision.

**D. Deliberation and decision:**

**(1) Deliberation:** At the end of the hearing on the merits or at a board meeting, the board shall reach a final decision on each adjudicatory matter.

**(a)** If allowed by the Open Meetings Act, Chapter 10, Article 15 NMSA 1978, the board may deliberate in closed session. However, any final action must occur in an open meeting.

**(b)** If a quorum of the board attended the hearing and the hearing notice indicated that the board may act at the conclusion of the hearing, the board may immediately deliberate and act on the matter.

**(c)** If the board does not reach a decision at the hearing on the merits or at a board meeting held promptly after the hearing, then, after the hearing clerk receives the transcript, the hearing clerk shall promptly provide a copy of the transcript and exhibits to the hearing officer and to board members who did not attend the hearing and who are qualified to vote on the decision. If requested, the hearing clerk shall provide a copy of the transcript to other board members and board counsel. The hearing clerk shall notify all parties and interested participants of the availability of the transcript.

**(2) Final order of the board:** After the board has reached a decision regarding the petition, the board shall direct a board member, the hearing officer, the board's counsel or a party to prepare a final order.

**(a)** The board may approve the final order at the conclusion of the hearing on the merits if a quorum of the board members is present and a majority of the board members present votes in favor of the final order; at a meeting of the board; or, after a decision of the board, by signature of the final order by the board chair.

**(b)** The final order shall contain findings of fact, conclusions of law, an order based on the findings and conclusions, and a statement regarding the availability of appeal, as authorized by 74-2-9 NMSA 1978. If a recommended decision was prepared,

the board may adopt, modify or set aside the recommended decision and state the board's reasons for adopting, modifying or setting aside the recommended decision.

**(c)** The hearing clerk shall promptly send copies of the final order to each party and interested participant, and to all other persons who have made written requests for notification of the action taken.

**E. Judicial review:** Judicial review of the final order shall be as provided by law. The filing of an appeal pursuant to 74-2-9 NMSA 1978 does not stay the final order, unless otherwise ordered by the board or a court, as appropriate, depending on which entity has jurisdiction at the time the stay is requested.

**F. Preparation of record proper:** The preparation of the record proper for an appeal or for any other reason shall be the responsibility of the hearing clerk. The appellant shall make satisfactory arrangements with the hearing clerk, including paying for copying, including transcript costs, before the hearing clerk prepares the record proper.

[20.11.81.18 NMAC - N, 12/16/06]

#### **20.11.81.19 [RESERVED]**

#### **20.11.81.20 ALTERNATE RESOLUTION:**

##### **A. Summary procedures:**

**(1) Use of summary procedures:** The board may dispose of a petition after an expedited public hearing if a party makes a written request that the board decide the merits of the petition solely on legal arguments presented in written briefs and oral arguments.

**(2) Expedited hearing:** If the hearing officer determines that the request has a likelihood of success and could fairly expedite the resolution of the proceeding, the hearing officer may allow the parties and interested participants to brief the issue and present oral arguments at an expedited public hearing, and then present the issue to the board for a decision. If an expedited hearing is conducted, the hearing officer shall:

**(a)** assure that public notice is given in accordance with Subsection G of 20.11.81.14 NMAC, and include in the public notice instructions for persons other than parties who wish to participate in the oral argument to submit a statement of intent equivalent to the statement provided in Paragraph (2) of Subsection H of 20.11.81.14 NMAC; and

**(b)** allow the public to attend the expedited hearing but may limit presentations at the hearing to oral arguments by parties and interested participants regarding the specific issue before the board.

**(3) Decision:** After an expedited hearing, the board may either decide the matter and issue a final order, or, if the board decides not to dispose of the matter, the board shall proceed with a full hearing as provided by 20.11.81.16 NMAC.

**B. Withdrawal:**

**(1) Notice of withdrawal:** At any time before a final decision is made by the board, the petitioner may withdraw the petition or the department may withdraw the permitting action that is the subject of the proceeding. Withdrawal may be accomplished by filing a notice of withdrawal with the board and serving a copy of the notice on all other parties and interested participants. Within five days (for a 30-day hearing procedure) or 10 days (for a 60-day hearing procedure) after receipt of the notice of withdrawal, a party or interested participant may file a written objection to the notice of withdrawal. If an objection is filed, the hearing officer or the board, depending on the stage of the hearing, shall rule on the notice of withdrawal.

**(2) Effect of withdrawal:** The result of a notice of withdrawal that is not opposed or has been approved by the board is that:

**(a)** when a petitioner withdraws a petition for a hearing on the merits, the permitting action becomes final; and

**(b)** when the department withdraws a permitting action, the petition is vacated and the agency must issue a new permitting action within 60 days unless either the board approves a different deadline or the applicant withdraws its application. When a new permitting action occurs, a new right to file a petition for hearing on the merits is available pursuant to 20.11.81 NMAC.

**C. Settlement:** The board encourages the settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the act and the regulations. The parties may ask the board to stay a proceeding authorized by 20.11.81 NMAC while settlement negotiations are being held. The board may approve a settlement that modifies a permitting action only after evidence supporting such modification is presented at a public hearing. The department, however, may withdraw a disputed permitting action and take another permitting action, which will give rise to a new right to file a petition for hearing on the merits pursuant to 20.11.81 NMAC.

[20.11.81.20 NMAC - N, 12/16/06]

**PART 82: RULEMAKING PROCEDURES — AIR QUALITY CONTROL BOARD**

**20.11.82.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2601.

[20.11.82.1 NMAC - N, 8/11/08]

**20.11.82.2 SCOPE:**

20.11.82 NMAC governs the procedures in all rulemaking hearings before the board, except to the extent that 20.11.82 NMAC is inconsistent with specific procedures in governing law. In cases in which 20.11.82 NMAC is inconsistent with any rulemaking procedures specified in governing law, the procedures in governing law shall apply, rather than the procedures in 20.11.82 NMAC. A rulemaking hearing includes a hearing regarding a proposal to adopt, amend or repeal a board rule, regulation or standard.

[20.11.82.2 NMAC - N, 8/11/08]

**20.11.82.3 STATUTORY AUTHORITY:**

20.11.82 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance No. 94-5, Sections 4 and 5; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994, Sections 9-5-1-4 and 9-5-1-5.

[20.11.82.3 NMAC - N, 8/11/08]

**20.11.82.4 DURATION:**

Permanent.

[20.11.82.4 NMAC - N, 8/11/08]

**20.11.82.5 EFFECTIVE DATE:**

August 11, 2008, unless a later date is cited at the end of a section.

[20.11.82.5 NMAC - N, 8/11/08]

**20.11.82.6 OBJECTIVE:**

The purposes of 20.11.82 NMAC are to:

- A. standardize the procedures used in rulemaking proceedings before the board;

**B.** encourage participation in the hearings conducted by the board for the promulgation of regulations;

**C.** make possible the effective presentation of the evidence and points of view of parties and members of the general public; and

**D.** assure that board hearings are conducted in a fair and equitable manner.

[20.11.82.6 NMAC - N, 8/11/08]

#### **20.11.82.7 DEFINITIONS:**

As used in 20.11.82 NMAC:

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

**B. "Board"** means the Albuquerque-Bernalillo county air quality control board or its successor board pursuant to the act.

**C. "Days"** means consecutive days except as otherwise specifically provided.

**D. "Department"** means the city of Albuquerque environmental health department or its successor agency.

**E. "Document"** means a pleading or exhibit and any other document including electronically stored information, writings, drawings, graphs, charts, photographs, sound recordings, images and any other data or data compilations that are stored in any medium from which information can be obtained either directly or, if necessary, after translation, into a reasonably usable form.

**F. "Environmental justice"** means the fair treatment of all residents (in the city of Albuquerque and Bernalillo county), including communities of color and low income communities, and their meaningful involvement in the development, implementation and enforcement of environmental laws, regulations and policies regardless of race, color, ethnicity, religion, income or education level.

**G. "Exhibit"** means any document or tangible item submitted for inclusion in the record proper.

**H.** Reserved

**I. "General public"** means any person attending a rulemaking hearing who has not filed a notice of intent to present technical testimony (NOI) or filed an entry of appearance pursuant to 20.11.82.20 NMAC or 20.11.82.21 NMAC.

**J. "Governing law"** means the statute, including any applicable case law, which authorizes and governs the decision regarding the proposed regulatory change.

**K. "Hearing clerk"** means the department employee designated by the director to provide staff support to the board, and is the person designated by the board to maintain the official record of the proceeding.

**L. "Hearing officer"** means the person who is designated by the board to conduct a hearing pursuant to 20.11.82 NMAC.

**M. Reserved**

**N. "NOI"** means a notice of intent to present technical testimony which is described in 20.11.82.20 NMAC.

**O. "Non-technical testimony"** means testimony that is not scientific, engineering, economic or other specialized testimony. A person who provides only non-technical testimony or a non-technical exhibit is not required to file an NOI or entry of appearance pursuant to 20.11.82.20 NMAC or 20.11.82.21 NMAC.

**P. "Participant"** means any person who participates in a rulemaking proceeding before the board.

**Q. "Party"** means:

- (1) the petitioner;
- (2) any person who filed an NOI pursuant to 20.11.82.20 NMAC; or
- (3) any person who filed an entry of appearance pursuant to 20.11.82.21 NMAC.

**R. "Person"** means an individual or any entity, including federal, state and local governmental entities, however organized.

**S. "Petitioner"** means the person who petitioned the board for the regulatory change that is the subject of the hearing.

**T. "Record proper" or "record"** means all documents related to the hearing, including documents received or generated by the board before the beginning, or after the conclusion of the hearing, including, but not limited to:

- (1) the petition for hearing and any response thereto;

(2) the minutes (or an appropriate extract of the minutes) of the meeting at which the petition for hearing was considered, and of any meeting thereafter at which the proposed regulatory change was discussed;

(3) the notice of hearing;

(4) proof of publication;

(5) NOI(s);

(6) statements for the public record;

(7) the hearing officer's report, if any;

(8) post-hearing submissions, if allowed;

(9) the stenographic transcription or audio recording of the hearing and the stenographic transcription or audio recording or appropriate extract of the audio recording of the meeting at which the board deliberated on the adoption of the proposed regulatory change; and

(10) the board's decision and the reasons therefor.

**U. "Regulation"** means a rule, regulation or standard promulgated by the board that affects one or more persons, in addition to the board and the department, except for any order or decision issued in connection with the disposition of any case involving a particular matter as applied to a specific set of facts.

**V. "Regulatory change"** means the adoption, amendment or repeal of a regulation.

**W. "Service"** means delivering a copy of a document, including a pleading or exhibit, to a party as required by Subsection C of 20.11.82.16 NMAC.

**X. "Technical testimony"** means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing.

**Y. "Transcript of proceedings"** means the verbatim record, audio recording or stenographic transcription of the proceedings, testimony and argument in the matter, together with all exhibits offered at the hearing, whether or not admitted into evidence, and includes the record of any motion hearings or pre-hearing conferences.

[20.11.82.7 NMAC - N, 8/11/08; A, 10/15/12]

## **20.11.82.8 VARIANCES:**

The variance procedures provided by 20.11.7 NMAC shall not apply to 20.11.82 NMAC.

[20.11.82.8 NMAC - N, 8/11/08]

**20.11.82.9 SEVERABILITY:**

If for any reason any section, subsection, sentence, phrase, clause, wording or application of 20.11.82 NMAC is held to be unconstitutional or otherwise invalid by any court or the United States environmental protection agency, the decision shall not affect the validity or application of remaining portions of 20.11.82 NMAC.

[20.11.82.9 NMAC - N, 8/11/08]

**20.11.82.10 DOCUMENTS:**

Documents incorporated and cited in 20.11.82 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Suite 3023, Albuquerque, NM 87102.

[20.11.82.10 NMAC - N, 8/11/08; A, 10/15/12]

**20.11.82.11 POWERS AND DUTIES OF BOARD AND HEARING OFFICER:**

**A. Board:** The board shall exercise all powers and duties authorized by 20.11.82 NMAC and not otherwise delegated to the hearing officer or the hearing clerk. The board shall designate a hearing officer for each hearing. The board may direct the hearing officer to file a report of the hearing as provided by 20.11.82.31 NMAC.

**B. Hearing officer:** The hearing officer shall exercise all powers and duties delegated or otherwise authorized by 20.11.82 NMAC. The hearing officer may be a member of the board. The hearing officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial consideration of issues arising in proceedings governed by 20.11.82 NMAC, including:

- (1) conducting hearings pursuant to 20.11.82 NMAC;
- (2) taking, admitting or excluding evidence, examining witnesses and allowing post-hearing submissions;
- (3) making orders as may be necessary to preserve decorum and to protect the orderly hearing process;
- (4) if requested by the board, preparing a report of the hearing, with recommendations for board action;

- (5) requesting parties to file original documents with the hearing clerk;
- (6) establishing the deadlines for filing documents with the hearing clerk;
- (7) requesting the prevailing party to submit a proposed statement of reasons in support of the board's decision; and
- (8) filing with the hearing clerk all original documents issued by the hearing officer.

**C. Notice of hearing officer assignment:** If a hearing officer other than a board member is assigned as a hearing officer, the hearing clerk shall notify the parties of the name and address of the hearing officer. At the same time, the hearing clerk also shall forward to the hearing officer copies of all documents related to the petition that have been filed to date.

[20.11.82.11 NMAC - N, 8/11/08; A, 10/15/12]

#### **20.11.82.12 LIBERAL CONSTRUCTION:**

20.11.82 NMAC shall be liberally construed to carry out its objectives.

[20.11.82.12 NMAC - N, 8/11/08]

#### **20.11.82.13 GENERAL PROVISIONS - COMPUTATION OF TIME:**

**A. Computation of time:** In computing any period of time prescribed or allowed by 20.11.82 NMAC, except as otherwise specifically provided, the day of the event from which the designated period begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, Sunday, or legal city of Albuquerque holiday, in which event the time shall be extended until the end of the next day that is not a Saturday, Sunday or legal city of Albuquerque holiday. Whenever a party must act within a prescribed period after service upon a party, and service is by mail, three days shall be added to the prescribed period. The three-day extension does not apply to any deadline imposed by the act.

**B. Extension of time:** For good cause shown, and after consideration of prejudice to other parties, the board or hearing officer may grant an extension of time for filing any document upon timely motion of a party to the proceeding.

[20.11.82.13 NMAC - N, 8/11/08]

#### **20.11.82.14 GENERAL PROVISIONS - RECUSAL:**

**A.** No board member shall participate in any action in which that member's impartiality or fairness may reasonably be questioned. The member shall recuse oneself

in any such action by giving notice to the board and the general public by announcing the recusal on the record. In making a decision to recuse oneself, the board member may rely upon any relevant authority.

**B.** A board member or a hearing officer shall not perform any function authorized by 20.11.82 NMAC regarding any matter in which a board member or a hearing officer:

- (1) has a personal bias or prejudice concerning a party;
- (2) is related to a party within the third degree of relationship;
- (3) is an officer, director or trustee of a party or interested participant in the proceeding; or
- (4) has a financial interest in the proceeding or has any other conflict of interest.

[20.11.82.14 NMAC - N, 8/11/08; A, 10/15/12]

#### **20.11.82.15 GENERAL PROVISIONS - EX PARTE COMMUNICATION:**

At no time after a proceeding is initiated by filing a petition pursuant to 20.11.82.18 NMAC and before the conclusion of a proceeding initiated pursuant to 20.11.82 NMAC shall any person have ex parte contact with a board member or the hearing officer regarding the merits of a petition or motion filed pursuant to 20.11.82 NMAC.

[20.11.82.15 NMAC - N, 8/11/08; A, 10/15/12]

#### **20.11.82.16 DOCUMENT REQUIREMENTS - FILING AND SERVICE OF DOCUMENTS:**

**A.** The filing of any document as required by 20.11.82 NMAC shall be accomplished by delivering the document to the hearing clerk.

**B.** Any person filing any document shall:

- (1) provide the hearing clerk with the original and 15 copies of the document;
- (2) deliver a copy to the board attorney;
- (3) serve a copy on all other parties; and
- (4) file with the hearing clerk at least 15 days before any hearing or meeting at which the board will consider the document; if the document is a motion seeking an order from the hearing officer in a rulemaking hearing, the motion shall also be served at the same time on the hearing officer and the board attorney; motions and responses

shall be filed only by parties to a hearing and shall comply with 20.11.82.16 NMAC and 20.11.82.25 NMAC;

(5) if the document is a motion for a stay, 20.11.82.35 NMAC shall apply.

**C.** Whenever 20.11.82 NMAC requires service of a document, service on all other parties shall be made by delivering a copy to the person to be served by hand delivery, mail or, if that person has agreed in writing, by sending it by facsimile or by electronic transmission to that person. An agreement to be served by facsimile or electronic transmission may be evidenced by placing the person's facsimile number or email address on a document filed pursuant to 20.11.82 NMAC. Service shall also be made upon the board's attorney. If a person is represented by an attorney, service of the document shall be made on the attorney. Service by mail is complete upon mailing the document unless service is made by mail to a party who must act within a prescribed period after being served, in which case three days shall be added to the prescribed period. The three-day extension does not apply to any deadline imposed by the act. Service by facsimile or electronic transmission is accomplished when the transmission of the document is completed. The person who received the facsimile or electronic transmission shall promptly provide written confirmation of receipt if requested by the hearing officer, the board or a party.

**D.** The petitioner and any person who has filed a timely NOI pursuant to 20.11.82.20 NMAC may inspect all documents that have been filed in a proceeding in which that person is involved as a participant. The inspection shall be permitted as provided by the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12. Whenever any document is filed in a proceeding subject to 20.11.82 NMAC, the hearing clerk shall notify by email the petitioner and all persons who have filed a timely NOI. A person who does not provide an email address shall instead be notified by mail.

**E.** The hearing clerk shall provide copies of all documents to each board member at least five days before a hearing or meeting at which the board will consider the documents. The hearing officer may make an exception to this requirement.

**F.** 20.11.82.20 NMAC and 20.11.82.28 NMAC also provide requirements regarding hearing exhibits.

[20.11.82.16 NMAC - N, 8/11/08; A, 10/15/12]

#### **20.11.82.17 EXAMINATION OF DOCUMENTS FILED:**

**A. Examination allowed:** Any person may inspect and request a copy of any document filed in any rulemaking proceeding before the board, during normal business hours, subject to the provisions of law restricting the public disclosure of confidential information. The documents shall be made available by the hearing clerk as required by the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 through 14-2-12,

and may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Suite 3023, Albuquerque, NM 87102.

**B. Cost of duplication:** The cost of duplicating documents shall be borne by the person seeking copies of the documents.

[20.11.82.17 NMAC - N, 8/11/08; A, 10/15/12]

#### **20.11.82.18 PREHEARING PROCEDURES - PETITION FOR REGULATORY CHANGE:**

**A.** Any person may file a petition with the board to adopt, amend or repeal any regulation within the jurisdiction of the board.

**B.** The petition shall be in writing and shall include the name of the regulation and a statement of the reasons for the proposed regulatory change. The petition shall cite the relevant statutes that authorize the board to adopt the proposed regulatory change, and shall estimate the time that will be needed to conduct the rulemaking hearing, if at all possible. A copy of the entire rule, including any proposed regulatory change, indicating any language proposed to be added or deleted, shall be attached to the petition. The entire rule and its proposed changes shall be submitted to the board in legislative-edit format, with strike-outs and underlines as appropriate, and shall include individual line numbers. The hearing clerk shall return to the petitioner any document that does not meet the requirements of 20.11.82.18 NMAC, along with a copy of 20.11.82 NMAC and a check-list of required items. The petitioner will be asked to resubmit the petition as required by 20.11.82.18 NMAC.

**C.** At a public meeting occurring no later than 60 days after receipt of the petition, the board shall determine whether or not to hold a public hearing on the proposed regulatory change. Any person may respond to the petition either in writing before the public meeting or in person at the public meeting.

**D.** If the board decides by a vote of a majority of board members present to hold a public hearing on the petition, the board may issue orders specifying procedures for conduct of the hearing, in addition to the requirements established in 20.11.82 NMAC, as may be necessary and appropriate to fully inform the board of the matters at issue in the hearing or control the conduct of the hearing. The orders may include requirements for giving additional public notice, holding pre-hearing conferences, filing direct testimony in writing before the hearing, or limiting testimony or cross-examination.

[20.11.82.18 NMAC - N, 8/11/08; A, 10/15/12]

#### **20.11.82.19 NOTICE OF HEARINGS:**

**A.** Unless otherwise allowed by governing law and specified by the board, the board, through the hearing clerk, shall give public notice of the hearing at least 30 days

before the hearing unless the board requires a longer public notice period. Public notice shall include at a minimum:

- (1) a single publication in the newspaper with the largest general circulation in Bernalillo county;
- (2) publication in the New Mexico Register;
- (3) if technically feasible at the time, publication by electronic media; and
- (4) other means of providing notice as the board may direct or are required by law.

**B.** The board shall make reasonable efforts to give notice to persons who have made a written request to the board for advance notice of regulatory change hearings. Requests for notice shall be addressed to the hearing clerk, shall designate the areas of board activity that are of interest, and provide a legible address to which notice can be sent.

**C.** Public notice of the hearing shall state:

- (1) the subject, including a description of the proposed regulatory change, date, time and place of the hearing;
- (2) the statutes, regulations and procedural rules governing the conduct of the hearing;
- (3) the manner in which persons may present their views or evidence to the board;
- (4) the location where persons may obtain copies of the proposed regulatory change; and
- (5) if applicable, that the board may make a decision on the proposed regulatory change at the conclusion of the hearing or at a separate board meeting.

[20.11.82.19 NMAC - N, 8/11/08; A, 10/15/12]

#### **20.11.82.20 TECHNICAL TESTIMONY; NOTICE OF INTENT (NOI):**

**A.** No later than 15 days before the hearing, any person, including the petitioner, who intends to present technical testimony at the hearing shall file an NOI. The NOI shall:

- (1) identify the person for whom the witness or witnesses will testify;

(2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;

(3) include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

(4) include the text of any recommended modifications to the proposed regulatory change;

(5) list and attach an original and 15 copies of all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and

(6) be served on the petitioner, if the document is an NOI filed by any person other than the petitioner.

**B.** The person filing an NOI shall serve the notice pursuant to 20.11.82.16 NMAC.

**C.** The hearing officer may enforce the provisions of 20.11.82.20 NMAC by taking whatever action the hearing officer deems appropriate, including exclusion of the technical testimony of any witness for whom an NOI was not timely filed. If the testimony is admitted, the hearing officer may keep the record open after the hearing to allow responses to the testimony.

[20.11.82.20 NMAC - N, 8/11/08; A, 10/15/12]

#### **20.11.82.21 ENTRY OF APPEARANCE:**

Any person who is or may be affected by the proposed regulatory change may file an entry of appearance and shall be a party. The entry of appearance shall be filed no later than 15 days before the date of the hearing on the petition. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries, or divide the service list to avoid a waste of public resources.

[20.11.82.21 NMAC - N, 8/11/08; A, 10/15/12]

#### **20.11.82.22 NON-TECHNICAL TESTIMONY; PARTICIPATION BY GENERAL PUBLIC:**

**A.** Any member of the general public may provide non-technical testimony at the hearing. Notification before the hearing is not required in order to present non-technical testimony at the hearing. A person providing non-technical testimony may also offer non-technical exhibits in connection with the testimony provided, if the exhibit is not an undue repetition of previous non-technical testimony. Members of the general public are

requested to deliver an original and 15 copies of each non-technical exhibit offered, to the hearing clerk, either before or at the hearing.

**B.** A member of the general public who wishes to submit a non-technical written statement for the record instead of providing oral testimony at the hearing shall file the written statement before the hearing or submit it at the hearing, and is requested to provide an original and 15 copies of the statement to the hearing clerk.

**C.** A member of the general public who wishes to provide technical testimony or offer technical exhibits shall comply with requirements of 20.11.82.20 NMAC.

[20.11.82.22 NMAC - N, 8/11/08; A, 10/15/12]

#### **20.11.82.23 LOCATION OF HEARING:**

Unless otherwise provided by governing law, the board shall hold rulemaking hearings and meetings in public facilities within Bernalillo county with public seating available.

[20.11.82.23 NMAC - N, 8/11/08]

#### **20.11.82.24 PARTICIPATION AT A BOARD MEETING BY CONFERENCE TELEPHONE OR OTHER SIMILAR DEVICE:**

A member of the board may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when a medical or emergency situation exists that makes it extremely difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone or other device can be identified when speaking, all participants are able to hear each other at the same time, and members of the public attending the meeting are able to hear any member of the board who speaks at the meeting. A request to be present and vote by telephone or other similar device shall be made by the member to the chair or acting chair of the board. A board member who wishes to participate in a meeting in this manner must receive permission from the chair or acting chair of the board sufficiently in advance of the meeting so the hearing clerk can make adequate arrangements. The chair or acting chair shall determine whether a qualifying medical or emergency situation exists. The chair or acting chair who approves the request shall direct the hearing clerk to make arrangements. A board member's participation by such means shall constitute presence in person at the meeting. This provision shall not be used to allow a member to constitute a quorum of the board, and may only be used for the purposes of:

- A.** choosing a hearing officer;
- B.** authorizing the hearing clerk to secure a hearing officer for a hearing or hearings;
- C.** scheduling or rescheduling a meeting or hearing; and

**D.** voting on the limited issues listed in Subsections A, B and C of 20.11.82.24 NMAC.

[20.11.82.24 NMAC - N, 8/11/08; A, 10/15/12]

#### **20.11.82.25 MOTIONS:**

**A. General:** All motions, except those made orally during a hearing, shall be in writing, specify the grounds for the motion, and state the relief sought. Each written motion shall be accompanied by an affidavit, certificate or other evidence relied upon, and shall be filed and served as required by 20.11.82.16 NMAC.

**B. Unopposed motions:** All unopposed motions shall state that the concurrence or agreement of all other parties was obtained. The party that filed the motion shall submit to the hearing officer for review a proposed order that has been approved by all parties.

**C. Opposed motions:** All opposed motions shall state either that concurrence or agreement of all other parties was sought and denied, or why concurrence was not sought. A memorandum brief in support of an opposed motion may be filed with the motion.

**D. Response to motions:** a party upon whom an opposed motion is served shall have 15 days after service of the motion to file a response. Any other party who fails to file a timely response shall be deemed to have waived any objection to the granting of the motion.

**E. Reply to response:** The moving party may submit, but is not required to submit a reply to any response within 10 days after service of the response.

**F. Decision regarding motions:** Motions may be decided by the hearing officer, in the hearing officer's sole discretion, without a hearing. Within five days after being served with a copy of the motion, a party upon whom service has been made may file a written request asking that a hearing be held. A procedural motion may be ruled upon before the expiration of the time for response. Any response regarding a procedural motion received after the decision is made shall be treated as a request for reconsideration of the ruling. However, the hearing officer shall refer all motions that would effectively dispose of the petition to the board for a decision.

[20.11.82.25 NMAC - N, 8/11/08; 20.11.82.25 NMAC - N, 10/15/12]

#### **20.11.82.26 HEARING PROCEDURES - CONDUCT OF HEARINGS:**

**A.** The rules of civil procedure and the rules of evidence shall not apply.

**B.** The hearing officer shall conduct the hearing in a manner that provides a reasonable opportunity for all persons to be heard without making the hearing

unreasonably lengthy or cumbersome, or burdening the record with unnecessary repetition. The hearing shall proceed as follows.

(1) The hearing shall begin with a statement from the hearing officer. The statement shall identify the nature and subject matter of the hearing and explain the procedures to be followed.

(2) The hearing officer may allow a brief opening statement by any party who wishes to make one.

(3) Unless otherwise ordered, the petitioner shall present its case first.

(4) The hearing officer shall establish an order for the testimony of other participants. The order may be based upon NOI(s), sign-in sheets and the availability of witnesses who cannot be present for the entire hearing.

(5) If the hearing continues for more than one day, the hearing officer shall provide an opportunity each day for testimony from members of the general public. Members of the general public who wish to present testimony should indicate their intent to testify on a sign-in sheet.

(6) The hearing officer may allow a brief closing argument by any party who wishes to make one.

(7) At the close of the hearing, the hearing officer shall determine whether to keep the record open for written submittals in accordance 20.11.82.30 NMAC. If the record is kept open, the hearing officer shall determine and announce the subject or subjects regarding which submittals will be allowed and the deadline for filing the submittals.

(8) Any board action to adopt, amend or repeal a board regulation requires the concurrence of four board members.

[20.11.82.26 NMAC - N, 8/11/08; 20.11.82.26 NMAC - Rn & A, 20.11.82.25 NMAC, 10/15/12]

#### **20.11.82.27 TESTIMONY AND CROSS-EXAMINATION:**

**A.** All testimony shall be taken under oath or affirmation, which may be accomplished as a group or individually.

**B.** The hearing officer shall admit all relevant evidence, unless the hearing officer determines that the evidence is incompetent or unduly repetitious. The hearing officer shall require all oral testimony be limited to the position of the witness in favor of, or against the proposed rule.

**C.** Any person who testifies at the hearing is subject to cross-examination on the subject matter of that person's direct testimony and matters affecting that person's credibility. Any person attending the hearing is entitled to conduct cross-examination as may be required for a full and true disclosure of matters at issue in the hearing. The hearing officer may limit cross-examination to avoid harassment, intimidation, needless expenditure of time or undue repetition.

[20.11.82.27 NMAC - N, 8/11/08; 20.11.82.27 NMAC - Rn & A, 20.11.82.26 NMAC, 10/15/12]

#### **20.11.82.28 TECHNICAL EXHIBITS:**

**A.** The deadlines for filing technical exhibits are established by 20.11.82.20 NMAC.

**B.** Any party offering a technical exhibit shall provide the hearing clerk with an original and 15 copies for the board, the hearing officer, the board attorney, and persons attending the hearing.

**C.** All exhibits offered at the hearing shall be marked with a designation identifying the person offering the exhibit and shall be numbered sequentially. If a person offers multiple exhibits, the person shall identify each exhibit with an index tab or by other appropriate means.

**D.** Large charts and diagrams, models and other bulky exhibits are discouraged. If visual aids are used, legible copies shall be submitted for inclusion in the record.

[20.11.82.28 NMAC - N, 8/11/08; 20.11.82.28 NMAC - Rn & A, 20.11.82.27 NMAC, 10/15/12]

#### **20.11.82.29 TRANSCRIPT OF PROCEEDINGS:**

The hearing clerk shall arrange for a court reporter to make a verbatim transcription of the hearing unless the board requires another method of recording. The petitioner shall pay the cost of the court reporter and the original transcription. The petitioner shall also pay the cost of a copy of a transcription for each board member, the hearing officer and the board attorney if required by the hearing officer or the board.

[20.11.82.29 NMAC - N, 8/11/08; 20.11.82.29 NMAC - Rn, 20.11.82.28 NMAC, 10/15/12]

#### **20.11.82.30 POST-HEARING SUBMISSIONS:**

The hearing officer may allow the record to remain open for a reasonable period of time following the conclusion of the hearing for written submission of additional evidence, comments and arguments, and proposed statements of reasons. The hearing officer's determination regarding post-hearing submissions shall be announced at the conclusion

of the hearing. In considering whether the record will remain open, the hearing officer shall consider the reasons why the material was not presented during the hearing, the significance of the material to be submitted and the necessity for a prompt decision.

[20.11.82.30 NMAC - N, 8/11/08; 20.11.82.30 NMAC - Rn & A, 20.11.82.29 NMAC, 10/15/12]

#### **20.11.82.31 HEARING OFFICER'S REPORT:**

If the board directs, the hearing officer shall file a report of the hearing. The report shall identify the issues addressed at the hearing, identify the parties' final proposals and the evidence supporting those proposals, including discussion or recommendations as requested by the board, and shall be filed with the hearing clerk within the time specified by the board. The hearing clerk shall promptly notify each party that the hearing officer's report has been filed and shall provide each party with a copy of the report and notice of any deadline set for comments on the report.

[20.11.82.31 NMAC - N, 8/11/08; 20.11.82.31 NMAC - Rn & A, 20.11.82.30 NMAC, 10/15/12]

#### **20.11.82.32 DELIBERATION AND DECISION:**

**A.** As provided in the act at NMSA 74-2-5.E, in making its regulations, the board shall give weight it deems appropriate to all facts and circumstances, including:

(1) character and degree of injury to or interference with health, welfare, visibility and property;

(2) the public interest, including the social and economic value of the sources and subjects of air contaminants, with due consideration for environmental justice principles; and

(3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved.

**B.** If a quorum of the board attended the hearing, and if the hearing notice indicated that a decision might be made at the conclusion of the hearing or meeting, the board may immediately deliberate and make a decision on the proposed regulatory change at the end of the hearing or at a board meeting after the hearing.

**C.** If the board does not reach a decision at the conclusion of the hearing or meeting, then, following receipt of the transcript, the hearing clerk shall promptly furnish a copy of the transcript to each board member who did not attend the hearing and, if necessary, to other board members, the board attorney and the hearing officer. Exhibits that were provided to persons at the time of the hearing need not be supplied again.

**D.** The board shall reach its decision on the proposed regulatory change within 60 days after the later of the close of the record or the date the hearing officer's report is filed, if a quorum of the board is available.

**E.** During the course of its deliberations, if the board determines that additional testimony or documentary evidence is necessary for a proper decision on the proposed regulatory change, then, consistent with the requirements of due process, the board may reopen the hearing for necessary additional evidence only. The board or hearing officer may require additional notice as appropriate.

**F.** The board shall issue its decision on the proposed regulatory change in a suitable format, which shall include its reasons for the action taken.

**G.** The board's written decision is the official version of the board's action and the reasons for that action. Other written or oral statements by board members are not a part of the board's official decision or reasons.

[20.11.82.32 NMAC - N, 8/11/08; 20.11.82.32 NMAC - Rn & A, 20.11.82.31 NMAC, 10/15/12]

#### **20.11.82.33 NOTICE OF BOARD ACTION:**

The hearing clerk shall provide notice of the board's action to each of the parties who have provided a legible address and to all other persons who have made a written request to the board for notification of the action taken, and have provided a legible address.

[20.11.82.33 NMAC - N, 8/11/08; 20.11.82.33 NMAC - Rn & A, 20.11.82.32 NMAC, 10/15/12]

#### **20.11.82.34 APPEAL OF BOARD REGULATIONS:**

**A.** Appeal of any regulatory change by the board shall be taken in accordance with NMSA 74-2-9.

**B.** The appellant shall serve a copy of the notice of appeal on the board and on each party.

**C.** The appellant shall be responsible for preparation of a sufficient number of copies of the record proper at the expense of appellant.

**D.** Unless otherwise provided by NMSA 74-2-9, the filing of an appeal shall not act as a stay of the regulatory change being appealed.

[20.11.82.34 NMAC - N, 8/11/08; 20.11.82.34 NMAC - Rn & A, 20.11.82.33 NMAC, 10/15/12]

### **20.11.82.35 STAY OF BOARD REGULATIONS:**

**A.** Any person who is or may be affected by a regulatory change adopted by the board may file a motion with the board seeking a stay of that rule or regulatory change. The motion shall include the reason for, and the legal authority supporting the granting of a stay. The movant shall serve the motion for a stay as provided by 20.11.82.16 NMAC. The movant shall file the motion at least 15 days before the next regularly scheduled board meeting. At the beginning of the next regularly scheduled board meeting, the board shall appoint a hearing officer. The hearing officer shall preside at the motion hearing, which shall occur before the meeting at which the board makes a final decision regarding the motion.

**B.** Unless otherwise provided by governing law, the board may grant a stay pending appeal of any regulatory change promulgated by the board. The board may only grant a stay if good cause is shown after a motion is filed and a hearing is held.

**C.** In determining whether good cause exists for granting a stay, the board shall consider:

- (1) the likelihood that the movant will prevail on the merits of the appeal;
- (2) whether the moving party will suffer irreparable harm if a stay is not granted;
- (3) whether substantial harm will result to another participant; and
- (4) whether harm to the public interest will result.

**D.** If no action is taken within 60 days after filing of the motion, the board shall be deemed to have denied the motion for stay.

[20.11.82.35 NMAC - Rn & A, 20.11.82.34 NMAC, 10/15/12]

### **PART 83-89: [RESERVED]**

### **PART 90: ADMINISTRATION, ENFORCEMENT, INSPECTION**

#### **20.11.90.1 ISSUING AGENCY:**

Albuquerque - Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2601.

[3/21/77. . .12/1/95; 20.11.90.1 NMAC - Rn, 20 NMAC 11.90.I.1, 10/1/02; A, 10/13/09]

#### **20.11.90.2 SCOPE:**

**A.** 20.11.90 NMAC is applicable to any source within Bernalillo county.

**B. Exempt:** 20.11.90 NMAC does not apply to sources within Bernalillo county, which are located on Indian lands over which the Albuquerque - Bernalillo County Air Quality Control lacks jurisdiction.

[12/1/95; 20.11.90.2 NMAC - Rn, 20 NMAC 11.90.I.2, 10/1/02; A, 10/13/09]

**20.11.90.3 STATUTORY AUTHORITY:**

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

[3/21/77. . .12/1/95; 20.11.90.3 NMAC - Rn, 20 NMAC 11.90.I.3, 10/1/02; A, 10/13/09]

**20.11.90.4 DURATION:**

Permanent.

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

**20.11.90.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.90.5 NMAC - Rn, 20 NMAC 11.90.I.5 & A, 10/1/02]

**20.11.90.6 OBJECTIVE:**

To minimize emissions from sources through inspection, enforcement, and good operating procedures.

[12/1/95; 20.11.90.6 NMAC - Rn, 20 NMAC 11.90.I.6, 10/1/02; A, 10/13/09]

**20.11.90.7 DEFINITIONS:**

[RESERVED]

**20.11.90.8 VARIANCES:**

[RESERVED]

**20.11.90.9 SAVINGS CLAUSE:**

Any amendment to 20.11.90 NMAC which is filed with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation No. 19, 23, and 25, or 20.11.90 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

[12/1/95; 20.11.90.9 NMAC - Rn, 20 NMAC 11.90.I.9, 10/1/02]

#### **20.11.90.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of 20.11.90 NMAC or the federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining portions of 20.11.90 NMAC.

[12/1/95; 20.11.90.10 NMAC - Rn, 20 NMAC 11.90.I.10, 10/1/02; A, 10/13/09]

#### **20.11.90.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.90 NMAC may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.90.11 NMAC - Rn, 20 NMAC 11.90.I.11 & A, 10/1/02; A, 10/13/09]

#### **20.11.90.12 [RESERVED]**

[3/21/77. . .3/24/82; 12/1/95; 20.11.90.12 NMAC - Rn, 20 NMAC 11.90.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.90.II.1, 10/1/02; Repealed, 10/13/09]

#### **20.11.90.13 SOURCE SURVEILLANCE:**

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

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

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

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

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

**F. Performance tests:**

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

(2) Performance tests shall be conducted and the results reported in accordance with the test method, as set forth in either 40 CFR Part 60.8, or an approved alternate test method. The director shall have 10 days prior notice before such testing is performed.

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

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

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

[3/21/77. . .3/24/82; 20.11.90.13 NMAC - Rn, 20 NMAC 11.90.II.2, 10/1/02; A, 10/13/09]

**20.11.90.14 ADMINISTRATION AND ENFORCEMENT:**

**A.** Upon request of the director, the person responsible for the emission of air contaminants for which limits are established by the rules codified under Title 20, *Environmental Protection*, Chapter 11, *Albuquerque - Bernalillo County Air Quality Control Board*, of the New Mexico Administrative Code, shall provide such facilities, utilities, and openings exclusive of instrument and sensing devices, as may be necessary for the proper determination of the nature, extent, quantity and degree of

such air contaminants. Such facilities may be either temporary or permanent at the discretion of the person responsible for their provisions; and shall be suitable for determination consistent with emission limits established in these rules.

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

[3/21/77. . .3/24/82; 20.11.90.14 NMAC - Rn, 20 NMAC 11.90.II.3, 10/1/02; A, 10/13/09]

## **PART 91-99: [RESERVED]**

## **PART 100: MOTOR VEHICLE INSPECTION - DECENTRALIZED**

### **20.11.100.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[10/19/82. . .12/1/95; 20.11.100.1 NMAC - Rn, 20 NMAC 11.100.I.1, 10/1/02; A, 9/1/04]

### **20.11.100.2 SCOPE:**

#### **A. Applicability (vehicles to be inspected):**

**(1) Motor vehicles.** All motor vehicles, as defined in 20.11.100.7 NMAC, shall be inspected for compliance with the requirements of 20.11.100 NMAC unless otherwise exempted. A vehicle shall not be registered or re-registered until the vehicle has passed the applicable on-board diagnostics (OBDII) inspection, exhaust emissions inspection, tampering inspection, pressurized gas cap test and visible emissions inspection prescribed by 20.11.100.17 NMAC or the program has issued a time extension for repairs of the vehicle, unavailability for testing, or reciprocity for a test from another state.

**(2) Commuter vehicles:** All motor vehicles that are more than four years old and are driven into, operated, or are otherwise present in Bernalillo county for 60 or more days per year but are registered in another county or state shall comply with 20.11.100 NMAC.

**(3) Federal installations:** Vehicles that are operated on federal installations located in Bernalillo county, shall comply with 20.11.100 NMAC, whether or not the vehicles are registered in New Mexico or Bernalillo county. The inspection requirement

applies to all employee owned or leased vehicles as well as agency operated vehicles. The inspection requirements for federal installations are mandated by 40 CFR Part 51.356(a)(4).

**(4) Fleet vehicles:** Fleet vehicles that are registered outside of Bernalillo county but are primarily operated in Bernalillo county shall comply with 20.11.100 NMAC. The inspection requirements for fleet vehicles are mandated by 40 CFR Part 51.356(a)(2).

**(5) Municipalities and counties:** If the program enters into a joint powers agreement with a municipality or county to extend the enforcement of 20.11.100 NMAC, all vehicles registered in that municipality or county shall comply with 20.11.100 NMAC.

**B. Exempt vehicles:**

**(1)** all new motor vehicles for four years following initial registration from the date of the manufacturer's certificate of origin (MCO);

**(2)** vehicles that are fueled by a mixture of gasoline and oil for purposes of lubrication;

**(3)** motor vehicles that are used for legally sanctioned competition and not operated on public streets and highways;

**(4)** implements of husbandry, or road machinery not regularly operated on public streets and highways;

**(5)** other vehicles that are not regularly operated on public streets and highways after providing satisfactory proof to the program manager;

**(6)** vehicles leased by a leasing company whose place of business is Bernalillo county to a person who resides outside of Bernalillo county; however, an exemption shall not be granted if the person resides in an area, that has an EPA-required vehicle inspection program;

**(7)** vehicles that are 35 years old or older;

**(8)** vehicles sold between licensed dealers;

**(9)** vehicles with a GVW of 10,001 lbs or more; and

**(10)** dedicated electric vehicles;

**(11)** existing electric hybrid vehicles which were exempted from 20.11.100 NMAC as of the effective date of 20.11.100.2 NMAC, until such time that a change of ownership of the vehicle occurs.

[5/20/88. . .12/1/95; 20.11.100.2 NMAC - Rn, 20 NMAC 11.100.I.2, 10/1/02; A, 5/1/04; A, 9/1/04; A, 1/1/12]

### **20.11.100.3 STATUTORY AUTHORITY:**

20.11.100 NMAC is adopted pursuant to the, authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Sections 3 and 4; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Sections 9-5-1-3 and 9-5-1-4; and the City of Albuquerque and Bernalillo County Motor Vehicle Emissions Control Ordinances. It is adopted in order to comply with the Federal Clean Air Act Amendments of 1990 and 40 CFR Part 51, Subpart S, *Inspection/Maintenance Program Requirements*.

[10/19/82. . .12/1/95; 20.11.100.3 NMAC - Rn, 20 NMAC 11.100.I.3, 10/1/02; A, 9/1/04; A, 1/1/12]

### **20.11.100.4 DURATION:**

Permanent, unless the violation described in 20.11.101 NMAC occurs.

[12/1/95; 20.11.100.4 NMAC - Rn, 20 NMAC 11.100.I.4, 10/1/02; A, 5/1/04]

### **20.11.100.5 EFFECTIVE DATE:**

December 1, 1995, unless a later date is cited at the end of a section. If no EPA-confirmed violation (two exceedances) of the federal ambient carbon monoxide standards has occurred within Bernalillo county, the vehicle inspection frequency shall be biennial.

[8/25/92. . .12/1/95; 20.11.100.5 NMAC - Rn, 20 NMAC 11.100.I.5, & A, 10/1/02; A, 9/1/04; A, 1/1/12; A, 9/10/2016]

### **20.11.100.6 OBJECTIVE:**

To provide for the control and regulation of carbon monoxide (CO), hydrocarbon (HC), ozone precursors and particulate emissions above certain levels from motor vehicles, and for anti-tampering inspections.

[10/19/82. . .12/1/95; 20.11.100.6 NMAC - Rn, 20 NMAC 11.100.I.6, 10/1/02; A, 5/1/04; A, 9/1/04; A, 1/1/12]

### **20.11.100.7 DEFINITIONS:**

In addition to the definitions in 20.11.100.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.100 NMAC shall govern.

**A. "Air care inspection station"** means a private business authorized by a certificate in accordance with 20.11.100.21 NMAC to inspect motor vehicles and issue certificates of inspection. It also means stations established by the city of Albuquerque and Bernalillo county, or other governmental entities, for testing government owned or leased motor vehicles.

**B. "Air care inspector"** means an individual authorized by a certificate issued by the program to perform inspections of motor vehicles and who has met the requirements of 20.11.100.26 NMAC.

**C. "Air care station"** means an *air care* inspection station, or a fleet *air care* station.

**D. "Audit"** means an assessment by VPMD, either as a physical on-site visit or an off-site review of data collected electronically, designed to determine whether *air care* inspectors and *air care* stations are correctly performing all tests and other functions required by the VPMD program. Physical on-site audits shall be of two types: overt and covert.

**E. "Biennial"** means every other year.

**F. "Chassis"** means the complete motor vehicle, including standard factory equipment, but excluding the body and cab.

**G. "City"** means the city of Albuquerque, a New Mexico municipal corporation.

**H. "Clean piping"** means the illegal act of an *air care* station or *air care* inspector that results in a fraudulent "pass" for a vehicle's tailpipe emissions test by entering into the emissions analyzer unique information identifying the vehicle being tested, but then performing the tailpipe test on a different vehicle, which bypasses actual testing of the first vehicle.

**I. "Clean scanning"** means the illegal act of an *air care* station or *air care* inspector that results in a fraudulent "pass" for a vehicle's emissions test by entering into the emissions analyzer unique information identifying the vehicle being tested, but then performing the emissions test on a different vehicle, which bypasses actual testing of the first vehicle.

**J. "County"** means the county of Bernalillo, a political subdivision of the state of New Mexico.

**K. "Covert audit"** means a quality assurance site visit by an anonymous agent delegated by VPMD to drive a vehicle into the selected station and asked to have the vehicle tested. The vehicle may be set up by VPMD in a tampered or failed condition. Covert audits are required by EPA to ensure that air care stations and air care inspectors are performing the emissions test correctly.

**L. "Covert surveillance"** means a quality assurance audit by observation done from an off-site location near the *air care* station, often using binoculars to monitor the actions of an *air care* inspector performing emissions testing.

**M. "Dealer"** means any person who sells or solicits or advertises the sale of new or used motor vehicles subject to registration in the state of New Mexico and as further defined in the Motor Vehicle Code Chapter 66, NMSA 1978.

**N. "Distributor"** means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer.

**O. "Division" or "VPMD"** means the vehicle pollution management division of the city environmental health department, which provides the staff for the Albuquerque-Bernalillo county vehicle pollution management program.

**P. "Driver"** means every person who drives or is in actual physical control of a motor vehicle upon a highway or upon property used for inspections.

**Q. "Emissions analyzer"** means a device for measuring the concentration of certain exhaust gases emitted by a motor vehicle.

**R. "Emissions inspection system" or "EIS"** means the equipment and software for conducting the official emissions inspection.

**S. "Essential parts"** means all integral and body parts of a vehicle of a type required to be registered under the Motor Vehicle Code, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model type or mode of operation.

**T. "Exhaust emissions"** means CO, HC and all other substances emitted through a motor vehicle's exhaust system, after passing downstream of the engine block exhaust ports and exhaust emissions control devices, if any.

**U. "Exhaust emissions control device"** means equipment designed by the manufacturer of the vehicle and installed on a motor vehicle for the purpose of reducing pollutants emitted from the vehicle, or a system or engine modification designed by the manufacturer of the motor vehicle that causes a reduction of pollutants emitted from the vehicle, or equipment designed by the vehicle manufacturer to prevent damage to or tampering with other exhaust emissions control devices.

**V. "Fast idle condition or unloaded 2,500 rpm"** means an exhaust emissions inspection conducted with the engine of the vehicle running under an accelerated condition as required by 40 CFR Part 51, Subpart S, *Inspection/Maintenance Program Requirements*.

**W. "Field audit gas"** means a gas mixture with known concentrations of CO<sub>2</sub>, CO, and HC that is used by the program to check the accuracy of exhaust gas analyzers used by authorized inspection stations.

**X. "Fleet"** means a group of vehicles under the common ownership or control of a commercial or governmental entity.

**Y. "Fleet air care station"** means any person, business, government entity, firm, partnership or corporation that provides for the construction, equipping, maintaining, staffing, managing and operation of authorized inspection station for the sole purpose of inspecting its private fleet of motor vehicles subject to 20.11.100 NMAC, and not offering inspection services to its employees or the general public.

**Z. "Fuel"** means any material that is burned by the engine of a vehicle in order to propel the vehicle.

**AA. "Gas cap test"** means the determination of the ability of the gas cap(s) to retain pressure.

**BB. "Gross vehicle weight"** means the weight of a vehicle without load, plus the weight of any load thereon.

**CC. "Government vehicle"** means a motor vehicle exempt from the payment of a registration fee and owned or leased by any federal, state, local, or other governmental entity.

**DD. "Headquarters"** means the main office of the vehicle pollution management program.

**EE. "Highway"** means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

**FF. "Idle mode test"** means an unloaded exhaust emissions test conducted only at the idle condition.

**GG. "Inspection or re-inspection or test"** means the mandatory vehicular anti-tampering and emissions inspection conducted both visually and with equipment or chemical sensing devices as required by 20.11.100 NMAC.

**HH. "Low emissions tune-up"** means adjustments and repairs that can reduce motor vehicle emissions including, but not limited to, the following procedures:

- (1) checking and setting to manufacturer's specifications, the idle mixture, idle speed, ignition timing and dwell;
- (2) checking for proper connection of vacuum lines, electrical wires, and for proper operation of pollution control devices;
- (3) checking and replacement of air breathing filters and positive crankcase ventilation valve as necessary;
- (4) replacement of spark plugs, points, and wires; and
- (5) for all motor vehicles equipped with computer controlled closed-loop feedback exhaust emissions control devices and systems, inspecting the operation of the emissions control system according to the motor vehicle manufacturer's specified procedures, including hose routing and on-board diagnostics, new vehicle warranty and repair or replacement as necessary.

**II. "Manufacturer"** means every person engaged in the business of constructing or assembling vehicles of a type required to be registered under the laws of the state of New Mexico.

**JJ. "Manufacturer's certificate of origin" or "MCO"** means a certification, on a form supplied by or approved by the MVD, signed by the manufacturer, stating that the new vehicle described therein has been transferred to the New Mexico dealer or distributor named therein or to a dealer duly licensed or recognized as a dealer or distributor in another state, territory or possession of the United States, and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. Every MCO contains a space for proper reassignment to a New Mexico dealer or to a dealer duly licensed or recognized as a dealer or distributor in another state, territory or possession of the United States. The certificate also contains a description of the vehicle, the number of cylinders, type of body, engine number and the serial number or other standard identification number provided by the manufacturer of the vehicle, if the information exists.

**KK. "Model year"** means the year of manufacture of the vehicle based on the annual production period of the vehicle as designated by the manufacturer and indicated on the title and registration of the vehicle. If the manufacturer does not designate a production period for the vehicle, then the model year means the calendar year of manufacture.

**LL. "Motor vehicle"** means any vehicle that:

- (1) is propelled by a spark ignition, internal combustion engine;

(2) has four or more wheels in contact with the ground;

(3) is subject to registration with the MVD to an owner of record who is domiciled within Bernalillo county, or is a government vehicle which is assigned to a governmental unit within Bernalillo county;

(4) has a GVW greater than 1,000 and less than 10,001 pounds;

(5) is for use upon public roads and highways;

(6) is a 1975 model year or newer; and

(7) is a vehicle not otherwise exempted by 20.11.100 NMAC.

**MM.** "**New motor vehicle**" is a vehicle that has undergone a transfer of ownership and is being registered for the first time to any person, but does not include the sale to another licensed motor vehicle dealer for the purpose of resale as a new vehicle.

**NN.** "**Operator**" means driver, as defined in 20.11.100 NMAC.

**OO.** "**Overt audit**" means an on-site quality assurance assessment of the performance of an *air care* station or an *air care* inspector, conducted by VPMD personnel. An overt audit may also be an assessment of an *air care* station's emissions analyzer to ensure that the equipment is maintained appropriately and operating correctly.

**PP.** "**Owner**" means a person who holds the legal title of the motor vehicle or, if the vehicle is the subject of an agreement for conditional sale or lease with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then "owner" means the conditional vendee, lessee or mortgagor.

**QQ.** "**Pass fail criteria**" means the standards established by 20.11.100 NMAC that specify the maximum allowable motor vehicle exhaust emissions under appropriate specified operating conditions.

**RR.** "**Person**" means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or legal representative, agent or assign.

**SS.** "**Pretesting**" means the determination by an *air care* station or inspector, of the "pass" or "fail" status of a vehicle and providing the information to the vehicle owner prior to performing the required complete emissions test.

**TT. "Program" or "VPMD program"** means the Albuquerque - Bernalillo county vehicle pollution management program.

**UU. "Program manager"** means a classified city employee selected in accordance with provisions of the joint powers agreement between the city and the county to perform for the joint air quality control board the duties required to enforce and administer the provisions of 20.11.100 NMAC, or the program manager's designee.

**VV. "Reconstructed vehicle"** means a vehicle that was assembled or constructed largely from of essential parts, new or used, derived from other vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, was materially altered by the removal of essential parts, new or used, derived from other vehicles or makes of vehicles.

**WW. "Registration and re-registration"** means both original registration and renewal of motor vehicle registration as provided in the New Mexico Motor Vehicle Code, Chapter 66 NMSA 1978.

**XX. "Standard gases"** means NIST certified emissions samples of gases maintained as primary standards for determining the composition of working gases, field audit gases, or the accuracy of analyzers.

**YY. "Truck"** means every motor vehicle designed, used or maintained primarily for the transportation of property. In addition, all vehicles with a GVW greater than 6,000 pounds shall be considered a truck.

**ZZ. "Vehicle information database" or "VID"** means a database consisting of data collected from each official inspection as specified in the EIS.

**AAA. "VIR"** means vehicle inspection report, a program-certified document (VIR) signed by a certified *air care* inspector or other program authorized official stating that the vehicle described therein is either in compliance (pass), not in compliance (fail), or has an approved time extension in order to achieve compliance through additional repairs or adjustments (time-limit extension).

**BBB. "Visible emissions"** means any fume, smoke, particulate matter, vapor or gas, or combination thereof, excluding water vapor or steam.

**CCC. [RESERVED]**

**DDD. [RESERVED]**

**EEE. "Working gases"** means program-approved span gases maintained by an authorized *air care* inspection station to perform periodic calibration of approved exhaust gas analyzers.

## **FFF. Abbreviations and symbols**

- (1) **A/F** means air/fuel.
- (2) **ASE** means the national institute for automotive service excellence.
- (3) **CO** means carbon monoxide.
- (4) **CO<sub>2</sub>** means carbon dioxide.
- (5) **DTC** means diagnostic trouble code.
- (6) **EHD** means the environmental health department.
- (7) **EIS** means the emissions inspection system.
- (8) **EPA** means the environmental protection agency.
- (9) **GVW** means gross vehicle weight.
- (10) **HC** means hydrocarbon.
- (11) **HP** means horsepower.
- (12) **LNG** means liquefied natural gas.
- (13) **LPG** means liquefied petroleum gas.
- (14) **MPH** means miles per hour.
- (15) **MCO** means manufacturer's certificate of origin.
- (16) **MVD** means the motor vehicle division of the New Mexico taxation and revenue department.
- (17) **NDIR** means non-dispersive infrared.
- (18) **NIST** means national institute of standards and technology.
- (19) **OBDII** means a vehicle's on-board diagnostics second generation.
- (20) **%** means percent.
- (21) **PCV** means positive crankcase ventilation.
- (22) **ppm** means parts per million by volume.

**(23) VID** means the vehicle information database.

**(24) VIN** means vehicle identification number.

[10/12/82. . .5/20/88, 11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.7 NMAC - Rn, 20 NMAC 11.100.I.7, 10/1/02; A, 5/1/04; A, 9/1/04; A, 1/1/12; A, 9/10/2016]

**20.11.100.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.100.8 NMAC - Rn, 20 NMAC 11.100.I.8, 10/1/02]

**20.11.100.9 SAVINGS CLAUSE:**

Any amendment of 20.11.100 NMAC that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance, or 20.11.100 NMAC. Prosecution for a prior violation shall be governed and prosecuted under the statute, ordinance, regulation, or part in effect at the time the violation was committed.

[9/23/94. . .12/1/95; 20.11.100.9 NMAC - Rn, 20 NMAC 11.100.I.9, 10/1/02; A, 1/1/12]

**20.11.100.10 SEVERABILITY:**

If any section, paragraph, sentence, clause or word of 20.11.100 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of 20.11.100 NMAC.

[9/23/94. . .12/1/95; 20.11.100.10 NMAC - Rn, 20 NMAC 11.100.I.10, 10/1/02; A, 1/1/12]

**20.11.100.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.100 NMAC may be viewed at the vehicle pollution management program headquarters, 1500 Broadway NE, Albuquerque, NM 87102.

[12/1/95; 20.11.100.11 NMAC - Rn, 20 NMAC 11.100.I.11, 10/1/02; A, 1/1/12]

**20.11.100.12 VEHICLE POLLUTION MANAGEMENT DIVISION:**

**A.** The vehicle pollution management division or its successor agency is part of the city of Albuquerque environmental health department.

**B.** The division manager shall establish and maintain a VPMD headquarters, which will include an emissions inspection facility equipped with certified emissions testing equipment and employing at least two ASE certified technicians.

**C.** The facility shall be operated by the city to provide services to the public and to facilitate program responsibilities and administer the provisions of 20.11.100 NMAC.

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95, 8/1/97; 20.11.100.12 NMAC - Rn, 20 NMAC 11.100.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.100.II.1, 10/1/02; A, 5/1/04; 20.11.100.12 NMAC - N, 1/1/12]

### **20.11.100.13 RESPONSIBILITIES OF VEHICLE POLLUTION MANAGEMENT DIVISION:**

VPMD shall be responsible for administering a program that ensures that federal motor vehicle emissions standards are met. In order to be successful in meeting federal goals and criteria for a motor vehicle emissions testing program, VPMD is authorized to take any actions commonly known to be necessary for a motor vehicle emissions testing program, now and in the future, including, at a minimum:

**A.** developing and approving specifications for gas analyzers in a manner consistent with improvements in the industry;

**B.** maintaining databases including the VID, certified *air care* inspectors' information and history, and extensions/exemptions from official inspections;

**C.** providing training and certification processes for *air care* station and *air care* inspectors;

**D.** performing quality assurance audits as required by 20.11.100.30 NMAC, assessing the level of compliance of each *air care* station or *air care* inspector by using onsite audits and by monitoring the information provided by the VID;

**E.** enforcing the certification and recertification requirements of *air care* inspectors;

**F.** taking enforcement actions as appropriate and providing for penalty assessment;

**G.** investigating and maintaining records regarding complaints against certified *air care* stations and certified *air care* inspectors;

**H.** providing for non-binding mediation of disputes arising from inspection activities by certified *air care* stations or certified *air care* inspectors, including if necessary, a verification test at no cost to the person requesting the test; and

**I.** evaluating and issuing compliance time extensions for vehicles unable to pass the inspection test criteria as provided by 20.11.100 NMAC.

[5/20/88. .9/23/94, 12/1/95, 20.11.100.13 NMAC - Rn, 20 NMAC 11.100.II.2, 10/1/02; A, 5/1/04; 20.11.100.13 NMAC - N, 1/1/12]

## **20.11.100.14 SCHEDULING OF INSPECTIONS:**

**A. Inspection and registration:** Every motor vehicle, as defined in 20.11.100.7 NMAC, shall be inspected biennially unless it is determined to emit quantities of CO or HC between 75% and 100% of its maximum allowable standard listed in Table I of Subsection A of 20.11.100.17 NMAC, in which case it shall be issued a provisional pass certificate good only for a one year registration and shall be required to be inspected again the following year prior to registration. The MVD shall distribute notices or other appropriate information to owners of vehicles applying for re-registration in accordance with the written agreement between the MVD and the program manager. Vehicles shall also be inspected when sold and when titles are transferred. A person who believes he has a vehicle for which he has been erroneously notified of inspection may petition the program manager to correct the error.

**B. Vehicles unavailable for inspection:** Motor vehicles that are unavailable for inspection may be granted an extension of inspection if authorized by the program manager. Persons seeking an extension may petition the program manager by submitting a signed affidavit justifying the special need and by providing other necessary documentation as required by the program manager.

### **C. Federal, state and local government vehicles:**

(1) Each motor vehicle operated in Bernalillo county that is owned or leased by the United States government, the state of New Mexico or any local government entity shall be inspected biennially.

(2) Scheduling vehicles for inspection pursuant to an agreement with the program manager shall be the responsibility of the governmental authority that owns or leases the vehicles. The schedules shall only be approved if the program manager determines that they are consistent with the scope and goals of 20.11.100 NMAC.

(3) Persons who are responsible for government fleet vehicles or motor pools shall update the vehicle inventory annually each January and forward the resulting inspection plan with fleet inventory to the program manager in a format approved by the program manager.

(4) Failure to forward the inspection plan and fleet inventory to VPMD by March 31<sup>st</sup> of each year is a violation of 20.11.100 NMAC and of the Air Quality Control Act 74-2-1 NMSA 1978.

(5) The program manager may assess a civil penalty not to exceed fifteen thousand dollars (\$15,000) for each day during any portion of which a violation occurs, pursuant to 74-2-12.1 NMSA 1978.

#### **D. Private fleets issued permanent fleet plates:**

(1) Each motor vehicle operated in Bernalillo county that is owned or leased by a private or non-governmental entity that has been issued a permanent fleet license plate shall be inspected biennially.

(2) Scheduling vehicles for inspection pursuant to an agreement with the program manager shall be the responsibility of the entity that owns or leases the vehicles. The schedules shall only be approved if the program manager determines that they are consistent with the scope and goals of 20.11.100 NMAC.

(3) Persons who are responsible for fleet vehicles or motor pools shall update the vehicle inventory annually each January and forward the resulting inspection plan with fleet inventory to the program manager in a format approved by the program manager.

(4) Failure to forward the inspection plan and fleet inventory to VPMD by March 31<sup>st</sup> of each year is a violation of 20.11.100 NMAC and of the Air Quality Control Act 74-2-1 NMSA 1978.

(5) The program manager may assess a civil penalty not to exceed fifteen thousand dollars (\$15,000) for each day during any portion of which a violation occurs, pursuant to 74-2-12.1 NMSA 1978.

[10/19/82. . .5/20/88, 9/23/94, 12/1/95, 8/1/97, 20.11.100.14 NMAC - Rn, 20 NMAC 11.100.II.3, 10/1/02; A, 5/1/04; 20.11.100.14 NMAC - N, 1/1/12]

#### **20.11.100.15 VEHICLE INSPECTION PROCEDURES:**

##### **A. [RESERVED]**

##### **B. Vehicle tests:**

(1) To determine if a motor vehicle is in compliance with 20.11.100 NMAC, all inspections shall be performed in strict accordance with 20.11.100 NMAC. Each vehicle shall be inspected at an *air care* station by an *air care* inspector. All items shall be tested to completion with reports of outcomes provided to the motor vehicle owner.

(a) Vehicles with an engine other than the engine originally installed by the manufacturer or an identical replacement of the engine shall be subject to the inspection procedures and standards for the chassis type, GVW and model year of the vehicle.

(b) Assembled vehicles or kit cars shall meet the standards and emissions control equipment that are required for the year of the vehicle engine. If the vehicle is assembled with a pre-1975 engine, testing is not required, but the vehicle owner shall petition the program manager for an exemption from emissions inspections.

**(2) Exhaust gas emissions measurements:** No emissions inspection required by 20.11.100 NMAC shall be performed unless the instrument used for measuring exhaust gases from the motor vehicle is an approved emissions analyzer.

**(a) Vehicle operating condition:**

**(i)** Prior to this portion of the inspection, the entire vehicle shall be in normal operating condition as specified by the emissions tune-up label originally installed on the vehicle. Motor vehicles equipped for simple selection of alternate fuel supplies (switching between gasoline and any compressed or liquefied gaseous fuel) shall be inspected using the fuel in use when presented for inspection.

**(ii)** Non-OBDII compatible vehicles (usually 1995 model year or older) subject to 20.11.100 NMAC shall be required to take and pass a preconditioned two-speed idle test as specified in Appendix B to Subpart S of 40 CFR Part 51. The test procedure shall include a first and second-chance test at both idle and at the unloaded 2,500 RPM test. If the vehicle passes both emissions tests, it shall be deemed in compliance with minimum emissions standards unless the vehicle fails the tampering inspection, pressurized gas cap test or visible emissions inspection required by 20.11.100 NMAC.

**(iii)** All 1996 and newer model year motor vehicles subject to 20.11.100 NMAC shall be required to take and pass an on-board diagnostic test, pressurized gas cap test and visible emissions inspection as specified in 40 CFR Part 51, Subpart S, *Inspection/Maintenance Program Requirements*. Certain 1996 and newer model year motor vehicles that are not OBDII compatible may be tested using the two-speed idle test as determined by the program manager.

**(iv)** No test shall commence if there are apparent leaks in the motor vehicle's exhaust system that will cause the exhaust analyzer to invalidate the test.

**(b) Exhaust emissions inspection:** The exhaust emissions inspection shall proceed as specified in 40 CFR Part 51 Appendix B to Subpart S.

**(c) Selection of appropriate pass/fail emissions inspection criteria:** The appropriate pass/fail criteria will be selected automatically by the approved emissions analyzer.

**(3) Visual examination for tampering:** The certified *air care* inspector shall determine specifically what emissions control devices should be in place and operable for each vehicle inspected. Specific design and equipment elements necessary in anti-tampering determinations shall only include catalytic converter(s).

**(4) Visible emissions requirements:** In addition to exhaust and tampering requirements of 20.11.100 NMAC, all vehicles are subject to and must pass inspection

for visible emissions (smoke). Non-diesel vehicles may not emit any visible emissions (except steam) during the test as specified in Subsection C of 20.11.100.17 NMAC.

[11/13/91. . .8/25/92, 9/23/94, 12/1/95; 20.11.100.15 NMAC - Rn, 20 NMAC 11.100.II.4, 10/1/02; A, 5/1/04; 20.11.100.15 NMAC - Rn & A, 20.11.100.12 NMAC, 1/1/12]

#### **20.11.100.16 ACTIONS PROHIBITED DURING VEHICLE INSPECTION:**

**A.** Each certified *air care* station or certified *air care* inspector shall inspect each vehicle in its as-presented condition, regardless of whether the *air care* inspector knows or believes that the vehicle will not pass.

**B.** Each certified *air care* station or certified *air care* inspector shall inspect each vehicle according to 20.11.100 NMAC and is prohibited from taking any of the following actions:

- (1) engaging in conduct that constitutes fraud, deceit, or gross negligence;
- (2) negligently providing incorrect or misleading information to the public regarding the requirements of 20.11.100 NMAC;
- (3) failing or refusing to give a motorist the customer copy of the emissions test;
- (4) failing to follow the inspection procedures specified by the vehicle manufacturer or required by 20.11.100 NMAC;
- (5) making false promises likely to influence, persuade or induce a motorist to authorize the repair, service or maintenance of a motor vehicle;
- (6) entering false data into an emissions analyzer;
- (7) performing or allowing a repair that is represented to the motorist as being required to remedy the cause of an inspection failure or obtain a certificate of inspection when the repair is not required;
- (8) adjusting or modifying a vehicle in a manner that would cause the vehicle to fail an inspection;
- (9) charging for and performing an inspection that is represented to the motorist as being required when it is not required;
- (10) failing to maintain the confidentiality of an inspector's access code for the emissions analyzer;

(11) failing to advise VPMD of any change in information provided in the inspector's or station's application for certification or for renewal of certification;

(12) failing to report to VPMD any illegal certification or other violation of 20.11.100 NMAC; or

(13) performing any type of clean scanning, clean piping or pretesting.

C. Performing any act or actions prohibited by Subsection B of 20.11.100.18 NMAC is a violation of 20.11.100 NMAC and may result in an enforcement action by VPMD.

D. It is the responsibility of each *air care* station owner or operator to ensure that all *air care* inspectors in his employment does not engage in prohibited act or actions in preparation for or during a vehicle inspection. VPMD may take an enforcement action against the *air care* station owner or operator employing *air care* inspectors who engage in prohibited act or actions.

[10/19/82. . .12/1/95; 20.11.100.16 NMAC - Rn, 20 NMAC 11.100.II.5, 10/1/02; A, 5/1/04; 20.11.100.16 NMAC - N, 1/1/12]

#### **20.11.100.17 VEHICLE INSPECTION CRITERIA:**

Failure to pass any one of the applicable criteria specified below in Subsections A, B, C, D and E of 20.11.100.17 NMAC, entitled *exhaust emissions*, *anti-tampering*, *visible emissions*, *gas cap*, and *on-board diagnostics* respectively, shall constitute noncompliance with 20.11.100 NMAC and a fail VIR shall be issued.

**A. Exhaust emissions:** Every motor vehicle that is determined to emit quantities (rates) of CO and HC greater than those listed in Table I appropriate to model year and weight classification listed shall be *failed*. Every motor vehicle with emissions rates equal to or lower than the applicable amounts shall be *passed* under subsection A of 20.11.100.17 NMAC.

#### **TABLE I**

#### **Maximum Allowable Exhaust Emissions**

Vehicle Model Year	Gross Vehicle Weight Rating (pounds)	Group Code	Unloaded			
			Idle Mode		2,500 RPM Test	
			HC PPM	CO %	HC PPM	CO %
1975 - 1978	0 to 6,000	C/T	500	5.0	500	5.0
1979 - 1980	0 to 6,000	C/T	400	4.0	400	4.0
1981 - 1985	0 to 6,000	C/T	220	1.2	220	1.2
1986 - 1990	0 to 6,000	C/T	200	1.2	200	1.2
1991 - 1995	0 to 6,000	C/T	180	1.2	180	1.2
1975 - 1978	6,001 to 8,000	LT	600	6.0	600	6.0
1979 - 1980	6,001 to 8,000	LT	600	4.5	600	4.5
1981 - 1982	6,001 to 8,500	LT	400	2.7	400	3.0
1983 - 1988	6,001 to 8,500	LT	300	1.2	300	3.0
1989 - 1995	6,001 to 8,500	LT	220	1.2	220	1.2

Vehicle Model Year	Gross Vehicle Weight Rating (pounds)	Group Code	Unloaded			
			Idle Mode		2,500 RPM Test	
			HC PPM	CO %	HC PPM	CO %
1975 - 1980	8,001 to 10,000	MT	650	6.5	650	6.5
1981 - 1990	8,501 to 10,000	MT	400	4.0	400	3.0
1991 - 1995	8,501 to 10,000	MT	220	2.0	220	2.0

**B. Anti-tampering:**

(1) All motor vehicles subject to 20.11.100 NMAC shall be inspected for the presence of a catalytic converter(s) that is properly connected.

(2) Any vehicle with required features or components removed or rendered inoperative shall be *failed*. If no tampering with required components or systems is evident, this portion of the inspection shall be *passed*.

(3) Vehicles that have had the original engine removed and replaced with a newer or inherently cleaner technology engine (including the emissions control devices required in association with that engine) may be eligible for a waiver of compliance with portions of Subsection B of 20.11.100.17 NMAC. The program manager shall determine if a vehicle has been retrofitted with an engine that is not adaptable to the emissions control requirements for the vehicle chassis model year. When the program manager makes the determination, the program manager may waive the requirements for replacement of emissions control equipment. There shall be no waiver for the installation of a catalytic converter unless the program manager determines installation would create a safety hazard.

**C. Visible emissions (smoke):** All motor vehicles subject to inspection must pass an inspection for visible emissions. The *air care* inspector shall watch the tailpipe during the idle portion of the emissions test and during the high-speed portion of the emissions test (using a mirror if necessary). If the inspector observes **any** smoke (not steam) during any part of the inspection, the visible portion of the emissions test shall be a *fail*.

**D. Gas cap (pressurized):** All 1975-2005 model year vehicles subject to inspection must pass a pressurized gas cap test to check the integrity of the gas cap seal designed to minimize fuel vapor loss or hydrocarbon emissions. Any vehicle with a gas cap that does not hold pressure consistent with the design standard for the vehicle shall be *failed*.

**E. On-board diagnostics (OBDII):** All 1996 and newer gasoline motor vehicles must pass an on-board diagnostics test specified by 40 CFR Part 51, Subpart S, *Inspection/Maintenance Program Requirements*. Any vehicle with an illuminated malfunction indicator lamp (MIL) or a set diagnostic trouble code (DTC) shall be *failed*. Any 1996 and newer model year vehicles that have been determined by the program manager to be OBDII incompatible shall be tested using the two-speed idle test with maximum allowable exhaust standards of 100 ppm hydrocarbons and 1.0 % carbon monoxide.

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.17 NMAC - Rn, 20 NMAC 11.100.II.6, 10/1/02; A, 5/1/04; 20.11.100.17 NMAC - Rn & A, 20.11.100.14 NMAC, 1/1/12; A, 9/10/2016]

#### **20.11.100.18 VEHICLE INSPECTION REPORT:**

**A.** Vehicle inspection reports (VIRs) shall only be purchased at program headquarters. Unused VIRs shall not be exchanged, sold or given by any person to any other person. All unused VIRs shall be turned in to the headquarters for credit or a refund, as the program manager determines is appropriate.

**B.** A pass VIR shall be issued to each motorist whose vehicle has undergone inspection and passed all criteria regarding on-board diagnostics, exhaust emissions, anti-tampering, pressurized gas cap and visible emissions as applicable. A fail VIR shall be issued to each motorist whose vehicle has undergone inspection and failed on-board diagnostics or any of the criteria regarding exhaust emissions, anti-tampering, pressurized gas cap and visible emissions as applicable. Vehicles that have failed any portion of an inspection and have been subsequently repaired and adjusted and passed a reinspection shall be issued a pass VIR. Pass VIRs shall be presented to the MVD upon re-registration of the vehicle.

**C.** VIRs may not be defaced by stamping information on, or affixing stickers to, the front or back of the VIR except in the delineated area designated by the VPMD program manager. Any *air care* inspector or *air care* station found to be defacing VIRs may be

subject to an enforcement action pursuant to 20.11.100.36 NMAC and penalties pursuant to 20.11.100.33 NMAC.

[5/20/88. . .11/13/91, 9/23/94, 12/1/95, 8/1/97; 20.11.100.18 NMAC - Rn, 20 NMAC 11.100.II.7, 10/1/02; A, 5/1/04; 20.11.100.18 NMAC - Rn & A, 20.11.100.15 NMAC, 1/1/12]

### **20.11.100.19 REPAIRS, ADJUSTMENTS, AND RE-INSPECTIONS:**

Every motor vehicle that fails an inspection required by 20.11.100 NMAC shall be repaired as necessary to pass re-inspection. If replacement of parts is required, the parts shall only be new aftermarket parts approved by the program manager or new original equipment, manufacturer's parts or assemblies.

**A.** Repairs required by Subsection A of 20.11.100.19 NMAC, shall include but are not limited to, the following as applicable to the type of failure.

**(1) Exhaust emissions:** adjust idle speed, fuel/air ratio and ignition timing to manufacturer's specifications including replacement of spark plugs, spark plug wires, air filters and PCV specified by the manufacturer.

**(2) Anti-tampering:** replace the missing or disabled components with replacement parts acceptable to the program manager.

**(3) Visible emissions:** Repair engine or replace inoperative emissions control devices as required to eliminate visible emissions.

**(4) Gas cap:** Replace gas cap with a new approved aftermarket or original equipment cap.

**(5) On-board diagnostics:** Repair malfunction(s) indicated by diagnostic trouble code(s), clear diagnostic trouble code(s) and drive vehicle through drive cycle required to reset readiness monitors in order to ensure repair effectiveness and elimination of diagnostic trouble codes.

**B.** Any person may repair, adjust or replace parts as necessary to prepare a vehicle to pass re-inspection, but not after an inspection has commenced.

**C.** Re-inspections may be obtained at any *air care* station. One free retest, within 90 calendar days of a failed test, may be obtained at the program headquarters, if requested.

[11/13/91. . .9/23/94, 12/1/95; 20.11.100.19 NMAC - Rn, 20 NMAC 11.100.II.8, 10/1/02; 20.11.100.19 NMAC - Rn & A, 20.11.100.16 NMAC, 1/1/12]

### **20.11.100.20 COMPLIANCE TIME EXTENSION:**

**A. Time extension for repairs.** Vehicles that are unable to pass re-inspection may be eligible to obtain a time extension if the following conditions are met:

(1) the owner shall provide evidence satisfactory to the program manager or his designee, that at least \$300.00 has been spent on the vehicle at a licensed repair facility for emissions-related repairs; or

(2) the owner shall provide evidence satisfactory to the program manager or his designee that at least \$300.00 of repair work is required to bring the vehicle up to an engine performance level capable of passing an emissions inspection; and

(a) in order to receive a time extension based on a estimate of repairs, the owner must prove to the program manager or his designee that the owner is financially incapable of paying for the repairs; and

(b) the repair work estimate shall be from a licensed repair facility.

**B. Application for time extension.** An owner who meets the criteria may apply for a time extension by petitioning the program manager or his designee at the VPMD headquarters, providing receipts for all parts and repair work performed, or providing the required estimate, and listing the following information in order to be eligible for consideration:

(1) vehicle VIN number;

(2) model year and manufacturer;

(3) owner's name and street address;

(4) valid driver's license number and any other information or documentation that the program manager deems necessary; and

(5) if applicable, identification of the business and address where the re-inspection, tune-up or determination was made, including documentation acceptable to the program manager or his designee that critical parts are unavailable.

**C. Time extension limitations:**

(1) A time extension shall be granted only one time in the life of a vehicle and shall be for a period of up to 12 consecutive months.

(2) If a vehicle that has been granted a time extension is repaired within the first 90 days of the extension, the extension may be cancelled and not counted as the one-per-life-of-the-vehicle time extension.

**(3)** Time extensions shall be limited to 90 days for motor vehicles that exceed any of their maximum allowable exhaust standards as specified in Table I at Subsection A of 20.11.100.17 NMAC by more than twice the level allowed.

**D. Free inspection for timely repair.** Any failing vehicle repaired within 90 days of its failed test is eligible for a free retest of that vehicle at the vehicle pollution management division headquarters.

**E. Inspection due following extension:** Any person who owns a motor vehicle for which a time extension has been issued pursuant to 20.11.100.20 NMAC shall have that vehicle inspected within the time frame specified in the extension granted for that vehicle.

**F. Expiration upon sale:** If a motor vehicle is granted a time extension under 20.11.100.20 NMAC and is sold within the time extension period, the sale shall terminate the extension. The holder of the original time extension shall inform each potential buyer that the vehicle does not comply with the emissions requirements of 20.11.100 NMAC. The seller shall also inform each potential buyer that the time extension is void upon the sale and the vehicle cannot be registered unless the vehicle passes an emissions inspection.

**G. Appeals:** Any person aggrieved by the decision of the program manager or designee regarding a compliance time extension may appeal by petitioning the program manager in writing for reconsideration of the decision. The petition shall provide the basis for reconsideration of the decision made regarding the time extension. The program manager, at his discretion, may review the petition and record and affirm or deny the decision on the request for the time extension, or the program manager may arrange for a hearing on the record at the city of Albuquerque office of administrative hearings, to be held no later than 15 working days after receipt of the request for reconsideration. The petitioner shall submit a \$50.00 fee to the office of administrative hearings, which shall set the time and place for the hearing. The hearing officer shall present written findings of fact and a recommendation of action to the program manager, who shall make the final decision and forward the findings and decision promptly to the petitioner. The final decision of the program manager may be appealed to the Albuquerque - Bernalillo county air quality control board in accordance with 20.11.81 NMAC.

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.20 NMAC - Rn, 20 NMAC 11.100.II.9, 10/1/02; A, 5/1/04; 20.11.100.20 NMAC - Rn & A, 20.11.100.17 NMAC, 1/1/12]

#### **20.11.100.21 CERTIFICATION REQUIREMENTS FOR AIR CARE STATIONS:**

**A.** No person shall solicit, advertise or imply that a facility is an *air care* station certified by the program manager to conduct inspections pursuant to 20.11.100 NMAC without having a current program-issued certificate on display on the premises. Any *air*

*care* inspection station that has its certification permanently or temporarily withdrawn or canceled by the board or the program manager shall immediately remove all inspection related signs and cease to represent the facility as a certified *air care* station.

**B.** No *air care* station owner or operator shall allow a person to conduct any part of an inspection pursuant to 20.11.100 NMAC unless the person is an *air care* inspector certified by the program manager and has a current program-issued certificate on display on the premises.

**C.** Any person may apply for certification to operate an *air care* station.

**D.** Before constructing, installing or renovating a facility or building intended for use as an *air care* station, the owner or operator shall submit an application and receive pre-approval to operate the facility as an *air care* station. The applicant shall also provide information on traffic flow and how it will be managed to prevent unsafe conditions. The applicant shall also indicate how and where the customer may view the vehicle inspection from start to finish.

**E.** The program manager may issue a station certificate to a person who applies and demonstrates to the program manager's satisfaction the following minimum conditions shall be in effect and equipment shall be present at the applicant's proposed *air care* station:

**(1)** at least one certified *air care* inspector whose certification is current and listed with the program manager shall be present and shall conduct all the inspections of motor vehicles; no inspection shall be performed in whole or in part by any person who is not a certified *air care* inspector;

**(2)** at least one approved emissions analyzer owned or leased by the station shall be in place and operating within the equipment specification limits;

**(3)** in order to qualify for certification, the facility shall also be equipped and supplied as follows:

**(a)** sufficient hand tools and automotive diagnostic equipment for proper performance of the inspections;

**(b)** program approved span gas and compatible equipment for performing gas span checks;

**(c)** suitable non-reactive tail pipe extenders or probe adapters for inspecting vehicles with screened or baffled exhaust systems;

**(d)** the approved emissions analyzer manufacturer's maintenance and calibration manual; and

(e) gas cap checking adaptors;

(4) the *air care* station shall provide the vehicle owner or driver with access to the test area so that observation of the entire official inspection process is possible; access may be limited, but in no way shall prevent full observation of the entire official inspection process from start to finish; and

(5) certified *air care* station owners or operators shall be responsible for the general management of their facility(ies) and for the supervision of their *air care* inspectors in accordance with 20.11.100 NMAC.

**F. "Emissions-inspection-only" stations** may be authorized by the program manager. Emissions-inspection-only stations shall indicate on a sign authorized by the program and placed in a readily visible location that no emissions-related adjustments or repair services are available. Repair-related requirements of Subsection B of 20.11.100.23 NMAC do not apply to "inspection-only" stations.

[5/20/88. . .11/13/91, 9/23/94, 12/1/95; 20.11.100.21 NMAC - Rn, 20 NMAC 11.100.II.10, 10/1/02; 20.11.100.21 NMAC - Rn & A, 20.11.100.18 NMAC, 1/1/12]

#### **20.11.100.22 BASIS FOR DENIAL OF AIR CARE STATION CERTIFICATION:**

The program manager may deny certification to a facility that does not:

**A.** comply with all applicable federal, state and local laws and regulations;

**B.** provide for an entrance and a dedicated inspection area inside the facility that is large enough to accept all vehicles with a GVW of 8500 lbs or less presented for inspection;

**C.** provide for adequate traffic flow; or

**D.** provide adequate viewing access by the vehicle owner or driver or for surveillance by program auditors.

[5/20/88. . .8/25/92, 9/23/94; 20.11.100.22 NMAC - Rn, 20 NMAC 11.100.II.11, 10/1/02; A, 5/1/04; 20.11.100.22 NMAC - N, 1/1/12]

#### **20.11.100.23 PERFORMANCE OF CERTIFIED AIR CARE STATIONS:**

**A.** A certified *air care* station shall obtain and pay for routine and unscheduled maintenance and replacement parts for the approved exhaust gas analyzer.

**B.** A certified *air care* station shall accept and perform emissions inspections on all vehicles presented for inspection and shall have adequate reference manuals and basic emissions information. Emissions inspections shall not be performed on vehicles if the

emissions inspection would pose a threat to any person's safety. A motor vehicle shall not be accepted for repair unless the station has adequate information regarding idle speed, idle mixture, timing, dwell, fast idle speed specifications, high altitude specifications and information describing emissions control systems, diagnostic and repair procedures, if normally available in the trade.

**C.** The times that a certified *air care* inspector will be available to conduct inspections shall be posted if inspection times do not include all hours the station is open for business.

**D.** Each certified *air care* station shall post a sign in a conspicuous location, on the exterior of the station, indicating testing hours and the fee charged for each inspection. The sign shall meet the uniform format and style requirements established by the program manager.

**E.** A certified *air care* station shall not refuse any vehicle for inspection based upon the race, color, religion, sex, national origin or ancestry, age or physical handicap or disability of the motorist, nor may the station refuse any vehicle for inspection because of the make, model or year of the vehicle.

**F.** Each certified *air care* station shall provide vehicle owners or drivers access to the inspection area so that the owner or driver can observe the official inspection. Access may be limited but in no way shall prevent full observation.

**G.** A certified *air care* station shall perform initial emissions inspection on vehicles without repair or adjustment prior to the inspection. This requirement shall not apply to a vehicle if an owner or driver specifically asks for repairs or adjustments prior to an emissions inspection, without prior suggestion or recommendation by the inspector or station owner or operator, and a work order is completed and authorized by the vehicle owner or driver.

**H.** Each certified *air care* station shall employ a sufficient number of *air care* inspectors so the station can adequately staff regular testing hours, as set by the *air care* station and approved by the program manager.

**I.** Each *air care* station shall ensure that emissions inspections are performed on every vehicle, upon presentation, unless a vehicle test poses a threat to a person's safety. An *air care* station that is not designated as an "inspection only" station may elect to conduct testing "by appointment only," as approved by the program manager, but shall indicate this on the station sign in lieu of posting the testing hours.

**J.** A person who owns or operates a certified *air care* station that changes the business name, ownership, official inspection personnel, or approved exhaust gas analyzers, or ceases to operate as an *air care* station, shall notify the program manager in writing within 10 days of the change. A certified *air care* station may have its certification revoked for failure to provide required notice. Relocation of an *air care*

station, without prior review and written approval of the program manager as required, shall automatically terminate and invalidate a current station certificate.

[5/20/88. . .11/13/91, 9/23/94, 12/1/95, 8/1/97; 20.11.100.23 NMAC - Rn, 20 NMAC 11.100.II.12, 10/1/02; A, 5/1/04; 20.11.100.23 NMAC - N, 1/1/12]

#### **20.11.100.24 FLEET AIR CARE STATIONS:**

**A.** No individual or business shall represent itself as a certified fleet *air care* station without being in possession of a duly authorized and currently valid certificate issued by the program manager.

**B.** Any person may apply for authorization for an *air care* station authorized by the program to perform inspections under 20.11.100 NMAC for the purposes of fleet inspection of a company or corporate business, or governmental fleet. Fleet *air care* stations shall not offer or provide the inspections to the company's employees or the general public. Fleet *air care* stations shall be equipped and operated and shall be subject to the same quality assurance requirements as a certified *air care* station. The signage requirements of Subsections C and D of 20.11.100.23 NMAC do not apply to a fleet *air care* station. The fee for certifying a fleet *air care* station shall be the same as for a certified *air care* station.

**C.** Notwithstanding Subsections A and B of 20.11.100.24 NMAC, any person with a fleet may contract with any certified *air care* station to provide inspections required to satisfy 20.11.100 NMAC.

[5/20/88. . .8/25/92, 9/23/94, 12/1/95, 20.11.100.24 NMAC - Rn, 20 NMAC 11.100.II.13, 10/1/02; 20.11.100.24 NMAC - Rn & A, 20.11.100.19 NMAC, 1/1/12]

#### **20.11.100.25 [RESERVED]**

[5/20/88. . .11/13/91, 8/25/92, 9/23/94, 12/1/95; 20.11.100.25 NMAC - Rn, 20 NMAC 11.100.II.14, 10/1/02; A, 5/1/04; Repealed, 1/1/12]

#### **20.11.100.26 CERTIFICATION OF AIR CARE INSPECTORS:**

**A.** No person shall represent himself as a certified *air care* inspector without being in possession of a duly authorized and currently valid certificate issued by the program manager.

**B.** Certificates issued under Subsection B of 20.11.100.26 NMAC shall be valid for 12 months unless the program manager requires re-certification earlier as provided in 20.11.100.27 NMAC.

##### **(1) Certification requirements for *air care* inspectors:**

**(a)** A person seeking certification shall file an application with the program manager on forms provided by the program. The issuance of certificates shall be administered by the program. Before an applicant may be granted a certificate, the applicant shall demonstrate general knowledge, skill and competence requirements under the program and in accordance with training and testing requirements set forth by the program manager.

**(b)** The knowledge, skill and competence that an applicant must demonstrate shall include, but is not limited to, the following:

**(i)** general operation and purpose of emissions control systems for all types of motor vehicles;

**(ii)** how HC and CO relate to timing and air/fuel ratio control;

**(iii)** rules and regulations pertaining to inspection and the inspection procedures established in the 20.11.100 NMAC;

**(iv)** general understanding of the benefits to vehicle owners provided in the *Defect Warranty Provisions* of Section 207(a) and the *Performance Warranty Provisions* of Section 207(b) of the Federal Clean Air Act as it applies to the inspection;

**(v)** ability to recognize by visual inspection the emissions control equipment for 1975 and newer vehicles, distinguishing between those requiring and those not requiring inspection;

**(vi)** operation and proper use, care, maintenance and gas span checking of the approved exhaust gas analyzers;

**(vii)** proper use, filing and storage of inspection forms, VIRs and supplemental documents;

**(viii)** ability to perform an actual emissions inspection from start to finish;  
and

**(ix)** other information as the program manager requires.

**(c)** The program may issue a certificate to the applicant when the program manager determines that the applicant has successfully completed the certification requirements of 20.11.100 NMAC.

**(d)** Persons certified under Subsection B of 20.11.100.26 NMAC shall inform the program manager within 10 days of any change in legal name, employment status or current mailing address. Each certified inspector will be assigned a personal identification number that will be checked for correlation in data audits of the program. Failure to keep the program manager informed may result in revocation of certification.

**(2) Performance of certified *air care* inspectors:** Certified *air care* inspectors shall:

**(a)** at no time allow another person to use his certificate or personal code to enter into an approved exhaust gas analyzer, nor shall he delegate his authority to another person to perform any official inspection or any part of an inspection under his name or personal identity code;

**(b)** accept all vehicles for emissions inspection and perform the emissions inspections in an expedient manner in order to avoid unnecessary public inconvenience; however, an *air care* inspector shall not accept a vehicle for inspection if the inspection would pose a threat to any person's safety;

**(c)** refrain from deviation from 20.11.100 NMAC and official procedures established for this program;

**(d)** at no time during the emissions inspections sequence attempt or allow adjustments to be performed on the vehicle being inspected until the final VIR is complete; and

**(e)** sign all VIRs at the time of inspection.

[5/20/88. . . 11/13/91, 8/25/92, 9/23/94, 12/1/95, 20.11.100.26 NMAC - Rn, 20 NMAC 11.100.II.15, 10/1/02; A, 5/1/04; A, 9/1/04; 20.11.100.26 NMAC - Rn & A, 20.11.100.21 NMAC, 1/1/12]

#### **20.11.100.27 RECERTIFICATION REQUIREMENTS FOR CERTIFIED *AIR CARE* INSPECTORS:**

**A.** The program manager will reissue certification to any *air care* inspector who demonstrates updated competency as evidenced under the then-current requirements administered by the program. Re-certification shall be required upon expiration of a current annual certificate or sooner if either of the following situations exist.

**(1)** If the program manager determines a need to update the general qualifications of *air care* inspectors prior to the annual re-certification period, holders of the certificates may be required to re-qualify.

**(2)** As a result of auditing or investigating consumer complaints, a certified inspector may be required to re-certify if the program manager determines that competency or other problems must be corrected in order to protect the public.

**B.** Certified *air care* inspectors shall re-certify during the month the current certification is scheduled to expire.

**C.** Each *air care* inspector is responsible for applying for recertification in a timely manner. The date of certification expiration is provided on the inspector certification certificate, which shall be displayed in the *air care* station, and the gas analyzer provides notice of certification expiration starting at least 30 days prior to the certificate expiration date. VPMD will not give special consideration regarding the time and availability of a recertification class to an *air care* inspector whose certification has lapsed unless good cause exists, as determined by the program manager.

**D.** VPMD will review the VID records of each *air care* inspector at the time of the recertification request to determine if there is a pattern of violations or fraud during inspections performed during the previous three years.

**E.** If a former *air care* inspector requests recertification, but has allowed a lapse in recertification that is greater than 90 days in length, the program manager may require the former inspector to take the week-long certification training class rather than the recertification training class.

[5/20/88. . .12/1/95; 20.11.100.27 NMAC - Rn, 20 NMAC 11.100.II.16, 10/1/02; 20.11.100.27 NMAC - N, 1/1/12]

#### **20.11.100.28 DENIAL OR SUSPENSION OF RECERTIFICATION FOR *AIR CARE* INSPECTOR:**

**A.** The VPMD program manager may suspend an existing certification or deny recertification for the following reasons:

(1) the VPMD program manager has determined, as a result of a review of the VID or VPMD inspection files, that an *air care* inspector has committed violations resulting in an accumulation of 16 points or more;

(2) the *air care* inspector has failed to attend the recertification training; or

(3) the *air care* inspector has failed the recertification test.

**B.** Whenever a certification has been suspended and the certification expires during the suspension period, the *air care* inspector may not obtain a new certification until the term of the suspension has expired.

[5/20/88; 20.11.100.28 NMAC - Rn, 20 NMAC 11.100.II.17, 10/1/02; 20.11.100.28 NMAC - N, 1/1/12]

#### **20.11.100.29 ADMINISTRATIVE FEES FOR CERTIFICATIONS AND RECERTIFICATIONS:**

**A.** Any person seeking certification, or annual recertification thereof, in order to participate in the program as an *air care* station or *air care* inspector shall pay to the city

the required fee as established below, before a certification shall be issued or renewed by the program.

<b>Certifications</b>	<b>Amount</b>
Certified <i>Air Care</i> Station	\$200.00
Certified <i>Air Care</i> Inspector	\$35.00

**B.** Every *air care* station or *air care* inspector who has had a certification suspended shall pay the following fees before the *air care* station or *air care* inspector certification will be reinstated.

<b>Reinstatement</b>	<b>Amount</b>
<i>Air Care</i> Station Certification	\$200.00
<i>Air Care</i> Inspector Certification	\$35.00

**C.** Any *air care* inspector who requests to be certified on more than one motor vehicle emissions analyzer shall pay a \$35.00 fee for each analyzer.

[9/23/94. . .12/1/95, R 8/1/97; 20.11.100.29 NMAC - Rn, 20 NMAC 11.100.II.18, 10/1/02; 20.11.100.29 NMAC - N, 1/1/12]

### **20.11.100.30 VPMD QUALITY ASSURANCE AUDITS OF AIR CARE STATIONS AND AIR CARE INSPECTORS:**

VPMD's quality assurance audits and data analysis are designed to: discover, correct and prevent fraud, waste and abuse; determine whether emissions testing procedures are being correctly performed; assess whether emissions analyzers are measuring accurately; and find any existing problems that could impede program performance.

**A.** The program shall conduct announced and unannounced overt quality assurance audits of each certified *air care* station as ordered by the program manager. The duties of the VPMD auditor shall include but not be limited to the following:

(1) verify that the equipment, reference materials and staffing agree with the information on file with the program manager and are sufficiently maintained to meet the intent of the VPMD program;

(2) check the accuracy of data entry and production of the final inspection reports furnished to motorists;

(3) perform a complete quality assurance survey on the analyzer, the calibration gas system, and automatic zero-span performance in relation to the specifications and requirements of 20.11.100 NMAC;

(4) the field audit gases for standardizing approved analyzers used for inspections shall conform to the provisions specified in 40 CFR, Part 86, Subpart B,

Section 86.114-94, *Analytical Gases*, for automotive exhaust emissions testing; those gases shall be of "precision" quality, certified to be within + (plus-or-minus) 1% of the labeled concentration, and certified by the NIST; and

(5) examine the service contract for the analyzer to assure proper lockout controls, data record capture and response in case of trouble.

**B.** The program shall perform covert quality assurance audits without offering official credentials or identification by submitting motor vehicles for inspection in order to examine the station operation under actual conditions. Covert audit vehicles may be offered at random times in a condition resulting from intentional maladjustment, or with emissions control components intentionally removed or rendered inoperative by VPMD. The results of covert audits by the program will provide data for assessing the performance of certified *air care* stations and certified *air care* inspectors and their adherence to the requirements of 20.11.100 NMAC.

**C.** VPMD shall perform covert quality assurance audits of the *air care* stations and *air care* inspectors by observing their activities unannounced from a remote off-site area.

**D.** VPMD shall perform data analysis of information contained in the VID to audit the performance of *air care* stations and *air care* inspectors. The criteria for the data analysis will be selected by VPMD in response to VPMD investigations, complaints, certification renewals or other triggers, or may occur at random times on randomly-selected stations and inspectors.

[20.11.100.30 NMAC - Rn & A, 20.11.100.24 NMAC, 1/1/12]

### **20.11.100.31 ENFORCEMENT AGAINST AIR CARE STATIONS AND INSPECTORS:**

**A.** If a VPMD program manager or a compliance auditor finds a condition or practice that violates any requirement of 20.11.100 NMAC, VPMD may take any enforcement action or combination of actions it finds necessary, including, but not limited to: a written warning, a notice of violation, a letter denying recertification, a notice of intent to suspend or revoke an active certification, or immediate lockout of the gas analyzer.

**B.** Violations for which the program manager or VPMD personnel may take action under 20.11.100.31 NMAC include:

(1) any act or omission by an *air care* station or an *air care* inspector that causes the station or inspector to be in violation of any applicable requirement of 20.11.100 NMAC;

(2) an *air care* station or inspector taking or performing any action prohibited under 20.11.100.16 NMAC as determined by any type of investigation by VPMD, such as an overt or covert audit, or VID analysis; and

(3) any other act or omission by a station or inspector that results in a situation that does not comply with 20.11.100 NMAC.

C. An enforcement action may be issued to an *air care* station or *air care* inspector by first class mail, hand delivery by VPMD personnel or electronically through the EIS.

D. The program manager may issue a notice of violation to the *air care* station for acts or omissions by an *air care* inspector at the *air care* station regardless of whether VPMD has issued a notice of violation to the *air care* inspector who committed the violation.

E. A notice of violation or warning issued pursuant to 20.11.100 NMAC, shall be in writing on an approved VPMD form and shall specify whether the notice of violation is issued to the inspector or the station. The notice shall include notification of the penalty points assessed for the violation and the total penalty points the *air care* station or inspector has accumulated during the preceding 12-month period.

[20.11.100.31 NMAC - N, 1/1/12]

#### **20.11.100.32 CATEGORIES OF VIOLATIONS:**

The program manager, supervisor or VPMD auditor shall review each notice of violation for consistency with 20.11.100 NMAC and determine the character and category of the violation for the purpose of assessing penalty points, monetary penalties or taking other enforcement action.

**A. Intentional violations.** An intentional violation is a violation that is the result of actions that are reckless, deliberate or purposeful or that occur when the person who committed the act or omission knew or should have known the conduct was a violation of 20.11.100 NMAC.

**B. Serious violations.** Serious violations are actions that occur as a result of inspector error, which includes an omission, and are likely to result in inaccurate test results.

**C. Minor violations** are common errors that can be prevented by diligence and care.

[20.11.100.32 NMAC - N, 1/1/12]

#### **20.11.100.33 PENALTY ASSESSMENT:**

**A.** Penalty points may be assessed against the *air care* inspector, *air care* station or both. Penalty points are tracked for each *air care* station and each *air care* inspector throughout a rolling 12 month period.

**B.** Violations committed during an inspection shall be assessed against the air care inspector.

**C.** Program violations, such as allowing or requiring an inspector to perform an improper test or allowing a non-certified individual to perform part or all of a test; improper filing and storage of program documents, or improperly posted signs, shall be assessed against the station.

**D.** Air care stations may be held responsible for their inspectors' actions if evidence establishes that the inspector violations occurred due to lack of diligence or supervision by the *air care* station owner or operator.

**E. Intentional violations.**

(1) Each intentional violation may result in the issuance of up to 16 points for each occurrence.

(2) 16 points shall result in a suspension or revocation of certification, as appropriate, for the *air care* inspector and the *air care* station at which the violations occurred.

(3) When an intentional violation results in a false pass, the *air care* station or inspector may be assessed a monetary penalty equal to 2.5 times the estimated cost of repair of the vehicle, according to the industry flat rate book.

(4) When the intentional violation results in a false fail, the *air care* station or inspector may be assessed a monetary penalty of up to \$1,000.

**F. Serious violations.**

(1) Each serious violation shall be assessed four points for each occurrence.

(2) A serious violation shall require the station to refund the test fee and provide a free retest to the vehicle owner or designee.

(3) A serious violation may also result in a mandatory conference at the VPMD headquarters to discuss the violation and how to assure that there will be no future repetition of the problem. The results of the conference shall be documented and may include a commitment by the station or inspector or both to complete additional training. The program manager or designee may agree to vacate points if commitments are completed successfully and in a timely manner. Mandatory conferences shall be scheduled and held at the VPMD headquarters.

**G. Minor violations:** Each minor violation shall be assessed two points. Minor violations shall result in formal written notices of violation.

[20.11.100.33 NMAC - N, 1/1/12]

#### **20.11.100.34 HISTORY OF VIOLATIONS:**

**A.** If the program manager determines that an *air care* station or *air care* inspector has a history of violations, the level of enforcement or penalty assessment may be increased for any future violations. The program manager shall not be limited to considering the immediately-preceding 12-month period to determine whether a history of violations exists.

**B.** When violations continue to occur at an *air care* station or by an *air care* inspector following previous enforcement actions, the program manager may issue a more severe enforcement action, including but not limited to: issuing a notice of violation instead of a written warning for a minor violation, or issuing an intent to revoke or suspend a certification for a non-minor violation that is the latest violation in a history of violations.

**C.** When violations continue to occur at an *air care* station or by an *air care* inspector following previous enforcement actions, the program manager may assess more severe penalties or a greater number of penalty points as a result of an *air care* station or *air care* inspector committing additional errors or violations.

**D.** Significant accumulation of penalty points shall result in an enforcement action described in 20.11.100.35 NMAC.

[20.11.100.34 NMAC - N, 1/1/12]

#### **20.11.100.35 ENFORCEMENT ACTION, DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATIONS:**

**A.** The program manager is authorized, after reasonable investigation and showing of a violation of any provision of 20.11.100 NMAC, to take enforcement actions including monetary penalties and denial, suspension or revocation of certification to operate under the program as a certified *air care* station or certified *air care* inspector. In deciding on an appropriate action, the program manager may consider: past violations on file against the charged party, previous actions that may have been taken by the program against the charged party, settlement or consent agreements that document past violations, and judicial decisions if related to the requirements of 20.11.100 NMAC.

**B.** Notwithstanding the provisions of Subsection C of 20.11.100.35 NMAC, the program manager may immediately suspend or revoke the certification of a certified *air care* station or certified *air care* inspector if the program manager determines that continued operation as an *air care* station or *air care* inspector would jeopardize the public health, safety and welfare; violate 20.11.100 NMAC or compromise the program.

**C.** Before taking any action to suspend or revoke a certification, the program manager shall inform the inspector or station owner of the charges. Any party so informed may request a hearing on the merits before the program manager. The request shall be made in writing to the program manager within 15 consecutive days after receiving the notice of intent to suspend or revoke the certification.

**D.** Upon receipt of a written request for a hearing on the merits, the program manager shall set a date, time and place for the hearing no more than 60 consecutive days from the date of receipt of the request. No fewer than 15 consecutive days before the hearing, the program manager shall inform the charged party of the date, time and place of the hearing. The program manager may appoint a hearing officer. At the hearing, the charged party may demonstrate why a monetary penalty should not be imposed and the certification should not be suspended or revoked. The hearing officer shall provide findings of fact, conclusions of law and a written recommendation to the program manager based on the evidence presented at the hearing.

**E.** After the hearing on the merits, based on the findings of the initial investigation and the recommendation of the hearing officer, the program manager shall take appropriate action including but not limited to any one or a combination of the following: monetary penalty, suspension or revocation of the certification or dismissal of the charges. The program manager may impose monetary penalties as authorized by the City of Albuquerque and Bernalillo County Joint Air Quality Control Board Ordinances, the City of Albuquerque and Bernalillo County Motor Vehicle Emissions Control Ordinances and the New Mexico Air Quality Control Act. The program manager may consider past violations on file against the charged party, previous actions that may have been taken by the program against the charged party, settlement or consent agreements that document past violations and judicial decisions if related to the requirements of 20.11.100 NMAC.

**F.** After a hearing specified by 20.11.100.35 NMAC, any party whose application for certification is denied or certificate is suspended or revoked may appeal the decision of the program manager to the board. To perfect the appeal to the board, the appellant shall deliver a written request to the headquarters within 15 consecutive days after receipt of the program manager's decision. At the next regular meeting of the board, the program manager shall inform the board that an appeal has been filed. The board may make its determination based on the record or may require a hearing de novo. If the board decides on a hearing de novo, the petitioner shall pay a fee of \$125.00 pursuant to Subsection C of 20.11.2.22 NMAC by the deadline established by the board. A hearing de novo shall be held in accordance with 20.11.81 NMAC. The board may uphold, overturn or amend the program manager's decision. If the board decides to conduct a hearing de novo, the board may appoint a hearing officer, and the board shall set a date, time and place for the hearing and shall hold the hearing within 90 consecutive days of the headquarters' receipt of the written request. No fewer than 15 consecutive days before the hearing, the board shall inform the appellant of the date, time and place of the hearing. The decision of the board shall be final.

[20.11.100.35 NMAC - Rn & A, 20.11.100.26 NMAC, 1/1/12]

### **20.11.100.36 ADDITIONAL ENFORCEMENT AUTHORITY:**

**A. Mandatory inspections:** Any person who owns a motor vehicle subject to 20.11.100 NMAC and fails to demonstrate compliance with 20.11.100 NMAC shall be issued a failing VIR and shall be refused re-registration by the MVD pursuant to the Motor Vehicle Code, 66-3-7.1 NMSA (1978).

**B. Procedural provisions:** Any person who violates the requirements of 20.11.100 NMAC shall be guilty of a misdemeanor pursuant to either the City of Albuquerque Joint Air Quality Control Board Ordinance 9-15-1-99(B)(1) R.O.1994 or the Bernalillo County Joint Air Quality Control Board Ordinance No. 94-5. Any person who violates a requirement of 20.11.100 NMAC shall also be subject to all other enforcement actions authorized by the Air Quality Control Act, 74-2-1 et. seq., NMSA 1978 and other remedies available at law or equity.

**C. Referral for further investigation or legal remedy.** In addition to suspension or revocation of certification and monetary penalties, cases that involve an intentional violation may be referred to the attorney general, district attorney or city attorney, as appropriate, for further investigation of fraudulent acts or other acts contrary to law.

[20.11.100.36 NMAC - Rn & A, 20.11.100.27 NMAC, 1/1/12]

## **PART 101: MOTOR VEHICLE INSPECTION - CENTRALIZED**

### **20.11.101.1 ISSUING AGENCY:**

Albuquerque/Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[11/16/93. . .12/1/95; 20.11.101 NMAC - Rn, 20 NMAC 11.101.1.1, 10/1/02]

### **20.11.101.2 SCOPE:**

All motor vehicles, as defined in 20.11.101.7 NMAC, shall be inspected biennially for compliance with the requirements of 20.11.101 NMAC, unless otherwise exempted. A vehicle shall not be registered or re-registered until such a vehicle has passed the emissions inspection and tampering inspection prescribed in 20.11.101.14 NMAC or has been issued a time extension for repairs by the VPMD.

**A. Federal Installations:** Vehicles, which are operated on federal installations located within Bernalillo County, shall comply with 20.11.101 NMAC regardless of whether the vehicles are registered in New Mexico or Bernalillo County. The inspection requirement applies to all employee owned or leased vehicles as well as agency operated vehicles.

**B. Fleet Vehicles:** Fleet vehicles, which are registered outside Bernalillo County but are primarily operated in Bernalillo County, shall comply with 20.11.101 NMAC.

**C. Municipalities and Counties:** If the Program enters into a joint powers agreement with another municipality or county to extend the enforcement of 20.11.101 NMAC, all vehicles registered in that municipality or county must comply with 20.11.101 NMAC.

[11/16/93. . .12/1/95; 20.11.101.2 NMAC - Rn, 20 NMAC 11.101.I.2, 10/1/02]

**20.11.101.3 STATUTORY AUTHORITY:**

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

[11/16/93. . .12/1/95; 20.11.101.3 NMAC - Rn, 20 NMAC 11.101.I.3, 10/1/02]

**20.11.101.4 DURATION:**

Permanent.

[12/1/95; 20.11.101.4 NMAC - Rn, 20 NMAC 11.101.I.4 10/1/02]

**20.11.101.5 EFFECTIVE DATE:**

Shall become effective upon the date EPA issues notice requiring the Program to operate a centralized vehicle emissions inspection and maintenance program, in which case the centralized program established in 20.11.101 NMAC will be implemented.

[8/31/94. . .12/1/95; 20.11.101.5 NMAC - Rn, 20 NMAC 11.101.I.5 & A, 10/1/02]

**20.11.101.6 OBJECTIVE:**

The objective of 20.11.101 NMAC is to provide for the control and regulation of CO and HC emissions above certain levels from motor vehicles, and anti-tampering.

[11/16/93. . .12/1/95; 20.11.101.6 NMAC - Rn, 20 NMAC 11.101.I.6, 10/1/02]

**20.11.101.7 DEFINITIONS:**

In addition to the definitions in 20.11.101.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.101 NMAC shall govern.

**A. "Air Care Inspection Facility"** means a business operated by an Independent Contractor authorized by contract in accordance with 20.11.101.18 NMAC to inspect motor vehicles and issue certificates of inspection. Repairs shall not be performed at an AIR CARE Inspection Facility.

**B. "Air Care Inspector"** means an individual authorized by a certificate issued by the Program to perform inspections of motor vehicles and who has met the requirements of 20.11.101.21 NMAC.

**C. "Air Care Technician"** means an individual certified in accordance with 20.11.101.18 NMAC to repair and adjust motor vehicles, which are subject to inspection pursuant to 20.11.101 NMAC.

**D. "Biennial"** means every other year.

**E. "Chassis"** means the complete motor vehicle, including standard factory equipment, exclusive of the body and cab.

**F. "City"** means the City of Albuquerque, a New Mexico municipal corporation.

**G. "Conditioning Mode"** means either a fast idle test condition or loaded test condition.

**H. "County"** means the County of Bernalillo, a political subdivision of the state of New Mexico.

**I. "Dealer"** means any person who sells or solicits or advertises the sale of new or used motor vehicles subject to registration in the State of New Mexico and as further defined in the Motor Vehicle Code Section 66-1-4.4.D, NMSA 1978.

**J. "Distributor"** means any person who distributes or sells new or used motor vehicles to dealers and who is not a manufacturer.

**K. "Division or VPMD"** means the Vehicle Pollution Management Division of the City Environmental Health Department, which provides the staff for the Albuquerque/Bernalillo County Vehicle Pollution Management Program.

**L. "Driver"** means every person who drives or is in actual physical control of a motor vehicle upon a highway or upon property used for inspections.

**M. "Essential Parts"** means all integral and body parts of a vehicle of a type required to be registered under the Motor Vehicle Code, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model type or mode of operation.

**N. "Exhaust Emissions"** means carbon monoxide, hydrocarbon and all other substances emitted through a motor vehicle's exhaust system, after passing downstream of the engine block exhaust ports and exhaust emissions control devices, if any.

**O. "Exhaust Emissions Control Device"** means equipment designed by the manufacturer of the vehicle and installed on a motor vehicle for the purpose of reducing pollutants emitted from the vehicle, or a system or engine modification designed by the manufacturer of the motor vehicle which causes a reduction of pollutants emitted from the vehicle, or equipment designed by the vehicle manufacturer to prevent damage to or tampering with other exhaust emission control devices.

**P. "Field Audit Gas"** means a gas mixture with known concentrations of CO<sub>2</sub>, CO, and HC that is used by the Program to check the accuracy of exhaust gas analyzers used by authorized inspection facilities.

**Q. "Fast Idle Test Condition"** means an exhaust emission inspection conducted with the engine of vehicle running under an accelerated condition to an extent prescribed by the Program Manager.

**R. "Fleet Air Care Station"** means any person, business, government entity, firm, partnership or corporation which provides for the construction, equipping, maintaining, staffing, managing and operation of authorized inspection station for the sole purpose of inspecting its private fleet of motor vehicles subject to 20.11.101 NMAC, and not offering inspection services to its employees or the general public. The fleet must include 10 or more vehicles, which are capable of being centrally fueled.

**S. "Fuel"** means any material that is burned by the engine of a vehicle in order to propel the vehicle.

**T. "Gross Vehicle Weight"** means the weight of a vehicle without load, plus the weight of any load thereon.

**U. "Government Vehicle"** means a motor vehicle exempt from the payment of a registration fee and owned or leased by any federal, state, local, or other governmental entity.

**V. "Headquarters"** means the main office of the Vehicle Pollution Management Program.

**W. "Highway"** means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction.

**X. "Idle Mode Test"** means an unloaded exhaust emissions test conducted only at the idle condition, as described in the VPMP Procedures Manual.

**Y. "Independent Contractor"** means any person, partnership, corporation, or business entity with whom the Program Manager enters into a contract providing for construction, equipment, maintenance, personnel, management and operation of official AIR CARE inspection facilities.

**Z. "Inspection, Re-inspection or Test"** means the mandatory vehicular anti-tampering and emissions inspection conducted both visually and with equipment required by 20.11.101 NMAC.

**AA. "Loaded Mode Test"** means an exhaust emissions test conducted at cruise conditions as specified by 20.11.101 NMAC and in compliance with 40 CFR Part 51 Appendix B Subpart S.

**BB. "Low Emissions Tune-Up"** means adjustments and repairs, which can reduce motor vehicle emissions including but not limited to the following procedures:

(1) checking and setting to manufacturer's specifications, the idle mixture, idle speed, ignition timing and dwell, and

(2) checking for proper connection of vacuum lines, electrical wires, and for proper operation of pollution control devices, and

(3) checking and replacement of air breathing filters and positive crankcase ventilation valve as necessary, and

(4) replacement of spark plugs, points, wires, as necessary, and

(5) for all motor vehicles equipped with computer controlled closed-loop feedback exhaust emission control devices and systems, inspecting the operation of the emission control system according to the motor vehicle manufacturer's specified procedures, including hose routing and on-board diagnostics, new vehicle warranty, and repair or replacement as necessary.

**CC. "Manufacturer"** means every person engaged in the business of constructing or assembling vehicles of a type required to be registered under the laws of the State of New Mexico.

**DD. "Manufacturer's Certificate of Origin or MCO"** means a certification, on a form supplied by or approved by the MVD, signed by the manufacturer, stating that the new vehicle described therein has been transferred to the New Mexico dealer or distributor named therein or to a dealer duly licensed or recognized as such in another state, territory or possession of the United States and that such transfer is the first transfer of such vehicle in ordinary trade and commerce. Every such certificate contains

a space for proper reassignment to a New Mexico dealer or to a dealer duly licensed or recognized as such in another state, territory or possession of the United States. The certificate also contains a description of the vehicle, the number of cylinders, type of body, engine number and the serial number or other standard identification number provided by the manufacturer of the vehicle, where such exists.

**EE. "Model Year"** means the year of manufacture of the vehicle based on the annual production period of the vehicle as designated by the manufacturer and indicated on the title and registration of the vehicle. If the manufacturer does not designate a production period for the vehicle, then the model year means the calendar year of manufacture.

**FF. "Motor Vehicle"** means any vehicle which:

- (1) is propelled by a spark ignition, internal combustion engine, and
- (2) has four or more wheels in contact with the ground, and
- (3) is subject to registration with the New Mexico Motor Vehicle Division to an owner of record who is domiciled within Bernalillo County, or is a government vehicle which is assigned to a governmental unit within Bernalillo County, and
- (4) has a GVW greater than 1,000 and less than 26,000 pounds, and
- (5) is for use upon public roads and highways, and
- (6) is a 1975 model year or newer, and
- (7) is a vehicle not otherwise exempted by 20.11.101 NMAC.

**GG. "New Motor Vehicle"** is a vehicle, which has undergone a transfer of ownership and is being registered for the first time to any person except in the sale to another licensed motor vehicle dealer for the purpose of resale as a new vehicle.

**HH. "Operator"** means driver, as defined in 20.11.101 NMAC.

**II. "Owner"** means a person who holds the legal title of the motor vehicle or, in the event a vehicle is the subject of an agreement for conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor.

**JJ. "Pass Fail Criteria"** means those standards set by 20.11.101 NMAC which specify the maximum allowable motor vehicle exhaust emissions under appropriate specified operating conditions.

**KK. "Person"** means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision or agency, or any other legal entity or legal representative, agent, or assign.

**LL. "Program or VPM Program"** means the Albuquerque/Bernalillo County Vehicle Pollution Management Program.

**MM. "Program Manager"** means the classified City employee selected in accordance with the provisions of the Joint Powers Agreement between the City and the County to perform for the Joint Air Quality Control Board those duties required to enforce and administer the provisions of 20.11.101 NMAC or the Program Manager's designee.

**NN. "Reconstructed Vehicle"** means any vehicle which shall have been assembled or constructed largely by means of essential parts, new or used, derived from other vehicles or makes of vehicles of various names, models and types or which, if originally otherwise constructed, shall have been materially altered by the removal of essential parts, new or used, obtained from other vehicles.

**OO. "Registration and Re-registration"** means both original registration and renewal of registration of motor vehicles as provided in the New Mexico Motor Vehicle Code, Chapter 66 NMSA 1978.

**PP. "Shall be Inspected"** means the vehicle shall be subjected to testing and inspection as applicable to model year and weight classification and shall satisfy the criteria of 20.11.101 NMAC as evidenced by the issuance of a certificate of inspection.

**QQ. "Standard Gases"** means NIST certified emissions samples of gases maintained as primary standards for determining the composition of working gases, field audit gases, or the accuracy of analyzers.

**RR. "Truck"** means every motor vehicle designed, used or maintained primarily for the transportation of property. In addition, all vans and all other vehicles with a GVW greater than 6000 pounds shall be considered a truck.

**SS. "VEGAS"** means a Program-certified, garage-type; computer controlled system, which meets or exceeds the specifications adopted by the Program and is capable of testing vehicles under idle mode and loaded mode conditions.

**TT. "VIR"** means Vehicle Inspection Report, a Program-certified document signed by a certified AIR CARE inspector or other Program authorized official stating that the vehicle described therein is either in compliance (pass), not in compliance (fail), or has an approved time extension in order to achieve compliance through additional repairs or adjustments (time-limit extension).

**UU. "Visible Emissions"** means any fume, smoke, particulate matter, vapor or gas, or combination thereof, except water vapor or steam.

**VV. "VPMP Procedures Manual or Procedures Manual"** means a compilation of procedures developed by the Program Manager pursuant to 20.11.101.12 NMAC.

**WW. "Wholesale"** means the act of any person selling or offering for sale vehicles of a type subject to registration in New Mexico to a vehicle dealer licensed under the Motor Vehicle Code, Chapter 66 NMSA 1978, or who is franchised by a manufacturer, distributor or vehicle dealer to sell or promote the sale of vehicles dealt in by such manufacturer, distributor or vehicle dealer and does not include the act of selling a vehicle at retail as a dealer subject to the dealer-licensing provisions of the Motor Vehicle Code.

**XX. "Working Gases"** means Program-approved span gases maintained by an authorized AIR CARE inspection facility or fleet AIR CARE station to perform periodic calibration of approved exhaust gas analyzers.

**YY. Abbreviations and Symbols:**

- (1) **A/F:** means air/fuel.
- (2) **ASE:** means the National Institute for Automotive Service Excellence.
- (3) **CO:** means carbon monoxide.
- (4) **CO<sub>2</sub>:** means carbon dioxide.
- (5) **EPA:** means the Environmental Protection Agency.
- (6) **GVW:** means gross vehicle weight.
- (7) **HC:** means hydrocarbon.
- (8) **HP:** means horsepower.
- (9) **LNG:** means liquefied natural gas.
- (10) **LPG:** means liquefied petroleum gas.
- (11) **MPH:** means miles per hour.
- (12) **MCO:** means manufacturer's certificate of origin.

(13) **MVD:** means the Motor Vehicle Division of the New Mexico Taxation and Revenue Department.

(14) **NDIR:** means non-dispersive infrared.

(15) **%:** means percent.

(16) **PCV:** means positive crankcase ventilation

(17) **ppm:** means parts per million by volume.

(18) **VIN:** means vehicle identification number.

(19) **40 CFR PART 51:** means the EPA Regulations for Inspection/Maintenance Programs published November 5, 1992 mandated by the Federal Clean Air Act Amendment of 1990.

[11/16/93, 12/1/95; 20.11.101.7 NMAC - Rn, 20 NMAC 11.101.I.7, 10/1/02]

#### **20.11.101.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.101.8 NMAC - Rn, 20 NMAC 11.101.I.8, 10/1/02]

#### **20.11.101.9 SAVINGS CLAUSE:**

Any amendment of 20.11.101 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Board Regulation 40, the Procedures Manual, or 20.11.101 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, the Procedures Manual or regulation in effect at the time the violations were committed.

[8/31/94. . .12/1/95; 20.11.101.9 NMAC - Rn, 20 NMAC 11.101.I.9, 10/1/02]

#### **20.11.101.10 SEVERABILITY:**

If any section, paragraph, clause, or word of this Part is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of the remaining provisions of 20.11.101 NMAC or the Procedures Manual.

[8/31/94. . .12/1/95; 20.11.101.10 NMAC - Rn, 20 NMAC 11.101.I.10, 10/1/02]

#### **20.11.101.11 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the Vehicle Pollution Management Program Headquarters, 1500 Broadway NE, Albuquerque, NM 87102.

[12/1/95; 20.11.101.11 NMAC - Rn, 20 NMAC 11.101.I.11, 10/1/02]

## **20.11.101.12 INSPECTION PROCEDURES:**

### **A. VPMP Procedures Manual:**

(1) The Program Manager shall develop an official document, titled VPMP Procedures Manual, outlining in sufficient detail the procedures necessary for a certified AIR CARE inspection facility, a certified fleet AIR CARE station, a certified AIR CARE inspector and a certified AIR CARE technician to comply with all applicable requirements of this Part. Upon approval by the Board, the Program Manager shall publish the official VPMP Procedures Manual and, within ten days of publication, provide general notice of its availability.

(2) The procedures, details and specifications contained in the VPMP Procedures Manual shall be a part of and incorporated into 20.11.101 NMAC and shall be binding upon each AIR CARE inspection facility, fleet AIR CARE station, AIR CARE inspector and AIR CARE technician.

(3) The Procedures Manual shall be amended as needed and required, and kept updated by the Program Manager. Notice of amendments to the Procedures Manual shall be provided by the Program Manager, with copies made available to the users. It is the responsibility of each AIR CARE inspection facility and fleet AIR CARE station to obtain and incorporate all amendments made available by the Program Manager. Each AIR CARE inspection facility or fleet AIR CARE station shall maintain at least one current copy of the VPMP Procedures Manual at the facility or station.

(4) If a provision of the Procedures Manual conflicts with a provision of this Part, the provision of this Part will prevail.

### **B. Vehicle Tests:**

(1) To determine if a motor vehicle is in compliance with this Part all inspections shall be performed in strict accordance with 20.11.101 NMAC and the VPMP Procedures Manual. Each vehicle shall be inspected at an AIR CARE inspection facility or fleet AIR CARE station by an AIR CARE inspector. All items shall be inspected to completion with reports of outcomes provided to the motor vehicle owner.

(2) Vehicles with an engine other than the engine originally installed by the manufacturer or an identical replacement of such an engine shall be subject to the inspection procedures and standards for the chassis type, GVW, and model year of the vehicle.

(3) Assembled vehicles or kit cars shall meet the standards and emission control equipment requirements for the year of the engine in the vehicle. If the vehicle is assembled with a pre-1975 engine, testing is not required. The vehicle owner must apply for an exemption from the Program Headquarters.

(4) Vehicles that have been switched from an engine of one fuel type to another fuel type that is subject to the program shall be subject to the test procedures and standards for the current fuel type, and the requirements of Paragraph (2), of Subsection B of 20.11.101.12 NMAC.

(5) Vehicles which are switched to a fuel type for which there is no certified configuration shall be tested according to the most stringent emission standards established for that vehicle type and model year.

**C. Exhaust Gas Emissions Measurements:** Emissions inspections required by this Part [20.11.101 NMAC] shall be performed in accordance with procedures described in 40 CFR part 51. All vehicles subject to inspection shall be required to pass the idle mode test. In addition, all 1981 and newer vehicles must pass the loaded mode test.

(1) Prior to this portion of the inspection, the entire vehicle shall be in normal operating condition as specified by the emissions tune-up label originally installed on the vehicle or as specified in the VPMP Procedures Manual. Motor vehicles equipped for simple selection of alternate fuel supplies, switching between gasoline and any compressed or liquefied gaseous fuel, shall be inspected using the fuel in use when presented for inspection.

(2) A Motor vehicle manufactured during or before the 1980 model year shall be required to take and pass only the idle mode test as outlined in the 40 CFR Part 51 and the VPMP Procedures Manual. The conditioning mode shall be administered only after a vehicle has failed the idle mode test. Upon completion of the conditioning mode, a vehicle that has failed the idle mode test condition may be retested at idle. If the vehicle passes the second chance test, it shall be deemed in compliance with minimum emissions standards unless the vehicle fails the tampering or visible emissions inspection required by 20.11.101 NMAC.

(3) A motor vehicle manufactured during or after the 1981 model year shall be required to take and pass the idle mode test and the loaded test condition as outlined in 40 CFR Part 51 and the VPMP Procedures Manual, except that a constant four-wheel drive vehicle is required to take and pass an unloaded 2500 rpm test and the idle mode test. If the vehicle passes, it is deemed in compliance with emissions standards unless the vehicle fails the tampering or visible emissions inspection required by 20.11.101 NMAC.

(4) No inspection shall commence if there are apparent leaks in the motor vehicle's exhaust system that will cause the exhaust analyzer to invalidate the inspection.

(5) Pattern failure notices issued by EPA shall be maintained by the AIR CARE facility, fleet AIR CARE station, and AIR CARE inspector in an up-to-date file for reference to unusual pretest conditioning requirements.

(6) Vehicles presented to an AIR CARE inspection facility for inspection shall not be pre-tested by having a manual diagnostic emissions analysis or visual examination for tampering performed prior to the beginning of the inspection.

(6) Selection of appropriate pass/fail emissions inspection criteria shall be done by an approved VEGAS.

**D. Visual Examination for Tampering:** All vehicles are subject to and must pass a tampering inspection. The certified AIR CARE inspector shall determine specifically what emissions control devices should be in place and operable for each vehicle inspected. This shall be done by consulting the emissions control information sticker under the hood and checking a reference manual or applications guide which states how the vehicle was equipped as manufactured and/or certified for sale or use within the United States. Specific design and equipment elements necessary in anti-tampering determinations shall only include catalytic converter, air injection reaction system, O<sub>2</sub> sensor.

**E. Visible Emission Requirements:** In addition to exhaust and tampering requirements of 20.11.101 NMAC, all vehicles are subject to and must pass an inspection for visible emissions (smoke). Non-diesel vehicles may not emit any continuous visible emissions for a period greater than two consecutive seconds.

[11/16/93. . .12/1/95; 20.11.101.12 NMAC - Rn, 20 NMAC 11.101.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.101.II.1, 10/1/02]

### **20.11.101.13 SCHEDULING OF INSPECTIONS:**

**A.** Every motor vehicle, as defined in 20.11.101.7 NMAC, shall be inspected biennially when the owner is so notified or otherwise informed by MVD. The MVD will distribute notices or other appropriate information to owners of vehicles applying for re-registration in accordance with the written agreement made between the MVD and the Program Manager. Vehicles shall also be inspected upon sale and when titles are transferred. Any person who believes he/she has a vehicle for which he/she has been erroneously notified of inspection may petition the Program Manager to correct such error.

#### **B. Vehicles Unavailable for Inspection:**

(1) Motor vehicles which are unavailable for inspection, and primarily operated in an area that does not have an I/M Program, may be granted an extension of inspection, if authorized by the Program Manager. Persons seeking an extension may petition the Program Manager by submitting a signed affidavit justifying the special need and by providing other necessary documentation as required by the Program Manager.

(2) Motor vehicles which are registered in Bernalillo County but are primarily operated in another I/M Program shall be tested, either in the area of primary operation or in Bernalillo county. If tested in another I/M Program area, the Program Manager will issue a compliance certificate upon presentation of a passing I/M test from the other program.

### **C. Federal, State and Local Government Vehicles:**

(1) Each motor vehicle operated in Bernalillo County which is owned or leased by the United States Government, the State of New Mexico or any New Mexico political subdivision shall be inspected biennially.

(2) The responsible government authority shall perform emissions inspections according to a schedule approved by the Program Manager. A schedule shall only be approved if the Program Manager determines that it is consistent with the scope and goals of 20.11.101 NMAC.

(3) Persons who are responsible for government fleet vehicles or motor pools shall periodically, but not less than annually, update the vehicle inventory and forward the resulting inspection plan with inventory to the Program Manager.

[11/16/93. . .12/1/95; 20.11.101.13 NMAC - Rn, 20 NMAC 11.101.II.2, 10/1/02]

### **20.11.101.14 INSPECTION CRITERIA FOR AIR CARE INSPECITON FACILITIES:**

Failure to pass any one of the applicable criteria specified below as, Exhaust Emissions; Anti-Tampering; or Visible Emissions (smoke), referred to respectively as Subsections A, B, C, of 20.11.101.14 NMAC, shall constitute noncompliance with 20.11.101 NMAC, and a fail VIR shall be issued.

**A. Exhaust Emissions:** Inspection procedure for all vehicles other than diesel-powered vehicles shall be consistent with the requirements specified in 40 CFR Part 51 Subpart S Appendix B.

(1) A non-diesel motor vehicle manufactured on or before the 1980 model year shall be required to take and pass only the idle mode test condition. A non-diesel motor vehicle manufactured in or after the 1981 model year shall be required to take and pass both the loaded test condition (except as specified in Paragraph (2), of Subsection A of 20.11.101.14 NMAC for full time four wheel drive) and the idle mode test condition.

**(a) Loaded mode condition:** Vehicles tested under the loaded mode shall have the drive wheels placed on a dynamometer and the vehicle shall be operated as prescribed in Table I, in drive for automatic transmissions and 2nd or higher gear for manual transmissions. Exhaust reading for HC and CO shall be recorded after readings have stabilized or at the end of 30 seconds, whichever comes first. After exhaust emissions have been recorded, engine speed shall be returned to idle for the idle mode test.

**(b) Idle mode test condition:** The idle mode test shall be performed with:

(i) the vehicle in drive for pre 1981 model year vehicles with automatic transmissions, or

(ii) in neutral both for, vehicles with manual transmissions and for post 1980 model year vehicles with automatic transmissions. Exhaust emissions shall be recorded for HC and CO concentrations after readings have stabilized or at the end of 30 seconds, whichever occurs first. A CO<sub>2</sub> reading less than 6% will be deemed as proof of exhaust sample dilution, and the vehicle shall be rejected from further emissions inspections until the vehicle is repaired. The vehicle owner will be provided with an INVALID VIR.

(2) 1981 and newer constant four wheel drive vehicles shall be inspected and required to pass an unloaded 2500 rpm  $\pm$  300 rpm test ("set RPM") and an idle mode test. The appropriate maximum allowables listed in Table II shall apply to both test conditions. Vehicle transmissions shall be placed in neutral. During the unloaded 2500-rpm test exhaust emissions for HC and CO shall be recorded after the engine reaches set rpm and readings have stabilized. A sampling algorithm shall allow for sampling system delay. If the recorded readings are below the appropriate maximum allowable (PASS), the unloaded 2500-rpm test shall terminate and the engine speed shall be returned to idle for an idle mode test. If the recorded readings at 2500 rpm are above the appropriate maximum allowables (FAIL), real time sampling shall continue until the vehicle either passes or ninety (90) seconds have elapsed, whichever occurs first. After final exhaust emissions reading have been recorded, engine speed shall be returned to idle for an idle mode test. The idle mode test shall be performed as described in Subparagraph (b), of Paragraph (1), of Subsection A of 20.11.101.14 NMAC.

**(3) Conditioning mode:** If a non-diesel vehicle manufactured in or before the 1980 model year fails the idle mode test, and if requested by the vehicle operator, the vehicle shall be conditioned according to one of the following conditioning modes and retested at idle:

**(a) Fast idle condition:** For constant four wheel driven vehicles, the engine shall be conditioned by increasing the engine speed to 2500 RPM (+/-300) for a period of 30 seconds with the transmission in neutral. Exhaust emissions for HC and CO shall be recorded after the readings have stabilized or at the end of 30 seconds, whichever

comes first. After the exhaust emissions at high idle have been recorded, the engine speed shall be returned to idle for an idle mode test.

**(b) Loaded mode test condition:** For vehicles other than constant four wheel drive vehicles, the conditioning mode shall be conducted according to Subparagraph (a), of Paragraph (1), of Subsection A of 20.11.101.14 NMAC.

**TABLE I**  
**DYNAMOMETER LOADING TABLE**  
**PASSENGER VEHICLES AND TRUCKS**

Gross Vehicle Weight Rating (Pounds)	Engine Size	Speed (MPH)	Load (HP)
8500 or less	4 cyl or less	22 - 25	2.8 - 4.1
8500 or less	5 or 6 cyl	29 - 32	6.4 - 8.4
8500 or less	8 cyl or more	32 - 35	8.4 - 10.8
8501 or more	all	37 - 40	12.7 - 15.8

(4) Any motor vehicle which is determined to emit quantities (rates) of carbon monoxide and hydrocarbons greater than those listed in Table II appropriate to model year and weight classification listed shall be FAILED and those with emission rates equal to or lower than the applicable amounts shall be PASSED under this subsection.

**TABLE II**  
**MAXIMUM ALLOWABLE EMISSIONS STANDARDS**

Vehicle Model Year	Gross Vehicle Rating (Pounds)	Group Code	IDLE MODE		LOADED MODE OR UNLOADED 2500 RPM TEST	
			HC PPM	CO %	HC PPM	CO%
1975-1976	0 to 6000	C/T	700	6.0	--	--
1977-1978	0 to 6000	C/T	600	5.0	--	--

Vehicle Model Year	Gross Vehicle Rating (Pounds)	Group Code	IDLE MODE		LOADED MODE OR UNLOADED 2500 RPM TEST	
			HC PPM	CO %	HC PPM	CO%
1979-1980	0 to 6000	C/T	500	4.0	--	--
1981-newer	0 to 6000	C/T	220	1.2	220	1.2
1975-1978	6001 to 8000	LT	900	6.0	--	--
1979-1980	6001 to 8000	LT	750	4.5	--	--
1981-1982	6001-8000	LT	650	2.7	400	3.0
1983-newer	6001-8000	LT	400	1.2	300	3.0
1975-1980	8001-10,000	MT	950	6.5	--	--
1981-1983	8001-10,000	MT	800	5.4	450	3.5
1984-newer	8001-10,000	MT	630	4.0	400	3.0
1975-1980	10,001 to 25,999	HT	950	6.5	--	--
1981-1986	10,001 to 25,999	HT	800	5.5	500	3.5
1986-newer	10,001 to 25,999	HT	440	2.0	400	3.0

Note: These criteria will be reviewed by the Board annually pursuant to the State Implementation Plan for Albuquerque/Bernalillo County. Adjustments will be promulgated as appropriate.

**B. Anti-tampering:**

(1) Motor vehicles subject to this Part shall be inspected for the presence and proper connections of original design features and components designed to reduce CO and HC exhaust emissions. The features and components are as follows:

(a) Catalytic converter;

(b) Oxygen sensor;

(c) Air pump or air aspiration system as applicable.

(2) Any vehicle with such features or components removed or rendered inoperative shall be FAILED under this subsection. If no tampering is evident with these components or systems, this portion of the inspection shall be PASSED.

**C. Visible Emissions (Smoke):** All non-diesel vehicles subject to inspection must pass an inspection for visible emissions. The inspection for visible emissions shall be conducted after the anti-tampering inspection and prior to the exhaust measurement inspection.

(1) The vehicle must be placed in neutral gear with the parking brake secured and all accessories off.

(2) The engine speed shall be raised to approximately 2000 RPM and held constant for 10 seconds.

(3) If visible emissions are emitted for a period of two consecutive seconds, the vehicle shall FAIL this portion of the inspection.

[11/16/93. . .12/1/95; 20.11.101.14 NMAC - Rn, 20 NMAC 11.101.II.3, 10/1/02]

#### **20.11.101.15 VEHICLE INSPECTION REPORT:**

**A.** Vehicle Inspection Reports (VIRs) shall only be purchased at Program Headquarters. Unused VIRs shall not be exchanged, sold or given by any person, AIR CARE inspection facility, fleet AIR CARE station, or any other entity. All unused VIRs which a person, AIR CARE inspection facility, fleet AIR CARE station, or any other entity does not intend to use shall be turned in to the Headquarters for credit or a refund, as the Program Manager determines is appropriate.

**B.** A pass VIR shall be issued to each motorist whose vehicle has undergone inspection and passed all criteria relative to exhaust emissions, anti-tampering, and visible emissions as applicable. A fail VIR shall be issued to each motorist whose vehicle has undergone inspection and failed any of the criteria relative to exhaust emissions, anti-tampering, and visible emissions as applicable. Vehicles, which have failed any portion of an inspection and have been subsequently repaired and adjusted and passed a re-inspection, shall be issued a pass VIR. Pass VIRs shall be presented to the MVD upon re-registration of the vehicle.

**C.** Within 60 calendar days after each paid emissions inspection, one free re-inspection may be obtained at any AIR CARE inspection facility upon presentation of the failed VIR.

[11/16/93; 20.11.101.15 NMAC - Rn, 20 NMAC 11.101.II.4, 10/1/02]

### **20.11.101.16 REPAIRS, ADJUSTMENTS AND RE-INSPECTIONS:**

**A.** Each motor vehicle that fails an inspection required by 20.11.101 NMAC shall be repaired as necessary to pass re-inspection. Where replacement of a catalytic converter or oxygen sensor is required, such parts shall only be new aftermarket parts approved by the Program Manager or new original equipment, manufacturer's parts or manufacturer's assemblies. Repairs required by this subsection may include but are not limited to, the following as applicable to the type of failure:

**(1) Exhaust Emissions:** adjust idle speed, fuel/air ratio and ignition timing to manufacturer's specifications including replacement of spark plugs, spark plug wires, air filters and PCV specified by the manufacturer.

**(2) Anti-tampering:** replace the missing or disabled components with new replacement parts.

**(3) Visible Emissions:** repair engine or replace inoperative emission control devices as required to eliminate visible emissions. Repairs may include replacement of valves, rings, pistons, PCV, or EGR systems.

**B.** Any person may repair, adjust or replace parts as necessary to prepare a vehicle to pass re-inspection, but in order to qualify for a time extension as specified in 20.11.101.17 NMAC, a Certified AIR CARE Technician must perform the repair.

**C.** Within 60 calendar days after each paid emissions inspection, one free re-inspection may be obtained at any AIR CARE inspection facility upon presentation of the failed VIR.

[11/16/93; 20.11.101.16 NMAC - Rn, 20 NMAC 11.101.II.5, 10/1/02]

### **20.11.101.17 REPAIR TIME EXTENSION:**

**A. Normal Difficulty:** Vehicles, which are unable to pass re-inspection, are eligible to obtain a time extension, not to exceed two years, providing the following conditions are met:

**(1) Exhaust Emissions:** In order for a motor vehicle to be eligible for a time extension, the owner must:

(a) Provide evidence, satisfactory to the Program Manager, that a low emissions tune-up has been performed by a Certified AIR CARE Technician, to the extent possible considering engine condition; and repair and replace nonfunctional emissions control devices.

(b) Provide evidence that any emissions control devices needed to bring the vehicle into compliance are not available.

(c) Petition the Program Manager at the Program Headquarters, provide receipts for all repair work performed, and list at least the following information in order to be eligible for consideration:

- (i) vehicle VIN number,
- (ii) model year and manufacturer,
- (iii) owner's name and street address,
- (iv) valid driver's license number or any other information or documentation that the Program Manager may deem necessary; and
- (v) identification of where the re-inspection, tune-up and/or determination was made, including evidence that critical parts are unavailable if so claimed.

**(2) Anti-tampering:** In order for a motor vehicle to be eligible for a time extension, the vehicle must pass all criteria relative to exhaust emissions for its model year and weight. If the vehicle cannot pass the exhaust emissions, in order for a motor vehicle to be eligible for a time extension, the owner must:

(a) Provide evidence that a low emissions tune-up has been performed by a Certified AIR CARE Technician to the extent possible considering engine condition; repair and replace nonfunctional emissions control devices.

(b) Provide evidence that any emissions control devices needed to bring the vehicle into compliance are not available.

(c) Petition the Program Manager at the Headquarters, provide receipts for all repair work performed, and list at least the following information in order to be eligible for consideration:

- (i) vehicle VIN number,
- (ii) model year and manufacturer,
- (iii) owner's name and street address,
- (iv) valid driver's license number or any other information or documentation that the Program Manager may deem necessary, and

(v) identification of where the re-inspection, tune-up, and/or determination was made, including evidence that critical parts are unavailable if so claimed.

(d) Upon receipt of the petition the Program Manager may grant a time extension based upon the validity and applicability of the information provided.

(e) Time extensions for anti-tampering can be issued to the same owner for two registration cycles but are void and cannot be renewed upon sale of the vehicle. The total extensions granted shall not exceed 24 months. The holder of an original time extension must inform each potential purchaser that the vehicle has a time extension and the vehicle does not comply with the emission requirements of 20.11.101 NMAC. The seller also must inform each potential purchaser that the extension is void upon the sale of the vehicle and the vehicle cannot be registered unless the vehicle passes an emission inspection.

(f) In addition to the time extensions described above, the Program Manager has the discretion to issue time extensions for extraordinary circumstances, if consistent with the purposes of 20.11.101 NMAC, and shall report such extensions at the next Program report to the Board.

**B. Inspection Due Following Extension:** Any person who owns a vehicle for which a time extension has been issued shall have the vehicle inspected and passed within the time frame specified by the extension for that vehicle.

**C. Appeals:** Any person aggrieved by the decision of the Program Manager or the Program Manager's designee regarding a compliance time extension may appeal by petitioning the Director of the EHD. To perfect the appeal, the person aggrieved must deliver the completed form to the Headquarters within fifteen (15) consecutive days after receipt of the Program Manager's decision. Following receipt of the appeal, the Director of the EHD shall hold an administrative hearing, within fourteen (14) calendar days of receipt of the request, and report the Director's decision to the Program within 48 hours of the determination. By the end of the next working day or sooner, if reasonably possible, the Program shall report the decision of the Director of the EHD to the petitioner. The Director of the EHD will present written findings of fact and conclusions of law to the Program within 45 days, and the Program shall forward the findings and conclusions promptly to the petitioner.

[11/16/93. . .12/1/95; 20.11.101.17 NMAC - Rn, 20 NMAC 11.101.II.6, 10/1/02]

### **20.11.101.18 CERTIFICATION REQUIREMENTS FOR AIR CARE INSPECTION FACILITIES:**

No individual or business shall represent itself as a certified AIR CARE inspection facility without being in possession of a duly authorized and currently valid certificate

issued by the Program Manager. Violations of the requirements of 20.11.101.18 NMAC shall be a violation of this Part.

**A.** The Program shall enter into an emissions inspection contract with one or more independent contractors following the review of proposals (RFP), to provide for the construction, equipping, operation and maintenance of official test-only AIR CARE inspection facilities, in such numbers and locations as may be required by 40 CFR Part 51 to provide vehicle owners reasonably convenient access to inspection facilities for the purposes of obtaining compliance with 20.11.101 NMAC.

**B.** In consultation with the Mayor's Office, City legal staff, City Finance and Management Department, the City Council, and the County Commission, the Program Manager shall establish request for proposals (RFP) specifications and contract terms for a contract with the independent contractor(s) and negotiate any terms of a contract with the independent contractor(s).

**C.** The Program Manager is prohibited from entering into an emissions inspection agreement with any independent contractor who:

(1) Is engaged in the business of manufacturing or selling vehicles.

(2) Does not have the capability, resources or technical and management skill to adequately construct, equip, maintain and operate a sufficient number of official AIR CARE inspection facilities to meet the demand for inspection of every vehicle which is required to be submitted for inspection subject to 20.11.101 NMAC.

**D.** All independent contractors and persons employed by or contracted with the independent contractor to perform the terms of the emissions inspection contract shall be employees or agents of the independent contractor and not of the City, County, the VPMP or the Board. No employee, agent, or contractor of any independent contractor shall wear a badge, insignia, patch, emblem, or device, which would tend to indicate that such person is an employee of the City, County, or State.

**E.** No person shall solicit, advertise or imply that a facility is an AIR CARE inspection facility certified by the Program Manager to conduct inspections pursuant to this Part without having a current contract with the City, County, and Program.

**F.** No AIR CARE inspection facility owner or operator shall allow a person to conduct any part of an inspection pursuant to 20.11.101 NMAC unless that person is an AIR CARE inspector certified by the Program Manager and has a current Program-issued certificate on display on the premises.

**G.** Certified AIR CARE inspection facility owners/operators shall be responsible for the general management of their facility(ies) and for the supervision of their AIR CARE inspectors and technicians in accordance with this Part, the VPMP Procedures Manual and other procedures and policies of the Program.

## **H. Performance of Certified AIR CARE Inspection Facilities.**

(1) Each certified AIR CARE inspection facility shall obtain and pay for routine and unscheduled maintenance and for replacement of parts for its approved exhaust gas analyzer systems.

(2) Each certified AIR CARE inspection facility shall provide vehicle owners or drivers access to the inspection area so that the owner or driver can observe the official inspection. Such access can be limited, but in no way shall prevent full observation.

(3) Each certified AIR CARE inspection facility shall post, on the exterior of the facility, a sign in a conspicuous location indicating the fee charged for inspections and the approximate current waiting time for vehicle owners wanting their vehicle inspected. The sign shall meet the requirements established by the Program Manager and specified by the independent contractor's contract with the Program.

(4) A certified AIR CARE facility may not refuse any vehicle for inspection based upon the race, color, religion, sex, national origin or ancestry, age or physical handicap or disability of the motorist, nor may the facility refuse any vehicle for inspection because of the make, model, or year of the vehicle.

[11/16/93. . .12/1/95; 20.11.101.18 NMAC - Rn, 20 NMAC 11.101.II.7, 10/1/02]

### **20.11.101.19 FLEET AIR CARE INSPECTION STATIONS:**

**A.** No individual or business shall represent itself as a certified fleet AIR CARE station without being in possession of a duly authorized and currently valid certificate issued by the Program Manager. Violations of the requirements of 20.11.101.19 NMAC shall be a violation of this Part.

**B.** Any government entity, corporation, or other business entity may apply for authorization to become a fleet AIR CARE station authorized by the Program to perform inspections under this regulation. The fleet stations shall not offer inspections to the company's employees or the general public. Fleet AIR CARE stations shall be equipped and operated as required by this section, and any applicable provisions in the Procedures Manual. The sign requirements of 20.11.101.18 NMAC shall not apply to a fleet AIR CARE station.

**C.** Vehicles which fail to pass any one of the applicable criteria required in the following paragraphs: Paragraph (2), Exhaust Emissions; Paragraph (3), Anti-Tampering; or Paragraph (4), Visible Emissions (smoke); of Subsection C of 20.11.101.19 NMAC, shall be in noncompliance with this regulation, and a fail VIR shall be issued.

**(1) Approved Equipment for Testing Fleet Vehicles:** The Program Manager shall develop specifications and approve BAR 90 equipment which is capable

of testing vehicles during idle test modes (with second chance capabilities), and during an unloaded 2500 RPM test. The specifications shall be described in a separate document and shall meet the minimum requirements set forth by 40 CFR Part 51. All fleet AIR CARE stations shall be equipped with approved BAR 90 analyzers.

**(2) Fleet Vehicle Exhaust Emissions:** Exhaust emissions inspection procedures for all fleet vehicles, other than diesel-powered vehicles, at fleet AIR CARE stations are as follows: A non-diesel motor vehicle manufactured on or before the 1980 model year shall be required to take and pass only the idle mode test condition. A non-diesel motor vehicle manufactured in or after the 1981 model year shall be required to take and pass both the unloaded 2500 RPM test condition and the idle mode test condition.

**(a) Idle mode test condition:** The idle mode test shall be performed with:

(i) the vehicle in drive for pre 1981 model year vehicles with automatic transmissions, or

(ii) in neutral both for vehicles with manual transmissions and for post 1980 model year vehicles with automatic transmissions. Exhaust emissions shall be recorded for HC and CO concentrations after readings have stabilized or at the end of 30 seconds, whichever occurs first. A CO<sub>2</sub> reading less than 6% will be deemed as proof of exhaust sample dilution, and the vehicle shall be rejected from further emissions inspections until the vehicle is repaired.

**(b) 1981 and newer vehicles** shall be inspected and required to pass an unloaded 2500 rpm  $\pm$  300 rpm test and an idle mode test. The appropriate maximum allowables are listed on Table II, under 20.11.101.14 NMAC, and shall apply to both test conditions. For the 2500 RPM test the engine of all vehicles shall be conditioned by increasing the engine speed to 2500 RPM (+/-300) for a period of 30 seconds with the transmission in neutral. Exhaust emissions for HC and CO shall be recorded after the readings have stabilized or at the end of 30 seconds, whichever comes first. If during these 30 seconds the recorded readings are below the appropriate maximum allowable (PASS), the unloaded 2500-rpm test shall terminate and the engine speed shall be returned to idle for an idle mode test. If the recorded readings at 2500 rpm are above the appropriate maximum allowables (FAIL), real time sampling shall continue until the vehicle either passes or ninety (90) seconds have elapsed, whichever occurs first. After final exhaust emissions reading have been recorded, engine speed shall be returned to idle for an idle mode test. The idle mode test shall be performed as described in Subparagraph (a), of Paragraph (2), of Subsection C of 20.11.101.19 NMAC. During both tests a sampling algorithm shall allow for sampling system delay.

**(3) Anti-tampering:**

(a) Fleet motor vehicles subject to this regulation shall be inspected for the presence and proper connections of original design features and components designed to reduce CO and HC exhaust emissions. The features and components are as follows:

- (i) catalytic converter,
- (ii) oxygen sensor,
- (iii) air pump or air aspiration system as applicable.

(b) Any vehicle with such features or components removed or rendered inoperative shall be FAILED under this subsection. If no tampering is evident with these components or systems, this portion of the inspection shall be PASSED.

**(4) Visible Emissions (Smoke):** All non diesel vehicles subject to inspection shall pass an inspection for visible emissions. The inspection for visible emissions shall be conducted after the anti-tampering inspection and prior to the exhaust measurement inspection.

(a) The vehicle must be placed in neutral gear with the parking brake secured and all accessories off.

(b) The engine speed shall be raised to approximately 2000 RPM and held constant for 10 seconds.

(c) If visible emissions are emitted for a period of two consecutive seconds the vehicle shall FAIL this portion of the inspection.

**(5) Additional Requirements for Fleet Air Care Stations:**

(a) Each fleet AIR CARE station shall obtain and pay for routine and unscheduled maintenance and for replacement parts for its approved exhaust gas analyzer systems.

(b) No person shall solicit, advertise or imply that a business is a fleet AIR CARE station certified by the Program Manager to conduct inspections pursuant to this regulation without having a current Program issued certificate on display on the premises.

(c) No fleet AIR CARE station owner or operator shall allow a person to conduct any part of an inspection pursuant to this Part unless that person is an AIR CARE inspector certified by the Program Manager and has a current Program issued certificate on display on the premises.

(d) Certified fleet AIR CARE stations owners or operators shall be responsible for the general management of their station and for the supervision of their AIR CARE

inspectors and technicians in accordance with this regulation, the VPMP Procedures Manual, and other procedures and policies of the Program.

(e) Each certified fleet AIR CARE station shall obtain and pay for routine and unscheduled maintenance and for replacement of parts for its approved exhaust gas analyzer systems.

[11/16/93. . .12/1/95; 20.11.101.19 NMAC - Rn, 20 NMAC 11.101.II.8, 10/1/02]

#### **20.11.101.20 VEHICLE POLLUTION MANAGEMENT PROGRAM HEADQUARTERS:**

The Program Manager shall establish and maintain a VPMP headquarters, which shall be an emissions inspection facility, equipped with at least two lanes with Program certified emissions equipment capable of duplicating the idle mode and loaded mode test conducted at the AIR CARE inspection facilities. It shall be staffed with at least two technicians who are ASE certified. The facility shall be operated by the City to provide services to the public and as necessary to facilitate Program responsibilities and administer the provisions of 20.11.101 NMAC. The Headquarters shall have, but not be limited to, the following responsibilities:

**A.** Provide for non-binding mediation of disputes between vehicle owners and certified AIR CARE inspection facilities, certified AIR CARE inspectors, or certified AIR CARE technicians. If required by the Program Manager, the facility will provide verification at no cost to the person requesting the inspection.

**B.** Evaluate and issue compliance time extensions for vehicles unable to pass the emissions inspections as provided under the terms of 20.11.101 NMAC.

**C.** Investigate and maintain records regarding complaints against certified AIR CARE inspection facilities, certified AIR CARE technicians and certified AIR CARE inspectors, and forward such findings to the Board.

**D.** Implement and oversee a repair effectiveness program which will keep track of emission-related repairs at repair facilities throughout the Program area. Information collected regarding the repair effectiveness of repair facilities shall be tabulated and made available to consumers.

**E.** Perform quality assurance audits as required by 20.11.101.24 NMAC.

[11/16/93. . .12/1/95; 20.11.101.20 NMAC - Rn, 20 NMAC 11.101.II.9, 10/1/02]

#### **20.11.101.21 CERTIFICATION OF AIR CARE INSPECTORS:**

No person shall represent him or herself as a certified AIR CARE inspector without being in possession of a duly authorized and currently valid certificate issued by the Program Manager. Certificates issued under this subsection shall be valid for 12

months unless the Program Manager requires re-certification at some shorter time as provided below in Subsection C of 20.1.101.209 NMAC.

**A. Qualification Requirements for Air Care Inspectors:**

(1) A person desiring to be certified shall file an application with the Program Manager on forms provided by the Program. All certificates shall be issued by the Program. Before an applicant is granted a certificate, the applicant must demonstrate the general knowledge, skill and competence required by the Program and shall meet the training and testing requirements established by the Program Manager.

(2) Knowledge, skill, and competence that an applicant must demonstrate shall include, but not be limited to, the following:

(a) general operation and purpose of emissions control systems for all types of motor vehicles,

(b) how HC and CO relate to timing and air/fuel ratio control,

(c) rules and regulations pertaining to inspection and the inspection procedures set forth in the Procedures Manual and 20.11.101 NMAC,

(d) general understanding of the benefits to vehicle owners provided in the Defect Warranty Provisions of Section 207(a) and the Performance Warranty Provisions of Section 207(b) of the Federal Clean Air Act as it applies to the inspection,

(e) ability to recognize by visual inspection the emissions control equipment for 1975 and newer vehicles, distinguishing between those required and those not required during inspection,

(f) proper use, filing, and storage of inspection forms, certificates of inspection and supplemental documents, and

(g) ability to perform an actual vehicle emissions test from start to finish,

(h) other information as the Program Manager requires.

(3) The Program may issue a certificate to the applicant when the Program Manager determines that the applicant has successfully completed the certification requirements of this Part.

(4) Individuals certified under this subsection shall inform the Program Manager within ten days of any change in legal name, employment status, or current mailing address. Failure to keep the Program Manager informed may be cause for revocation of certification. Each certified AIR CARE Inspector would be assigned a

personal identification number, which will be used by the Program to correlate information in data audits.

**B. Performance of Certified Air Care Inspectors:** Every certified AIR CARE inspector shall follow the official procedures of the VPMP Procedures Manual and uphold the rules and regulations set forth by the Board and the Program Manager and shall do the following:

(1) at no time allow another person to use his or her certificate or personal code to perform an official AIR CARE inspection nor delegate his or her authority to another person to perform any portion of an official inspection under his or her name or personal code,

(2) accept all vehicles for emission inspection and perform inspections in an expedient manner so as to avoid unnecessary public inconvenience. However and AIR CARE inspector will not accept a vehicle for inspection if the inspection would pose a threat to any person's safety,

(3) comply with the requirements of 20.11.101 NMAC and all the regulations and official procedures established for the Program,

(4) at no time during the emissions inspections sequence attempt or allow adjustments to be performed on the vehicle being inspected until the final VIR is complete, and

(5) sign all certificates of inspection at the time of inspection.

**C. Re-qualification Requirements for Certified Air Care Inspectors:**

(1) The Program Manager will reissue certification to any AIR CARE inspector who demonstrates updated competency as evidenced under the then-current requirements administered by the Program. Such re-qualification shall be required upon expiration of a current annual certificate or sooner as provided below.

(a) If the Board determines a need to update the general qualifications of AIR CARE inspectors prior to the annual re-certification period, holders of such certificates may be required to re-qualify.

(b) As a result of auditing or investigating consumer complaints, a certified inspector may be required to re-qualify if the Program Manager determines that competency and related problems must be corrected in order to protect the public.

(2) Certified AIR CARE inspectors must re-qualify during the month of expiration of the then-current certification. The Program shall mail written notification to the facility or station address of record of each active certified inspector whose certificate is about to expire. The notice shall inform the inspector of the necessity for re-

qualification and the nature of the skills, systems, or any updated procedures or retraining deemed necessary for performance of emissions inspections. The notice shall state the deadline for re-certification.

[11/16/93; 20.11.101.21 NMAC - Rn, 20 NMAC 11.101.II.10, 10/1/02]

### **20.11.101.22 CERTIFICATION OF AIR CARE TECHNICIANS:**

No person shall represent him or herself as a certified AIR CARE technician without being in possession of a duly authorized and currently valid certificate issued by the Program Manager. Certificates issued under this subsection shall be valid for 12 months unless the Program Manager subsequently requires re-certification sooner for a reason provided below in Subsection B of 20.11.101.22 NMAC.

#### **A. Qualification Requirements for Air Care Technicians:**

(1) A person desiring to be certified shall file an application with the Program Manager on forms provided by the Program. All certificates shall be issued by the Program. Before an applicant is granted a certificate, the applicant must demonstrate the general knowledge, skill and competence required by the Program and shall meet the training and testing requirements established by the Program Manager.

(2) The competency test required by this section shall include, but not be limited to, knowledge of the following:

(a) how to use a Program-approved emissions systems reference guide,

(b) basic understanding of possible causes and effects of timing and air/fuel ratio on emissions,

(c) how to perform, when applicable, high altitude adjustments as required by manufacturer's specifications,

(d) program requirements applicable to vehicles for which special time extensions may be needed,

(e) how to use on board diagnostics, latest shop diagnostic tools and instruments available to automotive emissions technicians,

(f) the provisions of the Emissions Control Systems Performance Warranty provided as required by Section 207(b) of the Federal Clean Air Act as it applies to the inspection,

(g) the emissions control equipment for 1975 and newer vehicles that are essential to satisfy 20.11.101.12 NMAC, and the ability to recognize equipment which is

not necessary to repair or adjust in order to pass a vehicle emissions inspection, so the motorist's costs can be kept at a minimum,

(h) the regulations and procedures under which the Program operates.

(3) Individuals certified under this subsection shall inform the Program Manager within ten days of any change in legal name, employment status, or current mailing address. Failure to keep the Program Manager informed may be cause for revocation of certification. Each certified technician would be assigned a personal identification number, which will be used by the Program to correlate information in data audits.

(4) The Program Manager may waive those portions of the test described above in a, b, c, e, and g of Paragraph (2) of Subsection A of 20.11.101.22 NMAC upon the applicant's submittal and the Program's acceptance of current certification in engine repair and engine performance from the ASE, or other nationally recognized automotive certification authority acceptable to the Program Manager, or a showing of equivalent education and experience in emission control, testing and engine repair.

#### **B. Re-qualification Requirements for Certified Air Care Technicians:**

(1) The Program Manager will reissue certification to an AIR CARE technician who demonstrates updated competency as evidenced under the then-current requirements administered by the Program. Such re-qualification shall be required at the expiration of a current annual certificate or sooner as provided below.

(a) If the Board determines a need to update the qualifications of AIR CARE technicians prior to the annual re-certification period, holders of such certificates may be required to re-qualify.

(b) As a result of auditing or investigating consumer complaints, a certified AIR CARE technician may be required to re-qualify if the Program Manager determines that competency and related problems must be corrected in order to protect the public.

(2) Certified AIR CARE technicians must re-qualify within thirty (30) days prior to the date of expiration of the then-current certification. The Program shall mail written notification to the facility or station address of record to each active technician whose certificate is about to expire. The notice shall inform the technician of the necessity for re-qualification and the nature of the skills, systems or any updated procedures or retraining deemed necessary for performance of emissions repairs, which will comply with 20.11.101 NMAC. The notice shall state the deadline for re-certification.

[11/16/93. . .12/1/95; 20.11.101.22 NMAC - Rn, 20 NMAC 11.101.II.11, 10/1/02]

#### **20.11.101.23 EXEMPTED SPECIAL VEHICLES CLASSIFICATIONS:**

The following vehicles are exempted from emission inspections:

**A.** Motor vehicles with a GVW less than 1,000 pounds or greater than 26,000 pounds.

**B.** All new motor vehicles only during the initial registration period first following the date of the MCO.

**C.** Vehicles, which are fueled by a mixture of gasoline and oil for purposes of lubrication.

**D.** 1974 or older model year vehicles.

**E.** Diesel and electric powered vehicles.

**F.** Vehicles sold between licensed motor vehicle dealers.

**G.** Vehicles leased to a person residing outside of the County by a leasing company whose place of business is Bernalillo County. This exemption applies only to those vehicles operated in an area with no I/M Program.

**H.** Vehicles that are used for legally sanctioned competition and not operated on public streets and highways.

**I.** Implements of husbandry, or road machinery not regularly operated on public streets and highways.

**J.** Other vehicles, which are not regularly operated on public streets and highways after adequate proof, satisfactory to the Program Manager, is submitted to the Program.

[11/16/93; 20.11.101.23 NMAC - Rn, 20 NMAC 11.101.II.12, 10/1/02]

#### **20.11.101.24 QUALITY CONTROL OF AIR CARE INSPECTION FACILITIES:**

**A.** The Program shall conduct announced and unannounced quality assurance audits of each certified AIR CARE inspection facility as ordered by the Program Manager. The duties of the auditor shall include but not be limited to the following:

(1) verifying that the equipment, reference materials and staffing are consistent with the information on file with the Program Manager,

(2) checking the accuracy of data entry and production of the final inspection reports furnished to motorists,

(3) performing a complete quality assurance survey on the VEGAS as required by 40 CFR Part 51 appendix A,

(4) confirming that the field audit gases for standardizing approved analyzers used for inspections conform to the provisions outlined in 40 CFR, Part 86, Subpart B114 for automotive exhaust emissions inspections. Those gases shall be of "precision" quality, certified to be within  $\pm 1\%$  of the labeled concentration, and certified by the NIST.

**B.** The Program may perform audits without offering official credentials or identification by submitting any motor vehicle for inspection in order to examine the station operation under actual conditions. Such inspection vehicles may be offered at random times in a condition involving intentional maladjustment, or with emissions control components intentionally removed or rendered inoperative. The results of such audits by the Program will provide data for assessing the performance of the certified AIR CARE inspection facility and its adherence to the requirements of 20.11.101 NMAC and the VPMP Procedures Manual.

[11/16/93; 20.11.101.24 NMAC - Rn, 20 NMAC 11.101.II.13, 10/1/02]

#### **20.11.101.25 SPECIFICATIONS FOR APPROVED VEGAS:**

##### **A. Performance and Design Specifications for Emissions Inspection**

**Equipment:** The Program Manager shall establish the specifications for VEGAS, which shall be used exclusively by the AIR CARE facilities authorized by the Program to perform emission inspections. The VEGAS shall have the capability to perform emission inspections on vehicles under idle mode and loaded test conditions as required by this regulation and the VPMD Procedures Manual for AIR CARE inspection facilities and shall meet the calibration, adjustments, and quality control requirements of 40 CFR Part 51 Subpart S Appendix A. In addition, the Program Manager will establish specifications and approve equipment to be used for inspection of vehicles at fleet AIR CARE stations. Both of these specifications shall be described in separate documents and shall meet the minimum requirements set forth by 40 CFR Part 51. These specifications will be made available by the Program upon request.

**B. Changes and Equipment Updates:** No changes in design or performance characteristics of component specifications which may affect emission inspection equipment performance will be allowed without the Program Manager's written approval. It will be the emission inspection equipment manufacturer's responsibility to confirm that such changes have no detrimental effect on the equipment performance. All approved emission inspection equipment shall be updated as needed and as specified in the specifications document.

[11/16/93; 20.11.101.25 NMAC - Rn, 20 NMAC 11.101.II.14, 10/1/02]

#### **20.11.101.26 DISCIPLINARY ACTION, DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATIONS:**

**A.** The Program Manager is authorized, after reasonable investigation and showing of a violation of any provisions of 20.11.101 NMAC, to take disciplinary actions including

monetary penalties, and/or denial, suspension, or revocation of certification to operate under the Program as a certified fleet AIR CARE station, certified AIR CARE inspector or certified AIR CARE technician. In deciding on an appropriate action, the Program Manager may consider past violations on file against the charged party as well as previous actions, which have been taken by the Program against the charged party.

**B.** Notwithstanding the provisions of Subsection C of 20.11.101.26 NMAC, the Program Manager may immediately suspend the certification of a certified fleet AIR CARE station, certified AIR CARE inspector or certified AIR CARE technician if the Program Manager determines that continued operation as an fleet AIR CARE station, AIR CARE inspector or an AIR CARE technician would jeopardize the public health, safety and welfare; violate the VPMP Procedures Manual, or 20.11.101 NMAC; or compromise the Program. In the case of immediate suspension or revocation, a hearing shall be held within fourteen calendar days of receipt of a written request for a hearing by the station, inspector, or technician.

**C.** Prior to taking any action to suspend or revoke a certification, the Program Manager shall inform the inspector, technician, or fleet station manager of the charges. Any party so informed may request a hearing on the merits before the Program Manager. Such request must be made in writing to the Program Manager within fifteen (15) consecutive days of receipt of the notice of intent to suspend or revoke the certification.

**D.** Upon receipt of a written request for a hearing on the merits, the Program Manager shall set a date, time and place for the hearing no more than sixty days from the date of receipt of the request. No fewer than fifteen consecutive days before the hearing, the Program Manager shall inform the charged party of the date, time and place of the hearing. The Program Manager may appoint a hearing officer. At the hearing, the charged party may demonstrate why a monetary penalty should not be imposed and/or the certification should not be suspended or revoked.

**E.** At the hearing on the merits, the Program Manager may take appropriate action including monetary penalties and/or suspension or revocation of the certification or dismissal of the charges based on the findings of the initial investigation and the evidence presented at the hearing. The Program Manager may issue monetary penalties, which are authorized by the City of Albuquerque and Bernalillo County Joint Air Quality Control Board Ordinances; the City of Albuquerque and Bernalillo County Motor Vehicle Control Ordinances, or the Air Quality Control Act. The Program Manager may consider past violations on file against the charged party as well as previous actions, which may have been taken by the Program, or the judicial system against the charged party which are related to the requirements of 20.11.101 NMAC, the Procedures Manual, or other Program guidelines and requirements.

**F.** Any party whose application for certification is denied, suspended, or revoked may appeal the decision of the Program Manager to the Board. To perfect the appeal to the Board, the appellant must deliver a written request to the Headquarters within fifteen

consecutive days after receipt of the Program Manager's decision. The Board may make its determination based on the record or may require a hearing de novo. The Board may uphold, overturn or amend the Program Manager's decision. If the Board decides to conduct a hearing de novo, the Board may appoint a hearing officer, and the Board shall set a date, time and place for the hearing and shall hold the hearing within ninety (90) days of the Board's receipt of the written request. No fewer than fifteen consecutive days before the hearing, the Board shall inform the appellant of the date, time and place of the hearing. The decision of the Board shall be final.

**G.** Enforcement provisions regarding AIR CARE Inspection Facilities shall be incorporated and made part of the contract between the Program and Contractor. Penalties for violation of this Part may include monetary fines, suspensions or termination of the contract.

[11/16/93. . .12/1/95; 20.11.101.26 NMAC - Rn, 20 NMAC 11.101.II.15, 10/1/02]

**20.11.101.27 ENFORCEMENT:**

**A. Mandatory Inspections:** Any person who owns a motor vehicle subject to 20.11.101 NMAC and fails to demonstrate compliance with 20.11.101 NMAC shall be issued a failing VIR and shall be refused re-registration by MVD pursuant to the Motor Vehicle Code, 66-3-7.1 NMSA (1988).

**B. Procedural Provisions:** Any person who violates a requirement of 20.11.101 NMAC shall be guilty of a petty misdemeanor pursuant to either the City Joint Air Quality Control Board Ordinance 9-5-1-99(B) ROA 1994 or the County Joint Air Quality Control Board Ordinance No. 95-5 Section 17. Each day a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. Any person who violates a requirement of 20.11.101 NMAC also shall be subject both to all other enforcement actions authorized by the Air Quality Control Act, 74-2-1 et seq., NMSA 1978, and all other remedies available under law or equity.

[11/16/93. . .12/1/95; 20.11.101.27 NMAC - Rn, 20 NMAC 11.101.II.16, 10/1/02]

**20.11.101.28 ADMINISTRATIVE FEES FOR CERTIFICATIONS:**

Any person seeking a certification, or annual renewal thereof, to participate in the Program as an fleet AIR CARE station, AIR CARE inspector, or AIR CARE technician shall remit to the City the fee indicated below before a certification shall be issued by the Program.

- A.** Certified fleet AIR CARE station certification fee = \$200.00
- B.** Certified AIR CARE inspector certification fee = \$35.00;
- C.** Certified AIR CARE technician certification fee = \$35.00.

[11/16/93. . .12/1/95; 20.11.101.28 NMAC - Rn, 20 NMAC 11.101.II.17, 10/1/02]

## **PART 102: OXYGENATED FUELS**

### **20.11.102.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[11/1/89. . .12/1/95; 20.11.102.1 NMAC - Rn, 20 NMAC 11.102.I.1, 10/1/02; A, 9/1/04]

### **20.11.102.2 SCOPE:**

20.11.102 NMAC is applicable to gasoline motor fuel sold retail or wholesale or supplied for use in motor vehicles in Bernalillo County except Indian lands.

[12/1/95; 20.11.102.2 NMAC - Rn, 20 NMAC 11.102.I.2, 10/1/02; A 12/11/05]

### **20.11.102.3 STATUTORY AUTHORITY:**

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

[11/1/89. . .12/1/95; 20.11.102.3 NMAC - Rn, 20 NMAC 11.102.I.3, 10/1/02; A, 9/1/04; A 12/11/05]

### **20.11.102.4 DURATION:**

Permanent.

[12/1/95; 20.11.102.4 NMAC - Rn, 20 NMAC 11.102.I.4, 10/1/02]

### **20.11.102.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.102.5 NMAC - Rn, 20 NMAC 11.102.I.5 & A, 10/1/02]

### **20.11.102.6 OBJECTIVE:**

To provide for the use of oxygenated fuels in Bernalillo county to reduce tail pipe emissions from gasoline powered motor vehicles and to establish a contingency

measure in the event that monitored carbon monoxide levels in Bernalillo county exceed 85 percent of the federal ambient carbon monoxide standards.

[6/15/95. . .12/1/95; 20.11.102.6 NMAC - Rn, 20 NMAC 11.102.I.6, 10/1/02; A, 9/1/04]

#### **20.11.102.7 DEFINITIONS:**

In addition to the definitions in 20.11.102.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in 20.11.102.7 NMAC shall govern.

**A. "Department"** means the Albuquerque environmental health department or its successor agency.

**B. "Ethanol"** means a colorless volatile flammable alcohol with the molecular composition of  $\text{CH}_3\text{CH}_2\text{OH}$ .

**C. "Facility" or "facilities"** means a place or places of business which sells or supplies for wholesale or retail purposes gasoline motor fuel, including fuel-transporting businesses.

**D. "Gasoline motor fuels"** means any flammable liquid used primarily as fuel for the propulsion of motor vehicles, but does not include diesel engine fuel, kerosene, liquefied petroleum gas, natural gas and products specially prepared and sold for use in the turbo-prop or jet-type engines.

**E. "Manager"** means the manager of the vehicle pollution management division (VPMD).

**F. "MTBE"** means methyl tertiary butyl ether.

**G. "Methanol"** means a light volatile flammable poisonous liquid alcohol  $\text{CH}_3\text{OH}$  formed by the destructive distillation of wood or manufactured from natural gas or coal, and used in combination with heavier co-solvent alcohols as an octane enhancer for addition to gasoline.

**H. "Motor vehicle"** means any vehicle propelled by a spark ignited internal combustion engine which is designed primarily for travel on public highways and which is generally and commonly used to transport persons and property over the public highways.

**I. "Oxygen content by weight"** means a measurement of the percentage of oxygen in an oxygenated fuel.

**J. "Oxygenate"** means any oxygen-containing ashless, organic compound which may be used as a fuel or as a gasoline blending component and which was approved

as a blending agent under the provisions of a waiver issued by the U.S. environmental protection agency pursuant to the Clean Air Act, Section 211 (f) (4).

**K. "Oxygenated fuel"** means a motor vehicle fuel blend, whether leaded or unleaded, consisting primarily of gasoline and a substantial amount of one or more oxygenates, generally an alcohol or ether.

**L. "Vehicle pollution management division (VPMD)"** means the division within the department responsible for the administration of 20.11.102 NMAC.

**M. "Winter pollution season"** means the annual period beginning the first day of November and ending at the conclusion of the last day of February of the immediately following year.

[11/10/93; 20.11.102.7 NMAC - Rn, 20 NMAC 11.102.I.7, 10/1/02; A, 9/1/04; A 12/11/05]

#### **20.11.102.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.102.8 NMAC - Rn, 20 NMAC 11.102.8, 10/1/02]

#### **20.11.102.9 SAVINGS CLAUSE:**

Any amendment of 20.11.102 NMAC that is filed with the state records center shall not affect actions pending for violation of a city or county ordinance, or prior versions of 20.11.102 NMAC. Prosecution for a prior violation shall be governed and prosecuted under the statute, ordinance, regulation, part or permit in effect at the time the violation was committed.

[11/10/93. . .12/1/95; 20.11.102.9 NMAC - Rn, 20 NMAC 11.102.I.9, 10/1/02; A, 9/1/04; A 12/11/05]

#### **20.11.102.10 SEVERABILITY:**

If any section, subsection, sentence, phrase, clause, or word of 20.11.102 NMAC or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of the remaining provisions of 20.11.102 NMAC.

[11/10/93. . .12/1/95; 20.11.102.10 NMAC - Rn, 20 NMAC 11.102.I.10, 10/1/02; A 12/11/05]

#### **20.11.102.11 DOCUMENTS:**

Documents incorporated and cited in 20.11.102 NMAC may be viewed at the Albuquerque environmental health department, 400 Marquette NW, Albuquerque, NM, 87102.

[12/1/95; 20.11.102.11 NMAC - Rn, 20 NMAC 11.102.I.11 & A, 10/1/02; A, 9/1/04; A 12/11/05]

### **20.11.102.12 OXYGENATED FUELS:**

During the winter pollution season, oxygenated fuels shall be used in all gasoline powered motor vehicles as a wintertime air pollution control strategy for reduction of carbon monoxide emissions in Bernalillo county.

#### **A. Annual program duration and minimum oxygen content:**

(1) During the winter pollution season, no person shall supply or sell any gasoline motor fuel intended as a final product for fueling of motor vehicles within Bernalillo county, or sell at retail, or sell to a private or government fleet for consumption; or introduce such fuels into a motor vehicle in Bernalillo county unless the fuel contains a minimum 2.7 percent oxygen content by weight, except as required pursuant to 20.11.102.14 NMAC.

(2) The department shall establish the blending tolerance for oxygenated fuels.

(3) The board, after considering EPA guidelines and other applicable information, reports, data, and testimony, may make a determination by July of each year whether the oxygenate levels should be modified or remain the same.

(4) Oxygenates approved for use in this program shall be blended per unit volume of gasoline motor fuel, and blended up to 10 percent by volume for ethanol, or at the volume for any other gasoline motor fuel additive which has been issued a waiver by the EPA pursuant to the Clean Air Act, Section 211 (f) (4).

(5) No gasoline motor fuel blended with methanol and intended as a final product for fueling of motor vehicles shall be sold at retail or to a private or government fleet within Bernalillo county.

**B. Inventory:** Any supplier who provides gasoline or oxygenate blends in bulk in Bernalillo county must register with VPMD and provide the names, addresses and telephone numbers of all jobbers, fleet fueling facilities and retail outlets supplied. The inventory shall be submitted to VPMD by November 30, 2005 and by October 31 each year thereafter.

**C. Recordkeeping:** During the winter pollution season, any supplier providing gasoline in Bernalillo county must document whether each batch is oxygenated, the

oxygen content by weight and the oxygenate type and percent by volume. This documentation must accompany each shipment and be kept on file by the retailer or fleet facility for the duration of the winter pollution season.

**D. Labeling and notice to the public:**

(1) All oxygenated motor fuel sold shall be clearly labeled at each dispensing pump identifying the type of oxygenate, with labels provided by the department.

(2) All retail gasoline facilities shall keep readily available all pamphlets, brochures, fact sheets, and other written information provided to them by the department for information and dissemination to the public.

**E. Sampling:** A minimum of 20 percent of all retail stations and 10 percent of all fleet fueling facilities will be sampled. The department, upon presentation of proper identification, shall be allowed to enter a facility during reasonable times. The department may collect those samples deemed appropriate after paying for or offering to pay for the samples at any facility. Samples will be collected through the filler of the underground gasoline storage tanks as outlined in 40 CFR Part 80, Appendix D. If a sample cannot be taken directly from the underground tank, the sample may be taken from the gas pump nozzle and labeled accordingly.

**F. Analysis:** The department shall make a good faith effort to analyze the samples as soon as possible. Samples shall be analyzed in the field or at the VPMD laboratory on the same day the samples are collected, circumstances permitting. Samples will be analyzed for ethanol, MTBE, or other oxygenates. Any sample results contested by a distributor or station will be sent by the department to the New Mexico Department of Agriculture (NMDA) petroleum standards bureau for analysis. Sample analysis shall be conducted in accordance with the American society for testing and materials (ASTM) standards or equivalent. Analysis shall comply with ASTM D-5845, ASTM D-4815, or equivalent standard.

**G. Enforcement:**

(1) Samples containing at least 2.5 percent oxygen by weight shall be considered in compliance. Samples containing at least 2.0 percent but less than 2.5 percent oxygen by weight will result in a notice of warning and must be corrected at the time of the next fuel delivery. Samples containing at least 1.5 percent but less than 2.0 percent oxygen by weight will result in notice of violation (NOV) and must be corrected within 24 hours. The NOV will cite the reason(s) for non-compliance and will include the sample date and the results of the analysis in percent oxygen by weight. Samples containing less than 1.5 percent oxygen by weight or repeat violations for samples below 2.5 percent oxygen by weight shall result in an immediate "*stop sale*" order which will remain in effect until the violation is corrected as determined by the department. Any fuel dispensed in violation of a "*stop sale*" order will result in the director of the department issuing a compliance order and imposing a penalty of not less than \$500

and not more than \$15,000 per day as authorized by the New Mexico Air Quality Act, NMSA 1978,74-2-12.B.

(2) The department may enter into an agreement, as appropriate, with any agency of the state or other local government entity to assist in the monitoring, compliance, and enforcement of 20.11.102 NMAC.

**H. Suspension of program due to oxygenate shortage:** Should extreme and unusual circumstances occur in the marketplace preventing the blending of oxygenates at the levels required by 20.11.102 NMAC, the manager may take the necessary steps as a temporary emergency measure to relax or suspend 20.11.102 NMAC. The manager shall inform the members of the board of such action taken within seven days of this occurrence. At its next regular meeting, or at a special meeting if so called, the board shall review the manager's action.

**I. Program review:** By the regular meeting of the board in July of each program year, the department shall provide a report to the board reviewing the results of the program, which shall include an analysis of costs and benefits to the consumer, investigations of complaints, compliance and quality assurance activities, and other findings and recommendations.

[11/10/93, 12/1/95; 20.11.102.12 NMAC - Rn, 20 NMAC 11.102.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.102.II.1, 10/1/02; A, 9/1/04; A 12/11/05]

#### **20.11.102.13 [RESERVED]**

[11/10/93; 20.11.102.13 NMAC - Rn, 20 NMAC 11.102.II.2, 10/1/02; A, 9/1/04; Repealed, 12/11/05]

#### **20.11.102.14 CONTINGENCY MEASURE:**

If monitored carbon monoxide levels in Bernalillo county exceed 85 percent of the federal ambient carbon monoxide standards, then the minimum oxygen content by weight of 2.7 percent required in Paragraph (1), of Subsection A of 20.11.102.12 NMAC, will be increased to 3.0 percent beginning November 1 of the immediately following winter pollution season and continuing through the last day of the immediately following February and resuming every winter pollution season (November through February) thereafter.

[11/10/93. .6/15/95; 20.11.102.14 NMAC - Rn, 20 NMAC 11.102.II.3, 10/1/02; A, 9/1/04; A 12/11/05]

### **PART 103: MOTOR VEHICLE VISIBLE EMISSIONS**

#### **20.11.103.1 ISSUING AGENCY:**

Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600.

[11/28/89. . .12/1/95; 20.11.103.1 NMAC – Rn, 20 NMAC 11.103.I.1, 10/1/02]

**20.11.103.2 SCOPE:**

This Part is applicable to all motor vehicles, as defined in this Part, shall comply with the requirements of this Part, unless otherwise exempted.

[11/28/89. . .12/1/95; 20.11.103.2 NMAC – Rn, 20 NMAC 11.103.I.2, 10/1/02]

**20.11.103.3 STATUTORY AUTHORITY:**

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

[12/1/95; 20.11.103.3 NMAC – Rn, 20 NMAC 11.103.I.3, 10/1/02]

**20.11.103.4 DURATION:**

Permanent.

[12/1/95; 20.11.103.4 NMAC – Rn, 20 NMAC 11.103.I.4, 10/1/02]

**20.11.103.5 EFFECTIVE DATE:**

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

[12/1/95; 20.11.103.5 NMAC – Rn, 20 NMAC 11.103.I.5 & A, 10/1/02]

**20.11.103.6 OBJECTIVE:**

This Part is intended to provide for the control and regulation of visible air contaminant emissions from motor vehicles into the ambient air.

[11/28/89. . .12/1/95; 20.11.103.6 NMAC – Rn, 20 NMAC 11.103.I.6, 10/1/02]

**20.11.103.7 DEFINITIONS:**

In addition to the definitions in 20.11.103.7 NMAC the definitions in 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in this Part shall govern.

**A. "Motor Vehicle"** means any vehicle, including motorcycles, powered by gasoline or diesel fuel and which has been intended, designed and manufactured primarily for use in carrying passengers or cargo on public roads and highways.

**B. "Non Highway Motor Vehicle"** means any vehicle, including motorcycles, powered by gasoline or diesel fuel and which has been intended, designed and manufactured primarily for operation off public roads, streets, and highways.

**C. "Opacity"** means the degree to which an air contaminant emission obscures the view of an observer, expressed in percentage of obscuration or in the degree (percent) to which transmittance of light is reduced by an air contaminant emission.

**D. "Owner"** means any individual, partnership, firm, public or private corporation, association, trust, estate, political subdivision, or agency or any other legal entity or legal representative, agent, or assign which owns a vehicle. If the operator of the motor vehicle is not the owner, the owner shall have primary responsibility for compliance.

**E. "Metro Court"** means the courts and those employees of the State of New Mexico Metropolitan Court.

**F. "Visible Air Contaminant Emission"** means any fume, smoke, particulate matter, vapor or gas, or combination thereof, except water vapor or steam condensate.

[11/28/89. . .12/1/95; 20.11.103.7 NMAC – Rn, 20 NMAC 11.103.I.7, 10/1/02]

#### **20.11.103.8 VARIANCES:**

**[RESERVED]**

[12/1/95; 20.11.103.8 NMAC - Rn, 20 NMAC 11.103.8, 10/1/02]

#### **20.11.103.9 SAVINGS CLAUSE:**

Any amendment to 20.11.103 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, Air Quality Control Board Regulation 36, or 20.11.103 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part, or regulation section in effect at the time the violation was committed.

[12/1/95; 20.11.103.9 NMAC – Rn, 20 NMAC 11.103.I.9, 10/1/02]

#### **20.11.103.10 SEVERABILITY:**

If any section, paragraph, sentence, clause, or word of this Part or any federal standards incorporated herein is for any reason held to be unconstitutional or otherwise

invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.

[12/1/95; 20.11.103.10 NMAC – Rn, 20 NMAC 11.103.I.10, 10/1/02]

#### **20.11.103.11 DOCUMENTS:**

Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.103.11 NMAC – Rn, 20 NMAC 11.103.I.11 & A, 10/1/02]

#### **20.11.103.12 VISIBLE EMISSION REQUIREMENTS:**

**A.** No owner shall cause to be emitted from any gasoline powered highway or non-highway motor vehicle any continuous visible air contaminant emission while the vehicle is in operation for a period greater than two consecutive seconds.

**B.** No owner shall cause to be emitted from any diesel powered highway motor vehicle, 10,000 pounds gross vehicle weight rating or less, visible air contaminant emission while the vehicle is in operation for a period greater than five consecutive seconds, which is a shade or density of more than 25% opacity.

**C.** No owner shall cause to be emitted from any diesel powered highway motor vehicle, greater than 10,000 pounds gross vehicle weight rating, continuous visible air contaminant emission while the vehicle is in operation for a period greater than five consecutive seconds, which is a shade or density of more than 30 % opacity.

**D.** No owner shall cause to be emitted from any diesel powered non-highway motor vehicle continuous visible air contaminant emission while the vehicle is in operation for a period greater than ten consecutive seconds, which is a shade or density of more than 40 % opacity.

**E.** Diesel powered highway and non-highway motor vehicles exceeding these requirements shall be exempt for a period of ten minutes, if the excessive visible air contaminant emissions are a direct result of cold engine start-up and provided that the motor vehicle is in a stationary position.

[12/1/95; 20.11.103.12 NMAC – Rn, 20 NMAC 11.103.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.103.II.1, 10/1/02]

#### **20.11.103.13 ENFORCEMENT PROCEDURES:**

**A.** Complaints may be filed with the Department by any person who observes a motor vehicle emitting visible air contaminant emissions in excess of that allowed by this Part. A signed written complaint will authorize the Department to request the owner to

have his/her vehicle tested at Department facilities at no charge. If an owner fails the Opacity Test or does not present his/her motor vehicle for testing, in accordance with procedures set up by the Department, the Department may take appropriate enforcement action against the owner.

**B.** The Department shall enter into an agreement with the Metro Court to provide a free test for owners of motor vehicles, which have been issued a citation by a law enforcement officer for excessive visible air contaminant emissions. The owner will have sixty days to bring any failing motor vehicle into compliance and present it to the Department for testing. The Department may issue a clearance certificate to the Metro Court after testing a vehicle, which has shown compliance with the visible emission requirements of 20.11.103.12 NMAC.

**C.** The Department shall develop procedures to audit private and government fleets stationed in Bernalillo County for compliance with visible air contaminant emissions in accordance with this Part.

[12/1/95; 20.11.103.13 NMAC – Rn, 20 NMAC 11.103.II.2, 10/1/02]

#### **20.11.103.14 PROGRAM REVIEW:**

The Department will provide a periodic report to the Board reviewing the results of the program including findings and recommendations.

[11/28/89; 20.11.103.14 NMAC – Rn, 20 NMAC 11.103.II.3, 10/1/02]

### **PART 104: NEW MOTOR VEHICLE EMISSION STANDARDS**

#### **20.11.104.1 ISSUING AGENCY:**

Albuquerque-Bernalillo County Air Quality Control Board, P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-1972.

[20.11.104.1 NMAC - Rp, 20.11.104.1 NMAC, 12/31/2023]

#### **20.11.104.2 SCOPE:**

All manufacturers, dealers, rental car agencies, the United States, state and local governments, or other persons who deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register model year 2027 and subsequent model year passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles or motor vehicle engines, heavy-duty vehicles, heavy-duty engines or motor vehicle engines. All regulated entities subject to compliance with 20.11.104.120 NMAC (Large Entity Reporting Requirement).

[20.11.104.2 NMAC - Rp, 20.11.104.2 NMAC, 12/31/2023]

### **20.11.104.3 STATUTORY AUTHORITY:**

The Air Quality Control Act, Sections 74-2-1 to -17 NMSA 1978; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994, Sections 9-5-1-3, 9-5-1-4, 9-5-1-5 and 9-5-1-6; and Bernalillo County Code, Article II, Sections 30-32, 30-33, 30-34 and 30-35.

[20.11.104.3 NMAC - Rp, 20.11.104.3 NMAC, 12/31/2023]

### **20.11.104.4 DURATION:**

Permanent.

[20.11.104.4 NMAC - Rp, 20.11.104.4 NMAC, 12/31/2023]

### **20.11.104.5 EFFECTIVE DATE:**

December 31, 2023, except where a later date is cited at the end of a section.

[20.11.104.5 NMAC - Rp, 20.11.104.5 NMAC, 12/31/2023]

### **20.11.104.6 OBJECTIVE:**

To adopt and implement the California vehicle emission standards and requirements statewide pursuant to Section 177 of the federal Clean Air Act.

[20.11.104.6 NMAC - Rp, 20.11.104.6 NMAC, 12/31/2023]

### **20.11.104.7 DEFINITIONS:**

The definitions in the Air Quality Control Act, Section 74-2-2 NMSA 1978 shall apply in 20.11.104 NMAC. If a term is defined in Section 74-2-2 NMSA 1978 and 20.11.104 NMAC, the definition in 20.11.104 NMAC shall apply. The definitions in 20.11.1.7 NMAC, the Revised Ordinances of Albuquerque 1994, Section 9-5-1-2, and the Bernalillo County Code, Article II, Section 30-31 shall not apply in 20.11.104 NMAC. When a term in a provision of the California code of regulations (CCR), Title 13, Title 17, or the California health and safety code (CHSC) incorporated by reference is given a different meaning than the term defined for general purposes in 20.11.104 NMAC, the specific CCR or CHSC section's meaning and application of the term shall control, except that all references in the incorporated sections of the CCR and CHSC shall have a different meaning unique to New Mexico whenever appropriate depending on context and the entity's authority, as follows: "California" shall, whenever appropriate, mean "New Mexico", or "Bernalillo County" and the "City of Albuquerque", depending on the context; the "California Air Resources Board," "CARB," "state board," or "board" shall mean the "environmental improvement board" or the "environment department", or the "air quality control board" or the "environmental health department", depending on the

context; and "Executive Officer" shall mean the "secretary" or the "director", depending on the context; provided, however, the terms in the CCR and CHSC definitions incorporated by reference in 20.11.104.7 NMAC (Definitions) shall not be changed. For registration of a motor vehicle, when a term defined herein is also defined in the Motor Vehicle Code, Articles 1 through 8 of Chapter 66 NMSA 1978, and is given a different meaning than the term defined for general purposes in 20.11.104 NMAC, the Motor Vehicle Code meaning, and application of the term shall control.

**A. "Air quality control board"** means the Albuquerque-Bernalillo county air quality control board, which is a local board, as such term is defined in Subsection K of Section 74-2-2 NMSA 1978.

**B. "California Air Resources Board" or "CARB"** means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39003.

**C. "Certification"** means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39018.

**D. "Dealer"** means the same in 20.11.104 NMAC as it is defined in Subsection B of Section 57-16-3 NMSA 1978.

**E. "Emission standards"** means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39027, which New Mexico is authorized to adopt pursuant to 42 U.S.C. § 7507.

**F. "Emergency vehicle"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 1961.3(f)(10).

**G. "Environment department"** means the New Mexico environment department.

**H. "Environmental health department"** means the environmental health department, which is a local agency as such term is defined in Subsection I of Section 74-2-2 NMSA 1978.

**I. "Environmental improvement board"** means the same in 20.11.104 NMAC as it is defined in Subsection A of Section 74-1-3 NMSA 1978.

**J. "Fleet"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 2012(d).

**K. "Fleet owner"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 2012(d).

**L. "Greenhouse gas"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 1961.3(18).

**M. "Heavy-duty engine"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 1900(b)(5) or CCR, Title 17, Section 95662, as applicable.

**N. "Heavy-duty vehicle"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 1900(b)(6) or CCR, Title 17, Section 95662, as applicable.

**O. "Light-duty truck"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 1900(b)(11).

**P. "Manufacturer"** means the same in 20.11.104 NMAC as it is defined in Subsection J of Section 57-16-3 NMSA 1978.

**Q. "Medium-duty"** means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39037.5.

**R. "Medium-duty passenger vehicle"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 1900(b)(12).

**S. "Medium-duty vehicle"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 1900(b)(13) or CCR, Title 17, Section 95662, as applicable.

**T. "Methane"** means the chemical compound containing one atom of carbon and four atoms of hydrogen.

**U. "Model year"** means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39038.

**V. "Motor vehicle"** means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39039.

**W. "Motor vehicle engine"** means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39042.5.

**X. "Non-methane organic gas"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 1961.2.

**Y. "Particulate matter"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 1961.2.

**Z. "Passenger car"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 1900(b)(17).

**AA. "Passenger vehicle"** means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39046.

**BB. "Plug-in hybrid electric vehicle" or "PHEV"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 1962.4 and CCR, Title 13, Section 1963, as applicable.

**CC. "Recall"** means the same in 20.11.104 NMAC as it is defined in CCR, Title 13, Section 1900(b)(19).

**DD. "Register"** means to register a motor vehicle with the New Mexico motor vehicle division.

**EE. "Sale" or "sell"** means the transfer of equitable or legal title to a motor vehicle or motor vehicle engine to the ultimate purchaser.\

**FF. "Truck"** means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39054.

**GG. "Ultimate purchaser"** means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39055.5.

**HH. "Vehicle"** means the same in 20.11.104 NMAC as it is defined in CHSC, Section 39059.

**II. "Zero-emission vehicle" or "ZEV"** means the same in 20.11.104 NMAC as it is incorporated in CCR, Title 13, Sections 1962.2(a) and 1962.4(b).

**JJ. "ZEV value"** means a unit, expressed numerically, demonstrating delivery of qualified zero-emission vehicles or other vehicle allowances for the annual ZEV requirement.

[20.11.104.7 NMAC -Rp, 20.11.104.7 NMAC, 12/31/2023]

#### **20.11.104.8 DOCUMENTS:**

Documents incorporated and cited in 20.11.104 NMAC may be viewed at the environmental health department, 1 Civic Plaza NW, Albuquerque, NM 87102. Information on internet access to these documents may be obtained by contacting the environmental health department at (505) 768-1972.

[20.11.104.8 NMAC - Rp, 20.11.104.8 NMAC, 12/31/2023]

#### **20.11.104.9 SEVERABILITY:**

If any provision of 20.2.91 NMAC, or the application of such provision to any person or circumstance, is held invalid, the remainder of 20.2.91 NMAC, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.11.104.9 NMAC - Rp, 20.11.104.9 NMAC, 12/31/2023]

**20.11.104.10 CONSTRUCTION:**

20.11.104 NMAC shall be liberally construed to carry out its purpose.

[20.11.104.10 NMAC Rp, 20.11.104.10 NMAC, 12/31/2023]

**20.11.104.11 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of 20.11.104 NMAC shall not affect any administrative or judicial action initiated under those prior versions.

[20.11.104.11 NMAC-Rp, 20.11.104.11 NMAC, 12/31/2023]

**20.11.104.12 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with 20.11.104 NMAC does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[20.11.104.12 NMAC -Rp, 20.11.104.12 NMAC, 12/31/2023]

**20.11.104.13 LIMITATION OF DEFENSE:**

The existence of a valid registration or certification under 20.11.104 NMAC shall not constitute a defense to a violation of 20.11.104 NMAC, except the requirement for obtaining a registration or certification.

[20.11.104.13 NMAC - Rp, 20.11.104.13 NMAC, 12/31/2023]

**20.11.104.14 - 20.11.104.100 [RESERVED]**

[20.11.104.100 NMAC - Repealed, 12/31/2023]

**20.11.104.101 GENERAL REQUIREMENTS:**

**A.** Except as otherwise required, 20.11.104 NMAC shall apply to new motor vehicles, including passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles, where "new" means model years 2027 through 2032 with 7,500 miles or fewer on the odometer, and for dealers the mileage at the time of sale as determined by the odometer statement when the dealer acquired the motor vehicle; and medium-duty passenger vehicles, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines, where "new" means model years 2027 and subsequent with 7,500 miles or fewer on the odometer, and for dealers the mileage at the time of sale as determined by the odometer statement when the dealer acquired the motor vehicle.

**B.** A manufacturer, dealer, rental car agency, the United States, state or local government, or other person shall not deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, heavy-duty vehicles, heavy-duty engines, or motor vehicle engines unless such motor vehicle or motor vehicle engine is certified to the California vehicle emission standards, as incorporated by reference pursuant to 20.11.104 NMAC.

**C.** Each manufacturer shall comply with the motor vehicle emission standards, zero-emission motor vehicle requirements, reporting, warranty, labeling, recall campaign, and other applicable requirements contained in 20.11.104 NMAC.

**D.** Each manufacturer, dealer, rental car agency, the United States, state and local government, and other person shall comply with the environment department's and environmental health department's inspection and information requests issued pursuant to 20.2.91.115 NMAC (Inspections and Information Requests) and 20.11.104.115 NMAC (Inspections and Information Requests), respectively.

**E.** Each person registering a motor vehicle in New Mexico shall comply with the registration requirements in 20.11.104 NMAC.

**F.** The requirements in 20.11.104 NMAC shall not be applicable if exempt, as provided in 20.11.104.103 NMAC (Exemptions).

**G.** The requirements in 20.11.104 NMAC shall be in compliance with Motor Vehicle Dealers Franchising Act, Sections 57-16-1 to -16 NMSA 1978.

**H.** Except as provided in 20.11.104.120 NMAC (Large Entity Reporting Requirement), all regulated entities shall submit information specified in CCR, Title 13, Sections 2012.1 and 2012.2 to the secretary.

**I.** In 20.11.104 NMAC, New Mexico is inclusive of the city of Albuquerque and Bernalillo county, which allows for compliance on a statewide basis.

[20.11.104.101 NMAC - Rp, 20.11.104.101 NMAC, 12/31/2023]

## **20.11.104.102      INCORPORATION BY REFERENCE:**

**A.** Sections of the CCR and the CHSC incorporated by reference herein include the regulations as they existed on the effective date in 20.11.104.5 NMAC (Effective Date); incorporated sections of the CCR and the CHSC do not incorporate a later adoption or amendment of the regulation.

**B.** Each manufacturer of a passenger car, light-duty truck, medium-duty passenger vehicle, medium-duty vehicle, heavy-duty vehicle, heavy-duty engine, or motor vehicle

engine shall comply with each applicable standard in Title 13 and Title 17 of the CCR as incorporated by reference herein, as applicable.

**C.** The CCR sections from Title 13 and Title 17 unless otherwise noted incorporated by reference include:

- (1) Title 13, Section 1900: Definitions. As amended, 11/30/2022.
- (2) Title 13, Section 1956.8: Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy-Duty Engines and Vehicles, 2021 and Subsequent Zero-Emission Powertrains, and 2022 and Subsequent Model Heavy-Duty Hybrid Powertrains (medium-duty vehicle greenhouse gas emission standards at 1956.8(h) only). As amended, 11/30/2022.
- (3) Title 13, Section 1961.2: Exhaust Emission Standards and Test Procedures - 2015 through 2025 Model Year Passenger Cars, and Light-Duty Trucks, and 2015 through 2028 Model Year Medium-Duty Vehicles. As amended, 11/30/2022.
- (4) Title 13, Section 1961.3: Greenhouse Gas Exhaust Emission Standards and Test Procedures - 2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles. As amended, 11/30/2022.
- (5) Title 13, Section 1961.4: Exhaust Emission Standards and Test Procedures — 2026 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as amended 11/30/2022, except that subsection 1961.4(g)(1) is not adopted by reference.
- (6) Title 13, Section 1962.2: Zero-Emission Vehicle Standards for 2018 through 2025 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles. As amended, 11/30/2022.
- (7) Title 13, Section 1962.3: Electric Vehicle Charging Requirements. As amended, 11/30/2022.
- (8) Title 13, Section 1962.4: Zero-Emission Vehicle Requirements for 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks, as amended 11/30/2022, except that subsection 1962.4(c)(1)(B) model years "2033", "2034", and "2035 and subsequent" with corresponding percentage requirements and subsection 1962.4(e)(2)(A)(3) are not adopted by reference.
- (9) Title 13, Section 1962.5: Data Standardization Requirements for 2026 and Subsequent Model Year Light-Duty Zero Emission Vehicles and Plug-in Hybrid Electric Vehicles. As amended 11/30/2022.
- (10) Title 13, Section 1962.6: Battery Labeling Requirements. As amended 11/30/2022.

(11) Title 13, Section 1962.7: In-Use Compliance, Corrective Action and Recall Protocols for 2026 and Subsequent Model Year Zero-Emission and Plug-in Hybrid Electric Passenger Cars and Light-Duty Trucks. As amended, 11/30/2022.

(12) Title 13, Section 1962.8: Warranty Requirements for Zero-Emission and Batteries in Plug-in Hybrid Electric 2026 and Subsequent Model Year Passenger Cars and Light-Duty Trucks. As amended 11/30/2022.

(13) Title 13, Section 1963: Advanced Clean Trucks Purpose, Applicability, Definitions, and General Requirements. As amended, 3/15/2021.

(14) Title 13, Section 1963.1: Advanced Clean Trucks Deficits. As amended, 3/15/2021.

(15) Title 13, Section 1963.2: Advanced Clean Trucks Credit Generation, Banking, and Trading. As amended, 3/15/2021.

(16) Title 13, Section 1963.3: Advanced Clean Trucks Compliance Determination. As amended, 3/15/2021.

(17) Title 13, Section 1963.4: Advanced Clean Trucks Reporting and Recordkeeping. As amended, 3/15/2021.

(18) Title 13, Section 1963.5(a)(1)-(3): Advanced Clean Trucks Enforcement. As amended, 3/15/2021.

(19) Title 13, Section 1964: Special Test Procedures for Certification and Compliance – New Modifier Certified Motor Vehicles. As amended, 3/15/2021.

(20) Title 13, Section 1965: Emission Control, Smog Index, and Environmental Performance Labels - 1979 and Subsequent Model-Year Motor Vehicles. As amended, 11/30/2022.

(21) Title 13, Section 1968.2: Malfunction and Diagnostic System Requirements - 2004 and Subsequent Model-Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles and Engines. As amended, 11/30/2022.

(22) Title 13, Section 1969: Motor Vehicle Service Information - 1994 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Engines and Vehicles, and 2007 and Subsequent Model Heavy-Duty Engines. As amended, 11/30/2022.

(23) Title 13, Section 1971.1: On-Board Diagnostic System Requirements -- 2010 and Subsequent Model-Year Heavy-Duty Engines. As amended, 3/15/2021.

(24) Title 13, Section 1976: Standards and Test Procedures for Motor Vehicle Fuel Evaporative Emissions. As amended, 11/30/2022.

(25) Title 13, Section 1978: Standards and Test Procedures for Vehicle Refueling Emissions. As amended, 11/30/2022.

(26) Title 13, Section 2012: Advanced Clean Trucks, Large Entity Reporting Requirement. As amended, 3/15/2021.

(27) Title 13, Section 2012.1: General Entity Information Reporting. As amended, 3/15/2021.

(28) Title 13, Section 2012.2: Vehicle Usage by Facility Reporting. As amended, 3/15/2021.

(29) Title 13, Section 2035: Purpose, Applicability, and Definitions. As amended, 10/1/2019.

(30) Title 13, Section 2036: Defects Warranty Requirements for 1979 Through 1989 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles; 1979 and Subsequent Model Motorcycles and Heavy-Duty Vehicles; and Motor Vehicle Engines Used in Such Vehicles; and 2020 and Subsequent Model Year Trailers. As amended, 12/22/2021.

(31) Title 13, Section 2037: Defects Warranty Requirements for 1990 and Subsequent Model Passenger Cars, Light-Duty Trucks, Medium-Duty Vehicles, and Motor Vehicle Engines Used in Such Vehicles. As amended, 11/30/2022.

(32) Title 13, Section 2038: Performance Warranty Requirements for 1990 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and Motor Vehicle Engines Used in Such Vehicles. As amended, 11/30/2022.

(33) Title 13, Section 2039: Emission Control System Warranty Statement. As amended, 12/26/1990.

(34) Title 13, Section 2040: Vehicle Owner Obligations. As amended, 10/1/2019.

(35) Title 13, Section 2041: Mediation; Finding of Warrantable Condition. As amended, 12/26/1990.

(36) Title 13, Section 2046: Defective Catalyst. As amended, 2/15/1979.

(37) Title 13, Section 2047: Certification Procedures for User Modifier-certified Motor Vehicles. As amended, 1/8/1988.

- (38) Title 13, Section 2062: Assembly-line Test Procedures - 1998 and Subsequent Model Years. As amended, 8/7/2012.
- (39) Title 13, Section 2109: New Vehicle Recall Provisions. As amended, 12/30/1983.
- (40) Title 13, Section 2111: Applicability. As amended, 12/22/2021.
- (41) Title 13, Section 2112: Definitions. As amended, 11/30/2022.
- (42) Title 13, Section 2113: Initiation and Approval of Voluntary and Influenced Emission-Related Recalls. As amended, 12/22/2021.
- (43) Title 13, Section 2114: Voluntary and Influenced Recall Plans. As amended, 12/22/2021.
- (44) Title 13, Section 2115: Eligibility for Repair. As amended, 12/22/2021.
- (45) Title 13, Section 2116: Repair Label. As amended, 12/22/2021.
- (46) Title 13, Section 2117: Proof of Correction Certificate. As amended, 12/22/2021.
- (47) Title 13, Section 2118: Notification. As amended, 12/22/2021.
- (48) Title 13, Section 2119: Recordkeeping and Reporting Requirements. As amended, 12/22/2021.
- (49) Title 13, Section 2120: Other Requirements Not Waived. As amended, 1/26/1995.
- (50) Title 13, Section 2121: Penalties. As amended, 12/22/2021.
- (51) Title 13, Section 2122: General Provisions. As amended, 12/8/2010.
- (52) Title 13, Section 2123: Initiation and Notification of Ordered Emission-Related Recalls. As amended, 12/22/2021.
- (53) Title 13, Section 2124: Availability of Public Hearing. As amended, 1/26/1995.
- (54) Title 13, Section 2125: Ordered Recall Plan. As amended, 12/22/2021.
- (55) Title 13, Section 2126: Approval and Implementation of Recall Plan. As amended, 12/22/2021.

- (56) Title 13, Section 2127: Notification of Owners. As amended, 12/22/2021.
- (57) Title 13, Section 2128: Repair Label. As amended, 12/22/2021.
- (58) Title 13, Section 2129: Proof of Correction Certificate. As amended, 12/22/2021.
- (59) Title 13, Section 2130: Capture Rates and Alternative Measures. As amended, 12/22/2021.
- (60) Title 13, Section 2131: Preliminary Tests. As amended, 12/22/2021.
- (61) Title 13, Section 2132: Communication with Repair Personnel. As amended, 1/26/1995.
- (62) Title 13, Section 2133: Recordkeeping and Reporting Requirements. As amended, 12/22/2021.
- (63) Title 13, Section 2135: Extension of Time. As amended, 1/26/1995.
- (64) Title 13, Section 2137: Vehicle, Engine, and Trailer Selection. As amended, 11/30/2022.
- (65) Title 13, Section 2139: Testing. As amended, 12/22/2021.
- (66) Title 13, Section 2140: Notification and Use of Test Results. As amended, 11/30/2022.
- (67) Title 13, Section 2141: General Provisions. As amended, 12/22/2021.
- (68) Title 13, Section 2142: Alternative Procedures. As amended, 12/22/2021.
- (69) Title 13, Section 2143: Failure Levels Triggering Recall and Corrective Action. As amended, 12/22/2021.
- (70) Title 13, Section 2144: Emission Warranty Information Report. As amended, 12/22/2021.
- (71) Title 13, Section 2145: Field Information Report. As amended, 12/22/2021.
- (72) Title 13, Section 2146: Emissions Information Report. As amended, 12/22/2021.
- (73) Title 13, Section 2147: Demonstration of Compliance with Emission Standards. As amended, 11/30/2022.

- (74) Title 13, Section 2148: Evaluation of Need for Recall. As amended, 12/22/2021.
- (75) Title 13, Section 2149: Notification and Subsequent Action. As amended, 12/22/2021.
- (76) Title 13, Section 2166: General Provisions. As amended, 12/22/2021.
- (77) Title 13, Section 2166.1: Definitions As amended, 12/22/2021.
- (78) Title 13, Section 2167: Required Recall and Corrective Action for Failures of Exhaust After- Treatment Devices, on-Board Computers or Systems, Urea Dosers, Hydrocarbon Injectors, Exhaust Gas Recirculation Valves, Exhaust Gas Recirculation Coolers, Turbochargers, Fuel Injectors. As amended, 12/22/2021.
- (79) Title 13, Section 2168: Required Corrective Action and Recall for Emission-Related Component Failures. As amended, 12/22/2021.
- (80) Title 13, Section 2169: Required Recall or Corrective Action Plan. As amended, 12/22/2021.
- (81) Title 13, Section 2169.1: Approval and Implementation of Corrective Action Plan. As amended, 12/22/2021.
- (82) Title 13, Section 2169.2: Notification of Owners. As amended, 12/22/2021.
- (83) Title 13, Section 2169.3: Repair Label. As amended, 12/22/2021.
- (84) Title 13, Section 2169.4: Proof of Correction Certificate. As amended, 12/22/2021.
- (85) Title 13, Section 2169.5: Preliminary Tests. As amended, 12/22/2021.
- (86) Title 13, Section 2169.6: Communication with Repair Personnel. As amended, 12/22/2021.
- (87) Title 13, Section 2169.7: Recordkeeping and Reporting Requirements. As amended, 12/22/2021.
- (88) Title 13, Section 2169.8: Extension of Time. As amended, 12/22/2021.
- (89) Title 13, Section 2170: Penalties. As amended, 12/22/2021.
- (90) Title 13, Section 2235: Requirements. As amended, 10/1/2019.

(91) Title 13, Section 2423: Exhaust Emission Standards and Test. As amended, 12/22/2021.

(92) Title 13, Section 2485: Airborne Toxic Control Measure to Limit Diesel-Fueled Commercial Motor Vehicle Idling. As amended, 12/22/2021.

(93) Title 17, Section 95660: Purpose. As amended, 11/30/2022.

(94) Title 17, Section 95661: Applicability. As amended, 12/5/2014.

(95) Title 17, Section 95662: Definitions. As amended, 12/22/2021.

(96) Title 17, Section 95663: Greenhouse Gas Exhaust Emission Standards and Testing Procedures for New 2014 and Subsequent Model Heavy-Duty Vehicles. As amended, 12/22/2021.

[20.11.104.102 NMAC - Rp, 20.11.104.102 NMAC, 12/31/2023]

### **20.11.104.103 EXEMPTIONS:**

The following motor vehicles shall not be subject to 20.11.104 NMAC.

**A.** Military tactical vehicles, which shall mean the same in this section as in CCR, Title 13, Section 1905.

**B.** Motor vehicles sold for registration in a state that is not New Mexico.

**C.** Motor vehicles that have greater than 7,500 miles on the odometer.

**D.** Motor vehicles available for rent to a final destination outside of New Mexico.

**E.** Motor vehicles transferred from one person to another person due to: death, inheritance, devise or bequest; divorce, dissolution, annulment or legal separation; merger or consolidation; bankruptcy; court judgment or decree; or possessory lien, seizure or foreclosure.

**F.** Emergency vehicles.

**G.** A motor vehicle acquired by a resident of New Mexico to replace a motor vehicle registered to such resident that was stolen, damaged, or failed beyond reasonable repair while out of state, provided that such replacement motor vehicle is acquired out of state when the previously owned motor vehicle was stolen, damaged, or failed beyond reasonable repair.

**H.** A motor vehicle with a right-hand drive configuration that is not available in a California-certified model, purchased by a rural route postal carrier and used primarily for work.

**I.** Motor vehicles purchased by a nonresident before establishing residency in New Mexico, regardless of the mileage on the odometer.

**J.** Motor vehicles purchased by a resident of New Mexico while assigned to active government service outside New Mexico.

**K.** Custom and assembled motor vehicles that:

(1) are maintained for occasional transportation, exhibitions, club activities, parades, tours, testing of operation, repair, maintenance, and similar uses; and

(2) are not used for general daily transportation.

**L.** A vehicle sold for the purpose of being wrecked or dismantled.

**M.** Motor vehicles used exclusively in the conduct of agricultural operations, like implements of husbandry not including a vehicle whose existing design is primarily for the transportation of persons or property on a highway, or road machinery not regularly operated on public streets and highways.

**N.** A vehicle defined as an "excluded bus" pursuant to CCR, Title 13, Section 1963(c)(11).

[20.11.104.103 NMAC - Rp, 20.11.104.103 NMAC, 12/31/2023]

**20.11.104.104 FLEET AVERAGE NON-METHANE ORGANIC GAS PLUS OXIDES OF NITROGEN EXHAUST EMISSION STANDARDS, REPORTING AND COMPLIANCE:**

**A.** Beginning model year 2027 and subsequent years, this 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) applies to manufacturers that deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register passenger cars, light-duty trucks, and medium-duty vehicles pursuant to the requirements of CCR, Title 13, Section 1961.4.

**B.** Each manufacturer subject to 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) shall comply with fleet average non-methane organic gas plus oxides of nitrogen exhaust emission standards for passenger cars, light-duty trucks, and medium-duty vehicles, and other requirements set forth in CCR, Title 13, Section 1961.4. Compliance shall be based on the motor vehicles subject to

20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) and 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall be determined on a statewide basis.

**C.** Each manufacturer subject to Subsection B of 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) shall accrue fleet average non-methane organic gas plus oxides of nitrogen exhaust emission standard credits and debits and may use credits in accordance with CCR, Title 13, Section 1961.4. Each manufacturer shall accrue and use debits and credits based on the number of motor vehicles subject to Subsection B of 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) and Subsection B of 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance). Accounting for the use of debits and credits shall be on a statewide basis.

**D.** Each manufacturer subject to Subsection B of 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) shall submit a report by May 1 of each year to the environment department that includes the statewide fleet average non-methane organic gas plus oxides of nitrogen exhaust emission data for the model year just ended. The report shall be in accordance with the procedures in CCR, Title 13, Section 1961.4 and be in the same format used to report such information to CARB. If a manufacturer elects to report the information required pursuant to Subsection B of 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) and Subsection B of 20.2.91.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) using the pooling provisions set forth in CCR, Title 13, Section 1961.4, the manufacturer shall report to the environment department the information for the entire pool as well as for the portion specific to New Mexico.

[20.11.104.104 NMAC - Rp, 20.11.104.104 NMAC, 12/31/2023]

#### **20.11.104.105 PARTICULATE MATTER EXHAUST EMISSION STANDARDS, REPORTING AND COMPLIANCE:**

Beginning model year 2027 and subsequent years, each manufacturer subject to 20.11.104.105 NMAC (Particulate Matter Exhaust Emission Standards, Reporting and Compliance) shall comply with particulate exhaust emission standards for passenger cars, light-duty trucks, medium-duty passenger vehicles, and medium-duty vehicles, and other requirements set forth in CCR, Title 13, Section 1961.4. Compliance shall be based on the motor vehicles subject to 20.11.104.105 NMAC (Particulate Matter

Exhaust Emission Standards, Reporting and Compliance) and 20.2.91.105 NMAC (Particulate Matter Exhaust Emission Standards, Reporting and Compliance) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall be determined on a statewide basis.

[20.11.104.105 NMAC - Rp, 20.11.104.105 NMAC, 12/31/2023]

**20.11.104.106 FLEET AVERAGE GREENHOUSE GAS EXHAUST EMISSION STANDARDS, REPORTING AND COMPLIANCE:**

**A.** Beginning model year 2027 and subsequent years, this 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) applies to manufacturers that deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register passenger cars, light-duty trucks, and medium-duty vehicles pursuant to the requirements of CCR, Title 13, Section 1961.3.

**B.** Each manufacturer subject to 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) shall comply with fleet average greenhouse gas exhaust emission standards for passenger cars, light-duty trucks, and medium-duty passenger vehicles, and other requirements set forth in CCR, Title 13, Section 1961.3. Compliance shall be based on the motor vehicles subject to 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) and 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall be determined on a statewide basis.

**C.** Each manufacturer subject to Subsection B of 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) shall accrue fleet average greenhouse gas exhaust emission standard credits and debits and may use credits in accordance with CCR, Title 13, Section 1961.3. Each manufacturer shall accrue and use debits and credits based on the number of motor vehicles subject to Subsection B of 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) and Subsection B of 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance). Accounting for the use of debits and credits shall be on a statewide basis.

**D.** Each manufacturer subject to Subsection B of 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) shall submit a report by May 1 of each year to the environment department that includes the statewide fleet average greenhouse gas exhaust emission standard data for the model year just ended. The report shall include the number of motor vehicles in each test group, delineated by model type certified pursuant to CCR, Title 13, Section 1961.3, be in accordance with the procedures in CCR, Title 13, Section 1961.3, and be in the

same format used to report such information to CARB. If a manufacturer reports the information required pursuant to Subsection B of 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) and Subsection B of 20.2.91.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) using option number 2 for the "Calculation of fleet average carbon dioxide value" set forth in CCR, Title 13, Section 1961.3(a)(5)(D), the manufacturer shall report the information for the entire pool as well as for the portion specific to New Mexico.

[20.11.104.106 NMAC - Rp, 20.11.104.106 NMAC, 12/31/2023]

#### **20.11.104.107 FLEET AVERAGE EXHAUST EMISSION STANDARDS REMEDICATION REPORT:**

**A.** If the environment department determines that a report submitted by a manufacturer pursuant to 20.11.104.104 NMAC (Fleet Average Non-methane Organic Gas Plus Oxides of Nitrogen Exhaust Emission Standards, Reporting and Compliance) or 20.11.104.106 NMAC (Fleet Average Greenhouse Gas Exhaust Emission Standards, Reporting and Compliance) demonstrates that the manufacturer is not in compliance with the fleet average non-methane organic gas plus oxides of nitrogen exhaust emission standards or the fleet average greenhouse gas exhaust emission standards, respectively, the manufacturer shall be required to submit a fleet average remediation report to the environment department.

**B.** A fleet average remediation report shall be submitted to the environment department within 60 calendar days after notice from the environment department.

**C.** The fleet average remediation report shall, at a minimum:

- (1) describe how the manufacturer intends to equalize any accrued debits;
- (2) identify all motor vehicle models and the percentage of each model delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico with their corresponding certification standards for New Mexico and California in relation to total sales in each respective state; and
- (3) describe how the manufacturer intends to achieve compliance with the fleet average non-methane organic gas plus oxides of nitrogen exhaust emission standards or the fleet average greenhouse gas exhaust emission standards, as applicable, in future model years.

[20.11.104.107 NMAC - Rp, 20.11.104.107 NMAC, 12/31/2023]

#### **20.11.104.108 LIGHT- AND MEDIUM-DUTY ZERO-EMISSION VEHICLE REQUIREMENTS, REPORTING AND COMPLIANCE:**

**A.** Effective model years 2027 through 2032, this 20.11.104.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) applies to manufacturers that deliver for sale, offer for sale, sell, import, deliver or lease passenger cars, light-duty trucks, and medium-duty vehicles pursuant to the requirements of CCR, Title 13, Section 1962.4.

**B.** Each manufacturer subject to 20.11.104.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) shall comply with the annual ZEV requirement set forth in CCR, Title 13, Section 1962.4 using New Mexico specific vehicle production volume calculated in accordance with CCR, Title 13, Section 1962.4. Manufacturer's compliance with the annual ZEV requirement in New Mexico shall be based on the motor vehicles subject to 20.11.104.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) and 20.2.91.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, or leases in New Mexico, and shall be determined on a statewide basis.

**C.** Each manufacturer subject to 2.11.104.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) shall submit to the environment department all reports in accordance with CCR, Title 13, Section 1962.4 for motor vehicles delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico during the previous model year. The reports shall be on a statewide basis and formatted as determined by the environment department.

**D.** Manufacturers subject to 20.11.104.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) may fulfill a portion of their compliance requirement with any of the additional vehicle values and allowances in accordance with CCR, Title 13, Section 1962.4, including:

(1) PHEVs produced and delivered for sale in New Mexico in accordance with CCR, Title 13, Section 1962.4;

(2) New ZEVs and PHEVs provided for use in qualified community-based clean mobility programs in New Mexico, which means a program determined by the environment department to qualify as a community-based clean mobility program pursuant to guidance issued by the environment department; a manufacturer cannot earn vehicle values pursuant to the requirements of CCR, Title 13, Section 1962.4 until the environment department determines a program qualifies as a community-based clean mobility program;

(3) ZEVs and PHEVs initially leased in New Mexico and sold at the end of lease to a New Mexico dealer participating in a financial assistance program, which means a vehicle purchase incentive program where approved dealers accept a point-of-sale incentive for used ZEVs and PHEVs for lower-income consumers; qualifying

programs in New Mexico will be approved by the environment department and posted on the environment department website;

(4) New ZEVs and PHEVs delivered for sale in New Mexico below the manufacturer's suggested retail price threshold in accordance with CCR, Title 13, Section 1962.4; and

(5) Early compliance vehicle values for model years 2025 and 2026 earned in accordance with CCR, Title 13, Section 1962.4.

**E.** Manufacturers subject to 20.11.104.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance) may fulfill any deficit portion of their total annual ZEV requirement with additional allowances in accordance with CCR, Title 13, Section 1962.4 and 20.11.104.109 (Voluntary Early Action Credits and Onetime Values), including: with converted ZEV values and PHEV values earned pursuant to 20.11.104.109 NMAC (Voluntary Early Action Credits and Onetime Values); and with ZEV values and PHEV values transferred from other states ("Pooled Values") pursuant to CCR, Title 13, Section 1962.4.

**F.** In New Mexico, manufacturers shall make up any deficits incurred for a model year by submitting a commensurate amount of ZEV values to the secretary within three years to fulfill any remaining deficit of their annual ZEV requirement in a given model year in accordance with CCR, Title 13, Section 1962.4.

[20.11.104.108 NMAC - Rp, 20.11.104.108 NMAC, 12/31/2023]

**20.11.104.109 VOLUNTARY EARLY ACTION CREDITS AND ONETIME VALUES:**

**A.** Beginning July 1, 2022, for model years 2023 through 2025, this 20.11.104.109 NMAC (Voluntary Early Action Credits and Onetime Values) applies to manufacturers that deliver for sale, offer for sale, sell, import, deliver or lease passenger cars, light-duty trucks, and medium-duty vehicles pursuant to the requirements of CCR, Title 13, Section 1962.2.

**B.** A manufacturer may earn early action credits for motor vehicles delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico as set forth in CCR, Title 13, Section 1962.2. To earn early action credits, a manufacturer shall report all prior model year qualifying motor vehicles from this Subsection B of 20.11.104.109 NMAC (Voluntary Early Action Credits and Onetime Values) and Subsection B of 20.2.91.109 NMAC (Voluntary Early Action Credits and Onetime Values) to the environment department before May 1 following each applicable year. Early action credits shall be calculated on a statewide basis and at the conclusion of the reporting for model year 2025 converted to ZEV values and PHEV values. The department shall verify, record, track, and report early action credits calculated on a statewide basis. At the conclusion of the reporting for model year 2025, the department shall follow CARB's

procedures to convert early action credits to ZEV values and PHEV values as set forth in CCR, Title 13, Section 1962.4(g)(2)(A).

**C.** For model 2025, a manufacturer may earn either early action credits as set forth 20.11.104.109 NMAC (Voluntary Early Action Credits and Onetime Values) and 20.2.91.109 NMAC (Voluntary Early Action Credits and Onetime Values) or early compliance vehicle values as set forth in 20.11.104.108 NMAC (Light- and Medium-Duty Zero-emission Vehicle Requirements, Reporting and Compliance), both which are calculated on a statewide basis. A manufacturer shall make this election in its report for model year 2025.

**D.** In addition to earning early action credits, a manufacturer may earn onetime ZEV values and PHEV values equal to their converted early action credits, calculated on a statewide basis. To earn the onetime ZEV and PHEV values, a manufacturer shall submit a request to the environment department by May 1, 2026.

**E.** Notwithstanding the provisions set forth in CCR, Title 13, Subsections 1962.4(g)(2)(B) and (C), ZEV values and PHEV values issued pursuant to 20.11.104.109 NMAC (Voluntary Early Action Credits and Onetime Values) may be used, and shall only be used by a manufacturer subject to 20.11.104.108 NMAC (Light- and Medium-Duty Zero-Emission Vehicle Requirements, Reporting and Compliance) or traded to a manufacturer subject to 20.11.104.108 NMAC (Light- and Medium-Duty Zero-Emission Vehicle Requirements, Reporting and Compliance) to fulfill a deficit portion of their annual ZEV requirement in New Mexico for model years 2027 through 2029.

**F.** ZEV values and PHEV values issued pursuant to 20.11.104.109 NMAC (Voluntary Early Action Credits and Onetime Values) may only be used for compliance with the annual ZEV requirements in New Mexico.

**G.** Motor vehicle early action credits or onetime values shall not constitute or convey a property right.

[20.11.104.109 NMAC - Rp, 20.11.104.109 NMAC, 12/31/2023]

#### **20.11.104.110      ADDITIONAL REPORTING:**

**A.** Beginning model year 2027 and subsequent years, each manufacturer subject to 20.11.104 NMAC shall submit to the environment department or environmental health department, within 30 calendar days of a request from the environment department or the environmental health department:

- (1) A copy of the applicable CARB executive order.
- (2) Any documentation the respective department determines necessary for the effective administration and enforcement of 20.11.104 NMAC, including without

limitation certification materials submitted to CARB and documentation regarding the sale of each motor vehicle subject to 20.11.104 NMAC.

(3) Any emission warranty information reports prepared in accordance with CCR, Title 13.

**B.** If these records are available electronically, the manufacturer shall submit the records in an electronic format approved by the respective department.

[20.11.104.110 NMAC -Rp, 20.11.104.110 NMAC, 12/31/2023]

#### **20.11.104.111 WARRANTIES:**

**A.** Beginning model year 2027 and subsequent years, each manufacturer of a motor vehicle subject to 20.11.104 NMAC shall warrant to the ultimate purchaser and each subsequent purchaser that the motor vehicle shall comply over its period of warranty coverage with all applicable requirements of CCR, Title 13, Sections 1962.4, 2035 through 2038, 2040, and 2046. Subsection C of 20.11.104.103 NMAC (Exemptions) shall not apply to this section.

**B.** Except as otherwise provided in Subsection B of 20.11.104.111 NMAC (Warranties), each manufacturer subject to 20.11.104 NMAC shall include with each motor vehicle or motor vehicle engine, the emission control systems warranty statement that complies with the requirements of CCR, Title 13, Section 2039, except:

(1) A manufacturer shall modify the emission control systems warranty statement as necessary to inform motor vehicle owners of the applicability of the warranty in New Mexico.

(2) For the purpose of the documents required pursuant to CCR, Title 13, Section 2039(c), a manufacturer is only required to submit such documents upon request of the environment department.

**C.** Upon the environment department's or the environmental health department's request, a manufacturer of a motor vehicle subject to 20.11.104 NMAC shall submit to the respective department within 30 calendar days of the request any emission warranty information report submitted to CARB, as required in CCR, Title 13, Section 2144.

[20.11.104.111 NMAC - Rp, 20.11.104.111 NMAC, 12/31/2023]

#### **20.11.104.112 LABELS:**

Beginning model year 2027 and subsequent years, a manufacturer, dealer, rental car agency, the United States, state or local government, or other persons shall deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire, receive, or register passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-

duty vehicles, heavy-duty vehicles, heavy-duty engines, or motor vehicle engines in New Mexico with emission control labels and environmental performance labels affixed in accordance with CCR, Title 13, Section 1965.

[20.11.104.112 NMAC - Rp, 20.11.104.112 NMAC, 12/31/2023]

### **20.11.104.113 RECALL CAMPAIGNS:**

**A.** Beginning model year 2027 and subsequent years, each manufacturer of a motor vehicle subject to 20.11.104 NMAC shall be subject to all recall campaign requirements of CCR, Title 13, including Sections 1962.4, 2035 through 2038, 2040, and 2046.

**B.** Any order issued or enforcement action taken by CARB to correct noncompliance that results in a recall campaign of a motor vehicle pursuant to CCR, Title 13, including Sections 1962.7, and 2111 through 2135 shall be prima facie evidence concerning noncompliance for a motor vehicle registered in New Mexico. If the manufacturer demonstrates to the environment department's satisfaction that the order or action is not applicable to a motor vehicle registered in New Mexico, the environment department or environmental health department shall not pursue a recall campaign of that motor vehicle.

**C.** If a manufacturer initiates a voluntary or influenced emission-related recall campaign pursuant to CCR, Title 13, including Sections 1962.7, and 2113 through 2121, the recall campaign shall include all affected motor vehicles registered in New Mexico.

**D.** For a motor vehicle subject to an order or action under Subsection B of 20.11.104.113 NMAC (Recall Campaigns) and Subsection B of 20.2.91.113 (Recall Campaigns), each manufacturer shall send to each owner of an affected motor vehicle registered in New Mexico a notice that complies with the requirements in CCR, Title 13, including Sections 1962.7, 2118 and 2127, as applicable, including a telephone number for owners to obtain answers to questions regarding the recall.

[20.11.104.113 NMAC - Rp, 20.11.104.113 NMAC, 12/31/2023]

### **20.11.104.114 REGISTRATION AND FEES:**

**A.** Effective January 1, 2026, for each manufacturer delivering for sale, offering for sale, selling, importing, delivering, or leasing passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, heavy-duty vehicles, heavy-duty engines or motor vehicle engines subject to 20.2.91 NMAC shall obtain a registration from the environment department. The environment department shall issue a registration for a period of 10 years subject to an annual registration fee as set forth in Section C of 20.1.91.114 NMAC (Registration and Fees) and 20.1.104.114 NMAC (Registration and Fees). It shall be a violation of 20.2.91 NMAC for a manufacturer

subject to 20.2.91 NMAC to not obtain a registration in accordance with Subsection A of 20.2.91.114 NMAC (Registration and Fees).

**B.** Effective January 1, 2026, each manufacturer subject to 20.2.91.114 NMAC (Registration and Fees) and 20.2.104.114 NMAC (Registration and Fees) shall report to the environment department the type and number of passenger cars, light-duty trucks, medium-duty passenger vehicles, medium-duty vehicles, and heavy-duty vehicles, heavy-duty engines or motor vehicle engines subject to 20.2.91 NMAC delivered for sale, offered for sale, sold, imported, delivered, or leased in New Mexico during the previous model year. The manufacturer shall submit the report to the department by May 1 of each year. Failure to timely submit the report shall be a violation of Subsection B of 20.2.91.114 NMAC (Registration and Fees) and cause for the department to revoke the manufacturer's registration.

**C.** The environment department shall assess an annual registration fee for the period beginning July 1 and ending June 30 of the subsequent year.

(1) The environment department shall assess annual registration fees by apportioning the total registration fee among all registrants according to each manufacturer's reported market share for the previous model year, calculated on a statewide basis.

(2) Within 45 calendar days after the report required by 20.2.91.114 NMAC (Registration and Fees) is due, the department shall notify each registrant of the registration fee required for the next registration period. Within 30 calendar days of the department's notice of the required registration fee, each registrant shall remit the specified amount payable to the New Mexico environment department.

(3) The total registration fee is \$300,000 and shall increase annually by the consumer price index through model year 2032. Beginning model year 2033, the total registration fee is \$100,000 and shall increase annually by the consumer price index.

(4) Failure to timely pay the annual registration fee shall be a violation of Subsection C of 20.2.91.114 NMAC (Registration and Fees) and cause for the department to revoke the manufacturer's registration.

**D.** Manufacturers seeking to earn early action credits and onetime values under 20.2.91.109 NMAC (Voluntary Early Action Credits and Onetime Values) shall pay a \$20,000 registration fee that is separate and apart from the annual registration fee required by Section C of 20.2.91.114 NMAC (Registration and Fees) by May 1 following each applicable model year.

[20.11.104.114 NMAC - Rp, 20.11.104.114 NMAC, 12/31/2023]

**20.11.104.115      INSPECTIONS AND INFORMATION REQUESTS:**

**A.** The environment department or environmental health department may inspect motor vehicles, and may inspect and copy relevant, non-financial records, including records documenting motor vehicle origin, certification, delivery, or sales, and any record of emission-related part repairs performed under warranty.

**B.** The environment department or environmental health department may require a manufacturer, dealer, rental car agency, the United States, state or local government, or other person to submit or may inspect and copy itself, relevant, non-financial records related to a motor vehicle subject or potentially subject to 20.11.104 NMAC, except that Subsection B of 20.11.104.115 NMAC (Inspections and Information Requests) shall not be construed to require the creation of a new record.

[20.11.104.115 NMAC - Rp, 20.11.104.115 NMAC, 12/31/2023]

**20.11.104.116      RECORDKEEPING:**

All manufacturers, dealers, rental car agencies, the United States, state and local governments, or other persons shall retain records pertaining to compliance under 20.11.104 NMAC.

[20.11.104.116 NMAC - Rp, 20.11.104.116 NMAC, 12/31/2023]

**20.11.104.117      PROHIBITED:**

Failure to comply with the emission standards, recordkeeping, reporting, or other requirements of 20.11.104 NMAC within the timeframes specified shall constitute a violation of 20.11.104 NMAC subject to enforcement action under Section 74-2-12 NMSA 1978.

[20.11.104.117 NMAC - Rp, 20.11.104.117 NMAC, 12/31/2023]

**20.11.104.118      EXHAUST EMISSION STANDARDS FOR HEAVY-DUTY ENGINES:**

**A.** Beginning model year 2027 and subsequent years, this 20.11.104.118 NMAC (Exhaust Emission Standards for Heavy-Duty Engines) applies to manufacturers that deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire or receive heavy-duty vehicles, heavy-duty engines or other motor vehicle engines pursuant to the requirements of CCR, Title 13, Sections 1900, 1956.8, 1961.2, 1965, 1968.2, 1971.1, 2035, 2036, 2166, 2166.1, 2167 through 2170, 2111 through 2119, 2121, 2123, 2125 through 2131, 2133, 2137, 2139 through 2149, 2423 and 2485.

**B.** Each manufacturer subject to 20.11.104.118 NMAC (Exhaust Emission Standards for Heavy-Duty Engines) shall comply with the heavy-duty engine emissions standards and other requirements set forth in CCR, Title 13, Sections 1900, 1956.8, 1961.2, 1965, 1968.2, 1971.1, 2035, 2036, 2166, 2166.1, 2167 through 2170, 2111

through 2119, 2121, 2123, 2125 through 2131, 2133, 2137, 2139 through 2149, 2423 and 2485. Compliance shall be based on the motor vehicles subject to 20.2.91.118 NMAC (Exhaust Emission Standards for Heavy-Duty Engines) and 20.11.104.118 NMAC (Exhaust Emission Standards for Heavy-Duty Engines) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, purchases, rents, leases, acquires or receives in New Mexico, and shall be determined on a statewide basis.

[20.11.104.118 NMAC - Rp, 20.11.104.118 NMAC, 12/31/2023]

**20.11.104.119 MEDIUM- AND HEAVY-DUTY ZERO-EMISSION VEHICLE REQUIREMENT, REPORTING, AND COMPLIANCE:**

**A.** Beginning model year 2027 and subsequent years, this 20.11.104.119 NMAC (Medium- and Heavy-duty Zero-emission Vehicle Requirement, Reporting, and Compliance) applies to manufacturers that deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire or receive medium-duty vehicles, heavy-duty vehicles, heavy-duty engines or other motor vehicle engines pursuant to the requirements of CCR, Title 13, Sections 1963, 1963.1, 1963.2, 1963.4, and 1963.5.

**B.** Each manufacturer subject to 20.11.104.119 NMAC (Medium- and Heavy-duty Zero-emission Vehicle Requirement, Reporting, and Compliance) shall deliver for sale, offer for sale, sell, import, deliver, purchase, rent, lease, acquire or receive medium-duty vehicles, heavy-duty vehicles, heavy-duty engines or other motor vehicle engines certified as ZEVs to New Mexico in accordance with CCR, Title 13, Sections 1963, 1963.1, 1963.2, 1963.4 and 1963.5.

**C.** Each manufacturer subject to 20.11.104.119 NMAC (Medium- and Heavy-duty Zero-emission Vehicle Requirement, Reporting, and Compliance) shall comply with the ZEV sales percentage schedule set forth in CCR, Title 13, Section 1963.1 using New Mexico specific ZEV sales calculated in accordance with CCR, Title 13, Section 1963.1. Manufacturer's compliance with the ZEV sales percentage shall be based on medium-duty vehicles, heavy-duty vehicles, heavy-duty engines or other motor vehicle engines subject to 20.11.104.119 NMAC (Medium- and Heavy-Duty Zero-emission Vehicles Requirement, Reporting, and Compliance) and 20.2.91.119 NMAC (Medium- and Heavy-Duty Zero-emission Vehicles Requirement, Reporting, and Compliance) that each manufacturer delivers for sale, offers for sale, sells, imports, delivers, purchases, rents, leases, acquires or receives in New Mexico, and shall be determined on a statewide basis.

**D.** Before May 1 of each year, each manufacturer subject to 20.11.104.119 NMAC (Medium- and Heavy-duty Zero-emission Vehicle Requirement, Reporting, and Compliance) shall submit to the department a report detailing ZEV sales percentage performance by identifying qualifying medium-duty vehicles, heavy-duty vehicles, heavy-duty engines or other motor vehicle engines transferred to or from any manufacturer or, offered for sale, sold, imported, delivered, purchased, rented, leased, acquired or received in New Mexico during the previous model year in accordance with

CCR, Title 13, Sections 1963.1. The report shall include the resulting surplus or deficit in meeting the ZEV sales percentage for the model year after applying any ZEV deficits or credits according to CCR Title 13, Section 1963.1. ZEV sales percentage performance shall be on a statewide basis. The report shall be prepared in the same format used to report ZEV sales percentage performance compliance to CARB.

**E.** Each manufacturer subject to 20.11.104.119 NMAC (Medium- and Heavy-duty Zero-emission Vehicle Requirement, Reporting, and Compliance) may generate, bank and trade ZEV credits for qualifying medium-duty vehicles, heavy-duty vehicles, heavy-duty engines or other motor vehicle engines delivered for sale, offered for sale, sold, imported, delivered, purchased, rented, leased, acquired or received in New Mexico in accordance with 20.11.104.119 NMAC (Medium- and Heavy-duty Zero-emission Vehicle Requirement, Reporting, and Compliance) and CCR, Title 13, Sections 1963, 1963.1 and 1963.2.

**F.** Beginning with the model year 2025, any manufacturer that produces on-road vehicles over 8,500 pounds gross vehicle weight rating for sale in New Mexico may generate, bank and trade ZEV credits for vehicles certified as ZEVs in accordance with CCR, Title 13, Sections 1963, 1963.1, 1963.2, 1963.4 and 1963.5 for such vehicles pursuant to CCR, Title 13, Section 1963.2.

[20.11.104.119 NMAC - Rp, 20.11.104.119 NMAC, 12/31/2023]

#### **20.11.104.120      LARGE ENTITY REPORTING REQUIREMENT:**

**A.** Beginning model year 2027 and subsequent years, this 20.11.104.120 NMAC (Large Entity Reporting Requirement) applies to entities in accordance with CCR, Title 13, Sections 2012, 2012.1, and 2012.2.

**B.** Each entity subject to this 20.11.104.120 NMAC (Large Entity Reporting Requirement) shall comply with the large entity reporting requirement in accordance with such sections provided however that every occurrence of "California" shall be replaced with "New Mexico", "Executive Officer" shall be replaced with "Secretary", "Public Utilities Commission" shall be replaced with "Public Regulation Commission", and all other replacements clarifying that CCR, Title 13, Sections 2012, 2012.1, and 2012.2 are requirements in New Mexico in accordance with this section. For purposes of compliance with 20.11.104.120 (Large Entity Reporting Requirement) only, all exemptions under CCR, Title 13, Section 2012(c) apply, and do not apply to another other section of 20.11.104 NMAC.

**C.** Each entity subject to this 20.11.104.120 NMAC (Large Entity Reporting Requirement) shall report complete information to the secretary by May 1, 2025, through the environment department's Advanced Clean Trucks webpage. Vehicle data shall be reported as the fleet was comprised on a date of the fleet owner's choosing any time after December 31, 2023. The reporting entity shall maintain the records of their information required by CCR, Title 13, Sections 2012.1 and 2012.2 for five years

following the report date. To the extent reports submitted contain confidential data, entities may choose to designate that information as confidential.

[20.11.104.120 NMAC - Rp, 20.11.104.120 NMAC, 12/31/2023]

## **CHAPTER 12: SANITARY PROJECTS**

### **PART 1: GENERAL PROVISIONS [RESERVED]**

### **PART 2: BOARD OF DIRECTOR TRAINING REQUIREMENTS**

#### **20.12.2.1 ISSUING AGENCY:**

New Mexico Environment Department.

[20.12.2.1 NMAC - N, 4/15/2008]

#### **20.12.2.2 SCOPE:**

This part governs the training required of members of the board of directors of mutual domestic associations pursuant to the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978.

[20.12.2.2 NMAC - N, 4/15/2008]

#### **20.12.2.3 STATUTORY AUTHORITY:**

20.12.2 NMAC is adopted pursuant to the Sanitary Projects Act, Sections 3-29-6 and 3-29-9 NMSA 1978.

[20.12.2.3 NMAC - N, 4/15/2008]

#### **20.12.2.4 DURATION:**

Permanent.

[20.12.2.4 NMAC - N, 4/15/2008]

#### **20.12.2.5 EFFECTIVE DATE:**

April 15, 2008, unless a later date is cited at the end of a section.

[20.12.2.5 NMAC - N, 4/15/2008]

#### **20.12.2.6 OBJECTIVE:**

The purposes of this part are:

**A.** to standardize the requirement for training and provide minimum criteria for training of members of the board of directors of mutual domestic associations pursuant to the act;

**B.** to encourage board members to seek additional training to better understand their roles and responsibilities pursuant to the act; and

**C.** to encourage technical assistance providers to develop training courses and provide guidelines for the content of those courses.

[20.12.2.6 NMAC - N, 4/15/2008]

#### **20.12.2.7 DEFINITIONS:**

**A.** "**Act**" means the Sanitary Projects Act, Sections 3-29-1 through 3-29-20 NMSA 1978.

**B.** "**Board of directors**" or "**board members**" means the directors elected by the mutual domestic association in accordance with its certificate of association and bylaws and responsible for the administration, operation, and maintenance of the association.

**C.** "**Department**" means the New Mexico environment department.

**D.** "**Mutual domestic association**" means an association organized under the provisions of the act.

**E.** "**Secretary**" means the secretary of the New Mexico environment department, the secretary's designee, or any person who properly assumes the role of the secretary in the event of the secretary's recusal or disqualification.

**F.** "**Technical service provider**" means any individual, business, learning institution, or entity to include the department that provides assistance in the form of department approved training to any mutual domestic association.

[20.12.2.7 NMAC - N, 4/15/2008]

#### **20.12.2.8 POWERS AND DUTIES OF DEPARTMENT AND SECRETARY:**

**A.** The department shall exercise all powers and duties prescribed under this part.

**B.** The secretary shall have the authority to take all measures necessary to review and approve specific training course content developed by the department or a technical service provider and act on behalf of the department.

[20.12.2.8 NMAC - N, 4/15/2008]

**20.12.2.9 INITIAL AND CONTINUING TRAINING TOPICS:**

**A.** The following topics are the minimum required subject areas for initial training of mutual domestic board of director members:

- (1) responsibilities of governing bodies (certificate of association, bylaws, election procedures and Governmental Conduct Act);
- (2) Sanitary Projects Act;
- (3) Safe Drinking Water Act and drinking water regulations;
- (4) Utility Operator Certification regulations;
- (5) Open Meetings Act;
- (6) Inspection of Public Records Act;
- (7) Audit Act and Requirements for Contracting and Conducting Audits of Agencies;
- (8) State Procurement Code;
- (9) office of the state engineer reports and requirements; and
- (10) basic accounting, budgeting, and rate setting.

**B.** The department shall maintain a list of approved courses for continuing training.

[20.12.2.9 NMAC - N, 4/15/2008]

**20.12.2.10 APPLICATION OF TRAINING REQUIREMENTS:**

**A.** Board members shall complete a minimum of twelve hours of initial training:

- (1) within two years of election or appointment to a board of directors and shall complete a minimum of six hours of training within the first year; and
- (2) within two years of re-election, or appointment to a board of directors after interruption in service on a board greater than four years and shall complete a minimum of six hours completed the first year.

**B.** To maintain certification after completion of the initial training, board members must complete a total number of credits equivalent to two hours of continuing training

during each year of their elected or appointed term. Any board member may carry up to six hours of excess credits earned over to the next compliance year(s) within the board member's term of office. Excess credits may not be carried over to a board member's subsequent term of office.

[20.12.2.10 NMAC - N, 4/15/2008]

#### **20.12.2.11 TRACKING AND RECORDATION OF INITIAL AND CONTINUING TRAINING:**

**A.** Mutual domestic associations shall track and record the required and continuing training received by members of their board of directors, including the following information:

- (1) course title and content shall be recorded for each board member;
- (2) total course hours shall be recorded for each board member; and
- (3) date, location and provider of the training shall be recorded for each board member.

**B.** Mutual domestic associations shall submit to the department a certificate of compliance with the requirement for board training as part of the member accountability report required by the act demonstrating compliance of each board member with the requirements for the initial and continuing training.

**C.** At the conclusion of any training, a certificate of completion shall be issued to the board member by the technical service provider or entity providing the training that documents the date and location of training, course title and description, total hours of training for each topic, name of the trainer or trainers.

**D.** Technical service providers will submit to the department a summary of each training event including the date(s) and location(s) of training, course title and description, total hours of training for each topic, name of the trainer or trainers, and a list of attendees that successfully completed the training and the water system they represent. The information reported to the department shall be in an electronic format as directed by the department.

[20.12.2.11 NMAC - N, 4/15/2008]

#### **20.12.2.12 APPROVAL OF COURSE CONTENT:**

**A.** The department shall approve in writing all training courses and associated credit hours intended to comply with this part.

**B.** Technical service providers shall submit proposed training to the secretary for approval at least 30 days in advance of any proposed class. Proposals will include a description of course content and time allotted to each topic, and total course credit hours.

**C.** Each initial course shall consist of all or some of the topics listed in Subsection A of 20.12.2.9 NMAC above.

**D.** Each continuing training course shall be approved by the department.

[20.12.2.12 NMAC - N, 4/15/2008]

**20.12.2.13 EFFECTIVE COMPLIANCE DATE:**

**A.** This part shall become effective 12 months after promulgated.

**B.** Training approved by the department and attended by mutual domestic board members in the 12 months prior to the promulgation of this part shall be credited to board members toward compliance with the requirements of this part.

[20.12.2.13 NMAC - N, 4/15/2008]